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Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515–6315

To: Subcommittee on Contracting and Workforce
From: Committee Staff
Date: February 1, 2016
Re: Hearing: "Supporting Success: Empowering Small Business Advocates"

The Committee on Small Business Subcommittee on Contracting and the Workforce hearing titled, "SBA Management Review: Office of Government Contracts and Business Development," at 3:00 P.M. on Wednesday February 3, 2016 in Room 2360 of the Rayburn House Office Building.

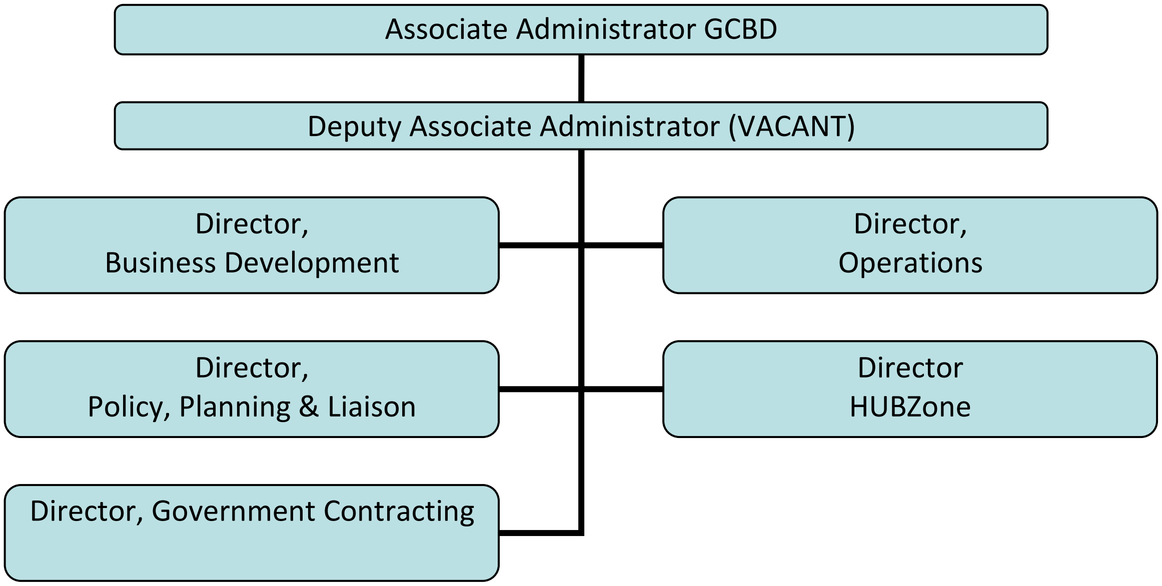
The United States Government Accountability Office (GAO) recently released a report about the operation of the Small Business Administration (SBA) and found numerous deficiencies in SBA management. As a follow-up to that study, the Committee on Small Business and its Subcommittees have held a series of oversight hearings. This hearing will provide oversight of the Office of Government Contracts and Business Development (GCBD) and the personnel in the Office of Field Operations assigned to GCBD programs at the SBA. GCBD oversees size standards, contracting policy, the small business contracting program, the 8(a) Business Development Program, the HUBZone program, the Woman-Owned Small Business program, the Economically-Disadvantaged Woman-Owned Small Business program, the Service-Disabled Veteran-Owned Small Business Program, and other programs. The hearing will examine how GCBD and the related field personnel are implementing and managing these programs.

To prepare for that hearing, this memorandum will provide an overview of GCBD and its programs, followed by a discussion of the issues identified by GAO, and then an explanation of other challenges identified in GCBD.

I. Overview of GCBD and its Programs

The GCBD office at SBA is overseen by an associate administrator appointed by the President, supported by five senior executives and a head of operations. It is depicted in the chart on the following page.

Office of Government Contracts and Business Development[1]



The GCBD programs exist within five suboffices: Policy, Planning and Liaison (PPL), Government Contracting (GC), Business Development (BD), HUBZone (HZ) and Operations. Each will now be discussed.

a. PPL

PPL has three primary responsibilities: (1) regulations; (2) goaling; and (3) size standards. On the regulator front, PPL drafts all the amendments to the contracting regulations within chapter 13 of the Code of Federal Regulations.[2] Additionally, PPL represents SBA on the Civilian Agency Acquisition Council (CAAC). The CAAC and its defense counterpart, the Defense Acquisition Regulatory Council (DARC) draft all of the regulations promulgated as part of the Federal Acquisition Regulation, which governs almost all federal contracts.

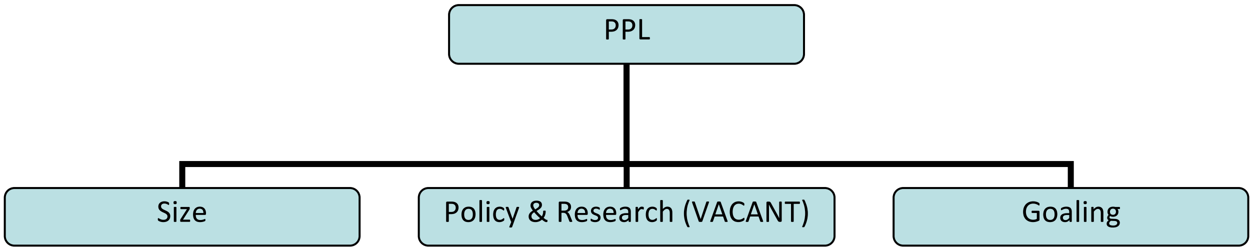
Additionally, PPL creates specific size standards for each industry that determine which businesses qualify as small businesses. The office assigns revenue- or employee-based size standards to each of the more than 1,100 North American Industrial Classification System (NAICS) codes.[3] These size standards then govern which firms can compete for restricted contracts.

Finally, PPL develops and negotiates prime contracting and subcontracting goals with each of the federal agencies. The Small Business Act (the Act) creates a goal of awarding 23 percent of all prime contract awards to small businesses, and then requires that SBA and all federal agencies

[1] All charts are based on information provided by SBA.
[2] It is worth noting that position responsible for drafting regulations has been vacant since 2014, despite the high backlog of regulations waiting for SBA action.
[3] 15 U.S.C. § 632(a). In a few instances, other factors are also considered, such as production or assets. For further information, please see the Committee Memorandum, "What is a Small Business for Purposes of Federal Contracting?" (2013), *available at* http://smbiz.house.gov/uploadedfiles/what_is_a_small_business_for_purpose_of_federal_contracting.pdf.

create agency-specific goals to obtain the 23 percent goal.[4] SBA is required to report to Congress annually on the goal achievements.[5]

The PPL organization may be depicted as follows:



b. GC

The GC office oversees the contracting assistance programs and most of GCBD's field operations, including the six area offices. The best known function of GC is that its area offices house the Procurement Center Representatives (PCRs) and Commercial Market Representatives (CMRs) discussed most recently during the December 9, 2015 Subcommittee on Contracting and Workforce Hearing titled, "Supporting Success: Empowering Small Business Advocates." As explained in that hearing memorandum, the PCRs are located at major federal procurement activities and review solicitations to ensure that small businesses have the chance to compete.[6] Likewise, the CMRs help small businesses compete for federal subcontracts.[7]

Additionally, GC oversees the Certificate of Competency Program, Natural Resources Assistance Program, Waivers of the Nonmanufacturer Rule, and the Small Business Size Determination Program. The Certificate of Competency Program allows contracting officers unsure of whether a small business has the ability to complete a task to refer the contract to SBA for evaluation.[8] The Natural Resources Assistance Program aids small businesses seeking to purchase timber from the federal government.[9] The nonmanufacturer rule requires that any contract for goods in which competition is limited to small businesses or a subset thereof require that the goods delivered be the product of a domestic small business unless SBA has determined that no such businesses are available.[10] The Small Business Size Determinations Program applies the size standards promulgated by PPL to adjudicate whether a firm is small for purposes of a specific contract.[11]

GC also manages four contracting programs: the small business prime contracting program, the small business subcontracting program, the Service-Disabled Veteran-Owned Small Business (SDVOSB) Program, and the Women-Owned Small Business (WOSB) Program.
According to the Act, prime contracts may be set aside for contracts can be set aside for small businesses in two ways. First, all contracts below $150,000 are reserved for small businesses unless

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[4] 15 U.S.C. § 644(g)-(h).
[5] *Id.* at § 644(h)(2).
[6] Committee Staff Memorandum, *Supporting Success: Empowering Small Business Advocates* 1-2 (2015) *available at* http://smbiz.house.gov/uploadedfiles/12-09-2015_hearing_memo.pdf.
[7] *Id.* at 3.
[8] 15 U.S.C. § 637(b)(7).
[9] 15 U.S.C. § 644(a).
[10] 15 U.S.C. § 637(a)(17); 15 U.S.C. § 657s(a)(4).
[11] 13 C.F.R. §§121.1001 through 121.1009.

the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more firms[12]. Second, any contract over $150,000 should be set aside for small business if the contracting officer determines that at least two small businesses will make offers, and the award can be made a fair price.[13] The business certifies that it is small at the time of offer[14] through the System for Award Management (SAM).[15] If an offeror or the contracting officer believes that the successful bidder is not actually a small business, SBA's size specialists and Office of Hearings and Appeals (OHA) will adjudicate the firm's size.[16] There is a statutory goal of awarding at least 23 percent of all federal prime contract dollars to small businesses.[17]

For subcontracts, any other-than-small business receiving a prime contract worth more than$650,000 (or $1.5 million in the case of contracts for construction) must negotiate subcontracting plan with the contracting agency as a material condition of the contract.[18] Likewise, if the prime contractor is an other-than-small business that in turn subcontracts to an other-than-small business for an amount above the aforementioned dollar thresholds, the subcontractor must negotiate a subcontracting plan with the prime contractor. These subcontracting plans delineate subcontracting opportunities for each of the five categories of small businesses, usually as a percentage of the work that will be subcontracted.[19] Some plans state the goals as a percentage of contract value.[20] Failure to meet the subcontracting goals is reflected in past performance ratings on prime contractors, and if the failure is due to a lack of good faith it can be treated as a material breach of the contract.[21]

The SDVOSB Program allows service-disabled veterans to receive set-aside and sole source contracts.[22] SDVOSBs are small businesses that are at least 51 percent owned and controlled by service- disabled veterans, or the spouse or caregiver of a service-disabled veteran with a permanent and severe disability.[23] Contracts may be set aside for SDVOSB if there are two or more SDVOSBs who will submit offers and the award can be made at a fair and reasonable price.[24] SDVOSB may receive sole-source contracts if there is only one SDBVOSB who can meet the requirements at a fair and reasonable price, and the contract will not exceed $6 million for a manufacturing contract or $3.5 million for any other contract.[25] For purposes of contracting with any agency other than the Department of Veterans Affairs (VA), a concern must self-certify its status in SAM, and is subject to protest by other interested parties, the contracting officer, or the

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[12] 48 C.F.R. § 19.502-2(a).
[13] *Id.* at (b).
[14] 13 C.F.R. § 121.404.
[15] *Available at* www.sam.gov.
[16] 13 C.F.R. § 121.1001.
[17] 15 U.S.C. 644(g).
[18] 15 U.S.C. § 637(d)(4); 48 C.F.R. § 19.702.
[19] 48 C.F.R. § 19.704.
[20] *See, e.g., Firs/Line Transp. Sec., Inc. v. United States,* 12-601C, 2012 WL 5939228 (Fed. Cl. Nov. 19, 2012) (Court of Federal Claims denied a pre-award protest challenging a solicitation's small business subcontracting goal of 40% of the total contract value, holding that this goal was within the high level of discretion afforded to the agency).
[21] 48 C.F.R. § 19.705-4.
[22] 15 U.S.C. § 657s(f). Additional information on the SDVOSB program, including tensions between this program and the program managed by the Department of Veterans Affairs, may be found in the Committee Staff Memorandum *Consistently Inconsistent: Challenges for Service-Disabled Veteran-Owned Small Businesses* (2013) *available at* http://smbiz.house.gov/uploadedfiles/3-19-2013_jt._hearing_revised_memo.pdf.
[23] 13 C.F.R. § 125.8.
[24] 48 C.F.R. § 19.1405(b).
[25] *Id.* at§ 19.1406(a).

SBA.[26] There is a statutory goal of awarding three percent of all prime contract dollars and three percent of all subcontract dollars to SDVOSBs.[27]

The WOSB program determines which industries and firms are eligible for set-aside and sole source contracts for WOSB and economically-disadvantaged WOSBs (EDWOSBs).[28] WOSB are small businesses that are at least 51 percent owned and controlled by women who are United States citizens.[29] EDWOSBs must meet the same eligibility requirements, and demonstrate that they have a personal net worth of less than $750,000, exclusive of a primary residence, the ownership share in the business, and any retirement accounts that have penalties for early withdrawal.[30] To certify as a WOSB or EDWOSB, the law prior to 2015 allowed firms to register and certify as such in SAM, and provide the contracting officer with supporting documents.[31] Additionally, the firm was required to either be certified by an SBA-approved third party certifier or provide supporting documentation to the Program Repository.[32] The law currently requires that WOSB and EDWOSB be certified by SBA, a third party, or another government agency, but SBA has not implemented these requirements.[33]

Contracts may be set aside for EDWOSBs if: (1) the contract requirement is in an industry designated by SBA as one where WOSBs are underrepresented; (2) two or more EDWOSBs will submit offers for the contract; and (3) award of the contract may be made at a fair and reasonable price.[34] Sole source contracts are available for EDWOSB if: (1) the contract requirement is in an industry designated by SBA as one where WOSBs are underrepresented; (2) there are not two or more EDWOSBs likely to submit offers for the contract; and (3) award of the contract may be made at a fair and reasonable price of less than $4.5 million, or $6 million in the case of manufacturing.[35] Contracts may be set aside or sole sourced for WOSBs in the same manner, except that the contract requirement must be for an industry designated by SBA as one where WOSBs are substantially underrepresented.[36] Status as an EDWOSB or a WOSB may be protested by another EDWOSB or WOSB bidding on a specific requirement, by the contracting officer, or by SBA.[37] There is a statutory goal of awarding five percent of all prime contract dollars and five percent of all subcontract dollars to WOSBs.[38]

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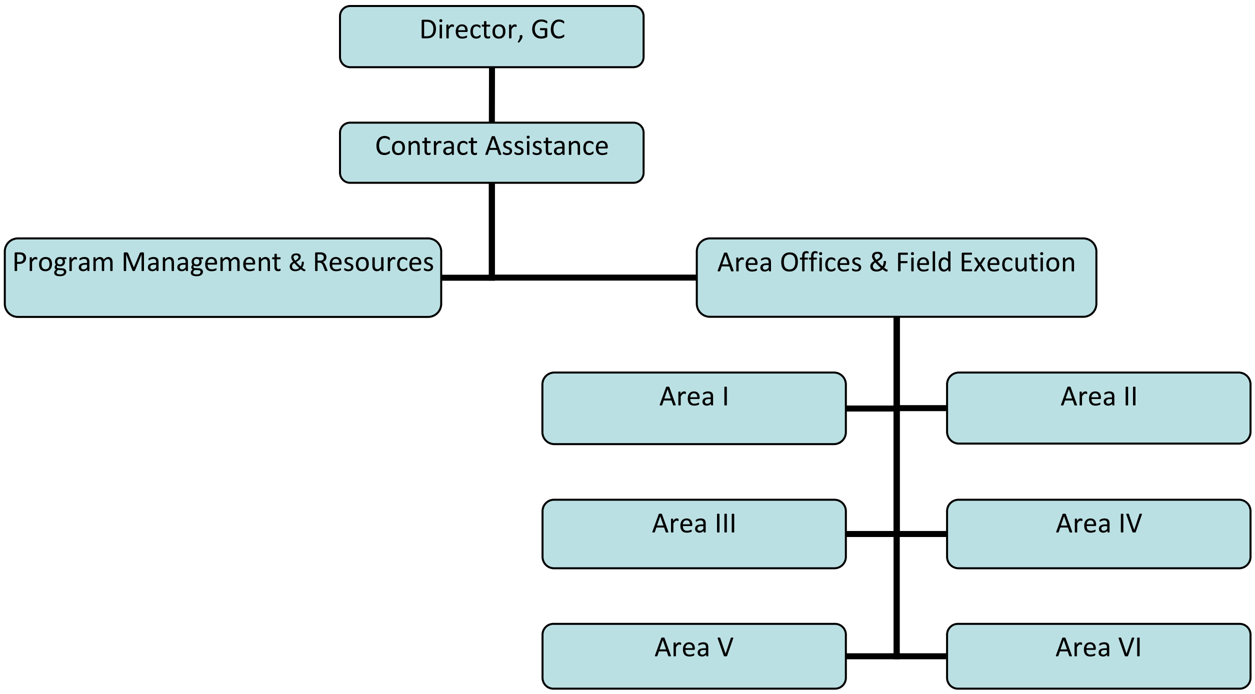
[26] 13 C.F.R. § 125.25.
[27] 15 U.S.C. § 644(g).
[28] 15 U.S.C. § 637(m).
[29] 13 C.F.R. § 127.200.
[30] *Id.* at § 127.203.
[31] *Id.* at§ 127.300. The supporting documents include: (I) proof of citizenship; (2) joint venture agreements; (3) Articles of Organization and operating agreements for Limited Liability Companies; (4) Articles oflncorporation, By-Laws, stock certificates, stock ledger and voting agreements for corporations; (5) for partnerships, the partnership agreement and any amendments; (6) any assumed/fictitious name certificate(s); (7) a signed copy WOSB/EDWOSB program certification; and (8) for EDWOSBs, personal financial statements.
[32] *Id.*
[33] 15 U.S.C. 837(m).
[34] 13 C.F.R. § 127.503(a).
[35] *Id.*
[36] *Id.* at§ 127.503(b).
[37] *Id.* at § 121.100l(a)(9).
[38] 15 U.S.C. § 644(g)(l).

GC's organization chart is depicted below. The PCRs, CMRs, and size specialists are located in the area offices. The SDVOSB, WOSB, prime contracting, subcontracting and other program are contained with Program Management and Resources.



c. BD

The BD Office has oversight of the 8(a) business development program (8(a) program) and the small disadvantaged business program. SDBs are small businesses at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals.[39] Social disadvantage is presumed for members of designated groups, or may be established by a preponderance of the evidence for any other individual.[40] Economic disadvantage is defined as a net worth of less than $750,000, after excluding the value of the individual's ownership interest the small business and the value of the individual's equity in a primary personal residence.[41] A firm certifies as an SDB to either the procuring agency or to a third-party certifier, although all 8(a) firms are automatically considered SDBs.[42] There is a statutory goal of awarding five percent of all prime contract and five percent of all subcontract dollars to SDBs.[43]

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[39] 13 C.F.R. § 124.1002.

[40] There is a rebuttable presumption that "Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory ofthe Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal)" are socially disadvantaged. 13 C.F.R. § 124.103.

[41] 13 C.F.R. § 124.1002(c).

[42] *Id.* at § 124.1003.

[43] 15 U.S.C. § 644(g).

The 8(a) program is an important subset of the SDB program. 8(a) firms are small businesses owned and controlled by socially and economically disadvantaged individuals who have applied for and been accepted into a nine-year business development program at SBA.[44] While the definition of social disadvantage is the same in the 8(a) program as it is in the SDB program, the definition of economic disadvantage is much stricter, with a $250,000 cap on assets outside of the business and primary residence, and a requirement that the individual demonstrate a limited access to capital.[45] Participation in the 8(a) program provides important contracting preferences -sole-source contracts up to $4 million ($6.5 million for manufacturing contracts) are the preferred contracting method, although competitive 8(a) awards are allowed with the permission of the SBA.[46]

In the 8(a) program, SBA is considered the prime contractor, and the 8(a) firm is its subcontractor, which requires agencies to negotiate awards with the Business Opportunities Specialists (BOSs) at SBA.[47] However, since the 1990s, SBA has been entering into Memorandums of Understanding (MOUs) with agencies, allowing agencies to bypass SBA and award contracts directly to the 8(a) firms.[48] The 8(a) certification is processed by SBA using one of two processing centers. Annual reviews are required throughout the nine years of program participation to ensure a firm's continued eligibility, but as of 2012, these reviews are no longer conducted by the BOSs, but by a headquarters office. The BOSs now only provide management and technical assistance. These Business Opportunities Specialists report to a district office that in turn reports to SBA's Office of Field Operations, with only a dotted line to BD or GCBD.[49]

Small business concerns owned by Indian Tribes (ITs) and Alaska Native Corporations (ANCs) may qualify for a modified version of the 8(a) program. ITs and ANCs are not required to be involved in the day-to-day management of the participant.[50] ANCs are presumed economically disadvantaged, whereas ITs look at the economic status of the tribe as a whole is considered and different thresholds apply.[51] In neither case is the size of other concerns owned by the ANC or IT considered when determining if the firm is small, and ANCs and ITs may have multiple subsidiaries participating in the 8(a) program at the same time. Perhaps the most important distinction is that ANCs and ITs are not subject to any caps on the size of sole-source contracts, although there is a proposed regulation to require that KOs justify sole-source awards above $20 million.[52]

Unlike all of the other SBA contracting programs, the eligibility of an 8(a) participant cannot be challenged by another 8(a) firm or any other party.[53] Instead, all protests must focus on whether the firm is indeed a small business, and the protest may only be brought when the contract in question is a set-aside contract rather than a sole source award.[54]

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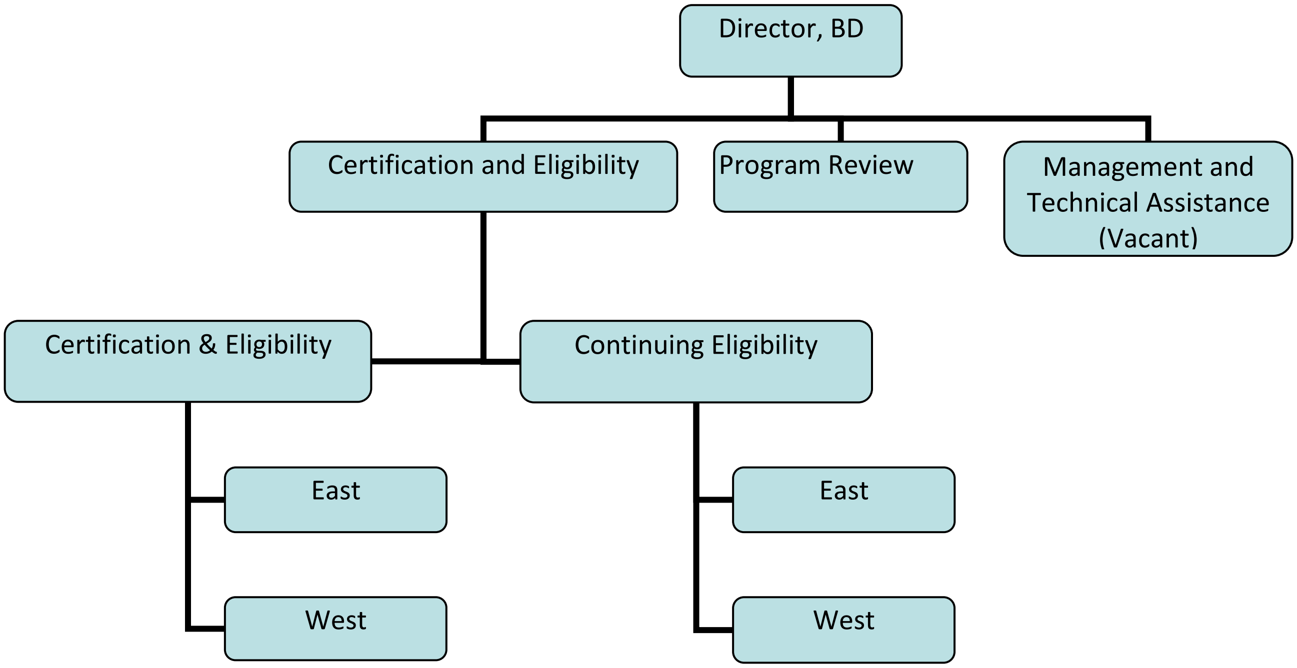
[44] 13 C.F.R. § 124.
[45] *Id.* at § 124.104.
[46] *Id.*at § 124.506.
[47] 15 U.S.C. § 637(a).
[48] 13 C.F.R. § 124.508.
[49] *Id.* at § 124.201, 124.601.
[50] *Id.* at § 124.109.
[51] *Id.*
[52] Federal Acquisition Regulation; Justification and Approval of Sole-Source 8(a) Contracts, 76 Fed. Reg. 14,559 (Mar. 16, 2011) (to be codified at 48 C.F.R. § 6, § 8, and§ 19).
[53] 13 C.F.R. § 124.517.
[54] *Id.*

The BD organization chart is as follows, but it does not depict the BOS.



d. HUBZone

A HUBZone is a geographic area with high poverty or high unemployment, as defined through a complicated statutory framework.[55] HUBZone small business concerns are small businesses whose principal office is located in a HUBZone, that are at least 51 percent owned by United States citizens, and which draw at least 35 percent of their employees from HUBZones.[56] These firms can receive set-aside contracts if two or more HUBZone concerns are expected to make a fair and reasonable offer.[57] Sole-source awards are permitted for contracts below $4 million ($6.5 million for manufacturing contracts).[58] A price evaluation adjustment of 10 percent is granted when bidding on contracts offered through full and open competition.[59] To certify as a HUBZone firm, a small business must apply on the SBA website, recertify every three years, certify through SAM, and qualify at the time of offer and the time of award.[60] SBA has the authority to conduct program

[55] 17 HUBZone are defined as any area located in a qualified census tract, qualified nonmetropolitan county, within the external boundaries of an Indian reservation or an area subject to the Base Realignment and Closure Act (BRAC). 15 U.S.C. § 632(p). Qualified census tracts are tracts designated by the Department of Housing and Urban Development (HUD) in which either 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent, but no more than 20 percent of a metropolitan statistical area may qualify. 26 U.S.C. § 42(d)(5)(B)(ii). Qualified nonmetropolitan counties are those in which median household income is at less than 80 percent of the nonmetropolitan State median household income, the unemployment rate at least 140 percent of the average unemployment rate for the United States or for the State in which such county is located, whichever is less, or which is located in a difficult development area, as designated by HUD. 15 U.S.C. § 632(p).

[56] 15 U.S.C. § 632(p)(5).

[57] 48 C.F.R. § 19.1305-1307.

[58] *Id.*

[59] *Id.*

[60] 13 C.F.R. § 126.300.

examinations of firms to verify their continued eligibility[61] or to hear appeals regarding a firm's size[62] or eligibility for the program.[63] There is a statutory goal of awarding three percent of all prime contract dollars and three percent of all subcontract dollars to HUBZone firms[64]

The HUBZone office at SBA publishes the lists and maps of eligible HUBZones, reviews applications, and conducts reviews of firms. SBA does not provide details of the organizational structure.

e. Operations

GCBD's operations group manages the information technology and develops training to support the GCBD offices. It provides additional administrative support to the Associate Administrator.

II. Issues Raised By GAO

The recent GAO report examining challenges at SBA identified a number of open recommendations for GCBD, but it also identified broadreaching issues within SBA that are affecting the ability of GCBD to perform its mission.[65] The following is a brief overview of the specific open recommendations, and of the systemic issues.

a. Open Recommendations

There are seven open management recommendations covering five programs for GCBD and its component offices. Many have previously been examined by this Subcommittee, so they will not be exhaustively covered.

i. PCR Data

In a 2011 report, GAO stated that:

> [t]o help ensure that [Government Contracting Area Report (GCAR)] data are accurate and that SBA reliably can use the data to monitor PCR and CMR performance and determine whether established goals have been achieved, we recommend that SBA's Director of Government Contracting take the following two steps:
> • provide clear and complete guidance to PCRs and CMRs on accurately recording and maintaining the appropriate backup documentation for accomplishments reported in the GCAR monthly report, and
> • require that monthly GCAR data are verified and that documentation for PCR and CMR records are periodically reviewed for quality and completeness."[66]

[61] *Id.* at § 126.401.
[62] *Id.*
[63] *Id* at§ 121.1001. SBA, the contracting officer, or any other interested party may protest the apparent successful offeror's qualified HUBZone SBC status. 13 C.F.R. § 126.801.
[64] 15 U.S.C. § 644(g)(1).
[65] GAO, SMALL BUSINESS ADMINISTRATION: LEADERSHIP ATTENTION NEEDED TO OVERCOME MANAGEMENT CHALLENGES (GAO-15-347) (2015), available at http://www.gao.gov/products/GAO-15-347 [hereinafter "GAO Management Report"].
[66] GAO, IMPROVEMENTS NEEDED TO HELP ENSURE RELIABILITY OF SBA'S PERFORMANCE DATA ON PROCUREMENT CENTER REPRESENTATIVES 9 (GAO-11-549R) (2011).

While additional guidance has been provided, GAO in the Management Report is still recommending that "[t]o help ensure that [GCAR] data are accurate and that SBA reliably can use the data to monitor [PCR] and [CMR] performance and determine whether established goals have been achieved, SBA's Director of Government Contracting should require that monthly GCAR data are verified and that documentation for PCR and CMR records are periodically reviewed for quality and completeness."[67] As discussed in a 2011 hearing of this Subcommittee, GCAR data is essential for tracking instances of bundling, consolidation, and failure of contracting agencies to follow the Act.[68]

ii. Bundling and Consolidation Data

In a 2013 report, GAO found that agencies did not understand the rule regarding bundling and consolidation and were not fully complying with the law.[69] GAO recommended that SBA submit the statutorily required bundling reports to Congress to increase accountability and promote compliance.[70] While SBA agreed, the recommendation had not been complied with at the time of the Management Report, prompting GAO to again recommend that SBA file the required reports.[71] Given the increased attention this Subcommittee has focused on bundling and consolidation, most recently at a March 17, 2015, and requiring in law that agencies improve their reporting on bundling and consolidation[72] it would improve the Committee's oversight if SBA were to provide timely reports.

iii. WOSB Program

The use of third-party certifiers for WOSB and EDWOSB programs came under scrutiny in a 2014 report that led to two outstanding recommendations.[73] Specifically, GAO found that the lack of clear guidance and oversight allowed for abuse of the program.[74] However, despite language in the FY 2015 NDAA requiring SBA to move to discontinue self-certification,[75] SBA has not closed two recommendations. Specifically, the Management Report echoed the recommendation that "[t]o improve management and oversight of the [WOSB] program, and to help ensure the effective oversight of third-party certifiers, the [SBA] should establish and implement comprehensive procedures to monitor and assess performance of certifiers in accord with the requirements of the third-party certifier agreement and program regulations."[76] Further, GAO recommended that "[t]o improve management and oversight of the WOSB program, and to provide reasonable assurance that only eligible businesses obtain WOSB set-aside contracts, [SBA] should enhance examination of businesses that register to participate in the WOSB program, including actions such as: (1)

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[67] Management Report at 106.
[68] *See* Helping Small Businesses Compete: Challenges Within Programs Designed to Assist Small Contractors Subcommittee on Contracting and Workforce (2011).
[69] GAO, SMALL BUSINESS CONTRACTING: UPDATED GUIDANCE AND REPORTING NEEDED FOR CONSOLIDATED CONTRACTS 8 (GAO-14-36) (2013).
[70] *Id.* at 19.
[71] Management Report at 106.
[72] The National Defense Authorization Act (NDAA) for Fiscal Year 2015 and the NDAA for Fiscal Year 2016 each included a data quality improvement plan for bundling and consolidation. *See* Pub. L. No. 113-291 § 822 and Pub. L. No. 114-92 § 862.
[73] GAO, WOMAN-OWNED SMALL BUSINESS PROGRAM: CERTIFIER OVERSIGHT AND ADDITIONAL ELIGIBILITY CONTROLS ARE NEEDED (GAO-15-54) (2014).
[74] *Id.* at 15.
[75] Pub. L. No. 113-291 § 825.
[76] Management Report at 106.

promptly completing the development of procedures to conduct annual eligibility examinations and implementing such procedures; (2) analyzing examination results and individual businesses found to be ineligible to better understand the cause of the high rate of ineligibility in annual reviews, and determine what actions are needed to address the causes; and (3) implementing ongoing reviews of a sample of all businesses that have represented their eligibility to participate in the program."[77]

If any set-aside program fails to implement the appropriate controls, it opens itself to waste, fraud and abuse. Therefore, these recommendations remain critical.

iv. HUBZone

While the HUBZone program does not rely upon third-party verification programs, the outstanding GAO recommendations are very similar. Based on a 2015 report that examined lacks of controls and communication in the HUBZone program, GAO made two recommendations.[78] First, GAO recommended that "[t]o improve SBA's administration and oversight of the [HUBZone] program and reduce the risk that firms that no longer meet program eligibility criteria receive HUBZone contracts, [SBA] should conduct an assessment of the recertification process and implement additional controls, such as developing criteria and guidance on using a risk-based approach to requesting and verifying firm information, allowing firms to initiate the recertification process, and ensuring that sufficient staff will be dedicated to the effort so that a significant backlog in recertifications does not recur."[79] Further, GAO recommended that "SBA should establish a mechanism to better ensure that firms are notified of changes to HUBZone designations that may affect their participation in the program, such as ensuring that all certified firms and newly certified firms are signed up for the broadcast e-mail system or including more specific information in certification letters about how location in a redesignated area can affect their participation in the program."[80] Given that factors such as the residences of employees can change daily, and that the HUBZone program was designed to continually shift between locations so that only the most underutilized areas would qualify, both recommendations are common sense.

v. Mentor-Protégé

In September 2011 and again in 2015, the Subcommittee held hearings examining mentor-protégé programs. This was spurred in part by a 2011 GAO report,[81] which has led to legislation reforming the mentor-protégé programs.[82] The crux of the report was that, while well-intentioned, there was little to no tracking of protégé firms to see if the programs produced lasting benefits.[83] Thus, GAO recommended and SBA agreed that the program would benefit from post award tracking. However, nearly six years later, the recommendation that "[t]o more fully evaluate the effectiveness of their mentor-protege programs, ….the Mentor-Protege Program Directors of the . . . SBA . . . should consider collecting and maintaining protege postcompletion information" remains open.[84] This is

[77] *Id.*
[78] GAO, SMALL BUSINESS CONTRACTING: OPPORTUNITIES EXIST TO FURTHER IMPROVE HUBZONE OVERSIGHT (GAO-15-234) (2015).
[79] Management Report at 106.
[80] *Id.* at 106-107.
[81] GAO, MENTOR-PROTEGE PROGRAMS HAVE POLICIES THAT AIM TO BENEFIT PARTICIPANTS BUT DO NOT REQUIRE POSTAGREEMENT TRACKING (GAO-11-548R) (2011).
[82] NDAA for Fiscal Year 2013, Pub. L. No. 112-239 § 1641 (2013).
[83] MENTOR-PROTEGE PROGRAMS HAVE POLICIES THAT AIM TO BENEFIT PARTICIPANTS BUT DO NOT REQUIRE POSTAGREEMENT TRACKING at 9.
[84] Management Report at 107.

particularly problematic now that SBA has been given statutory authority over all civilian agency mentor-protégé programs.

b. Systemic Issues

In addition to the specific recommendations that were outstanding for GCBD, other agency-wide issues are posing challenges to the effectiveness of the GCBD programs and organization. Specifically, human capital, contracting and information technology and organizational structure are hampering GCBD.

i. Human Capital

GAO noted in its management report that SBA's Inspector General (OIG) "has included human capital as one of the most serious management challenges at SBA since fiscal year 2001" [85], Within GCBD, this has led to the use of Voluntary Early Retirement Authority and Voluntary Separation Incentive Payments (VERA/VSIP) programs for fiscal years 2012 and 2014.[86] In a VERA/VSIP action, the agency pays employees up to $25,000 to retire, but then may only replace a fraction of the retiring employees to achieve cost savings. GAO notes that "SBA officials stated that each program office was consulted to determine which positions were eligible for VERA/VSIP."[87] However, in GCBD the VERA/VSIP action led to the loss of statutorily mandated positions, such as PCRs, and the loss of numerous senior executives. As a consequence, GCBD has been operating without a Deputy, PPL lost its director of Policy and Research, the BD program lost its head of management and technical assistance, and numerous PCRs, BOS, and CMRs left. Sixteen months later these positions have not been filled. This has led to a backlog of regulations: based on the FY13-FY16 NDAAs, SBA still needs to produce seven proposed rules, thirteen final rules, and take seventeen other actions. Fewer than fifty PCRs are responsible for over $400 billion in contracts each year, and the majority of those PCRs carry other job assignments. GCBD's ability to fulfill its mission is jeopardized, which begs the question of why GCBD leadership approved buyouts for crucial positions.

ii. Information Technology and Contract Management

As highlighted in the January 6, 2016 and January 7, 2016 full Committee hearings, information technology (IT) remains a challenge for SBA. However, within GCBD it has led to a lack of oversight of the 8(a) and HUBZone programs. Specifically, GAO cites a February 2014 report by the OIG in which SBA failed to follow contracting law when purchasing its OneTrack system.[88] One Track was intended to track participants in the 8(a) and HUBZone programs, as well as SBA's loan programs, to reduce fraud. However, since SBA "failed to perform market research or use a modular contracting strategy intended to reduce acquisition risks" the agency was left with a system that still is not deployed and which does not meet the needs of GCBD.[89]

iii. Organizational Structure

In a 2003 report, GAO criticized SBA's organizational structure as creating complex overlapping relationships among offices that contributed to challenges in delivering services to small

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[85] Management Report at 20.
[86] *Id.* at 49.
[87] *Id.* at 43 footnote 103.
[88] *Id.* at 28-29.
[89] *Id.*

businesses.[90] GAO again specified that the "working relationships between headquarters and field offices . . . differ from reporting relationships, potentially posing programmatic challenges."[91] A"[d]istrict officials work[ing] with program offices at SBA's headquarters to implement the agency's programs, but [reporting] to regional administrators, who themselves report to the Office of Field Operations," GAO cited the BOS "in the district offices [who] work with [GCBD] at SBA headquarters to assist small businesses with securing government contracts but report to district office management."[92]

GAO also cited as problem that "some officials have the same duties."[93] While not identified as such by GAO, within GCBD the delineation between GC and PPL is tenuous, as illustrated by SBA's own website. PPL does not have a website, but GC does.[94] The GC website says that it is responsible for goaling, and that it plays a major role in federal regulations on government contracting.[95] Indeed, PPL and GC have previously been a single organization as recently as 2015. Clearly, a better division of responsibility is needed.

III. Issues Before the Subcommittee

Given this litany of issues, the Subcommittee looks forward to having the SBA explain what steps it is taking to close each of the seven open GAO recommendations. Further, the Subcommittee expects to hear how GCBD is addressing the human capital, IT, contract management and organization issues. Finally, the Subcommittee may ask about pending or recently issued regulations from GCBD.

IV. Conclusion

Given that nearly 40 percent of federal contract spending is either prime contracts or subcontracts with small businesses, ensuring that GCBD is properly functioning must remain a priority. The Subcommittee looks forward to SBA's participating in this ongoing oversight of the office.

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[90] Management Report at 58, *citing* GAO, MAJOR MANAGEMENT CHALLENGES AND PROGRAM RISKS: SBA (GAO-03-116) (2003).
[91] *Id.*
[92] *Id.*
[93] *Id.*
[94] https://www.sba.gov/offices/headquarters/ogc/about-us.
[95] *Id.*