

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6515

MEMORANDUM

To: Members, Subcommittee on Economic Growth, Tax and Capital Access
From: Andy Kim, Chairman
Date: August 1, 2019
Re: Subcommittee hearing titled: “Expanding Opportunities for Small Businesses at Military Bases”

The House Committee Subcommittee on Economic Growth, Tax, and Capital Access on Small Business will meet for a hearing titled “Expanding Opportunities for Small Businesses at Military Bases.” The hearing is scheduled to begin at **11:00 A.M. on Thursday, August 1, 2019 at Town Hall, 111 West Second Street, Moorestown, NJ 08057**. The hearing will focus on increasing procurement opportunities for small businesses with the Federal government, and particularly Joint Base McGuire-Dix-Lakehurst, the nation’s only tri-service joint base.

Background

America’s 30.2 million small businesses are the engine of job creation and economic growth in this country, creating two thirds of net new jobs in the United States and employing nearly half of the nation’s workforce.¹ In 1953, Congress passed the Small Business Act,² which authorized the U.S. Small Business Administration (SBA) to make sure that these businesses have the tools and resources they need to start and expand their operations and create the jobs that support a growing economy and a strengthened middle class. The Federal government is the largest purchaser of goods and services in the world, spending nearly \$442 billion in FY 2017. The Federal government is therefore in a unique position to sustain small business development and growth by utilizing the quality performance and innovative products that small businesses provide.

As part of the agency’s core operations, SBA is responsible for ensuring that small businesses receive their fair share of federal contracting opportunities. Ensuring that small firms have a full opportunity to compete for federal contracts not only guarantees an active U.S. industrial base but, generally, small companies have lower overhead rates than their corporate counterparts and can provide products and services rapidly and at the best value to taxpayers. Small firms also lead the way in innovation.

Small Business Contracting Programs

¹ Small Business Admin. Office of Advocacy, *2018 Small Business Profile*, www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf_See also: SBA Office of Advocacy, *Frequently Asked Questions about Small Businesses* (Aug. 2018) <https://www.sba.gov/sites/default/files/advocacy/Frequently-Asked-Questions-Small-Business-2018.pdf>.

² PL 83-163, as amended.

In order to maximize small business participation in the federal marketplace, the Small Business Act incentivizes contracting opportunities with small businesses by setting forth the government-wide goal of awarding at least 23% of all eligible federal contracting dollars to small businesses. Additionally, the SBA administers several government-wide small business contracting programs. These programs set aside or reserve contracting opportunities for small businesses, enabling small businesses to compete only with similar situated firms for federal awards. Moreover, they allow sole-source awards, meaning awards without competition, in certain instances. These contracting programs have been developed to break down barriers and to expand certain market segments, such as minority entrepreneurs.

The four procurement programs are: (1) the 8(a) Business Development program; (2) Women-Owned Small Business program; (3) Historically Underutilized Business Zone (HUBZone) small business program; and (4) Service-Disabled Veteran-Owned Small Business program. The Act also sets the goal of awarding 5% of all eligible prime contracting and subcontracting dollars to small disadvantaged businesses and women-owned businesses; and 3% for HUBZone and service-disabled veteran-owned businesses.

During the last six years, the Federal government has been successful in achieving the 23% goal, although the other contracting goals have not necessarily been met. Last year, for example, the Federal government awarded 25% of all eligible prime contracting dollars to small businesses and met the goal of awarding 5% and 3% of eligible prime contracting dollars for small disadvantaged businesses and service disabled veteran-owned service businesses, respectively. However, the prime contracting goals for HUBZone small businesses and Women-Owned small businesses were not met.³ Below are detailed requirements of each of the programs.

8(a) Program

The 8(a) Business Development Program is a business assistance program for small businesses owned by socially and economically disadvantaged individuals or groups.⁴ To qualify for the program, small businesses must meet the following requirements:

- The SBA's size standard for being small within its industry,
- Must be at least 51 percent unconditionally owned and controlled by:
 - by one or more socially⁵ and economically⁶ disadvantaged individuals who are US citizens and are of good character and;

³ Small Business Admin., *SBA Beats Goal for Small Business Awards: \$120Bn To America's Small Businesses*, press release 19-04, Jun. 28, 2019, <https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sba-beats-goal-small-business-awards-120bn-americas-small-businesses>.

⁴ Under the Small Business Act, small businesses owned by Indian tribes, an Alaska Native Corporations (ANC), a Native-Hawaiian Organizations (NHO) or Community Development Corporations (CDC) qualify to participate in the program based on slightly different requirements.

⁵ Under the Small Business Act, certain individuals are presumed socially disadvantaged: African-Americans, Hispanic Americans, Asian Pacific Americans, Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians), and Subcontinent Asian Americans. If they are a member of another group not listed, then they must show through a preponderance of the evidence that they are socially disadvantaged.

⁶ Economic disadvantage is shown by submitting a narrative and personal financial documentation about one's income, assets, and net worth. These values must fall below regulatory amounts.

- The business must demonstrate a potential for success, generally by being in business for, at least, two years.⁷

Once certified into the program, participants are eligible for numerous benefits generally for a period of 3 years and in some cases for up to 9 years. For example, individually-owned small businesses can receive sole-source contracts, up to a ceiling of \$4 million for goods and services and \$7 million for manufacturing. Over those thresholds, individually-owned small businesses generally compete for awards, but competition is limited to 8(a) participants. Additionally, participants are eligible to receive technical assistance through the 7(j) program in several areas, such as accounting, bookkeeping, marketing operation of small business concerns and the identification of new business opportunities. Participants are eligible for these benefits throughout their nine years in the program. Once a firm has established its eligibility, it is required to maintain it with SBA monitoring it annually.

Women-Owned Small Business Federal Contracting Program

The WOSB program levels the playing field by restricting competition for federal contracts to qualified women-owned small businesses in industries where women are substantially underrepresented. Additionally, there is a subset of contracts reserved solely for Economically Disadvantage Women-Owned Small Businesses (EDWOSBs). EDWOSBs can receive contracts in either WOSB or EDWOSB eligible industries.

To qualify for the WOSB program;

- A business must meet the SBA’s size standard for being small within its industry; and
- Be 51% unconditionally and directly owned and controlled⁸ by women who are also U.S. citizens.

To qualify as an economically disadvantaged business within the women’s contracting program, the business must:

- Meet all the requirements of the women’s contracting program (listed above); and
- Be economically disadvantaged.⁹

To determine which industries are eligible for the program, the SBA must conduct a study of the NAICS codes, which represent all industries, every 5 years. As of February 2019, there were a total of 113 four-digit NAICS codes eligible under the WOSB program—92 eligible NAICS codes for WOSBs and 21 for EDWOSBs.¹⁰

When the WOSB Program was first enacted, its statutory authority allowed WOSBs to self-certify eligibility to the program or obtain formal certification from a third party. Currently, the Small

⁷ 13 CFR §124.101-124.112.

⁸ According to 13 CFR §127.202, control includes managing the day-to-day operations and making long-term decisions for the small business.

⁹ 13 CFR §127.200- §127.203. To be economically disadvantaged, the personal financial condition of the woman, including her personal income for the past three years, personal net worth and the fair market value of all of her assets are taken into consideration. These values must fall below regulatory amounts.

¹⁰ See U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-19-168, WOMEN-OWNED SMALL BUSINESS PROGRAM (2019).

Business Act requires formal certification, which SBA has still not implemented, thereby allowing WOSBs and EDWOSBs to self-certify.¹¹

This program assists WOSBs and EDWOSBs through set asides and sole-source awards. The latter is available in contract awards, including any options, up to \$4 million or \$6.5 million in the case of manufacturing concerns, provided that the award can be made at a fair and reasonable price and the contracting officer does not have a reasonable expectation that 2 or more WOSBs or EDWOSBS will submit offers.¹²

HUBZone Program

The HUBZone program was created in 1997 as part of the Small Business Reauthorization Act (P.L. 105-135) and was designed to promote economic development by providing federal assistance to firms located in economically distressed areas, i.e., areas with high unemployment rates, low income, and/or high poverty rates. By lowering barriers for entry into the federal marketplace for these firms, an incentive is created for selling goods and services to the government, ultimately creating jobs and bringing revenue to the area.

In order to qualify for the HUBZone program:

- A business must meet the SBA's size standard for being small within its industry;
- Be at least 51 percent owned and controlled by U.S. citizens, a Community Development Corporation, an agricultural cooperative, a Native Hawaiian organization, or an Indian tribe;
- Must have its principal office located within a HUBZone; and
- Have at least 35 percent of its employees live in a HUBZone.¹³

Once certified for the program, HUBZone firms may take advantage of several mechanisms available to participants seeking to do business with the federal government. HUBZone firms are eligible to compete for set aside contracts and sole source contracts up to \$4 million and \$7 million for manufacturing concerns, including options, if the award can be made at a fair and reasonable price and the contracting officer doesn't have a reasonable expectation that 2 or more HUBZones will submit offers. Also, they receive a 10 percent price preference in full and open contract competitions (competition in which any company whether small or large can compete).¹⁴

Service-Disabled, Veteran-Owned Small Business Program

Congress has also designated service-disabled veteran-owned small businesses as a key group that can benefit from contract assistance. To be eligible for this program, small businesses must:

- A business must meet the SBA's size standard for being small within its industry;
- Be at least 51% owned and controlled by one or more service-disabled veterans; and
- Eligible veterans must have a service-connected disability¹⁵

In an effort to get the program on-line as quickly as possible, SDVOSBs have been allowed to self-certify that they meet all necessary qualifications. Thus, businesses can be awarded set aside

¹¹ *Id.*

¹² 13 CFR §127.503.

¹³ 13 CFR §126.200-§126.207.

¹⁴ 13 CFR §126.600-§126.618.

¹⁵ 13 CFR §125.12-§125.16.

contracts and sole-source contracts up to \$4 million or \$6.5 million in the case of manufacturing concerns, subject to the same requirements previously highlighted in the WOSB and HUBZone programs.¹⁶ In the 116th Congress, the Small Business Committee recently marked-up H.R. 1615, which would require formal certification of SDVOSBs.

Additional Opportunities for Small Businesses: SBIR and STTR

The Small Business Innovation Research (SBIR) program aims to stimulate technological innovation and increase the use of the small business community to meet federal research and development (R&D) needs. Moreover, it has the goal to foster and encourage participation in innovation and entrepreneurship by socially and economically disadvantaged individuals and expand private-sector commercialization of innovations resulting from federally funded R&D.¹⁷

Under the program, each federal agency with an extramural Research & Development (R&D) budget greater than \$100 million is required to allocate a portion of that funding to conduct a multi-phase R&D grant program for small businesses. Currently, 11 federal agencies participate in the SBIR program outside of the Small Business Administration (SBA): the Departments of Agriculture (USDA), Commerce (DOC), Defense (DOD), Education (ED), Energy (DOE), Health and Human Services (HHS), Homeland Security (DHS), and Transportation (DOT); the Environmental Protection Agency (EPA); the National Aeronautics and Space Administration (NASA); and the National Science Foundation (NSF). These agencies must allocate at least 3.2% of extramural R&D funds to this program, though agencies may opt to exceed these minimum percentages.¹⁸

Modeled largely after the SBIR program, the Small Business Technology Transfer (STTR) Program seeks to facilitate the commercialization of university and federal R&D by small companies. Under the program, each federal agency with extramural R&D budgets of \$1 billion or more is required to allocate not less than 0.45% of this funding to conduct a multi-phase R&D program for small businesses. The STTR program provides funding for research proposals that are developed and executed cooperatively between a small firm and a scientist in an eligible research institution and that are aligned with the mission requirements of the federal funding agency.¹⁹ Currently, five agencies participate in the STTR program: DOD, DOE, HHS, NASA, and NSF.

Each program has its own eligibility criteria for participating small businesses, however both programs are structured in three phases. In Phase I, an agency solicits contract proposals or grant applications to determine the scientific and technical merit and feasibility of ideas that appear to have commercial potential.²⁰ Phase II is intended to further R&D efforts initiated in Phase I that meet particular program needs and that exhibit potential for commercial application. Finally, Phase III is focused on the commercialization of the results achieved in the previous phases. Neither program provides funding for Phase III.

¹⁶ 13 CFR §125.17-§125.26.

¹⁷ P.L. 97-219 and 15 U.S.C. §638.

¹⁸ *Id.*

¹⁹ P.L. 102-564 and 15 U.S.C. §638.

²⁰ Depending on the agency, SBIR and STTR awards are granted as contracts or grants.

The SBA emphasizes three principal differences between the STTR and SBIR programs: (1) under STTR, the small business and its partnering research institution must establish an intellectual property agreement detailing the allocation of intellectual property rights and rights to carry out follow-on research, development, or commercialization activities; (2) under STTR, the small business partner must perform at least 40% of the R&D and the research institution partner must perform at least 30% of the R&D; and (3) the STTR program does not require the principal investigator to be primarily employed by the small business, a requirement of the SBIR program.

As an innovative new way of conducting business, the Air Force has made multiple SBIR and STTR Phase 1 awards through an event known as “Pitch Day”, which consists of streamlined evaluations of whitepapers and in-person presentations. Following a 30-day application period, 59 small businesses were invited last March by the Air Force to pitch their proposals. Out of those businesses, 51 received initial award that same day, representing a big change in the speed at which the Government makes awards and increasing the industrial base within minutes.²¹

Conclusion

There are multiple ways in which the Federal Government can reach small businesses and benefit from the services and products they provide. Through the SBA’s contracting programs (8(a), WOSB, SDVOSB and HUBZone) the government ensures the participation of small businesses in the Federal marketplace, while enhancing competition and creating a robust industrial base. Moreover, through the SBIR and STTR programs, the government promotes R&D while benefiting from what innovative small businesses have to offer. The hearing will allow Members to discuss ways to increase government procurement opportunities for small businesses.

²¹ See U.S. Air Force SBIR/STTR Program, *The Inaugural Air Force Pitch Day: New contracts and new partners*, (Mar. 2019) <https://www.afsbirsttr.af.mil/News/ModuleID/13334/ItemID/352/mct/EventDetails/>.