

U.S. Small Business Administration



Your Small Business Resource

Regulatory Update on 2010 Small Business Jobs Act & Women-Owned Small Business Program

Presented by:

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NDIA Small Business Conference 2011

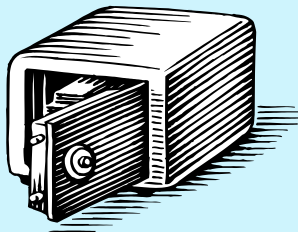
Small Business Jobs Act of 2010

- ◆ On September 27, 2010, President Obama signed Small Business Jobs Act of 2010 (Public Law 111-240; Sections 1312 thru 1347)



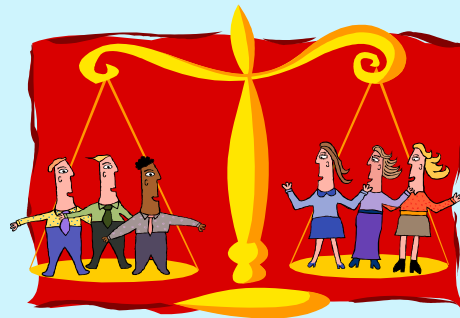
Small Business Jobs Act of 2010

- The Act is intended to benefit small businesses by providing them with tax incentives and better access to capital.
- The Act also contains a number of provisions that will help small business contractor who are pursuing prime and/or and subcontracting opportunities with the federal government or currently performing on government contracts or subcontracts.



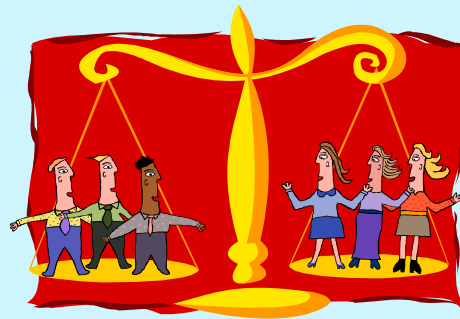
◆ 1. Parity

- ❖ Section 1347 – Amends the SB Act by deleting “shall” in FAR Part 19.1305(a) and replacing with “may” for contract actions that have a reasonable expectation that two or more HUBZone small business concerns will submit offers (so called “rule of two”).



◆ 1. Parity (Continued)

- ❖ FAR 19.1305 is affected by the change in the statutory language re-establishing “equality” between HUBZone small businesses and other set-aside programs including those for 8(a), SDVOSB, and EDWOSB/WOSB.



◆ 2. Repeals the Comp Demo Program

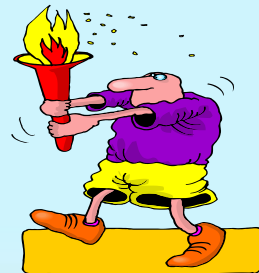
Originally, Congress established the Small Business Competitiveness-Demonstration Program in 1988 to test the effectiveness of small business' ability to compete in those industry categories where they were dominated by eliminating small business set-asides in those industries.



◆ 2. Repeals the Comp Demo Program (Continued)

The Act restores the ability of contracting officers to conduct Small Business Set-Asides (in addition to 8(a), HUBZone, SDVOSB- and now WOSB/EDWOSB set-asides) in the former Comp-Demo designated industry groups (FAR Part 19.1005).

As a Result of the SBJA, FAR Part 19.10 is deleted in its entirety.



◆ 3. Set Asides for Multiple Award Schedules

- ❖ 15 U.S.C. 644 under Section 15 as amended requires that FAR be amended to establish guidance under which agencies “**may, at their discretion**”
 - ◆ (i) set aside part or parts of a multiple award contract for small business;
 - ◆ (ii) set aside orders placed against multiple award contracts for small businesses; and
 - ◆ (iii) reserve one or more contract award(s) for small businesses under full and open competition multiple award procurements.



◆ 4. Presumption of Loss for Misrepresentation by a firm



- ❖ Government may recoup the costs for the total amount expended when a concern that is other than small knowingly and willfully sought and received a contract intended for small business.
- ❖ Misrepresentation includes:
 - ◆ Submission of a proposal or bid intended for or encouraging to be classified as a small business set-aside.
 - ◆ Improper status in CCR or ORCA registration

◆ 5. Requires Annual Certifications of Status

- ❖ **Current Regs** - In contracts lasting up to 5 years, the bidder or offeror certifies its size at the time of submission of proposal or bid. In long term contracts, the contractor is required to certify its size on the 5th year of the performance period and every option year, thereafter.
- ❖ The Act requires certifications of Size Status to be performed **annually** using the Online Reps & Certs Application (ORCA) database .



◆ 6. **Section 1343 - Establish Government-Wide Policy for Prosecution of Size and Status Fraud**

- ❖ No later than 1 year after the date of enactment, the SBA Administrator, in consultation with the Attorney General, will issue the policy for prosecution of size and status fraud.



◆ 7. Section 1314 - Establishes SB Teaming Pilot Program

- ❖ SBA will issue grants for up to \$5 million to organizations that will consult with small business concerns and help establish teaming and joint ventures seeking to compete for larger prime contracts and subcontracting opportunities.



◆ 7. Establish SB Teams Pilot Program - Cont'd

- ❖ The eligible organizations for an award of a grant will recommend contracting opportunities for teaming arrangements and joint ventures for small business concerns.
- ❖ Program expires in 5 years, unless extended.



◆ 8. Section 1347 – Establishment of Mentor Protégé Programs in HUBZone, SDVOSB, and WOSB

- ❖ The Administrator may expand and establish official programs for small business set-aside programs in HubZone, SDVOSB, and WOSB modeled on the SBA's existing 8(a) Mentor Protégé Program.



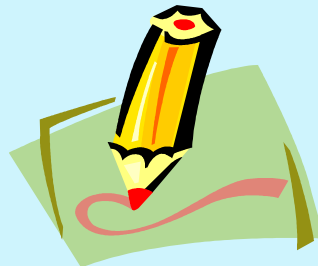
◆ 9. Section 1321 - Subcontracting Misrepresentations

- ❖ Requires that, by September 27, 2011, the FAR be amended to establish a policy on subcontracting compliance relating to small businesses, including assignment of compliance responsibilities between contracting offices, small business offices, and program offices performing periodic oversight and review activities.



◆ 10. Section 1322 - Holding Large Prime Contractors Accountable to Their Subcontracting Plans

- ❖ To the extent the prime contractor is unable to make a good faith effort to utilize its small business subcontractors, the contractor must explain in writing to the Contracting Officer reasons why it is unable to do so.



◆ 11. Section 1334 – Payment to Subcontractors

- ❖ Prime contractor shall notify the Contracting Officer in writing if:
 - ◆ Subcontractor payments are less than the 'agreed to' price
 - ◆ Timeliness of payments – cannot pay within 90 days
- ❖ Contracting Officer must consider unjustified payment as a factor as part of past performance evaluation and reporting



◆ 12. Section 1313 – Limitation on the Use of Acquisitions Involving Consolidation

- ❖ The act provides that before agency bundles contract requirements with a total value of more than \$2 million:
 - ◆ Conduct Market Research and
 - ◆ Identify alternative contract approaches involving less consolidation
 - ◆ Make written determination if consolidation is necessary
 - ◆ Certify steps will be taken to include small business concerns in the acquisition plan/strategy





- ◆ **13. Section 1312 - Bundling Accountability Measures & Oversight**
 - ❖ Teaming requirements – Agencies are to solicit MAS proposals (above substantial bundling threshold) from any responsible source, including small business concerns and teams or joint ventures of small business concerns.
 - ❖ By September 27, 2011, amend the FAR to establish government-wide policy on contract bundling.
 - ❖ Reduction of contract bundling through publication -
 - ◆ agencies required to post a list of rationale of any bundled contracts the agency has solicited or awarded.

◆ 14. electronic PCR (ePCR)– 3 Year Pilot Program

- ❖ Within 1 year of enactment, implement a 3-year pilot program for ePCR.
- ❖ This will allow the PCR to cover more contracting activities and procurement reviews resulting in more SB awards.



◆ 15. Update Size Standards Cycle

- ❖ Act provides every 18 months, the SBA must conduct a rolling review of at least 1/3 of the existing size standards, and the SBA must conduct a complete review of all size standards at least every 5 years.
- ❖ These reviews allow proper adjustment of industry sectors for more participation in small business set-asides.



- ◆ **16. Establishes an Official HUBZone Subcontracting Goal**
 - ❖ Amends the calculation of the government-wide procurement goal of 3% participation by HUBZone small businesses to cover subcontracts (the previous goal of “3 percent of the total value of all prime contracts” now reads “3 percent of the total value of all prime contracts and subcontracts”).



◆ 17. Micro-Purchase Guidelines

- ❖ Not later than 1 year after enactment, OMB & GSA Administrator to create guidelines for analysis of purchase card expenditures to identify opportunities for achieving and accurately measuring fair participation of small businesses in purchases not exceeding micro-purchase thresholds.
- ❖ This effort will help measure SB Participation in ways to increase small business goals and awards.



◆ 18. Section 1333 - Agency Accountability

- ❖ Agency goal communications at all levels - Senior Procurement Executives, senior Program Managers, and OSDBU Directors shall communicate to the subordinates the importance of achieving small business goals.



◆ 19. SB Contracting Training

- ❖ FAI in consultation with OFPP, DAU and the SBA shall develop courses for acquisition personnel (GS-1102s, requirements personnel, and management) concerning proper classification of business concerns and small business size and status for purposes of Federal contract vehicles.



◆ For More Info on Contacts for Jobs Act

Go To Website at:

<http://www.sba.gov/content/small-business-jobs-act-2010>

To Submit Comments, Send an e-mail to:

richard.miller@sba.gov



Women-Owned Small Business Contracting Program

- ◆ Federal Contracting Officers can now set-aside certain contract requirements for WOSB/EDWOSB firms
- ❖ FAR Coverage Effective April 1, 2011 (FAC 51)
- ❖ Limited to 83 four digit NAICS (327 six digit NAICs)
- ❖ “Documented” self-certification (Upload Docs. Into Data Repository)
- ❖ Dollar Thresholds for Competition (\$6.5M mfg/\$4M all others)
- ❖ No sole source contracts
- ❖ CO must verify WOSB/EDWOSB status prior to award



Women-Owned Small Business Contracting Program

- ◆ For More Info on the WOSB/EDWOSB Program

Go to the Website at:

www.sba.gov/wosb



Thank You!

QUESTIONS?



***NDIA: Back to the Future: A
Preparation for the Journey!***