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An Overview of Small Business Contracting

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An Overview of Small Business Contracting

Congress has broad authority to impact the federal procurement process and how agencies purchase goods and services from private sector firms. One way in which Congress has exercised this authority is by adopting measures to promote contracts and subcontracts with “small businesses.” This report discusses federal contracting preferences for firms that meet the Small Business Administration’s definition of “small.” It also provides information on statutory and regulatory requirements for agencies to award contracts to small businesses, as well as federal assistance for small business owners seeking government contracts.

Small business contracting policies and programs respond to the congressional directive to ensure that a “fair proportion” of federal contract and subcontract dollars is awarded to small businesses. Congress established government-wide goals for the percentage of federal contract and subcontract dollars awarded to small businesses each fiscal year. The Small Business Administration (SBA) negotiates small business procurement goals with each federal agency, negotiating agency-specific goals that collectively add up to the government-wide goals in statute. The SBA publishes annual Small Business Procurement Scorecards and the System for Awards Management (SAM.gov) posts an annual Small Business Goaling Report, which measure goal achievement.

There are procurement goals for both prime and subcontract dollars for small businesses, small businesses owned by socially and economically disadvantaged individuals (SDBs), women-owned small businesses (WOSBs), small businesses located within a HUBZone, and service-disabled veteran-owned small businesses (SDVOSBs). In recent years, the government has generally succeeded in meeting the government-wide goals for awards made to small businesses, SDBs, and SDVOSBs. It has also met its subcontracting goals for small businesses and WOSBs. It has had difficulty meeting the WOSB and HUBZone prime contracting goals.

A collection of laws and regulations underpin small business contracting efforts. In order to facilitate contracting opportunities for small businesses, Congress has authorized federal agencies, under specified circumstances, to set aside contracts exclusively for small businesses; authorized federal agencies to make sole-source awards to small businesses; and authorized federal agencies to set aside contracts for, or grant other contracting preferences to, the four types of small businesses for which there are small business procurement goals: SDBs, SDVOSBs, WOSBs, and HUBZone firms. Congress tasks the SBA and agency procurement personnel with reviewing and structuring proposed procurements to maximize opportunities for small business participation.

Also supporting small businesses in the federal market are technical assistance providers, small business contractor mentor-protégé programs, and subcontracting policies and regulations.

Observers may judge the relative success or failure of federal efforts to create small business contracting opportunities by whether the government and individual agencies meet small business procurement goals. The publication of goal attainment data and SBA Procurement Scorecards offer an accessible way to examine the level of small business contracting each year, but may focus reviewers on readily measured information (dollars awarded) rather than broader assessments of the effectiveness of contracting programs and policies. Moreover, the procurement goals themselves may not reflect overall policy aims, because of how they are expressed by monetary value, and/or because of how high or low they are relative to the availability of small suppliers. Other valuable information might include measures of market diversification, competitiveness, or concentration.

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Introduction

The size of the federal government as a buyer creates economic impacts that continue to interest policymakers. From FY2020 to FY2022, the government spent in the range of \$600 to \$700 billion on contracts,¹ and represents the largest buyer of goods and services in the world.² This report describes the various federal requirements, programs, and personnel involved in promoting federal contracting and subcontracting with small businesses. It covers requirements and programs for certain types of small businesses: small disadvantaged businesses (SDBs), SDBs participating the SBA's "8(a) Business Development Program," Historically Underutilized Business Zone (HUBZone) small businesses, women-owned small businesses (WOSBs), and service-disabled veteran-owned small businesses (SDVOSBs). Small businesses and these types of "socioeconomic" small businesses may receive contracting preferences, which limit competition to certain firms (through a contract set-aside) or receive contract awards without competition (through a sole-source contract award). The Small Business Administration (SBA) has significant involvement with all of these contracting programs at agencies across the executive branch, although agency purchasing staff execute contracting activities, including implementation of contracting preferences. The report also discusses the roles and responsibilities of various federal procurement officers as well as the role of agency Offices of Small and Disadvantaged Business Utilization (OSDBUs).

In the Small Business Act (P.L. 83-163), which established the Small Business Administration (SBA),³ Congress declared a policy of promoting the interests of small businesses in order to "preserve free competitive enterprise."⁴ The Small Business Act further specifies that small businesses should receive a "fair proportion" of federal contracts and subcontracts.⁵ The act states

It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of

¹ U.S. Government Accountability Office, *A Snapshot of Government-Wide Contracting for FY 2022*, August 15, 2023; U.S. Government Accountability Office, *A Snapshot of Government-Wide Contracting for FY 2021*, August 25, 2022; U.S. Government Accountability Office, *A Snapshot of Government-Wide Contracting for FY 2020*, June 22, 2021.

² U.S. General Services Administration, "Federal Acquisition Policy Division," at <https://www.gsa.gov/policy-regulations/policy/acquisition-policy/office-of-acquisition-policy/governmentwide-acq-policy/federal-acquisition-policy-division>.

³ On July 31, 1951, the Small Defense Plants Administration (SDPA) was created by an amendment to P.L. 81-774, the Defense Production Act of 1950, and was given "primary responsibility in the field of channeling defense contracts to small producers." As hostilities with Korea subsided, so did the perceived need for the SDPA. Congress granted the Small Business Administration (SBA) similar authority to promote small business contracting with all federal agencies, as opposed to focusing on the Department of Defense. See U.S. Congress, Senate Select Committee on Small Business, *Small Business Administration*, committee print, 83rd Cong., 1st sess., August 10, 1953 (Washington: GPO, 1953), p. iv.

⁴ As stated in the Small Business Act, "It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise." P.L. 83-163, the Small Business Act of 1953 (as amended), see <https://www.govinfo.gov/app/details/COMPS-1834>.

⁵ P.L. 83-163, the Small Business Act of 1953 (as amended), see <https://www.govinfo.gov/app/details/COMPS-1834>.

Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.⁶

When the act was signed into law in 1953, Congress found that World War II and Korean War-induced materials' shortages combined with an inability to obtain defense contracts or financial assistance had threatened the existence of thousands of small businesses.⁷ Congress indicated that it therefore intended to "equalize the scales when necessary to guarantee the continued vigor of our competitive free enterprise system."⁸ By 2007, a House committee report explained that the primary rationale for small business contracting programs "is the positive economic benefits they provide, as well as assisting small businesses overcome the complexities of the [procurement] system."⁹

Small Business Procurement Goals

Legislative History of Small Business Procurement Goals

Since 1978, federal agency heads have been required to establish small business procurement goals in consultation with the SBA, "that realistically reflect the potential of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals" to participate in federal procurement. Each agency is required, at the conclusion of each fiscal year, to report its progress in meeting prime contract and subcontract award goals to the SBA.¹⁰

In 1988, Congress required the President to establish annual government-wide goals for federal contracts awarded to small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals.¹¹ Through the same legislation, P.L. 100-656, the Business Opportunity Development Reform Act of 1988, Congress set a minimum government-wide small business procurement goal, requiring that small businesses receive "not less than 20 percent of the total value of all prime contract awards for each fiscal year" and that small businesses owned and controlled by socially and economically disadvantaged individuals receive

⁶ 15 U.S.C. §631(a); and P.L. 83-163, the Small Business Act of 1953 (as amended), see <https://www.govinfo.gov/app/details/COMPS-1834>.

⁷ U.S. Congress, Senate Select Committee on Small Business, *Small Business Administration*, committee print, 83rd Cong., 1st sess., August 10, 1953 (Washington: GPO, 1953), p. iii. Also, see U.S. Congress, House Committee on Banking and Currency, *Small Business Act of 1953*, report to accompany H.R. 5141, 83rd Cong., 1st sess., May 28, 1953, H.Rept. 83-494 (Washington: GPO, 1953).

⁸ U.S. Congress, Senate Select Committee on Small Business, *Small Business Administration*, committee print, 83rd Cong., 1st sess., August 10, 1953 (Washington: GPO, 1953), p. v.

⁹ U.S. Congress, House Committee on Small Business, *Small Business Contracting Program Improvements Act*, report to accompany H.R. 3867, 110th Cong., 1st sess., October 22, 2007, H.Rept. 110-400 (Washington: GPO, 2007), p. 4. The report states, "The economic benefits of these programs can be seen in two primary areas—market competition and local economic development. First, [these] programs ... are designed to increase and diversify small contractors with the intent of expanding the federal supplier base. This leads to increased competition, which results in higher quality, greater product variety, and lower prices. Second, these contracting initiatives lower barriers to entry in a wide range of markets for small businesses. This provides greater market access for small firms' goods and services. From an economic perspective, such access is critical to generating positive macroeconomic benefits, including higher job creation, wage growth, and greater income distribution."

¹⁰ 15 U.S.C. §644(g)(2); and P.L. 95-507, a bill to amend the Small Business Act and the Small Business Investment Act of 1958. Prime contracts are made between the government and a business whereas subcontracts are between a prime contractor and other businesses.

¹¹ P.L. 100-656, the Business Opportunity Development Reform Act of 1988, codified at 15 U.S.C. §644(g)(1).

“not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.”¹² This law also directed each federal agency to “have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of contracts let by such agency.”¹³ The law further required SBA to report to the President annually on the attainment of the goals and to include the information in an annual report to Congress.¹⁴

Over the years, government-wide procurement goals for both prime and subcontract dollars have been established for small businesses generally (P.L. 100-656 and P.L. 105-135); small businesses owned by socially and economically disadvantaged individuals (P.L. 100-656); women-owned small businesses (P.L. 103-355); small businesses located within a HUBZone (P.L. 105-135); and small businesses owned by service-disabled veterans (P.L. 106-50, the Veterans Entrepreneurship and Small Business Development Act of 1999).

There are five government-wide statutory small business procurement goals set by Congress:

Table 1. Statutory Federal Small Business Procurement Goals

Type of Firm	Goal	Measure of Contract Awards
Small Businesses	23%	Dollar value of prime contract awards
Small Disadvantaged Businesses (SDBs) ^a	5%	Dollar value of prime and subcontract awards
Women-Owned Small Businesses (WOSBs)	5%	Dollar value of prime and subcontract awards
Service-Disabled Veteran-Owned Small Businesses (SDVOSBs)	5%	Dollar value of prime and subcontract awards
HUB (Historically Underutilized Business) Zone Small Businesses	3%	Dollar value of prime and subcontract awards

Sources: 15 U.S.C. §644(g)(1)(A); P.L. 118-31.

Notes: Prime contract awards are made directly to a business from an agency. Some federal prime contracts require a contractor to subcontract with small businesses to create more opportunities for those firms. P.L. 118-31, the National Defense Authorization Act for Fiscal Year 2024, increased the SDVOSB goal from 3% to 5%. Executive action increased the statutory SDB goal; in FY2024, agencies must collectively award at least 13% of contract spending to SDBs, per Office of Management and Budget Memorandum M-24-01 (https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-01-Increasing-the-Share-of-Contract-Dollars-Awarded-to-Small-Disadvantaged-Businesses_Final.pdf), in order to increase this share of award dollars to 15% by 2025.

- a. SDBs are small businesses owned and controlled by socially and economically disadvantaged individuals. These firms must meet criteria described in SBA regulations at 13 C.F.R. §124.1001. While all 8(a) Business Development Program participant firms qualify as SDBs, not all SDBs are in the 8(a) program.

¹² P.L. 100-656, the Business Opportunity Development Reform Act of 1988, codified at 15 U.S.C. §644(g)(1). The government-wide minimum participation goal for small businesses was increased from 20% to 23% by P.L. 105-135, the Small Business Reauthorization Act of 1997.

¹³ 15 U.S.C. §644(g)(1); and P.L. 100-656, the Business Opportunity Development Reform Act of 1988.

¹⁴ 15 U.S.C. §644(g)(1); and P.L. 100-656, the Business Opportunity Development Reform Act of 1988.

Agency-Level Goal-Setting

The SBA negotiates small business procurement goals with each federal agency and establishes a *small business eligible* baseline for evaluating the agency's performance.¹⁵ The small business eligible baseline excludes certain contracts that the SBA has determined do not realistically reflect the potential for small business participation in federal procurement (such as those awarded to mandatory and directed sources), contracts funded predominately from agency-generated sources (i.e., nonappropriated funds), contracts not covered by the Federal Acquisition Regulation, acquisitions on behalf of foreign governments, and contracts not reported in the General Services Administration's (GSA's) Federal Procurement Data System—Next Generation, or FPDS-NG (such as government procurement card purchases and contracts valued less than \$10,000).¹⁶

During the goal negotiation process, the SBA consults with agencies to establish annual goals for small business participation in contracting and subcontracting that collectively add up to the government-wide goals in statute. If the SBA and the agency cannot agree on the goals, the agency may submit the case to the Office of Management and Budget (OMB) Office of Federal Procurement Policy (OFPP) for resolution.¹⁷ SBA added Small Disadvantaged Business goals to the negotiation process in FY2022, per OMB Memorandum M-22-03.¹⁸ SBA sets agency goals for HUBZone businesses, WOSBs, and SDVOSBs at the statutory level; it bases subcontracting goals on recent attainment levels.¹⁹ An agency's head is required to "make consistent efforts to annually expand participation by small business concerns from each industry category."²⁰

Small Business Procurement Scorecards and Reports

Once goals are set, the SBA then evaluates agencies' performance against their negotiated goals and presents the results in the SBA's annual Small Business Procurement Scorecards.²¹ The SBA

¹⁵ According to a 2001 GAO report, the SBA began to specify what types of contracts the Federal Procurement Data System would exclude when determining agency compliance with federal contracting goals in FY1998. Prior to FY1998, "agencies reported their small business achievements directly to SBA and excluded from their calculations certain types of contracts, such as those for which small businesses had a limited or no chance to compete. SBA then published an annual report summarizing each agency's achievements. SBA officials said that in some cases they were not aware of all exclusions the agencies made when reporting their numbers." GAO, *Small Business: More Transparency Needed in Prime Contract Goal Program*, GAO-01-551, August 1, 2001, pp. 9-10, at <http://www.gao.gov/assets/240/231854.pdf>.

¹⁶ SBA, Office of Policy, Planning and Liaison, Office of Government Contracting and Business Development, "FY 2018 Goaling Guidelines," p. 3; and GSA, Federal Procurement Data System—Next Generation, "What's In FPDS-NG," at https://www.fpds.gov/wiki/index.php/FPDS-NG_FAQ.

¹⁷ SBA, Office of Policy, Planning and Liaison, Office of Government Contracting and Business Development, "FY 2018 Goaling Guidelines," August 30, 2017, p. 4, at https://www.sba.gov/sites/default/files/2018-06/FY18_Small_Business_Goaling_Guidelines.pdf (hereinafter SBA, Office of Policy, Planning and Liaison, Office of Government Contracting and Business Development, "FY 2018 Goaling Guidelines").

¹⁸ Memorandum from Jason S. Miller, Deputy Director for Management, Office of Management and Budget, to Heads of Executive Departments and Agencies, December 2, 2021, p. 2, <https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-03.pdf>.

¹⁹ SBA, Office of Policy, Planning and Liaison, Office of Government Contracting and Business Development, "FY 2023 Goaling Guidelines," p. 6.

²⁰ 15 U.S.C. §644(g)(2).

²¹ Current and past Scorecards are available at <https://www.sba.gov/document/support-small-business-procurement-scorecard-overview>. The Scorecard "grading methodology" is described by the SBA for each fiscal year, in documents available at <https://www.sba.gov/document/support-contracting-scorecard-grading-methodology>.

uses FPDS-NG data, which are also published in GSA’s annual Small Business Goaling Report,²² available through SAM.gov. GSA is also required to produce an annual report that must include “all procurements made for the period covered by the report and may not exclude any contract awarded.”²³ Agencies can take credit in every category that is applicable to the recipient of the contract. For example, “when counting goaling achievements, a contract awarded to a Service-Disabled Veteran-Owned Woman-Owned Small Business would be counted toward the Small Business (SB) goal, the Service-Disabled Veteran-Owned Small Business (SDVOSB) goal and the Women-Owned Small Business (WOSB) goal. However, these category counts are not summed to triple the total count. *The Sum of Parts Does Not Equal the Whole* (italics in original).”²⁴

Agency goal attainment is an aspirational pursuit without punitive consequences for failure to meet goals. Any agency that does not achieve a goal must submit a “corrective action report” to the SBA, denoting the reasons it failed to achieve the goal and proposing a “corrective action plan.”²⁵ The SBA’s Small Business Procurement Scorecards and GSA’s Small Business Goaling Report are distributed widely, receive media attention, and heighten public awareness of small business contracting. Agency performance as reported in the SBA’s Small Business Procurement Scorecards may also be referenced by Members during congressional debates and hearings.

As shown in **Table 2**, the Small Business Procurement Scorecard data show that the government has met the prime award goals for small businesses generally, as well as for SDVOSBs, over the past five fiscal years. It has also met the subcontract award goals for small and WOSBs over the same time period.

Table 2. Federal Procurement Goals and Percentage of Federal Contract Dollars Awarded to Small Businesses, by Type of Small Business

Business Type	Federal Goal	Percentage Dollars Awarded FY2023	Percentage Dollars Awarded FY2022	Percentage Dollars Awarded FY2021	Percentage Dollars Awarded FY2020	Percentage Dollars Awarded FY2019
Small Business						
Prime	23%	28.35%	26.50%	27.23%	26.02%	26.50%
Subcontract		33.34%	31.08%	30.87%	32.46%	33.27%
SDB						
Prime Contractor	5% ^a	12.1%	11.38%	11.01%	10.54%	10.29%
Subcontractor		4.89%	4.55%	4.44%	4.40%	4.17%

²² GSA’s Small Business Goaling Reports are available at <https://sam.gov/reports/awards/static>.

²³ 15 U.S.C. §644(h)(3)(A)(ii). Current and past reports are available at <https://www.gsa.gov/policy-regulations/policy/acquisition-policy/small-business-reports>.

²⁴ SBA, Office of Policy, Planning and Liaison, Office of Government Contracting and Business Development, “FY 2018 Goaling Guidelines,” p. 5. “The exception to this non-additive rule is for total Small Disadvantaged Business (SDB), which is the sum of 8(a) and non-8(a) SDBs. Each special type of small business is first of all a small business. That also means Federal procurements awarded to SDVOSB will also have been awarded to Veteran-Owned Small Business (VOSB).”

²⁵ SBA, Office of Policy, Planning and Liaison, Office of Government Contracting and Business Development, “FY 2023 Goaling Guidelines,” p. 8.

Business Type	Federal Goal	Percentage Dollars Awarded FY2023	Percentage Dollars Awarded FY2022	Percentage Dollars Awarded FY2021	Percentage Dollars Awarded FY2020	Percentage Dollars Awarded FY2019
WOSB						
Prime Contractor	5%	4.91%	4.57%	4.63%	4.85%	5.19%
Subcontractor		5.65%	5.14%	5.24%	5.62%	5.25%
HUBZone						
Prime Contractor	3%	2.78%	2.65%	2.53%	2.44%	2.28%
Subcontractor		1.97%	1.68%	1.60%	1.65%	1.37%
SDVOSB						
Prime Contractor	3% ^b	5.07%	4.57%	4.41%	4.28%	4.39%
Subcontractor		2.63%	2.16%	2.25%	2.14%	1.95%

Sources: SBA, Government-wide FY2018-2023 Small Business Procurement Scorecard.

Notes: SBA excludes certain contracts when procurement data is unavailable or because the work cannot realistically be performed by small businesses. According to the SBA's FY2024 Goaling Guidelines, excluded contracts include acquisitions on behalf of foreign governments; contracts awarded to mandatory sources (which include Federal Prison Industries contracts and those with nonprofit agencies employing persons who are blind or have other significant disabilities); contracts funded with non-appropriated, agency-generated funds; Tricare health care program contracts; and Department of Veterans Affairs Community Care Network contracts. Purchases valued at less than \$10,000 are also excluded because they are not tracked in the Federal Procurement Data System. The value of contracts with these exclusions is referred to as the "small business eligible" value.

- a. Executive action has increased the statutory SDB goal, seeking to increase this share of award dollars to 15% by 2025. In FY2022, agencies were required to collectively award at least 11% of contract spending to SDBs (<https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-03.pdf>). In FY2023, they were required to collectively award at least 12% to SDBs (<https://www.whitehouse.gov/wp-content/uploads/2022/10/M-23-01.pdf>). In FY2024, they must collectively award at least 13% to SDBs (https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-01-Increasing-the-Share-of-Contract-Dollars-Awarded-to-Small-Disadvantaged-Businesses_Final.pdf).
- b. P.L. 118-31, the National Defense Authorization Act for Fiscal Year 2024, increased the SDVOSB goal from 3% to 5%.

Small Business Contracting Preferences

The Competition in Contracting Act of 1984 generally requires "full and open competition" for government procurement contracts.²⁶ However, various provisions of the Small Business Act authorize or, in some cases, require federal agencies to provide small businesses a preference when making a contract award.²⁷ Preferences for small business contractors may take the form of

²⁶ 41 U.S.C. §3301; and the Deficit Reduction Act of 1984 (Title VII, the Competition in Contracting Act). The Competition in Contracting Act (CICA) of 1984 (originally enacted as part of the Deficit Reduction Act of 1984, P.L. 98-369, §§2701-2753) requires that contracts be entered into after "full and open competition through the use of competitive procedures" unless otherwise authorized by law. CICA addresses small business set-asides by allowing "procurement of property or services ... using competitive procedures, but excluding other than small business concerns" 10 U.S.C. §2304(b)(2) and 41 U.S.C. §253(b)(2).

²⁷ Set-aside authorities are codified in different places in the *U.S. Code*, where contracts and socioeconomic contracting programs are covered (15 U.S.C. §644(j)(1); 15 U.S.C. §637(a) for SDBs and 8(a) program participants; 15 U.S.C. §657a for HUBZone small businesses; 15 U.S.C. §637(m) for WOSBs; and 15 U.S.C. §657f for SDVOSBs).

contract set-asides and sole-source awards; while set-asides limit the competition for an award to small firms, a sole-source award is made directly to a firm without competition.²⁸

Federal agencies are required to set-aside contracts for small businesses under certain conditions, and are generally encouraged to do so when possible.²⁹ Set-asides may be “total” or “partial,” depending on the market research findings of purchasing agencies.³⁰ Agencies consider the value of a contract and the number of available small businesses able to complete required work. **Table 3** summarizes agency requirements to make small business set-asides and **Table 4** shows the conditions and limitations for sole-source awards to small businesses.

In the case of Multiple Award Contracts (MACs),³¹ agencies may make a partial set-aside for socioeconomic small businesses.³² Agencies may also make a small business reserve, to award MACs to a socioeconomic small business under full and open competition.³³

Frequently-used terms related to small business contracting preferences are defined below.

Glossary

Term	Description
Micro-purchase threshold	\$10,000, per Section 806 of the NDAA for FY2018 (P.L. 115-91)
“Responsible” prospective contractor	To be determined responsible, a prospective contractor must generally have adequate financial resources to perform the contract; be able to comply with the required or proposed delivery or performance schedule; have a satisfactory performance record; have a satisfactory record of integrity and business ethics; have the necessary organization, experience, skills, equipment, and facilities; and be otherwise qualified under laws and regulations (48 C.F.R. §9.104-1).

²⁸ A “price evaluation preference” is another kind of preference used. Agencies are required to grant HUBZone small businesses a price evaluation preference of not more than 10% in open and unrestricted competitions.

²⁹ 15 U.S.C. §644(j)(1). Certain regulations implementing this provision of the Small Business Act effectively narrow its scope. For example, certain small business contracts awarded or performed overseas are not necessarily required to be set aside for small businesses, and the small business provisions contained in Part 19 of the Federal Acquisition Regulation (Part 48 of the *Code of Federal Regulations*) generally do not apply to Blanket Purchase Agreements and orders placed against Federal Supply Schedule contracts.

³⁰ If market research “indicates that a total set-aside is not appropriate,” and a contract can be divided “into distinct portions,” contracting officers must “set aside a portion or portions of an acquisition, except for construction, for exclusive small business participation.” 48 C.F.R. §19.502-3(a).

³¹ A multiple-award contract describes a type of Indefinite Delivery, Indefinite Quantity (IDIQ) contract awarded to multiple vendors under a single solicitation. For information on IDIQs, see CRS In Focus IF12558, *Indefinite Delivery, Indefinite Quantity Contracts*, by Dominick A. Fiorentino and Alexandra G. Neenan.

³² 48 C.F.R. §19.502-4. Contracting officers may also set aside orders placed under multiple-award contracts for socioeconomic small businesses (48 C.F.R. §19.504). Socioeconomic small businesses refers, collectively, to small disadvantaged (and 8(a) program participant) businesses, women-owned small businesses, service-disabled veteran-owned small businesses and HUBZone businesses.

³³ 48 C.F.R. §19.501(a)(2). In a 2024 memorandum from the Office of Federal Procurement Policy under the Office of Management and Budget, agencies were advised to set aside orders over the micro-purchase threshold for small businesses “when the contracting officer determines there is a reasonable expectation of obtaining offers from two or more small business contract holders under the multiple-award contract that are competitive in terms of market prices, quality, and delivery.” See Office of Federal Procurement Policy, “Increasing Small Business Participation on Multiple-Award Contracts,” memorandum for chief acquisition officers senior procurement executives, January 25, 2024, p. 4, at https://www.whitehouse.gov/wp-content/uploads/2024/01/REV_Increasing-Opportunities-to-Small-Businesses-under-MACs-CATS-Final-Copy-1-25-24.pdf.

Term	Description
Rule of two	Agencies set aside contracts for bids by small businesses when there is a reasonable expectation of obtaining offers from two or more responsible small businesses that are competitive in terms of market prices, quality, and delivery (48 C.F.R. §19.502).
Simplified Acquisition Threshold	\$250,000, per Section 805 of the NDAA for FY2018 (P.L. 115-91)
Small business	A firm that meets Small Business Administration size criteria (13 C.F.R. §121.201).
Small business set-aside	Contract restricted to offers by small businesses
Sole-source award	Contract awarded to a single firm without competition from other offerors

As shown in **Table 3**, when a contract award’s value is expected to be between the “micro-purchase threshold” (\$10,000) and “simplified acquisition threshold” (\$250,000), an agency must award the contract to a small business “unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of fair market prices, quality, and delivery.”³⁴ The agency will create a “total” small business set-aside under these circumstances. Furthermore, regulations direct an agency to make an award to a firm if it is the only firm that makes an “acceptable offer” in response to a set-aside and is “a responsible small business concern.”³⁵

For contracts above the simplified acquisition threshold, agencies must also generally set aside contracts exclusively for small businesses as long as a contracting officer expects that offers will be obtained from at least two responsible small businesses and the award will be made at a fair market price.³⁶ Before making a small business set-aside for acquisitions above this threshold, a contracting officer must “first consider an acquisition for the small business socioeconomic contracting programs (i.e., 8(a), HUBZone, SDVOSB, or WOSB programs).”³⁷

³⁴ 48 C.F.R. §19.502-2(a).

³⁵ 48 C.F.R. §19.502-2(a). “If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm.” The set-aside is “withdrawn” and the contract is “resolicited on an unrestricted basis” when a “the contracting officer receives no acceptable offers from responsible small business concerns.”

³⁶ 48 C.F.R. §19.502-2(b). In addition to the expectation that offers will be obtained from at least two responsible small businesses and the award will be made at a fair market price, a contracting officer must also have “a reasonable expectation of obtaining from small businesses the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.”

³⁷ 48 C.F.R. §19.203(c). However, if a requirement has been accepted by the SBA under the 8(a) Program, it must remain in the 8(a) Program unless the SBA agrees to its release.

Table 3. Conditions for Small Business Set-Asides

Anticipated Contract Award Value ^a	Acquisition Procedure	Number of Small Business Offerors	Set-Aside Requirement	Regulations
Below “micro-purchase threshold” (\$10,000)	Purchase card preferred			48 C.F.R. §13.201
Between “micro-purchase threshold” (\$10,000) and “simplified acquisition threshold” (\$250,000)	Small business set-aside	2+	Total set-aside or sole-source award	48 C.F.R. §19.502-2(a)
Above “simplified acquisition threshold” (\$250,000)	Small business set-aside	2+	Total or partial set-aside; socioeconomic program consideration	48 C.F.R. §19.502-2(b); 48 C.F.R. §19.502-3; 48 C.F.R. §19.203(c).

Sources: 48 C.F.R. §13.201; 48 C.F.R. §19.502-2; 48 C.F.R. §19.502-3; 48 C.F.R. §19.203(c).

- a. The Federal Acquisition Regulatory Council has the responsibility of adjusting each acquisition-related dollar threshold on October 1, of each year that is evenly divisible by five. As a result, these thresholds may differ from those in statute. The next adjustment for inflation will take place on October 1, 2025. 41 U.S.C. §1908(c)(2).

Agencies may make sole-source awards to small businesses and socioeconomic small businesses, subject to limits on the value of such awards shown in **Table 4**. Sole-source contract award limits generally range from \$4 million to \$7 million. Group-owned firms in the 8(a) Business Development Program (e.g., Alaska Native Corporations, Native Hawaiian Organizations) may receive sole-source awards in excess of the limits for individually-owned firms.

Table 4. Sole-Source Award Limitations

Type of Small Business	Sole-Source Award Limit	Regulations	Statutes
Small Business	\$250,000	48 C.F.R. §19.502-2(a)	15 U.S.C. §644(j)
8(a) Program Participant ^a	\$4.5 million (\$7 million for manufacturing contracts)	48 C.F.R. §19.805-1(a)(2)	15 U.S.C. §637(a)(16)(A)
Alaska Native Corporation (ANC) or Indian Tribe-Owned 8(a)	No limit, written justification required for contracts in excess of \$25 million (\$100 million for DoD contracts) ^b	48 C.F.R. §19.805-1(b)(2); 13 C.F.R. §124.506(b)(5)	P.L. 100-656, §602(a), 102 Stat. 3887-88 (November 15, 1988) (codified at 15 U.S.C. §637 note)
Native Hawaiian (NHO) 8(a)	No limit for DoD contracts, written justification required for contracts in excess of \$100 million	48 C.F.R. §219.805-1(b)(2)(A)-(B); 13 C.F.R. §124.506(b)(5)	See P.L. 109-148, §8020, 119 Stat. 2702-03 (December 30, 2005)

Type of Small Business	Sole-Source Award Limit	Regulations	Statutes
WOSBs	\$4.5 million (\$7 million for manufacturing contracts)	48 C.F.R. §19.1506(a)-(c)	15 U.S.C. §637(m)
SDVOSBs	\$4 million (\$7 million for manufacturing contracts)	13 C.F.R. §128.405	15 U.S.C. §657f(c)
VOSBs (VA only) ^c	\$5 million	48 C.F.R. §819.7007 and 48 C.F.R. §819.7008	38 U.S.C. §8127(c)
HUBZone	\$4.5 million (\$7 million for manufacturing contracts)	48 C.F.R. §19.1306	15 U.S.C. §657a(c)(2)(A)

Sources: 48 C.F.R. §19.502-2(a); 48 C.F.R. §19.805-1(a)(2); 48 C.F.R. §19.805-1(b)(2); 13 C.F.R. §124.506(b)(5); 48 C.F.R. §219.805-1(b)(2)(A)-(B); 13 C.F.R. §124.506(b)(5); 48 C.F.R. §19.1506(a)-(c); 13 C.F.R. §128.405; 48 C.F.R. §819.7007 and 48 C.F.R. §819.7008; 48 C.F.R. §19.1306; 15 U.S.C. §637(a); 15 U.S.C. §657a; 15 U.S.C. §637(m); 38 U.S.C. §8127(c) for VOSBs; and 15 U.S.C. §657f.

Notes: Sole-source award limits include a contract's anticipated total value, including any options.

- a. Sole-source awards in excess of the above thresholds may be made only when (1) there is not a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers at a fair market price; or (2) the SBA accepts the contract on behalf of certain group-owned firms (e.g., ANCs). When an 8(a) contract's anticipated value, including options, is less than \$4.5 million (or \$7 million for manufacturing contracts), the contract is typically awarded on a sole-source basis without competition and when the anticipated value exceeds these thresholds, it generally must be awarded via a set-aside (48 C.F.R. §19.805-1; and 15 U.S.C. §637(a)(16)(A)). Once they have been awarded more than \$168,500,000 in 8(a) contract awards, participant firms owned by individuals may not receive any additional 8(a) sole-source awards, though they can still receive set-asides. This amount is set forth at 13 C.F.R. §124.519. SBA will not count awards of less than \$250,000 toward this limit.
- b. P.L. 111-84, the National Defense Authorization Act for Fiscal Year 2010, required federal contracting officers to execute written justifications and obtain approval for sole-source contracts in excess of \$20 million, a threshold that was increased through regulatory updates, to \$25 million, effective October 1, 2020, to account for inflation. P.L. 116-92, the National Defense Authorization Act for Fiscal Year 2020, increased this threshold to \$100 million for DOD (but not for other agencies).
- c. The Department of Veterans Affairs has its own contracting preferences for veteran-owned small businesses (VOSBs), known as the Veterans First program. It is the only agency with a program for VOSBs.

Certification and Other Requirements for Small Business Contractors

Businesses interested in bidding on a federal contract must register with the federal government's System for Award Management (SAM) at SAM.gov.³⁸ Government agencies use SAM for several purposes, including to find contractors.³⁹ Businesses also must match their products and services

³⁸ SBA, "Federal Contracting Guide: Basic Requirements," at <https://www.sba.gov/federal-contracting/contracting-guide/basic-requirements>.

³⁹ SBA, "Register with SAM," at <https://www.sba.gov/federal-contracting/contracting-guide/basic-requirements#section-header-8>.

to a North American Industry Classification System (NAICS) code, a step that is especially important for firms interested in small business contracting preferences, because they must meet the SBA's small business size standards, which depend on a firm's NAICS code. Businesses generally have a primary NAICS code, and may have multiple NAICS codes if they sell multiple products and services.⁴⁰

Businesses that identify themselves as a small business in SAM must (1) meet the Small Business Act's definition of a small business, and (2) not exceed the SBA's established size standards, which are updated periodically.⁴¹

The Small Business Act defines a small business as one that

- is organized for profit;⁴²
- has a place of business in the United States;
- operates primarily within the United States or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor;
- is independently owned and operated; and
- is not dominant in its field on a national basis.⁴³

The Small Business Act authorizes the SBA to establish size standards to determine small business program eligibility. SBA has established two types of standards: *industry-specific size standards* and *alternative size standards* for certain lending and venture capital investment programs.⁴⁴

⁴⁰ U.S. Bureau of the Census, "North American Industry Classification System," at <https://www.census.gov/eos/www/naics/>.

⁴¹ P.L. 111-240, the Small Business Jobs Act of 2010, requires the SBA to conduct a detailed review of not less than one-third of the SBA's industry size standards every 18 months beginning on the new law's date of enactment (September 27, 2010) and ensure that each size standard is reviewed at least once every five years. For additional information and analysis of the SBA's size standards, see CRS Report R40860, *Small Business Size Standards: A Historical Analysis of Contemporary Issues*, by R. Corinne Blackford and Anthony A. Cilluffo.

⁴² The business may be a sole proprietorship, partnership, corporation, or any other legal form.

⁴³ 15 U.S.C. §632(a); and 13 C.F.R. §121.105. Affiliations between businesses, or relationships allowing one party control or the power of control over another, generally count in size determinations. Businesses can thus be determined to be other than small because of their involvement in joint ventures, subcontracting arrangements, or franchise or license agreements, among other things, provided that their employment or income, plus those of their affiliate(s), exceed the pertinent size threshold. See 13 C.F.R. §121.103.

⁴⁴ Alternative standards are based on the applicant's maximum tangible net worth and average net income after federal taxes. The SBA's 7(a) Business and Certified Development Company (CDC/504) Loan Programs allow businesses to qualify as small if they meet the SBA's size standard for the industry in which the applicant is primarily engaged, or have a maximum tangible net worth of not more than \$20 million and average after-tax net income after federal taxes (excluding any carry-over losses) of not more than \$6.5 million for two full fiscal years before the date of application. These thresholds were adjusted for inflation through SBA rule-making in March 2024. 15 U.S.C. §632(a)(2-3); 15 U.S.C. §632(a)(5)(B); U.S. Small Business Administration, "Small Business Size Standards: Adjustment of Alternative Size Standard for SBA's 7(a) and CDC/504 Loan Programs for Inflation; and Surety Bond Limits: Adjustments for Inflation," 89 *Federal Register* 11703, February 15, 2024.

Businesses participating in the SBA's 504/Certified Development Company (504/CDC) loan guaranty program are deemed small if they did not have a tangible net worth in excess of \$15 million and did not have an average net income in excess of \$5 million after taxes (excluding any carry-over losses) for the preceding two years before the date of application. 15 U.S.C. §632(a)(5)(B).

The SBA's Small Business Investment Company (SBIC) program allows businesses to qualify as small if they meet the (continued...)

The SBA's industry-specific size standards are used to determine eligibility for federal small business contracting purposes. A business can compare its number of employees or average annual receipts (depending on its industry) to size standards listed in the SBA's Table of Small Business Size Standards.⁴⁵ The table has standards for over 1,000 NAICS codes. Businesses that exceed the applicable size standard for their primary industry do not meet the requirement of being small.

Certification Requirements for Government-Wide Contracting Programs⁴⁶

Small businesses generally self-certify their status as small when they register their business in the SAM database. Firms that wish to compete only with similar firms for government contracts (through contract set-asides), or receive sole-source awards through a socioeconomic small business contracting program (e.g., HUBZone small businesses, SBA 8(a) program participants, WOSBs, and veteran-owned small businesses [VOSBs] and SDVOSBs), are subject to certification requirements.⁴⁷ Each socioeconomic program has its own eligibility and certification requirements outlined in regulations. Firms may obtain certification through the SBA's online certification platform at certify.sba.gov.

The contracting officer is required to accept an offeror's status representation in a specific bid or proposal that it is a small business unless "(1) another offeror or interested party challenges the concern's small business representation or (2) the contracting officer has a reason to question the representation."⁴⁸ Procedures for filing a challenge, or "protest," are outlined in SBA regulations.⁴⁹

SBA's size standard for the industry in which the applicant is primarily engaged, or have a maximum tangible net worth of not more than \$19.5 million and average after-tax net income for the preceding two years of not more than \$6.5 million. 15 U.S.C. §662(12)(A-B); and SBA, "Small Business Size Standards: Inflation Adjustment to Monetary Based Size Standards," 79 *Federal Register* 33647-33669, June 12, 2014.

⁴⁵ The table is available at <https://www.sba.gov/document/support-table-size-standards> or in the *Code of Federal Regulations* at 13 C.F.R. §121.201. Firms may also look up their NAICS code in the table or use the SBA's Size Standards Tool available on its website available at <https://www.sba.gov/size-standards/index.html>.

⁴⁶ These programs apply government-wide but are implemented under the authority of the Small Business Act, pursuant to regulations promulgated by the SBA that determine, in part, eligibility for the programs.

⁴⁷ Section 862 of P.L. 116-283, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, required the SBA to establish a government-wide SDVOSB certification and periodic recertification process that replaced a veteran certification process previously handled by the Department of Veterans Affairs (VA). VA continues to determine whether an individual qualifies as a service-disabled veteran.

⁴⁸ 48 C.F.R. §19.301-1(b).

⁴⁹ Size-related protest procedures are outlined at 13 C.F.R. §121.1001-§121.1008. Socioeconomic status protest procedures are outlined at 13 C.F.R. §124.1002 for SDBs, 13 C.F.R. §126.800-126.805 for HUBZone firms, 13 C.F.R. §128.500 for SDVOSBs (and veteran-owned small businesses), and 13 C.F.R. §127.600-§127.605 for WOSBs. Note that "The eligibility of a[n 8(a) Program] Participant for a sole source or competitive 8(a) requirement may not be challenged by another Participant or any other party, either to SBA or any administrative forum as part of a bid or other contract protest" (13 C.F.R. §124.517(a)).

8(a) Program⁵⁰

The 8(a) Business Development Program provides business development assistance to businesses owned and controlled by persons who are socially and economically disadvantaged,⁵¹ have good character, and demonstrate a potential for success.⁵² The program creates federal contracting preferences such as contract set-asides and sole-source contracts in addition to authorizing SBA to provide business development support, including mentorship, training, and counseling to eligible firms. After nine years in the program, the program goal is for firms to successfully compete for federal contracts without 8(a) program assistance. A participating business may “graduate” from or exit the program after nine or fewer years but once a participant has left the program, neither the firm nor the owner of that firm is eligible to participate in the program again.⁵³

Although the 8(a) program was originally established for the benefit of disadvantaged individuals, in the 1980s, Congress expanded the program to include small businesses owned by four groups: small businesses owned by Alaska Native Corporations (ANCs), Community Development Corporations (CDCs), Indian tribes, and Native Hawaiian Organizations (NHOs) are eligible to participate in the 8(a) program under somewhat different requirements.⁵⁴ Firms

⁵⁰ Federal agencies are authorized to award contracts for goods or services, or to perform construction work, to the SBA for subcontracting to 8(a) program participants. The SBA is authorized to delegate the function of executing contracts to the procuring agencies and often does so. Once the SBA has accepted a contract for the 8(a) program, the contract is awarded through either a set-aside or on a sole-source basis, with the contract amount generally determining the acquisition method used. For more information on this program, see CRS In Focus IF12458, *The SBA's 8(a) Business Development Program*, by R. Corinne Blackford; and CRS Insight IN12245, *SBA's 8(a) Business Development Program Responds to District Court Ruling*, by R. Corinne Blackford.

⁵¹ Prior to a ruling in a 2023 district court case, *Ultima Servs. Corp. v. U.S. Department of Agriculture*, the SBA applied a “presumption of social disadvantage” to individuals applying for its 8(a) program from the following groups: Asian Pacific Americans, Black Americans, Hispanic Americans, Subcontinent Asian Americans, and Native Americans. Applicants were required to attest to membership in one of these groups or provide a personal narrative regarding their social disadvantage to the SBA if they did not belong to one of the groups. Since the ruling, in which the court ruled that SBA cannot presume social disadvantage based on ethnic or racial group membership, any program participant who previously relied on the presumption of social disadvantage for program eligibility has to submit a narrative to SBA and program applicants must also submit narratives describing evidence of their disadvantaged status.

⁵² Section 8(a) of the Small Business Act, P.L. 85-536, as amended, can be found at 15 U.S.C. §637(a). Regulations are in 13 C.F.R. §124. The program is also governed by Section 7(j) of the act. The Clinton Administration changed the program’s name from the Minority Small Business and Capital Ownership Development Program to the 8(a) Business Development program in 1988 “to emphasize that individuals need not be members of minority groups and to stress the importance of assisting participating firms in their overall business development.” See SBA, “Small Business Size Regulations: 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals,” 63 *Federal Register* 35727, June 30, 1998.

⁵³ In an effort to assist small businesses adversely affected by the COVID-19 pandemic, P.L. 116-260, the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Division N, Title III of the Consolidated Appropriations Act of 2021), provided businesses participating in the 8(a) program on or before September 9, 2020, the option to extend their participation in the program for one year.

⁵⁴ If ANCs, CDCs, NHOs, and Indian tribes own multiple businesses, these groups may participate more than once via a firm that has not previously participated in the program. Firms owned by ANCs, CDCs, NHOs, and Indian tribes are also not subject to the maximum total award amount (\$168,500,000) and may continue to receive sole-source awards beyond it. ANCs and CDCs are similarly treated as economically disadvantaged. In contrast, Indian tribes and NHOs must establish economic disadvantage.

Firms owned by ANCs and Indian tribes can also receive sole-source awards in excess of \$4.5 million (\$7 million for manufacturing contracts) even when contracting officers reasonably expect that at least two eligible and responsible 8(a) firms will submit offers and the award can be made at fair market price (P.L. 100-656, §602(a), 102 Stat. 3887-88 (November 15, 1988) (codified at 15 U.S.C. §637 note); and 48 C.F.R. §19.805-1(b)(2)). NHO-owned firms may (continued...)

apply to the program through the SBA's online certification platform at certify.sba.gov, submitting a variety of documents regarding firm ownership, governance, finances, and personal information.

Historically Underutilized Business Zone (HUBZone) Program⁵⁵

The HUBZone program provides federal contracting preferences to small businesses located in SBA-designated areas called HUBZones. SBA designates these areas based on Census data that indicate levels of high poverty, high unemployment, or low income, or if they are located in qualified disaster areas, on Indian reservations, around some closed military installations, or in governor-designated places that meet certain criteria.⁵⁶ It is the only federal contracting program that assists firms based on their geographic location rather than their size and/or the characteristics of their owners (e.g., contracting programs for small businesses, disabled-veteran owned small businesses). HUBZones are shown in an online HUBZone map, updated by the SBA according to a five-year revision cycle, as required by the National Defense Authorization Act for Fiscal Year 2018.⁵⁷ Program benefits include contract set-asides, sole-source awards, and price-evaluation preferences.⁵⁸ The government has not met the government-wide HUBZone procurement goal, in part because there are relatively fewer HUBZone firms (roughly 3,500-4,000) compared to other socioeconomic small businesses.⁵⁹

Service-Disabled Veteran-Owned Small Business Procurement Program⁶⁰

The SDVOSB program is the only government-wide procurement preference program for veterans. SDVOSBs are eligible for contract set asides and sole-source contract awards if they: meet small business size standards; are at least 51% unconditionally and directly owned and controlled by one or more service-disabled veterans; have one or more service-disabled veterans manage day-to-day operations and make long-term decisions; and be owned by one or more eligible veterans that have a service-connected disability.⁶¹ In cases where a veteran has a

receive sole-source awards from the Department of Defense under the same conditions (DOD's authority to make sole-source awards to NHO-owned firms of contracts exceeding \$4.5 million (\$7 million for manufacturing contracts) even if contracting officers reasonably expect that offers will be received from at least two responsible small businesses existed on a temporary basis in 2004-2006, and became permanent in 2006 (see P.L. 109-148, Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act of 2006, §8020, 119 Stat. 2702-03 (December 30, 2005); 48 C.F.R. §219.805-1(b)(2)(A)-(B)).

⁵⁵ For more information on this program, see CRS In Focus IF12428, *The SBA's Historically Underutilized Business Zone (HUBZone) Program*, by R. Corinne Blackford.

⁵⁶ Governors may petition SBA annually to designate HUBZones in areas of their state that (1) are located outside of an urbanized area, (2) have a population of 50,000 or fewer, and (3) have an unemployment rate that is at least 120% of the unemployment rate for the nation or state in which it is located, whichever is less. However, the total number of areas in each petition may not exceed 10% of the total number of the covered (or eligible) areas in the state.

⁵⁷ Section 1701 of P.L. 115-91, the National Defense Authorization Act for Fiscal Year 2018. The online HUBZone map is available at <https://preview-maps.certify.sba.gov/hubzone/map/help>.

⁵⁸ Described at 13 C.F.R. §126.613(a)(1), a price evaluation preference is granted where a contracting officer will award a contract in full and open competition. In these situations, the officer will "deem the price offered by a certified HUBZone small business concern to be lower than the price offered by another [non-small business] offeror."

⁵⁹ SAM.gov, entity search, accessed March 14, 2024. For comparison, there are roughly 36,000 SDVOSBs registered in SAM.gov.

⁶⁰ For more information on this program, see CRS Report R47226, *Federal Contracting by Veteran-Owned Small Businesses: An Overview and Analysis of Contemporary Issues*, by R. Corinne Blackford; and CRS Insight IN12313, *Service-Disabled Veteran-Owned Small Business Contracting Program Changes*, by R. Corinne Blackford.

⁶¹ 13 C.F.R. §128.200; 38 U.S.C. §101(2) defines "veteran."

permanent and severe disability, a veteran's spouse or permanent caregiver may qualify as an eligible SDVOSB owner.⁶² In addition, some eligible SDVOSBs may be owned and controlled by a deceased veteran's surviving spouse.⁶³

Women-Owned Small Business Program⁶⁴

Under this program,⁶⁵ WOSBs are eligible for set-asides and sole-source opportunities in certain industries where they are "substantially underrepresented," while economically disadvantaged WOSBs (EDWOSBs) are eligible for such opportunities in all industries in which WOSBs are either "underrepresented" or "substantially underrepresented." At the direction of Congress, the SBA identifies WOSB program-eligible industries by determining how underrepresented WOSBs are among federal contractors in each industry.⁶⁶ The government has met the WOSB procurement goal twice since it was authorized in 1994 and the SBA has proposed removal of WOSB NAICS industry restrictions to "attract more participants to the WOSB Program and remove a major impediment to widespread program usage by agencies."⁶⁷

Agency-Specific Contracting Programs

Federal agencies may also set aside contracts or make sole-source awards to small businesses not participating in any other program under certain conditions. For example, the Departments of the Interior, Veterans Affairs, and Transportation have programs that promote contracting with small businesses, as does the Environmental Protection Agency. These agencies' programs are briefly described below.

Buy Indian Act Contracting Preferences

Under authority provided by the Buy Indian Act of 1910,⁶⁸ the Department of the Interior's (DOI) Bureau of Indian Affairs, Bureau of Indian Education, and the offices of the Assistant Secretary-Indian Affairs and the Department of Health and Human Services' Indian Health Service provide contracting preferences to qualified Indian tribes and Native American-owned and -controlled

⁶² 48 C.F.R. §802.101. The veteran must have had a 100% service-connected disability rating.

⁶³ 48 C.F.R. §802.101; 15 U.S.C. §632(q). The veteran must have died as a direct result of a service-connected disability.

⁶⁴ For more information on this program, see CRS In Focus IF12476, *SBA's Women-Owned Small Business Contracting Program*, by R. Corinne Blackford; and CRS Insight IN11912, *Update to Industries Eligible for the Women-Owned Small Business Contracting Program*, by R. Corinne Blackford.

⁶⁵ The SBA has identified North American Industry Classification System (NAICS) industry codes in which federal agencies may set aside federal contracts exceeding the micro-purchase threshold exclusively for WOSBs (including economically disadvantaged WOSBs) because those industries were identified as ones in which WOSBs are substantially underrepresented. The SBA has also identified NAICS industry codes that may be set aside exclusively for economically disadvantaged WOSBs because those industries were identified as ones in which WOSBs are underrepresented. See U.S. Small Business Administration, "Women Owned Small Business Federal Contracting Program: Identification of Eligible Industries," 87 *Federal Register* 15468-15481, March 18, 2022.

⁶⁶ Congress proposed a contract set-aside for WOSBs (including EDWOSBs) in the Equity in Contracting for Women Act of 2000 (H.R. 4897). This language was incorporated into the Small Business Reauthorization Act of 2000, which was included in P.L. 106-554, the Consolidated Appropriations Act, 2001. Congress authorized sole-source contracts for WOSBs (including EDWOSBs) in the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (FY2015 NDAA; P.L. 113-291).

⁶⁷ SBA, *FY2025 Congressional Budget Justification and FY2023 Annual Performance Report*, pp. 14-15, at <https://www.sba.gov/document/report-congressional-budget-justification-annual-performance-report>.

⁶⁸ Buy Indian Act of 1910 as amended; 25 U.S.C. §47.

businesses.⁶⁹ Relatedly, the Department of Defense’s Indian Incentive Program encourages prime contractors with a subcontract worth at least \$500,000 to subcontract with qualified Indian tribes, Native American-owned and -controlled businesses, and Native Hawaiian small businesses by providing a 5% rebate on the amount subcontracted to these businesses.⁷⁰

Department of Veterans Affairs Veterans First Program⁷¹

The VA has established its own SDVOSB and VOSB contracting preferences, known as the Veterans First program. According to this program’s regulations, VA contracting officers must set aside contracts for SDVOSBs and VOSBs where the “rule of two” is met,⁷² granting priority consideration to SDVOSBs.⁷³ Both SDVOSBs and VOSBs receive priority consideration before any other type of small business and the complete order of priority is as follows: (1) SDVOSB, (2) VOSB, (3) 8(a) or HUBZone small business, and (4) other small businesses with preference of some kind.⁷⁴ The prioritization of certain types of small business concerns is not a feature of the government-wide small business contract preference programs and is unique to the VA.

Department of Transportation Disadvantaged Business Enterprise Program⁷⁵

The Department of Transportation (DOT) Disadvantaged Business Enterprise (DBE) program aims to prevent discrimination against DBEs by providing them equal opportunity to compete for federally funded transportation contracts. Congress has maintained a cumulative national goal of at least 10% contracting by DBEs where federal highway, transit, or airport project assistance is used.⁷⁶ Although DOT, like all executive agencies, establishes agency procurement goals for contracting with small disadvantaged businesses, this program is distinct from that effort because it applies to the contracts awarded by state and local governments that receive DOT grant assistance from certain DOT agencies.⁷⁷ Firm eligibility for the DBE program differs somewhat from the SBA’s 8(a) program, although a DBE must meet SBA size criteria and other revenue limitations.

⁶⁹ GAO, *Buy Indian Act: Bureau of Indian Affairs and Indian Health Service Need Greater Insight into Implementation at Regional Offices*, GAO-15-588, July 9, 2015, at <https://www.gao.gov/products/GAO-15-588>; and U.S. Department of the Interior, Office of Indian Energy and Economic Development, “The Buy Indian Opportunity,” at <https://www.bia.gov/as-ia/ieed/online-primers-economic-development-glance>.

⁷⁰ U.S. Department of Defense, Office of Small Business Programs, “Indian Incentive Program (IIP),” at <https://business.defense.gov/Programs/Indian-Incentive-Program/>.

⁷¹ For more information on this program, see CRS Report R47226, *Federal Contracting by Veteran-Owned Small Businesses: An Overview and Analysis of Contemporary Issues*, by R. Corinne Blackford.

⁷² 38 U.S.C. §8127(d). The rule of two is met when “the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by veterans or small business concerns owned and controlled by veterans with service-connected disabilities will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States.”

⁷³ 48 C.F.R. §819.7004.

⁷⁴ 48 C.F.R. §819.7004.

⁷⁵ For more information on this program, see CRS In Focus IF12055, *The U.S. DOT Disadvantaged Business Enterprise Program*, by R. Corinne Blackford.

⁷⁶ Congress has reauthorized the DOT DBE program several times since its inception; most recently in P.L. 117-58, the Infrastructure Investment and Jobs Act.

⁷⁷ Those agencies are the Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA). The program is implemented through DOT regulations published at Title 49, Parts 23 and 26, of the C.F.R. A DBE is defined by criteria from both Small Business Administration (SBA) and DOT regulations.

Environmental Protection Agency Disadvantaged Business Enterprise Program

Under the Environmental Protection Agency (EPA) DBE program, the EPA Administrator aims to award not less than 10% of research funding relating to the Clean Air Act Amendments of 1999 to DBEs.⁷⁸ In addition, at least 8% of federal funding awarded in support of certain EPA authorized programs, including grants, loans, and contracts for wastewater treatment and leaking underground storage tanks, must be awarded to businesses or other organizations owned or controlled by socially and economically disadvantaged individuals, including historically black colleges and universities and women-owned businesses.⁷⁹

To be certified by the EPA as a DBE, applicants must first attempt to be certified by the SBA, DOT, or a tribal, state, or local government, or by an independent private organization. EPA will consider applications for DBE certification only from firms or organizations that have been denied certification from these aforementioned entities. Eligibility criteria for the agency's "8% statute" and its "10% statute" programs differ, and those programs are each different from the eligibility criteria for the DOT DBE program and the SBA's 8(a) program.⁸⁰

Small Business Mentor-Protégé Programs and Joint Ventures⁸¹

Small business mentor-protégé programs typically seek to pair new businesses with more experienced businesses in mutually beneficial relationships. Protégés may receive financial, technical, or management assistance from mentors in obtaining and performing federal contracts or subcontracts, or serving as suppliers under such contracts or subcontracts. Mentors may receive credit toward subcontracting goals, reimbursement of certain expenses, or other incentives. The SBA maintains a list of mentor-protégé agreements that are in place, which "can be used for market research and to help contracting officials as they award contracts."⁸²

The federal government currently has several mentor-protégé programs to assist small businesses in various ways.

- The SBA's *All Small Mentor-Protégé Program* is a government-wide program designed to assist small businesses in obtaining and performing federal contracts.⁸³ Mentors may (1) form joint ventures with protégés that are eligible to perform federal contracts set aside for small businesses; (2) make certain equity

⁷⁸ The EPA's DBE program was authorized by P.L. 101-549, the Clean Air Act Amendments of 1990.

⁷⁹ As required by P.L. 102-389, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993.

⁸⁰ 40 C.F.R. §33.202-§33.205.

⁸¹ For additional information and analysis of federal small business mentor-protégé programs, see CRS Report R41722, *Small Business Mentor-Protégé Programs*, by Robert Jay Dilger and R. Corinne Blackford.

⁸² See SBA, "Active Mentor-Protégé Agreements," at <https://www.sba.gov/document/support-active-mentor-protége-agreements>.

As of January 1, 2018, there were 63 active Department of Defense (DOD) mentor-protégé agreements. See DOD, Office of Small Business Programs, "Active MPP [Mentor-Protégé Program] Agreements," at <https://business.defense.gov/Programs/Mentor-Protége-Program/Protége-Eligibility-Requirements/>.

⁸³ Certification is required for both mentors and mentees, and can be completed through the SBA's online certification platform at certify.sba.gov.

- investments in protégé firms; (3) lend or subcontract to protégé firms; and (4) provide technical or management assistance to their protégés.⁸⁴
- The *Department of Defense (DOD) Mentor-Protégé Program*, in contrast, is agency-specific. It assists various types of small businesses and other entities in obtaining and performing DOD subcontracts and serving as suppliers on DOD contracts. Mentors may (1) make advance or progress payments to their protégés that DOD reimburses; (2) award subcontracts to their protégés on a noncompetitive basis when they would not otherwise be able to do so; (3) lend money to or make investments in protégé firms; and (4) provide or arrange for other assistance.⁸⁵

Other agencies also have agency-specific mentor-protégé programs to assist various types of small businesses or other entities in obtaining and performing subcontracts under agency prime contracts. The Department of Homeland Security (DHS), for example, has a mentor-protégé program wherein mentors may provide protégés with rent-free use of facilities or equipment, temporary personnel for training, property, loans, or other assistance. Because these programs are not based in statute, as are the SBA and DOD programs, they generally rely upon preexisting authorities (e.g., authorizing use of evaluation factors) or publicity to incentivize mentor participation.

Subcontracting Policies

For small businesses, participating in federal contracts as subcontractors can offer an important pathway to government contracting work and is one of the ways that the federal government can help maintain a diversity of suppliers. As mentioned, there are annual goals for the amount of federal contract dollars subcontracted with small businesses (see “Small Business Procurement Goals”).

The federal government maintains a policy of “maximum practicable” subcontracting opportunities for small businesses and socioeconomic small businesses via prime contracts above the simplified acquisition threshold.⁸⁶ Federal prime contractors that receive awards of \$750,000 or more (\$1.5 million or more for construction contracts) must submit a small business subcontracting plan to their purchasing agency.⁸⁷ Agency contracting officers review subcontracting plans during the pre-award process,⁸⁸ determine whether a subcontracting plan is

⁸⁴ SBA, “SBA Mentor-Protégé Program,” at <https://www.sba.gov/federal-contracting/contracting-assistance-programs/sba-mentor-protege-program>; SBA, “Small Business Mentor Protégé Programs,” 81 *Federal Register* 48558-48595, July 25, 2016; and SBA, “Consolidation of Mentor-Protégé Programs and Other Government Contracting Amendments,” 85 *Federal Register* 66146-66199, October 16, 2020.

⁸⁵ Program authority is found at 10 U.S.C. §4902; program implementation regulations are in the Defense Federal Acquisition Regulations Supplement (DFARS), in Appendix I and DFARS Subpart 219.71.

⁸⁶ 48 C.F.R. §19.702. For contracts of this size, prime contractors must agree to maximize participation by small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small businesses, “consistent with its [the contract’s] efficient performance.”

⁸⁷ 48 C.F.R. §19.704. Per 48 C.F.R. §19.702(b), prime contractors exempt from the requirement to submit a subcontracting plan include small business concerns, personal service contractors, and contractors performing work entirely outside of the United States or its outlying areas.

⁸⁸ 48 C.F.R. §19.705-4.

“acceptable,”⁸⁹ and may assess small business subcontracting plans as one evaluation factor when choosing a contractor during the “source selection” process.⁹⁰

Other policies related to subcontracting include the “nonmanufacturer rule”⁹¹ and regulations that limit the amount of small business contracting dollars flowing through small firms to larger ones.⁹² More information on small business subcontracting policy is available in CRS Report R47585, *An Overview of Small Business Subcontracting: In Brief*.

Technical Assistance for Small Business Contract Seekers

Direct assistance for contractors and prospective contractors includes directories and databases of opportunities, as well as technical assistance provided by the Small Business Administration (SBA) and Department of Defense (DOD). Agencies offer forecasts of prime contracting opportunities as well as prime contractor directories for prospective small business subcontractors. Forecasts are published for planning purposes but do not represent an invitation for bids or a request for proposals. Some agencies may publish potential opportunities by geographic area, such as the Department of Veterans Affairs (VA), which hosts a searchable map of future VA contracting requirements.⁹³

The SBA and DOD have programs dedicated to individually assisting both federal prime contractors and subcontractors. SBA’s offerings also include its standard suite of “technical assistance,” which can assist small businesses with federal contracting as well as other kinds of counseling and training.⁹⁴ Small Business Development Centers, dispersed across the country and U.S. territories, are the SBA’s flagship technical assistance resource for small businesses. SBA also advertises online courses as well as a Subcontracting Assistance Program that are available by contacting the SBA directly.⁹⁵

The SBA’s Empower to Grow program (formerly known as the 7(j) Management and Technical Assistance program) offers “individualized coaching and training to help disadvantaged small businesses and others grow with government contracts.”⁹⁶ The program is available to businesses located in areas of high unemployment or low income, or owned by low-income individuals,

⁸⁹ 48 C.F.R. §19.705-4(d).

⁹⁰ In a negotiated contracting process where a contract is not a set-aside for small businesses and that involves consolidation or bundling of contract requirements, if there is a “significant opportunity” for subcontracting, contracting officers must consider proposed subcontractor participation when evaluating a contract offer. 48 C.F.R. §15.304(c)(4).

⁹¹ 13 C.F.R. §121.406. The nonmanufacturer rule affects firm eligibility for certain contracting preferences when an agency is purchasing manufactured products. It requires that a firm be the manufacturer of the end item being procured or that it supply a product manufactured by another small business. It applies to socioeconomic small businesses contracting preferences above the micro-purchase threshold, and to both socioeconomic and other small business contracting preferences above the simplified acquisition threshold. Waivers to the rule may be granted, per 13 C.F.R. §§121.1201-1206.

⁹² Prime contractors that receive a small business preference typically may not pay more than 50% of the federal dollars they receive to firms that are “not similarly situated,” i.e., firms that are not a small business or the specific type of small business that received the contract (13 C.F.R. §125.6). These regulations are known as the “limitations on subcontracting.”

⁹³ Department of Veterans Affairs, “VA Forecast of Contracting Opportunities: State Map Search,” at <https://www.vendorportal.ecms.va.gov/evp/fco/StateMap.aspx>.

⁹⁴ SBA, “Counseling and Help,” <https://www.sba.gov/federal-contracting/counseling-help>.

⁹⁵ This directory is available at <https://business.defense.gov/Acquisition/Subcontracting/Subcontracting-For-Small-Business/>.

⁹⁶ SBA, “Empower to Grow,” at <https://www.sba.gov/sba-learning-platform/empower-grow>.

certified 8(a) and HUBZone firms, and economically disadvantaged WOSBs.⁹⁷ Eligible firms may work directly with their SBA district office to enroll in the program.⁹⁸

DOD's Under Secretary of Defense for Acquisition and Sustainment oversees the APEX Accelerators program for contractors. Formerly known as Procurement Technical Assistance Centers, APEX Accelerators help small businesses "determine whether they are ready for government opportunities," complete necessary registration processes, network with procurement staff and other contractors, "navigate solicitations," and even "resolve [contract] performance issues."⁹⁹ The program "focuses on building a [*sic*] strong, sustainable, and resilient U.S. supply chains by assisting a wide range of businesses that pursue and perform under contracts with the DoD, other federal agencies, state and local governments and with government prime contractors."¹⁰⁰

Manufacturing Extension Partnership National Network Centers (MEP Centers) also assist small business contractors, specifically in the manufacturing sector. MEP Centers are located in all 50 states and Puerto Rico. MEP is based at the National Institute of Standards and Technology (NIST), which provides funding for the MEP National Network.¹⁰¹

The Department of Transportation's OSDBU oversees a network of regional Small Business Transportation Resource Centers (SBTRCs) to assist small disadvantaged transportation businesses (including but not limited to DBEs). SBTRCs "work closely with the transportation contracting community and other technical assistance providers" and provide all services free of charge.¹⁰²

OSDBUs provide direct support for small business contractors and subcontractors, especially with regard to specific contracts. OSDBUs are required to assist small businesses "to obtain payments, required late payment interest penalties, or information regarding payments due to the [small business] concern from an executive agency or a contractor."¹⁰³ OSDBUs must also help small businesses that are awarded contracts or subcontracts to find "resources for education and training on compliance with contracting regulations."¹⁰⁴

Procurement Processes and Personnel

The procurement process through which an agency purchases goods or services involves agency solicitation of contract offers and the use of various "source selection methods" to evaluate

⁹⁷ Ibid.; SBA, *FY2022 Congressional Justification and FY2020 Annual Performance Report*, p. 72, at <https://www.sba.gov/document/report-congressional-budget-justification-annual-performance-report>.

⁹⁸ SBA, *FY2023 Congressional Budget Justification and FY2021 Annual Performance Report*, p. 69, at <https://www.sba.gov/document/report-congressional-budget-justification-annual-performance-report> (hereinafter SBA, *FY2023 Congressional Budget Justification and FY2021 Annual Performance Report*).

⁹⁹ APEX Accelerators, "What We Do," <https://www.apexaccelerators.us/#/about-us>.

¹⁰⁰ Ibid.

¹⁰¹ U.S. Department of Commerce, National Institute of Standards and Technology, Manufacturing Extension Partnership (MEP), "About NIST MEP," accessed March 11, 2024.

¹⁰² U.S. DOT Office of Small and Disadvantaged Business Utilization, "Regional Assistance," at <https://www.transportation.gov/osdbu/SBTRCs>.

¹⁰³ 15 U.S.C. §644(k)(6).

¹⁰⁴ 15 U.S.C. §644(k)(19).

offerors' submissions.¹⁰⁵ "At a minimum, a solicitation identifies what an agency wants to buy, provides instructions to would-be offerors, identifies the source selection method that will be used to evaluate offers, and includes a deadline for the submission of bids or proposals."¹⁰⁶ Contracting officers may solicit "sealed bids" without negotiation with offerors, or negotiate a contract with prospective contractors through "negotiated contracting." Agencies may also use the General Services Administration's (GSA's) Federal Supply Schedule, a list of products and services available from GSA-selected vendors. Contracting officers may use contracting preferences such as contract set-asides (total or partial), reserves, and sole-source awards in an effort to reach their agency small business contracting goals.

The Role of Procurement Officials

Various personnel within purchasing agencies as well as at the Small Business Administration play a role in facilitating small business contracting and subcontracting. Agency contracting officers determine an appropriate method for procuring required goods or services, issue contract solicitations that provide instructions to offerors or bidders, identify the "source selection method" to be used (sealed bidding or negotiated contracting), and evaluate offerors' submissions. They also award the contract and conduct contract administration, which may include contract performance monitoring, contract modifications, and invoice processing and payments to the contractor.¹⁰⁷

At the agency level, procurement department heads (sometimes titled *senior procurement executives*) are responsible for implementing small business programs at their agencies, including achieving program goals. In general, procurement department staff who work on small business issues (often titled *small business specialists*) coordinate with Office of Small and Disadvantaged Business Utilization directors (see discussion below) on their agencies' small business programs.¹⁰⁸

Chief acquisition officers provide a focal point for acquisition in agency operations. Their key functions include "monitoring and evaluating agency acquisition activities, increasing the use of full and open competition, increasing performance-based contracting, making acquisition decisions, managing agency acquisition policy, acquisition career management, acquisition resources planning, and conducting acquisition assessments."¹⁰⁹

In order to help "facilitate the maximum participation of small business concerns as prime contractors, subcontractors, and suppliers" as required by law,¹¹⁰ federal acquisition regulations¹¹¹

¹⁰⁵ For more information on the procurement process, see CRS Report RS22536, *Overview of the Federal Procurement Process and Resources*, by Dominick A. Fiorentino.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ GAO, *Small Business Contracting: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates*, GAO-17-675, August 25, 2017, p. 7, at <https://www.gao.gov/assets/690/686766.pdf> (hereinafter GAO, *Small Business Contracting: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates*).

¹⁰⁹ GAO, *Small Business Contracting: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocates*, pp. 7-8.

¹¹⁰ 15 U.S.C. §644(e)(1) states, "To the maximum extent practicable, procurement strategies used by a Federal department or agency having contracting authority shall facilitate the maximum participation of small business concerns as prime contractors, subcontractors, and suppliers."

¹¹¹ 48 C.F.R. §19.202-1.

require contracting officers, when applicable, to take certain actions prior to awarding a federal contract, including to

1. “Divide proposed acquisitions of supplies and services (except construction) into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement.”¹¹²
2. “Plan acquisitions such that, if practicable, more than one small business concern may perform the work, if the work exceeds the amount for which a surety may be guaranteed by the SBA against loss under 15 U.S.C. §694b [generally \$6.5 million, or \$10 million if the contracting officer certifies that the higher amount is necessary].”¹¹³
3. “Ensure that delivery schedules are established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government.”¹¹⁴
4. In certain circumstances, “[p]rovide a copy of the proposed acquisition package and other reasonably obtainable information related to the acquisition” to certain SBA personnel for review, comment and recommendation; the same information is also provided to the agency Office of Small and Disadvantaged Business Utilization [whose role is described below]”¹¹⁵
5. If applicable, “Provide a statement” explaining why an acquisition “cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement;” or why an acquisition “cannot be structured so as to make it likely that small businesses can compete for the prime contract;” or why “[c]onsolidation or bundling is necessary and justified.”¹¹⁶

Before awarding a federal contract, the contracting officer must also affirmatively determine that the business is responsible to perform the contract. If the contracting officer determines that an apparent successful small business offeror lacks certain elements of responsibility, the SBA may issue a Certificate of Competency (COC) that permits the contracting officer to award the contract to the small business.¹¹⁷ Under the COC program, the SBA certifies to contracting

¹¹² 48 C.F.R. §19.202-1(a).

¹¹³ 48 C.F.R. §19.202-1(b).

¹¹⁴ 48 C.F.R. §19.202-1(c).

¹¹⁵ 48 C.F.R. §19.202-1(e). This must be done at least 30 days prior to the issuance of the solicitation “if (i) The proposed acquisition is for supplies or services currently being provided by a small business and the proposed acquisition is of a quantity or estimated dollar value, the magnitude of which makes it unlikely that small businesses can compete for the prime contract; (ii) The proposed acquisition is for construction and seeks to package or consolidate discrete construction projects and the magnitude of this consolidation makes it unlikely that small businesses can compete for the prime contract; or (iii) The proposed acquisition is for a consolidated or bundled requirement.... The contracting officer shall provide all information relative to the justification for the consolidation or bundling, including the acquisition plan or strategy and if the acquisition involves substantial bundling, the information identified in [FAR] 7.107-4FAR.”

¹¹⁶ 48 C.F.R. §19.202-1(e)(2).

¹¹⁷ If the contracting officer determines that an apparent successful small business offeror lacks certain elements of responsibility (e.g., is unable to fulfill the requirements of a specific government procurement because it lacks capability, competency, capacity, credit, integrity, perseverance, tenacity, or limitations on subcontracting), the officer is required to refer the matter in writing to the SBA for review and a possible Certificate of Competency (COC), even if the next acceptable offer is also from a small business (15 U.S.C. §637(b)(7); and 48 C.F.R. §19.601(a-e)). The COC (continued...)

officers that a small business concern meets responsibility requirements for receiving and performing a specific government contract.

The Roles of the Office of Small and Disadvantaged Business Utilization and SBA Personnel

Each agency with procurement authority has an Office of Small and Disadvantaged Business Utilization (OSDBU), and may have SBA staff known as Procurement Center Representatives (PCRs) assigned to them as well. OSDBU statutory responsibilities include consultation with agency procurement officials and SBA staff, in addition to assistance for small business contractors and subcontractors.¹¹⁸ OSDBUs participate in the development of each purchasing agency's small business contracting strategy, and coordinate with agency procurement professionals on day-to-day purchasing tasks. To facilitate collaboration with agency procurement officials on small business policy, OSDBUs liaise with PCRs.¹¹⁹

Procurement Center Representatives, Commercial Market Representatives, and Business Opportunity Specialists

The SBA must assign a *procurement center representative* to each major procurement center. A major procurement center is, in the opinion of the SBA Administrator, one that purchases substantial dollar amounts of goods or services, including goods or services that are commercially available.¹²⁰

The PCRs cover different agencies and regions of the country, and perform such tasks as reviewing proposed agency acquisitions to recommend contract set-asides for small businesses; recommending ways to improve acquisition competition; and recommending contracting method alternatives when the PCR "believes that the acquisition, as proposed, makes it unlikely that small businesses can compete for the prime contract."¹²¹

Federal contracting officers are required to provide the SBA's PCR (or, if a PCR is not assigned, the SBA Area Office serving the procuring activity area) a "reasonable period of time" to review any solicitation requiring submission of a small business subcontracting plan and to submit advisory findings before the solicitation is issued.¹²²

certifies in writing that the small business meets all required elements of responsibility for the purpose of receiving and performing a specific government contract. The "COC program empowers the SBA to certify to contracting officers as to all elements of responsibility of any small business concern to receive and perform a specific government contract. The COC program does not extend to questions concerning regulatory requirements imposed and enforced by other federal agencies" (48 C.F.R. §19.601(b)).

¹¹⁸ 15 U.S.C. §644(k). For additional information on OSDBUs, see CRS Report R47851, *Offices of Small and Disadvantaged Business Utilization: An Overview*, by R. Corinne Blackford.

¹¹⁹ 15 U.S.C. §644(k)(8).

¹²⁰ 15 U.S.C. §644(l)(6); and 48 C.F.R. §19.402(a). Generally speaking, commercial products are those that are "customarily used by the general public or by nongovernmental entities for purposes other than governmental purposes." Commercial services are those procured to support commercial products. 48 C.F.R. §2.101, "Commercial product," and 48 C.F.R. §2.101, "Commercial service."

¹²¹ PCR duties are further described in **Appendix C**.

¹²² 48 C.F.R. §19.705-3. The PCR's advisory comments regarding the small business subcontracting plan's acceptability must be submitted, in writing, to the appropriate contracting officer within five working days after the plan's receipt (see SBA, "Prime Contracts Program," SOP 60 02 8, effective October 27, 2013, p. 15, at https://www.sba.gov/sites/default/files/sops/Prime_Contracts_SOP-60-02-8.pdf).

The SBA has *commercial market representatives* (CMRs) who, among other duties, help prime contractors find small businesses to perform subcontracts; counsel contractors on their responsibility to maximize subcontracting opportunities for small businesses; and conduct periodic reviews, often in concert with an SBA PCR, of contractors awarded contracts that require an acceptable small business subcontracting plan.¹²³

The SBA's *business opportunity specialists* provide, among other duties, guidance, counseling, and referrals for assistance with technical, management, financial, or other matters intended to improve the competitive viability of SBA 8(a) program participants.¹²⁴ They provide 8(a) program participants comprehensive assessments of the firm's strengths and weaknesses; monitor and document their compliance with 8(a) program requirements; advise them on compliance with contracting regulations after the award of a 8(a) program contract or subcontract; review and monitor their compliance with mentor-protégé agreements; represent the interests of the SBA Administrator and small businesses in the award, modification, and administration of 8(a) program contracts and subcontracts; and report fraud or abuse involving the 8(a) program.¹²⁵

Select Post-Award Requirements

As mentioned, the SBA's CMRs conduct periodic compliance reviews of contractors awarded contracts that require an acceptable small business subcontracting plan (see "Subcontracting Plan Reviews").¹²⁶ In addition, once the contract is completed, federal agencies are required to pay the contractor on a timely basis (see "Prompt Payments") and pay interest penalties for late payments. Federal agencies may also pay contractors before the contract's payment's due date (see "Accelerated Payments").¹²⁷

Subcontracting Plan Reviews

CMRs may conduct hundreds of compliance reviews in a fiscal year, selecting a sample of prime contracts from the Federal Procurement Data System that have individual subcontracting plans. Reviewers seek to "determine whether prime contractors that are not small businesses complied

¹²³ 15 U.S.C. §633(h)(1)(D). For additional information on subcontracting plan requirements, see 48 C.F.R. §19.702(a)(1); and 15 U.S.C. §637(d)(3). Contracts requiring a subcontracting plan are generally those that exceed \$750,000 (\$1.5 million for construction) and have subcontracting possibilities. More information on small business subcontracting policy is available in CRS Report R47585, *An Overview of Small Business Subcontracting: In Brief*, by R. Corinne Blackford.

¹²⁴ U.S. Congress, House Committee on Small Business, Subcommittee on Contracting and Infrastructure, *Oversight of the SBA's Women-Owned Small Business Federal Contract Program*, hearing, 116th Cong., 1st sess., May 16, 2019, H.Hrg. 116-021 (Washington: GPO, 2019), p. 39.

¹²⁵ 15 U.S.C. §633(g)(1).

¹²⁶ 15 U.S.C. §633(h). CMRs also conduct "performance reviews" on contractors with a small business subcontracting plan, while a contract is still ongoing. The goal of these is to determine the progress of a contractor in reaching its subcontracting plan goals. U.S. Government Accountability Office, *Some Contracting Officers Face Challenges Assessing Compliance with the Good Faith Standard*, GAO-24-106225, November 9, 2023, pp. 7-8.

¹²⁷ The Federal Acquisition Regulation (FAR) stipulates that performance-based payments are the "preferred Government financing method when the contracting officer finds them practical," although other types of payments exist. Performance-based payments are the payment of funds to a contractor after the "successful accomplishment or the event or performance criterion for which payment is requested." U.S. General Services Administration, U.S. Department of Defense (DOD), U.S. National Aeronautics and Space Association, *Federal Acquisition Regulation*, Section 52.232-32, "Performance-Based Payments."

with their post-award subcontracting responsibilities outlined in the subcontracting plan to ensure small business subcontracts are being properly awarded and reported.”¹²⁸

Prompt Payments

Once a contract is awarded, federal agencies are generally required to pay interest to prime contractors on any invoice payments the agency fails to make by the date(s) specified in the contract, or within 30 days of receipt of a *proper invoice* for the amount due if no date is specified in the contract.¹²⁹

Similar requirements exist for prime contractors in paying subcontractors on construction contracts. These requirements are especially important for small businesses in the construction industry.¹³⁰

If the contracting officer determines that a prime contractor on a contract that requires an acceptable subcontracting plan has a history of unjustified, untimely payments to contractors, the contracting officer must record the contractor’s identity, describe the circumstances under which the contractor may be determined to have a history of unjustified, untimely payments to subcontractors, and include the contractor’s identity in, and make publicly available through, the Federal Awardee Performance and Integrity Information System.¹³¹ This information is used by federal agencies to “evaluate the business ethics and quality of prospective contractors competing for Federal contracts and to protect taxpayers from doing business with contractors that are not responsible sources.”¹³²

Accelerated Payments

Federal agencies are permitted to make an accelerated payment up to seven days before the required payment date in a federal contract, or earlier if the agency deems it necessary on a case-by-case basis if, after receiving a proper invoice, it is in the best interest of the government, and any of the following is true:

- the invoice is under \$2,500;
- the payment is to a small business; or

¹²⁸ U.S. Government Accountability Office, *Oversight of Contractor Compliance with Subcontracting Plans Needs Improvement*, GAO-20-464, May 28, 2020, p. 35, <https://www.gao.gov/assets/gao-20-464.pdf>.

¹²⁹ 31 U.S.C. §3903(a); and P.L. 97-177, the Prompt Payment Act. Among other things, a proper invoice contains (1) the name of the contractor, the invoice date, and the contract number; (2) a description of the goods rendered and the shipping and payment terms; (3) other substantiating documentation or information required under the contract; and (4) the name, title, telephone number, and complete mailing address of the person to whom payment should be sent. 31 U.S.C. §3901(a); and 48 C.F.R. §32.905(b)(1)(i)-(x). The interest rate to be used is that determined by the Secretary of the Treasury twice a year under the Contract Disputes Act. 31 U.S.C. §3902(a).

¹³⁰ 31 U.S.C. §3905(b); and P.L. 100-496, the Prompt Payment Act Amendments of 1988. Specifically, every construction contract awarded by a federal agency must contain clauses obligating the prime contractor to (1) pay the subcontractor for “satisfactory performance” under the subcontract within seven days of receiving payment from the agency, and (2) pay interest on any amounts that are not paid within the proper time frame. The contract must also obligate the prime contractor to include similar payment and interest penalty terms in its subcontracts, as well as require its subcontractors to impose these terms on their subcontractors, to ensure that the payment and interest penalty requirements flow down to all tiers of construction subcontractors.

¹³¹ 15 U.S.C. §637(d)(13)(C-E).

¹³² Department of Defense, General Services Administration, and National Aeronautics and Space Administration, “Federal Acquisition Regulation; FAR Case 2008-027, Federal Awardee Performance and Integrity Information System,” 75 *Federal Register* 14059, March 23, 2010.

- the payment is related to an emergency, disaster, or military deployment.¹³³

Agencies are required to establish an accelerated payment date for small business prime contractors, with a goal of 15 days after receipt of a proper invoice, if a specific payment date is not established by contract.¹³⁴ In addition, they are required to establish an accelerated payment date for prime contractors that subcontract with small businesses (though they may not be small businesses themselves), with a goal of 15 days after receipt of a proper invoice, if a specific payment date is not established by contract and if the contractor agrees without any further consideration from, or fees charged to, the subcontractor.¹³⁵

Conclusion

There are various government-wide and agency-specific requirements, programs, and personnel involved in promoting federal contracting and subcontracting with small businesses. Small businesses and “socioeconomic” small businesses (i.e., SDBs, SDBs participating the SBA’s 8(a) Business Development Program, HUBZone businesses, WOSBs, and SDVOSBs) may receive contracting preferences through contracting programs. SBA has significant involvement in these programs along with agency OSDBU staff and the procurement personnel within agencies. Certain agencies implement their own programs in addition to participating in government-wide programs, such as the VA, DOT, and DOI. Subcontracting policies, technical assistance resources, and mentor-protégé programs also support small business contractors in federal procurement.

The small business contracting programs described in this report generally have strong bipartisan support. Many observers judge the relative success or failure of federal efforts to enhance small business contracting opportunities by whether the federal government and individual federal agencies meet the small business procurement goals.

The SBA’s Procurement Scorecards and Small Business Goaling Reports are convenient tools for comparing federal small business contracting performance over time, but have limitations.

Moreover, the regularly provided reports on small business procurement do not evaluate the effect these contracts have on small businesses, industry competitiveness, or the overall economy. As one group of researchers has argued

the entire goal-setting process ... is geared to measuring the dollars and contracts awarded to small business, and pays little attention to the *effect* that access to government contracts has on small business starts, growth, and wealth generation. Results of the program are also hard to isolate, difficult to measure, and generally not judged against the next best or other alternative policies [emphasis in original].¹³⁶

While Congress has expressed various arguments for promoting federal procurement from small businesses at different points in time, views vary on the policies and programs that may be used

¹³³ 31 U.S.C. §3903(a)(8); Office of Management and Budget, “Prompt Payment,” 64 *Federal Register* 52582-52583, September 29, 1999; and 5 C.F.R. §1315.5.

¹³⁴ This policy was enacted by section 873 of the National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92).

¹³⁵ Section 873 of the National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92). Prior to the act, P.L. 115-232, the John S. McCain National Defense Authorization Act for Fiscal Year 2019, required these accelerated payment policies for Defense Department small business contractors and subcontractors.

¹³⁶ Clifford A. Grammich, Thomas R. Edison Jr., Nancy Young Moore, and Edward G. Keating, *Small Business and Defense Acquisitions: A Review of Policies and Current Practices* (Santa Monica, CA: RAND, 2011), p. 15, at https://www.rand.org/content/dam/rand/pubs/monographs/2011/RAND_MG443.pdf.

to accomplish small business participation in federal procurement. Studies examining the effect of small business contracting preferences on small business startups, growth, wealth generation, and industry competitiveness may prove useful for contracting program oversight. Congress may also be interested in program impacts on promoting a more diversified, robust pool of federal contractors and on the economy at large.

Appendix A. SBA's Surety Bond Guarantee Program

The SBA's Surety Bond Guarantee program¹³⁷ aims to increase small businesses' access to federal, state, and local government contracting, as well as private-sector contracts, by guaranteeing bid, performance, and payment bonds for small businesses that cannot obtain surety bonds through regular commercial channels.¹³⁸

A surety bond is a three-party instrument between a surety (someone who agrees to be responsible for the debt or obligation of another), a contractor, and a project owner. The agreement binds the contractor to comply with the terms and conditions of a contract. If the contractor is unable to successfully perform the contract, the surety assumes the contractor's responsibilities and ensures that the project is completed. The surety bond reduces the government's risk associated with contracting.¹³⁹

Surety bonds are meant to encourage project owners to contract with small businesses that may not have the credit history or prior experience of larger businesses and may be at greater risk of failing to comply with the contract's terms and conditions.¹⁴⁰

Surety bonds are important to small businesses interested in competing for federal contracts because the federal government requires prime contractors—prior to the award of a federal contract exceeding \$150,000 for the construction, alteration, or repair of any building or public work of the United States—to furnish a performance bond issued by a surety in an amount that the contracting officer considers adequate to protect the government's interests.¹⁴¹

The program guarantees individual contracts of up to \$6.5 million and up to \$10 million if a federal contracting officer certifies that such a guarantee is necessary. The SBA's guarantee ranges from a maximum of 80% to 90% of the surety's loss if a default occurs.¹⁴² Small businesses pay SBA a fee of 0.6% of the contract price for performance and payment bond guarantees but SBA will return the fee if the bond is cancelled or not issued; SBA does not charge a fee for bid bond guarantees.¹⁴³

¹³⁷ For additional information and analysis, see CRS Report R42037, *SBA Surety Bond Guarantee Program*.

¹³⁸ Ancillary bonds may also be eligible. They ensure completion of requirements outside of performance or payment, such as maintenance. SBA, "Surety Bonds," at <https://www.sba.gov/funding-programs/surety-bonds>.

¹³⁹ SBA, "Surety Bonds," at <https://www.sba.gov/funding-programs/surety-bonds>.

¹⁴⁰ SBA, "Surety Bonds."

¹⁴¹ The threshold amount was originally set at \$2,000 in 1935 under P.L. 74-321, An Act Requiring Contracts for the Construction, Alteration, and Repair of Any Public Building or Public Work of the United States to be Accompanied by a Performance Bond Protecting the United States and an Additional Bond for the Protection of Persons Furnishing Material or Labor for the Construction, Alteration, or Repair of Said Public Buildings or Public Work [the Miller Act of 1935], 49 Stat. 793 (August 24, 1935) (codified at 40 U.S.C. §3131(a)(b)). Also, see Department of Defense, General Services Administration, and National Aeronautics and Space Administration, "Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds," 75 *Federal Register* 53130, August 30, 2010.

¹⁴² P.L. 114-92, the National Defense Authorization Act for Fiscal Year 2016, includes a provision that increased the Preferred Surety Bond Guarantee Program's guarantee rate from not to exceed 70% to not to exceed 90% of losses starting one year from enactment (effective November 25, 2016).

¹⁴³ SBA, "Surety Bonds," at <https://www.sba.gov/funding-programs/surety-bonds#id-bond-guarantee-fee>.

Appendix B. Small Business Size Protests

If an offeror's small business status is challenged,¹⁴⁴ the contracting officer is generally not allowed to award the contract until the SBA has made a size determination or 15 business days after the SBA receives the protest, whichever occurs first.¹⁴⁵ The SBA's Office of Government Contracting Area Office (Area Office) serving the area in which the headquarters of the offeror is located initially reviews the protest.¹⁴⁶ The Area Office is required, by regulation, to determine the offeror's size status within 15 business days after receipt of the protest, or "within any extension of time granted by the contracting officer."¹⁴⁷ If the SBA does not make a determination within the required time, the contracting officer "may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the government."¹⁴⁸

Any interested party may file an appeal of the Area Office's decision with the SBA's Office of Hearings and Appeals (OHA). If the OHA accepts the appeal for consideration and finds the protested concern to be ineligible for award, the contracting officer must "terminate the contract unless termination is not in the best interests of the government, in keeping with the circumstances described in the [aforementioned] written determination. However, the contracting officer may not exercise any options or award further task or delivery orders."¹⁴⁹ Furthermore, a firm cannot become eligible for a specific award after the SBA has determined that it is not a small business, even if it takes action to meet the definition of a small business.¹⁵⁰ The SBA or the federal agency may suspend or debar a firm from future government contracts for misrepresenting its size status. In addition, individuals that knowingly misrepresent a business's size to secure a federal contract can be subject to civil and criminal penalties.¹⁵¹

¹⁴⁴ Who may initiate a challenge and file a protest depends on the type of firm being challenged. SBA regulations at 13 C.F.R. §121.1001 describe who may initiate a size protest for SBA's Small Business Set-Aside Program; competitive 8(a) contracts; SBA's Subcontracting Program; SBA's Small Business Innovation Research (SBIR) program and Small Business Technology Transfer (STTR) program; the Department of Defense's Small Disadvantaged Business (SDB) Program, and any other similar program of another federal agency; SBA's HUBZone program; SBA's SDVOSB program; SBA's WOSB program; and for "any unrestricted Government procurement in which a business concern has represented itself as a small business concern."

¹⁴⁵ The contracting officer may award the contract if he or she "determines in writing that an award must be made to protect the public interest." 48 C.F.R. §19.302(g)(1).

¹⁴⁶ 48 C.F.R. §19.302(c)(1). "An offeror, the SBA, or another interested party may protest the small business representation of an offeror in a specific offer. However, for competitive 8(a) contracts, the filing of a protest is limited to an offeror, the contracting officer, or the SBA." 48 C.F.R. §19.302(a)(2). "The protest, or confirmation if the protest was initiated orally, shall be in writing and shall contain the basis for the protest with specific, detailed evidence to support the allegation that the offeror is not small. The SBA will dismiss any protest that does not contain specific grounds for the protest." 48 C.F.R. §19.302(c)(2). "The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation." 48 C.F.R. §19.302(c)(3). "In order to affect a specific solicitation, a protest must be timely." 48 C.F.R. §19.302(d). "To be timely, a protest ... must be received ... by the close of business of the fifth business day after bid opening (in sealed bid acquisitions) or receipt of the special notification from the contracting officer that identifies the apparently successful offeror (in negotiated acquisitions)." 48 C.F.R. §19.302(d)(1). "...a protest filed by the contracting officer or the SBA is generally always considered timely whether filed before or after award." 48 C.F.R. §19.302(d)(2).

¹⁴⁷ 48 C.F.R. §19.302(f)(1).

¹⁴⁸ 48 C.F.R. §19.302(g)(2).

¹⁴⁹ 48 C.F.R. §19.302(h).

¹⁵⁰ 48 C.F.R. §19.301-1(c).

¹⁵¹ 13 C.F.R. §121.108; 18 U.S.C. §287; 18 U.S.C. §1001. See CRS Report R45322, *Selected Legal Tools for Maintaining Government Contractor Accountability*, by David H. Carpenter and Kathleen Ann Ruane.

Appendix C. Procurement Center Representatives

Agencies with procurement authority may have SBA staff known as Procurement Center Representatives (PCRs) assigned to them. The SBA may assign one or more PCRs to any contracting activity or contract administration office to implement the SBA's policies and programs. PCRs are located in the SBA's six Area Offices, and cover different agencies and regions of the country.

PCRs perform such tasks as reviewing proposed agency acquisitions to recommend contract set-asides for small businesses.¹⁵² PCRs also

- Review proposed acquisitions to recommend “the setting aside of selected acquisitions not unilaterally set aside by the contracting officer;” new qualified small business sources; and the feasibility of breaking out components of the contract for competitive acquisitions.¹⁵³
- Review proposed acquisition packages. If the PCR (or, if a PCR is not assigned, the SBA Area Office serving the area in which the procuring activity is located) “believes that the acquisition, as proposed, makes it unlikely that small businesses can compete for the prime contract,” the PCR can recommend any alternate contracting method that he or she “reasonably believes will increase small business prime contracting opportunities.”¹⁵⁴
- Recommend small businesses “for inclusion on a list of concerns to be solicited in a specific acquisition.”¹⁵⁵
- Appeal to the chief of the contracting office “any contracting officer’s determination not to solicit a concern recommended by the SBA for a particular acquisition, when not doing so results in no small business being solicited;” this appeal may be further appealed to the agency head.¹⁵⁶
- Conduct periodic reviews of the agency’s contracting activity, including the agency’s assessment of any required small business subcontracting plan, “to ascertain whether the agency is complying with the small business policies in this regulation.”¹⁵⁷
- Sponsor and participate in conferences and trainings “designed to increase small business participation in the contracting activities of the office.”¹⁵⁸

¹⁵² 48 C.F.R. §19.402; 13 C.F.R. §125.2.

¹⁵³ 48 C.F.R. §19.402(c)(1).

¹⁵⁴ 48 C.F.R. §19.402(c)(2).

¹⁵⁵ 48 C.F.R. §19.402(c)(3).

¹⁵⁶ 48 C.F.R. §19.402(c)(4). See 48 C.F.R. §19.505 for a description of the appeals process.

¹⁵⁷ 48 C.F.R. §19.402(c)(5).

¹⁵⁸ 48 C.F.R. §19.402(c)(6).

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