CHAPTER 11

SMALL BUSINESS PROGRAMS

Because small businesses are responsible for most of the job creation and technical innovations in the United States, Congress and the president have shown great interest in encouraging the growth and health of small businesses throughout the American economy. One of the most direct ways the government can encourage and nurture small businesses is through federal contracts.

THE SMALL BUSINESS ACT

The **Small Business Act of 1953** states that small businesses should receive a "fair proportion" of federal contracts and that small businesses should have the "maximum practical opportunity" to participate in federal contracting. The Small Business Act established the **Small Business Administration** (SBA) to aid small businesses and to ensure they receive a "fair proportion" of federal contracts.

Congress has established a **23%** governmentwide goal for awards of contracts to small businesses. Subsets of the small business goal are a **5%** governmentwide goal for awards to small disadvantaged businesses (SDBs), a **5%** governmentwide goal for awards to women-owned small businesses (WOSB), a **3%** governmentwide goal for awards to "historically underutilized business zone" (HUBZone) small businesses, and a **3%** governmentwide goal for awards to service-disabled veteran-owned small businesses (SDVOSB) (the Department of Veterans Affairs has a 12% goal for awards to veteran-owned small businesses [VOSB]). A contract can be counted towards more than one goal: an award to an SDB in a HUBZone that is owned by a service-disabled woman veteran would be counted towards *all* the goals.

Each year the SBA negotiates "agency goals" with each department and agency. These agency goals may be higher or lower than the governmentwide goals, depending on the types of supplies and services the particular agency acquires.

The SBA maintains statistics that show how successful each department and agency is in attaining its goals. It provides these statistics to Congress and the president, and disappointing statistics sometimes trigger new legislation and mandates. This is why the departments and agencies pay close attention to the number of contracts awarded to each targeted group of businesses. Also, this is the reason each contracting activity has at least one small business specialist (SBS) to help these businesses (see Chapter 2 for more on the SBS and his functions).

To comply with these "socioeconomic policies," the government uses **set-asides** and **preference programs** to encourage small businesses, SDBs, HUBZone small business concerns, WOSBs, and SDVOSBs to obtain and perform government contracts.

WHAT QUALIFIES AS A SMALL BUSINESS?

The SBA establishes **small business size standards** on an industry-by- industry basis. It uses the **North American Industry Classification System** (NAICS) codes to identify the various industries (NAICS codes are available at **http://www.census.gov/eos/www/naics/**). The most prevalent size standard for manufacturing industries is **500 employees**, and the most prevalent size standard for service industries is **$7,500,000 in average annual gross revenue over the preceding three fiscal years**. For most industries, a company that does not exceed these size standards is considered "small." While a business with 500 employees or $7,500,000 in gross revenue may not seem small, the purpose of setting the size standard at these levels is to allow small businesses to grow into thriving "medium" businesses before losing the benefits of their small business size status.

However, the usual 500 employees/$7,500,000 size standards do not apply to all industries. A company that manufactures breakfast cereal foods is considered small if it has fewer than 1,000 employees (NAICS code 311230), while a company that manufactures cookies and crackers is considered small if it has fewer than 750 employees (NAICS code 311821). A drycleaning plant is considered small if its average annual gross revenue for the preceding three years does not exceed $5,500,000 (NAICS code 812320), but an establishment that drycleans industrial work uniforms is considered small if its average annual receipts for the preceding three years does not exceed $38,500,000 (NAICS code 812332). The SBA sets these size standards after determining the average size of the firms in each industry and the amount of competition within each industry.

The small business size standards are available at **http://www.sba.gov/size**. The contracting officer selects the appropriate NAICS code for the supply or service he intends to purchase, and he includes the NAICS code and the corresponding size standard in paragraph (a) of **FAR 52.204-8, Annual Representations and Certifications** (in Section K of the Uniform Contract Format – see Chapter 7).

The contracting officer's selection can determine whether a company is allowed to participate in a small business set-aside. For instance, if a contracting officer decides to set aside a contract for fabric, should he categorize the industry as "Broadwoven Fabric Mills" (NAICS code 313210), which has a size standard of 1,000 employees, or as "Knit Fabric Mills" (NAICS code 313240), which has a size standard of 500 employees? The contracting officer's decision will determine whether companies with between 500 and 1,000 employees will be able to participate in the set-aside. This is why the SBA allows bidders and offerors to appeal the contracting officer's decision (see paragraph (c) of FAR 19.303, Determining North American Industry Classification System Codes and Size Standards, and Chapter 16 for more on size standard appeals).

If a small business submits a bid or proposal for supplies under a small business set-aside expected to exceed $25,000, but that small business is not the manufacturer of those supplies (that is, it is engaged in retail or wholesale trade), the size standard is **500 employees** regardless of the actual size standard for the supply (this is called the "**nonmanufacturer rule**"). In addition, the small business nonmanufacturer must furnish supplies produced by a small business manufacturer or producer ("a concern that, with its own forces, transforms organic or inorganic substances including raw materials and/or miscellaneous parts or components into the end product"), and the supplies must be manufactured or produced in the United States. However, if the SBA has determined that there are *no* small business manufacturers or processors in the federal market, the small business nonmanufacturer may provide supplies produced by *any* domestic manufacturer or processor. The nonmanufacturer rule is addressed in paragraph (f) of FAR 19.102, Size Standards. A complete list of supplies for which the nonmanufacturer rule has been waived is available at **https://www.sba.gov/contracting/contracting-officials/non-manufacturer-rule/class-waivers**.

See FAR subpart 19.1, Size Standards, for more information.

Size Status Determination

Each bidder or offeror provides information about its average annual gross revenue for the previous three years and number of employees when it registers in the System of Award Management (SAM – **https://www.sam.gov**). This information, along with other formation obtained during the SAM registration, is used by SBA's computers to determine whether the bidder or offeror is a small business for the NAICS code the contracting officer identified in FAR 52.204-8 as applying to the acquisition. However, those who question the accuracy of the information the bidder or offeror entered into SAM may file a **protest** with the contracting officer. With invitations for bids (IFBs) that are set-aside exclusively for small businesses, protestors have **five working days** after bid opening to file their protests. With requests for proposals (RFPs) that are set-aside, the contracting officer must notify each unsuccessful offeror of the name and address of the apparent successful offeror, and protestors have **five working days** from receipt of this notice to file their protests. The protest must provide detailed evidence supporting the allegation that the bidder or offeror is not small. The contracting officer promptly forwards the size status protest to the SBA for decision (see Chapter 16 for more on protests regarding small business status).

Small Business Joint Ventures and Team Arrangements

A joint venture ("an association of persons and/or concerns . . . consorting to engage in and carry out a single specific business venture for joint profit . . . ") or team arrangement of two or more small businesses may submit an offer as a small business as long as each concern is small under the applicable size standard *provided*: (1) for an acquisition with a revenue-based size standard (such as $7,500,000), the procurement exceeds half the corresponding size standard (if the applicable size standard is $7,500,000, the acquisition would have to be larger than $3,750,000); or (2) for an acquisition with an employee-based size standard (such as 500 employees), the acquisition exceeds $10,000,000.

SET-ASIDES

A "**set-aside"** restricts, or "sets aside," contracts exclusively for small business participation. Only businesses that do not exceed prescribed size standards for the supply or service being acquired (and meet the qualifications for specific kinds of set-asides) are considered small and allowed to bid or propose on set-asides. Bidders or offerors that exceed the applicable size standard for a set-aside are, by definition, nonresponsive and their bids or proposals will be rejected.

Rules and Policies That Apply to All Set-Asides

The "Rule of Two"

Paragraph (a) of FAR 19.502-2, Total Small Business Set-Asides, states that "each acquisition of supplies or services that has an anticipated dollar value exceeding $3,500…but not over $150,000…is automatically reserved exclusively for small business concerns and shall be set aside for 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 market prices, quality, and delivery."

Paragraph (b) states that "the contracting officer shall set aside any acquisition over $150,000 for small business participation when there is a reasonable expectation that: (1) offers will be obtained from at *least two responsible small business concerns* offering the products of different small business concerns…; and (2) award will be made at fair market prices." This requirement is commonly called the "**rule of two**." Because of the importance each agency places on meeting its small business contract award goals, most agencies require each contracting activity's SBS to review all acquisitions over the simplified acquisition threshold that its contracting officers decide *not* to set aside. SBSs commonly use the SAM database to convince contracting officers of the existence of capable small businesses (see Chapter 5 for more on the SAM). In addition, the SBA maintains a **Dynamic Small Business Search** database at **http://web.sba.gov/pro-net/search/dsp_dsbs.cfm** that identifies businesses representing themselves as small businesses and the type of business they claim to be – SDVOSB, SDB, WOSB, etc.

Relationship Among Small Business Programs

Since there are many different kinds of set-asides, FAR 19.203, Relationship Among Small Business Programs, establishes the relationship among these various programs:

- "There is no order of precedence among the 8(a) Program (subpart 19.8), HUBZone Program (subpart 19.13), Service-Disabled Veteran-Owned Small Business (SDVOSB) Procurement Program (subpart 19.14), or the Women-Owned Small Business (WOSB) Program (subpart 19.15)" (paragraph (a)).
- Acquisitions between $3,500 ($5,000 for the Department of Defense) and $150,000 may be set-aside for small businesses, 8(a), HUBZone concerns, SDVOSBs, or WOSBs – there is no precedence among these programs (paragraph (b)).
- For acquisitions exceeding the simplified acquisition threshold ($150,000), "the contracting officer shall first consider an acquisition for the small business socioeconomic contracting programs (*i.e.*, 8(a), HUBZone, SDVOSB, or WOSB programs) before considering a small business set-aside…" (paragraph (c)). Therefore, the contracting officer must: (1) determine whether to set aside the acquisition (taking into account the "rule of two"); and, if he determines there are two or more small businesses qualified to perform the contract, (2) decide which type of set-aside to employ (taking into account the "rule of two" applies to all the various set-asides), how well the contracting activity is fulfilling its various small business goals, and such other factors as the results of market research and the acquisition history of the supply or service.
- 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 release it from the 8(a) program.

Limitations on Subcontracting

Besides the small business representation, each contract exceeding $150,000 that is awarded as a set-aside includes FAR 52.219-14, Limitations on Subcontracting, in which the bidder or offeror agrees, as a condition to contracting, that for:

- **Services** (except construction), at least **50%** of the cost of performance will be expended for employees of the concern.
- **Supplies**, at least **50%** of the cost of manufacturing the supplies, excluding the cost of materials, will be performed by the concern.
- **General construction**, at least **15%** of the cost of the contract, excluding the cost of materials, will be performed by its own employees.
- **Construction by special trade contractors**, at least **25%** of the cost of the contract, excluding the cost of materials, will be performed by its own employees.

These limitations on subcontracting do not apply to small business nonmanufacturers (see above).

Identification in FedBizOpps

FedBizOpps (**https://www.fbo.gov**) allows anyone to search for any of the small business set-asides (and any of the preference programs) by selecting the "Set-Aside Code" drop-down menu, then selecting "Total Small Business," "Competitive 8(a)," "HUBZone," "Veteran-Owned Small Business," "Woman-Owned Small Business," or any of the other small business set-asides or preference programs.

Historically Underutilized Business Zones (HUBZone) Program

One program designed to help a subset of small businesses is the **Historically Underutilized Business Zones (HUBZone) Program**. It is intended to help small business concerns (SBCs) in economically distressed communities obtain federal contracts. A HUBZone is any one of the following:

- "Qualified census tracts" ("any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50% or more of the households have an income which is less than 60% of the area median gross income for such year or which has a poverty rate of at least 25%") – there are more than 13,000 qualified census tracts.
- "Qualified nonmetropolitan counties" ("not located in a metropolitan statistical area…in which: (I) the median household income is less than 80% of the

nonmetropolitan state median household income; (II) the unemployment rate is not less than 140% of the average unemployment rate for the United States or for the state in which such county is located, whichever is less; or (III) there is located a difficult development area ["any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income"]…" – there are more than 500 qualified nonmetropolitan counties.

- "Qualified disaster areas" ("any census tract or nonmetropolitan county located in an area for which the president has declared a major disaster").
- Lands within the boundaries of an Indian reservation – there are almost 600 qualified Indian lands.
- "Redesignated areas" ("any census tract that ceases to be qualified [as a HUBZone]…and any nonmetropolitan county that ceases to be qualified [as a HUBZone]").
- "Base closure areas" ("lands within the boundaries of a military installation that were closed through a privatization process") – there are more than 100 base closure areas.

The SBA has a HUBZone map available at **http://map.sba.gov/hubzone/maps/** that is searchable by state and county. Also, the map will identify whether a particular address is in a HUBZone.

To qualify as a HUBZone SBC, a firm must be small for its primary NAICS code, be at least 51% owned and controlled by U.S. citizens, have its principle office in a HUBZone, and at least 35% of its employees must reside in a HUBZone. HUBZone SBCs must be certified by the SBA as meeting the HUBZone requirements. Firms that obtain SBA HUBZone certification are added to the SBA's "Dynamic Small Business Search" database (see above). Only firms on the list are HUBZone SBCs and eligible for HUBZone preferences.

A contracting officer may set-aside an acquisition that exceeds the micro-purchase threshold ($3,500; $5,000 for the Department of Defense) for HUBZone SBCs if there is a reasonable expectation of receiving two or more offers from HUBZone SBCs and award will be made at a fair market price (the "rule of two").

If the contracting officer receives only one acceptable offer from a qualified HUBZone SBC in response to a HUBZone set aside, paragraph (c) of FAR 19.1305, HUBZone Set-Aside Procedures, states that "the contracting officer *should* make an award to that concern" (emphasis added). This is because the HUBZone SBC responded to the set-aside thinking there would be competition, so its price should be "competitive." However, the HUBZone SBC's offer must be at a "fair market price" or the contracting officer will cancel the HUBZone set-aside and conduct a set-aside open to all small businesses. As a practical matter, the HUBZone SBC's offer must be exceedingly unreasonable before a contracting officer will dissolve the HUBZone set-aside.

If the contracting officer receives no acceptable bids or offers from HUBZone small business concerns, the contracting officer will cancel the HUBZone set-aside and conduct a set-aside for small businesses "as appropriate" (that is, an SDVOSB set-aside, a WOSB or economically disadvantaged WOSB [EDWOSB] set-aside, an 8(a) set-aside, or a small business set-aside).

A contracting officer is permitted to award a **sole source contract** to a HUBZone SBC if: (1) he does not have a reasonable expectation that offers would be received from two or more HUBZone SBCs; (2) the contract is greater than the simplified acquisition threshold ($150,000) but less than **$7,000,000** for manufacturing contracts or **$4,000,000** for all other contracts; (3) the requirement is not currently being performed by an 8(a) participant (see below); and (4) award will be made at a fair and reasonable price. However, the contracting officer must consider HUBZone set-asides before considering a HUBZone sole source contract (or small business set-asides).

In addition, contracting officers are required to give offers from HUBZone SBCs a **price evaluation preference** in acquisitions that are conducted using full and open competition by adding **10%** to all offers *except* those of HUBZone SBCs. However, the preference may not be used where price is not a selection factor (as in architect-engineer contracts), nor can it be applied when the successful offeror is a non-HUBZone small business.

Solicitations that are set aside for HUBZone SBCs contain **FAR 52.219-3, Notice of Total HUBZone Set-Aside**, in Section I if the solicitation is in the uniform contract format (UCF), or in the "Clauses" portion if the solicitation is in the simplified contract format (SCF).

Solicitations and contracts conducted using full and open competition contain **FAR 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns**.

For more on the HUBZone program, see FAR subpart 19.13 and **https://www.sba.gov/contracting/government-contracting-programs/hubzone-program**. Also, see Chapter 16 for protests concerning HUBZone program eligibility.

Service-Disabled Veteran-Owned Small Business Program

The **Veterans Benefits Act of 2003** (Public Law 108-183) amended the Small Business Act to establish a **service-disabled veteran-owned small business (SDVOSB)** set-aside program.

To qualify as an SDVOSB:

- The veteran must have a service-related disability as determined by the Department of Veterans Affairs or the Department of Defense;
- The business must be small under the NAICS code assigned to the procurement; and

- The service-disabled veteran must own at least 51% of the business, must hold the highest officer position in the business, and must control the management and daily operations of the business.

A contracting officer may set aside an acquisition that exceeds the micro-purchase threshold ($3,500; $5,000 for the Department of Defense) for SDVOSBs if he has a "reasonable expectation that offers will be received from two or more service disabled veteran-owned small business concerns, and award will be made at a fair market price" (the "rule of two" again).

If the contracting officer receives only one acceptable offer from a qualified SDVOSB in response to an SDVOSB set aside, paragraph (c) of FAR 19.1405, Service-Disabled Veteran-Owned Small Business Set-Aside Procedures, states that "the contracting officer *should* make an award to that concern" (emphasis added).

If the contracting officer receives no acceptable bids or offers from SDVOSBs, the contracting officer will cancel the SDVOSB set-aside and conduct a set-aside for small businesses "as appropriate" (that is, a HUBZone set-aside, a WOSB or EDWOSB set-aside, an 8(a) set-aside, or a small business set-aside).

A contracting officer is permitted to award a **sole source contract** to an SDVOSB if: (1) he does not have a reasonable expectation that offers would be received from two or more SDVOSBs; (2) the contract is greater than the simplified acquisition threshold ($150,000) but less than **$6,500,000** for manufacturing contracts or **$4,000,000** for all other contracts (note that these limits are different than those for HUBZone sole source contracts); (3) the requirement is not currently being performed by an 8(a) participant (see below); and (4) award will be made at a fair and reasonable price. The contracting officer must consider a contract award to a SDVOSB on a sole source basis before considering small business set-asides.

Unlike offers from HUBZone SBCs, the legislation does *not* provide for the application of a 10% price evaluation preference to SDVOSB offers in acquisitions that are conducted using full and open competition.

Solicitations that are set aside for SDVOSBs contain **FAR 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside**, in Section I if the solicitation is in UCF, or in the "Clauses" portion if the solicitation is in the SCF.

For more on the SDVOSB program, see FAR subpart 19.14, Service-Disabled Veteran-Owned Small Business Procurement Program, and **https://www.sba.gov/contracting/government-contracting-programs/service-disabled-veteran-owned-businesses**. Also, see Chapter 16 for protests concerning SDVOSB program eligibility.

NOTE: There are no set-asides authorized for veteran-owned small businesses (VOSBs) outside of the Department of Veterans Affairs (see Veterans Affairs Acquisition Regulation [VAAR] subpart 819.70, Veteran-Owned and Operated Small Businesses). However, large prime contractors do have incentives for awarding subcontracts to VOSBs – see below.

Women-Owned Small Business Program

The Women-Owned Small Business (WOSB) program is different than the other small business programs in that WOSB and economically disadvantaged WOSB (EDWOSB) set-asides are restricted to industries in which WOSBs and EDWOSBs are *underrepresented*: only EDWOSBs are eligible to receive set-aside or sole source contracts in one of the 21 industries in which WOSBs are *underrepresented* (as determined by the SBA according to four-digit North American Industry Classification System [NAICS] industry groups), but both EDWOSBs and WOSBs are eligible to receive set-aside or sole source contracts in one of the 92 industries in which WOSBs are *substantially underrepresented* (go to **https://www.sba.gov/contracting/government-contracting-programs/women-owned-small-businesses** for a list of the 113 industries that are eligible for WOSB and EDWOSB set-asides and sole source contracts).

To qualify as a WOSB, the business must be small under the NAICS code assigned to the procurement, women who are U.S. citizens must own at least 51% of the business, and those women must control the management and daily operations of the business. A woman must hold the highest officer position in the business. This woman must have managerial experience of the extent and complexity needed to run the concern, must manage the business on a full-time basis, and may not engage in outside employment that prevents her from devoting sufficient time and attention to the daily affairs of the business.

To qualify as an EDWOSB, the business must meet the qualifications of a WOSB except that the owner(s) must also be *economically disadvantaged*. To be considered economically disadvantaged, the woman's personal net worth must be less than **$750,000**, excluding her ownership interest in the business and her equity interest in her primary personal residence (or less than **$6,000,000** including her ownership interest in the business and her equity interest in her primary personal residence). In addition, the woman's average income during the previous three years must be less than **$350,000** per year.

A WOSB or EDWOSB must be certified as eligible to participate in the WOSB program by a "third party certifier" (for a fee) or by self-certifying (free).

Currently, there are four third party certifiers:

El Paso Hispanic Chamber of Commerce (**http://www.ephcc.org**);
National Women Business Owners Corporation (**http://www.nwboc.org**);
U.S. Women's Chamber of Commerce (**http://uswcc.org/certification/**);
Women's Business Enterprise National Council (**http://www.wbenc.org/**).

If the firm decides to self-certify, it must fill out an application at **https://certify.sba.gov** and submit the following documents:

- Copies of birth certificates, naturalization papers, or unexpired passports for owners who are women;
- Copy of the joint venture agreement, if applicable;
- For limited liability companies:
  - Articles of organization (also referred to as certificate of organization or articles of formation) and any amendments; and
  - Operating agreement, and any amendments;
- For corporations:
  - Articles of incorporation and any amendments;
  - By-laws and any amendments;
  - All issued stock certificates, including the front and back copies, signed in accord with the by-laws;
  - Stock ledger; and
  - Voting agreements, if any;
- For partnerships, the partnership agreement and any amendments;
- The assumed/fictitious name (doing business as) certificate(s); and
- A copy of the SBA Form 2413, WOSB Program Certification (WOSBs only). Instead of an SBA Form 2413, EDWOSBs must submit an SBA Form 2414, WOSB Program Certification – EDWOSBs, and each woman claiming economic disadvantage must submit an SBA Form 413, Personal Financial Statement.

Once a firm has been certified as eligible to participate in the WOSB program by a third party certifier, or has been approved by the SBA, the WOSB or EDWOSB files the certification at **https://certify.sba.gov,** represents its status as WOSB or EDWOSB in SAM, and can participate in WOSB or EDWOSB set-asides and sole source contracts in the applicable industry (or industries).

A contracting officer may set aside an acquisition that exceeds the micro-purchase threshold ($3,500; $5,000 for the Department of Defense) in an eligible industry for WOSBs or EDWOSBs if the contracting officer has a "reasonable expectation…that two or more WOSBs [or EDWOSBs] will submit offers for the contract, and award will be made at a fair and reasonable price" (that "rule of two" again).

If the contracting officer receives only one acceptable bid or offer from a qualified WOSB or EDWOSB in response to a WOSB or EDWOSB set-aside, paragraph (d) of FAR 19.1505, Set-Aside Procedures, states that "the contracting officer may make an award if only one acceptable offer is received from a qualified EDWOSB concern or WOSB concern eligible under the WOSB Program." Note the word "may" in "the contracting officer *may* make an award…" This is different than the wording used to describe what a contracting officer should do when one offer is received in response to a HUBZone set-aside or SDVOSB set-aside: "the contracting officer *should* make an award to that concern…"

If the contracting officer receives no acceptable bids or offers from a WOSB (or EDWOSB), the contracting officer will cancel the set-aside and conduct a set-aside for small businesses "as appropriate" (that is, a HUBZone set-aside, a SDVOSB set-aside, an 8(a) set-aside, or a small business set-aside).

A contracting officer is permitted to award a **sole source contract** to WOSBs or EDWOSBs in industries where WOSBs are substantially underrepresented, or to EDWOSBs in industries where WOSBs are underrepresented provided: (1) the contracting officer does not have a reasonable expectation that offers will be received from two or more WOSBs (or EDWOSBs); (2) the anticipated contract price (including options) will not exceed $6,500,000 for manufacturing contracts or $4,000,000 for all other contracts; and (3) award will be made at a fair and reasonable price.

Note that WOSBs and EDWOSBs do not receive a 10% price evaluation preference in acquisitions that are conducted using full and open competition, unlike HUBZone SBCs.

Solicitations that are set aside for WOSBs contain **FAR 52.219-30, Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program**, in Section I if the solicitation is in the UCF, or in the "Clauses" portion if the solicitation is in the SCF. Solicitations that are set aside for EDWOSBs contain **FAR 52.219-29, Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns**.

For more on the WOSB program, see FAR subpart 19.14, Service-Disabled Veteran-Owned Small Business Procurement Program. Also, see Chapter 16 for protests concerning a firm's eligibility as a WOSB or an EDWOSB.

Section 8(a) Business Development Program

The purpose of the **Section 8(a) business development program**, which is named after Section 8(a) of the Small Business Act, is to foster business ownership by individuals who are both socially and economically disadvantaged, and to give these individuals the opportunity to participate fully in the free enterprise system. Participants in the 8(a) program are eligible to receive a broad range of assistance from SBA, including loans, training, counseling, marketing assistance, and high-level executive development. The most popular assistance for 8(a) participants are **sole source** and **set-aside contracts**. (Actually, the SBA is awarded the contract, and it subcontracts the entire effort to the 8(a) concern. In this way, the SBA is a buffer between the contracting agency and the 8(a) concern.)

The 8(a) program is restricted to **small disadvantaged businesses** (SDBs), and contracts awarded under the 8(a) program count toward an agency's SDB contract award goal.

To qualify as an SDB, a firm must meet the following criteria:

- It must not exceed the applicable small business size standard corresponding to the NAICS code that corresponds to its primary business activity (see above).
- At least 51% of the firm must be owned and controlled by a "socially" *and* "economically" disadvantaged individual (or individuals):
  - To qualify as **socially disadvantaged**, an individual must be an American citizen (by birth or naturalization) and either: (1) be a member of a group that is presumed to be socially disadvantaged (that is, be a Black American, Hispanic American, Native American, Asian Pacific American, or Subcontinent Asian American), or (2) show by a "preponderance of evidence" that he is socially disadvantaged because of "race, ethnicity, gender, physical handicap, or residence in an environment isolated from the mainstream of American society." (**NOTE:** Women-owned small businesses and service-disabled veteran-owned small businesses are *not* considered socially disadvantaged unless at least 51% of the business is owned, controlled, and managed by members of these racial or ethnic groups.)
  - To qualify as **economically disadvantaged**, an individual cannot have: (1) a net worth that exceeds **$250,000** excluding the value of the business and primary residence (however, once a firm is accepted into the 8(a) program, the limit on an individual's net worth increases to $750,000); (2) an average gross income during the preceding three years that exceeds **$250,000** (however, once a firm is accepted into the 8(a) program, the limit on an individual's average gross income during the preceding three years increases to $350,000); or (3) assets exceeding **$4,000,000**, *including* the business and primary residence (once a firm is accepted into the 8(a) program, the limit on an individual's assets increases to $6,000,000).

Ownership, social disadvantage, and economic disadvantage criteria are somewhat different for concerns owned by Indian tribes, Alaska Native corporations, and Native Hawaiian organizations.

To qualify for the 8(a) program, the SDB must have been in business for at least **two years** (this requirement may be waived if the socially and economically disadvantaged owner or owners demonstrate substantial technical and business management experience).

Business Plan

After an SDB is accepted into the 8(a) program, but before it may obtain any 8(a) program benefits, it must prepare and submit for SBA approval a **business plan** outlining a reasonable approach for using the 8(a) contracts to develop the expertise and capabilities necessary to become self-sustaining and competitive. The goal of the 8(a) program is to "graduate" SDBs that can compete for government and commercial contracts on their own.

The business plan must explain how the 8(a) concern intends to use the 8(a) program to attain its business targets, objectives, and goals. The business plan must analyze the concern's strengths and weaknesses, assess its prospects for profitable operations during its program participation and after it leaves the program, and provide estimates of the contract awards it will need under the 8(a) program and from other sources to meet its specific targets, objectives, and goals. Once approved, the 8(a) concern must review its business plan with the SBA annually and modify the plan as appropriate.

Obtaining and Processing 8(a) Contracts

The SBA obtains procurements for the 8(a) program in three ways:

1. The contracting activity unilaterally offers the procurement to the SBA for the 8(a) program;
2. The SBA identifies a procurement as suitable for the 8(a) program and asks the agency for it; or
3. An 8(a) concern, through self-marketing, convinces a contracting activity to offer the procurement to the SBA on its behalf.

Once a requirement is accepted by the SBA for the 8(a) program, it remains in the 8(a) program unless the SBA agrees to release it for performance by a non-8(a) concern. For example, if the SBA accepts a requirement for maintenance of a particular building into the 8(a) program, all future requirements for maintenance of that building must be fulfilled through the 8(a) program unless the SBA agrees to permit a non-8(a) firm to perform the maintenance. The SBA does not allow many requirements to leave the 8(a) program.

Most 8(a) contracts are awarded to 8(a) concerns on a sole source basis (either because the contracting activity is convinced the 8(a) concern can perform the contract at a fair market price or because the SBA has selected the particular 8(a) concern for the contract). Such sole source 8(a) contracts are *not* synopsized in **FedBizOpps**.

However, an 8(a) acquisition over **$7,000,000** for manufacturing, or **$4,000,000** for services or construction, must be set-aside for 8(a) concerns if there is a reasonable expectation that at least two eligible and responsible 8(a) concerns will submit offers and the award will be made at a fair and reasonable price (the "rule of two"). If there is not a reasonable expectation that at least two 8(a) concerns will submit bids or offers at a fair market price, the SBA can authorize a sole source 8(a) award. Competitive 8(a) solicitations *are* synopsized in **FedBizOpps**.

The requirement to compete 8(a) acquisitions over $7,000,000 for manufacturing or $4,000,000 for services or construction does *not* apply to concerns owned by an Indian tribe or an Alaskan Native corporation, nor does it apply to Department of Defense 8(a) contracts with concerns owned by Native Hawaiian organizations – 8(a) contracts of *any* size may be awarded to these types of concerns.

Joint Ventures

A **joint venture** in which at least one member is an 8(a) concern may submit an offer on a competitive 8(a) acquisition (that is, over $7,000,000 for manufacturing or over $4,000,000 for services or construction) provided: (1) each concern is small under the applicable size standard; (2) the size of at least one 8(a) member of the joint venture is *less* than half of the corresponding size standard (that is, if the size standard is 500 employees, at least one 8(a) concern has fewer than 250 employees); and (3)(a) if the acquisition has a revenue-based size standard, the procurement *exceeds* half that size standard (that is, if the size standard is $10,000,000, the acquisition would have to be larger than $5,000,000); or (3)(b) if the acquisition has an employee-based size standard (such as 500 employees), the acquisition exceeds $10,000,000.

For sole source and competitive 8(a) acquisitions that are less than these dollar levels, a joint venture must have at least one 8(a) concern as a member, and the combined annual receipts or number of employees of the concerns in the joint venture must meet the applicable size standard.

Duration of Program Eligibility

If accepted into the 8(a) program, the firm can stay in the program for **nine years**. The nine years of program eligibility are divided into two stages: the **developmental** stage and the **transitional** stage. During its **four years** in the developmental stage, the 8(a) concern is eligible for:

- Sole source and competitive 8(a) contracts;
- Financial assistance;
- Financial assistance for employee skills training or upgrading;
- Transfer of technology or surplus property owned by the United States; and
- Training sessions to help develop marketing skills and compete successfully for contracts in the marketplace.

During its **five years** in the transitional stage, the 8(a) concern is eligible for:

- All the assistance available to concerns in the developmental stage;
- Assistance from contracting agencies in forming joint ventures, leader-follower arrangements, and team arrangements with other firms; and
- Training and technical assistance in transitional business planning.

To help 8(a) concerns transition from 8(a) subcontracts, firms in the transitional stage have "**non-8(a) business activity goals**," which represent revenue obtained outside the 8(a) program. The goals are:

Year in transitional stage	Non-8(a) business activity targets (required minimum non-8(a) revenue as a percentage of total revenue)
1	15
2	25
3	35
4	45
5	55

8(a) concerns that fail to meet these goals may cause the SBA to take remedial action, such as:

- Increased monitoring of the 8(a) concern's contracting activity during the ensuing program year;
- Requiring the 8(a) concerns to obtain management and technical assistance;
- Conditioning the award of future sole source 8(a) contracts on the concern's taking affirmative steps to expand revenues from non-8(a) sources;
- Reducing the concern's level of 8(a) support;
- Eliminating sole source 8(a) contracts; or
- Terminating the concern's participation in the 8(a) program.

Besides failing to meet non-8(a) business activity goals during the transitional stage, an 8(a) concern's participation may be terminated if, for example:

- It fails to maintain its small business status;
- It's socially and economically disadvantaged owners fail to maintain the 51% ownership requirement;
- It fails to provide the SBA with required financial statements, business plans, or reports;
- An owner has a net worth of more than **$750,000**, excluding his ownership interest in the business and equity in his primary residence;
- An owner has assets exceeding **$6,000,000**, including the business and primary residence;
- It ceases business operations;

- It is debarred or suspended; or
- It knowingly submits false information to the SBA.

There are many other grounds for a concern's termination from the 8(a) program.

In addition, once an 8(a) concern receives more than **$100,000,000** in both sole source and competitive 8(a) contracts (or, if the firm is primarily engaged in an industry with a revenue-based small business size standard, five times that size standard or $100,000,000, whichever is less), SBA will no longer award it any *sole source* 8(a) contracts. Nevertheless, the 8(a) concern can still compete for competitive 8(a) acquisitions (that is, those above $7,000,000 for manufacturing; those above $4,000,000 for services or construction). However, 8(a) contracts under **$100,000** are *not* counted against the $100,000,000 / 5 times the size standard limitation. (This restriction does *not* apply to 8(a) concerns owned by Indian tribes, Alaska Native corporations, and Native Hawaiian organizations – there are **no limits** on these 8(a) concerns.)

Clauses in 8(a) Solicitations and Contracts

Competitive 8(a) solicitations contain **FAR 52.219-17, Section 8(a) Award**, and **FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns**, in Section I if the solicitation is in the UCF, or in the "Clauses" portion if the solicitation is in the SCF.

See FAR subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program), and **https://www.sba.gov/contracting/government-contracting-programs/8a-business-development-program** for further information on the 8(a) program application and contracting procedures.

Small Business Set-Asides

At or Below the Simplified Acquisition Threshold

If an acquisition exceeds the micro-purchase threshold ($3,500; $5,000 for the Department of Defense) but not the simplified acquisition threshold ($150,000), the contracting officer may set aside the acquisition for competition among all small businesses. There is no order of precedence among the HUBZone, SDVOSB, WOSB, 8(a), and small business set-asides – the contracting officer may choose to solicit any small businesses he determines are capable of providing the required supplies or services.

Above the Simplified Acquisition Threshold

If an acquisition exceeds the simplified acquisition threshold, and the contracting officer has considered *and rejected* a HUBZone set-aside, a HUBZone sole source award, an SDVOSB set-aside, an SDVOSB sole source award, a WOSB (or EDWOSB) set-aside, an 8(a) set-aside, and an 8(a) sole source award, the contracting officer *must* set aside the acquisition for participation by *all* small businesses "when there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns, and award will be made at fair market prices" (the "rule of two").

Not only does a small business set-aside allow firms owned by white males to compete, but it allows WOSBs and EDWOSBs outside of underrepresented industries, SDBs that aren't 8(a) certified, VOSBs, and any other kind of small business to compete. (**NOTE:** There is one quirk to small business set-asides: the contracting officer must solicit Federal Prison Industries, Inc. [FPI] when conducting a small business set-aside, and must consider a timely offer from FPI. See "Market Research" in Chapter 4 and **http://www.unicor.gov** for more information on FPI.)

If the contracting officer receives only one acceptable bid or offer from a qualified small business in response to a small business set-aside, paragraph (a) of FAR 19.502-2, Total Small Business Set-Asides, states that "the contracting officer *should* make an award to that firm" (emphasis added).

If, after evaluating the bids or proposals submitted in response to a small business set-aside solicitation, the contracting officer determines that none of the bids or proposals are reasonable or none of the bidders or offerors are responsible (including the refusal by the SBA to issue a certificate of competency [COC] for any of the bidders or offerors – see Chapter 7), he dissolves the set aside and resolicits without any size restrictions: large and small businesses may submit bids or proposals. However, as a rule, the prices must be exceedingly unreasonable before a contracting officer will dissolve a set-aside. This is because most contracting officers do not want to resolicit and, consequently, incur additional delay and administrative expenses.

Unlike the HUBZone, SDVOSB, and 8(a) programs, a contracting officer is *not* permitted to award a **sole source contract** to a small business unless the small business meets the "only one responsible source and no other supplies or services will satisfy agency requirements" exception to full and open competition (see Chapter 3).

Solicitations that are set aside for small businesses contain **FAR 52.219-6, Notice of Total Small Business Set-Aside**, in Section I if the solicitation is in the UCF, or in the "Clauses" portion if the solicitation is in the SCF.

See FAR subpart 19.5, Set-Asides for Small Business, for further information on small business set aside procedures. Also, see Chapter 16 for protests concerning small business size status.

Disaster Relief and Emergency Assistance Set-Asides

In the wake of the inadequate government response to Hurricanes Katrina, Rita, and Wilma in 2005, Congress authorized the use of set-asides for major disaster or emergency assistance acquisitions. When the president declares a disaster or emergency, contracting officers may set-aside acquisitions for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance for contractors residing or doing business primarily in the geographic area affected by the disaster or emergency. A contracting officer is not required to set-aside such acquisitions, and he may give local firms award preference instead. (Note that these are *local area set-asides*, not small business set-asides.)

The contracting officer defines the specific geographic area for the set-aside, but the geographic area must be within the declared disaster or emergency area (or areas). However, the area need not include all the counties in the declared disaster or emergency areas – the set-aside may cover the entire declared areas or some part of the areas (for example, one or more counties, and the set-aside area may cross state lines). These set-asides may be used with other set-asides, such as those for small businesses – the contracting officer may set-aside an acquisition for small businesses within the disaster or emergency area.

For more on disaster relief and emergency assistance set-asides, see FAR subpart 26.2, Disaster or Emergency Assistance Activities, and FAR 6.208, Set-Asides for Local Firms During a Major Disaster or Emergency.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

A program very similar to the SBA's 8(a) program is the Department of Transportation (DOT) **Disadvantaged Business Enterprise (DBE) Program**. The DBE program is intended to provide contracting opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals in DOT's highway, mass transit, and airport financial assistance programs operated by the Federal Highway Administration, the Federal Transit Administration, and the Federal Aviation Administration, respectively.

The DBE program requires state and local transportation agencies that receive DOT financial assistance to establish goals for the participation of DBEs – the overall goal is for DBEs to receive at least 10% of the financial assistance. Each DOT-assisted state and local transportation agency is required to establish annual DBE goals, and to review anticipated large prime contracts throughout the year and establish contract-specific DBE subcontracting goals.

Most of the qualifications for participation in the 8(a) program and the DBE program are the same, but there are differences between the two programs – for example, women-owned small businesses are considered disadvantaged under the DBE program, and the two programs have different limits on owners' net worth and firms' gross revenue (there are even different size standards for airport concessionaires under the DBE program). Furthermore, there are the usual quirks – Alaska Native Corporations must be certified as DBEs even if they do not meet the size, ownership, and control criteria that apply to Indian tribes and Native Hawaiian Organizations. So those interested in the DBE program should to look at the applicable regulations and contact the applicable DOT administrations to determine whether they are qualified.

DOT's DBE website is **https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise**. The DBE program regulations are in Title 49 of the Code of Federal Regulations (CFR), Part 23, Participation by Disadvantaged Business Enterprises in Airport Concessions; and 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

SUBCONTRACTING INCENTIVES

General Requirement

A contractor (large or small) that receives a contract for more than the simplified acquisition threshold ($150,000) must agree that small businesses, VOSBs, SDVOSBs, HUBZone small businesses, SDBs, and WOSBs will have "the maximum practicable opportunity to participate in contract performance consistent with its efficient performance" (see FAR 52.219-8, Utilization of Small Business Concerns).

Subcontracting Plans

Before a contracting officer can award to a large business a contract that is greater than $700,000 ($1,500,000 for construction) and that has subcontracting opportunities, he must require the large business to submit and negotiate a **small business subcontracting plan**. The small business subcontracting plan must include separate goals for subcontract awards to small businesses, veteran-owned small businesses (VOSBs), SDVOSBs, HUBZone small businesses, SDBs, and WOSBs; the name of the person who will administer the subcontracting program for the large business; a description of the principal types of supplies and services to be subcontracted; and a description of the efforts the large business will make to insure small businesses, VOSBs, SDVOSBs, HUBZone SBCs, SDBs, and WOSBs have an equitable opportunity to compete for subcontracts. If the large business fails to submit a subcontracting plan when requested or fails to negotiate an acceptable subcontracting plan, it is *ineligible* for award.

Once the contracting officer and the successful large business negotiate an acceptable subcontracting plan, the plan becomes part of the contract, and the contractor must report its subcontracting achievements annually (semiannually for Department of Defense contractors) through the **Electronic Subcontracting Reporting System** (eSRS) (**https://www.esrs.gov**). Any contractor failing to comply "in good faith" with the subcontracting plan is liable to *liquidated damages* equal to the actual dollar amount by which the contractor fails to achieve each subcontract goal.

However, when the contracting officer decides the inclusion of a **monetary incentive** is necessary to increase small business, VOSB, SDVOSB, HUBZone, SDB, and WOSB subcontracting opportunities, he can authorize an additional payment up to **10%** of the amount the contractor exceeds each subcontract goal in its subcontract plan. The amount of the incentive is negotiated and depends on the contractor's unique outreach programs; its use of small businesses, VOSBs, SDVOSBs, HUBZone SBCs, SDBs, and WOSBs in nontraditional areas; and the technical assistance it intends to provide small businesses, VOSBs, SDVOSBs, HUBZone SBCs, SDBs, and WOSBs. Nevertheless, the contracting officer will *not* give the contractor an incentive bonus if: (1) the contractor exceeds a subcontract goal because of a reason not under its control (such as a subcontractor overrun); or (2) the contractor exceeds a subcontract goal but it did not disclose in its subcontracting plan all the subcontracts it had intended to award to small businesses, VOSBs, SDVOSBs, HUBZone SBCs, SDBs, and WOSBs.

In addition, contracting officers are to consider each offeror's past compliance with its subcontracting plans when evaluating the offeror's past performance (see Chapter 8).

For DOD, two additional provisions apply: (1) subcontract awards to qualified **nonprofit agencies for the blind and the severely handicapped** under DOD contracts count toward the contractor's small business goal; and (2) it is conducting a test program through December 31, 2027, to determine whether **comprehensive small business subcontracting plans** that are negotiated on a corporate, division, or plant-wide basis will increase subcontracting opportunities for small businesses.

Unrestricted solicitations expected to exceed $700,000 (or $1,500,000 for construction) contain **FAR 52.219-9, Small Business Subcontracting Plan**, and **FAR 52.219-16, Liquidated Damages – Subcontracting Plan**. If the contracting officer decides a monetary incentive is necessary, he will include **FAR 52.219-10, Incentive Subcontracting Program**.

Many large businesses use the SBA's **Dynamic Small Business Search** database at **http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm** to identify the availability of various types of small businesses. In addition, many large businesses use the **SBA Subcontracting Network** (**SUB-*Net***) (**http://web.sba.gov/subnet**) to post subcontracting opportunities and notices of sources sought (it is also used by federal agencies, state and local governments, non-profit organizations, colleges and universities, and even foreign governments). While these subcontracting opportunities are not necessarily reserved for small businesses, small businesses are able to identify potential subcontracts in their areas of expertise and use their limited resources pursuing the most promising.

When awarding subcontracts, contractors may rely on the representations of the subcontractors regarding their status as small businesses, VOSBs, SDVOSBs, SDBs, and WOSBs. However, contractors are obligated to confirm the status of subcontractors claiming to HUBZone SBCs by accessing the SBA's "Dynamic Small Business Search" database at **http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm** and verifying that SBA has "certified" them (see above).

See FAR subpart 19.7, The Small Business Subcontracting Program, for more information on subcontracting with small businesses, VOSBs, SDVOSBs, HUBZone SBCs, SDBs, and WOSBs.

American Indian Incentive Program

To provide prime contractors with an incentive to subcontract with American Indian organizations and Indian-owned economic enterprises, contracting officers *may* include in contracts an incentive payment equal to **5% of the amount paid to an Indian subcontractor**. If the contracting officer believes subcontracting opportunities exist for Indian organizations or Indian-owned economic enterprises, and money is available to pay the incentive, then the contracting officer *may* include **FAR 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises**, in solicitations and contracts of any amount.

See FAR subpart 26.1, Indian Incentive Program, for more on the Indian subcontracting incentive.

MENTOR-PROTÉGÉ PROGRAMS

In 1990, Congress authorized DOD to develop a program to provide its major contractors with incentives to enter into agreements with small firms in which the major contractor agrees to provide appropriate developmental assistance to the small firm to enhance its ability to compete for, and successfully perform, DOD contracts and subcontracts. In return, Congress authorized DOD to reimburse the major contractors for the cost of developmental assistance provided to the small firms, or to credit the developmental assistance costs against its subcontract goals (see above).

DOD developed a **mentor-protégé program** in which a major contractor ("mentor" – typically a large business) selects one or more small firms ("protégé") to enter into a long-term relationship as a junior partner. DOD's mentor-protégé program worked so well that Congress authorized the National Aeronautics and Space Administration (NASA) to develop a similar one. In 1996, when Congress exempted the Federal Aviation Administration (FAA) from the requirements of the FAR, the FAA instituted a mentor-protégé program that is similar to DOD's and NASA's. And in 2003, when Congress authorized the creation of the Department of Homeland Security and gave it wide latitude in establishing its acquisition processes, the department instituted a mentor-protégé program that resembles DOD's and NASA's.

Other agencies, though not authorized by Congress to spend funds on a mentor-protégé program, have developed their own "no-cost" programs. Under such programs, the agency does not reimburse the mentor for any protégé developmental costs, but instead provides its mentors with additional consideration during the proposal evaluation process (some agencies take into consideration these developmental costs when determining indirect cost rates). These agencies are the Departments of

Energy, State, and Veterans Affairs; the Environmental Protection Agency (EPA); the General Services Administration (GSA); and the U.S. Agency for International Development (USAID).

In addition, the SBA has developed a mentor-protégé program in which the protégés are restricted to 8(a) program participants, and the mentor-protégé team can submit bids and proposals as a small business for *any government procurement* if certain conditions are met. Furthermore, an SBA mentor can own up to 40% of its protégé to help it raise capital.

However, each agency has different qualification requirements for participation as a protégé. For example, DOD permits SDBs, SDVOSBs, HUBZone SBCs, WOSBs, business entities owned and controlled by Indian tribes and Native Hawaiian Organizations, and qualified organizations employing the severely disabled to participate in its program; the Department of Veterans Affairs restricts participation in its program to VOSBs and SDVOSBs; and the EPA program is for SDBs only.

To provide uniformity among the civilian agencies' mentor-protégé programs, the **National Defense Authorization Act for Fiscal Year 2013** assigned responsibility for civilian agencies' mentor-protégé programs to the SBA, and directed the SBA to pattern it after its 8(a) mentor-protégé program (the act exempts DOD – DOD will retain control of its program). So SBA decided to establish a mentor-protégé programs for all other small businesses that parallels its 8(a) mentor-protégé program

The agencies that already have mentor-protégé programs (that is, the Departments of Energy, Homeland Security, State, and Veterans Affairs; EPA; FAA; GSA; NASA; and USAID) can keep their mentor-protégé programs until August 2017; if they want to continue their programs after that, then must submit a plan for the program to the SBA and obtain its approval. In addition, it an agency that wants to start its own mentor-protégé program, it must obtain submit a plan to the SBA and obtain its approval.

The following are the key features of the SBA's mentor-protégé program:

- The mentor and protégé firms must enter into a written agreement setting forth an assessment of the protégé's needs and a detailed description and timeline for the delivery of that assistance by the mentor. The agreement must be approved by the SBA.

  Examples of the assistance typically provided by a mentor to its protégé are: management guidance (financial, organizational, business development, marketing); engineering and other technical assistance; rent-free use of facilities and equipment owned or leased by the mentor; and temporary assignment of mentor personnel to the protégé for training purposes.

- The term of the mentor-protégé agreement cannot exceed three years, but the agreement may be extended an additional three years provided the protégé has received the agreed-upon business development assistance and will continue to receive additional assistance. Annually, the protégé must report to the SBA all the technical and management assistance provided by the mentor; all loans or investments made by the mentor in the protégé; all subcontracts awarded by the mentor to the protégé; all federal contracts awarded to the mentor-protégé relationship; and a narrative describing the success such assistance has had in addressing the developmental needs of the protégé and addressing any problems encountered. SBA will review the mentor-protégé relationship annually to determine whether to approve its continuation for another year.

- A mentor can have up to three protégés.
- With SBA approval, a protégé can have two mentors, *provided* the second relationship will not compete or conflict with the assistance provided in the first relationship, and: (1) the second relationship pertains to an unrelated NAICS code ; or (ii) the protégé firm is seeking to acquire a specific expertise that the first mentor does not possess.
- The SBA can authorize a small business to be both a mentor and a protégé.
- During evaluation of a proposal submitted by a mentor, a contracting activity may provide additional consideration if the mentor will provide significant subcontracting work to its protégé.
- A protégé that graduates or otherwise leaves the 8(a) program but continues to qualify as a small business may convert its 8(a) mentor-protégé relationship to a small business mentor-protégé relationship.
- A mentor and a protégé may form a joint venture with SBA approval. The joint venture may compete as a small business for any government contract as long as the protégé meets the applicable size standard. The joint venture may seek any type of small business contract for which the protégé firm qualifies (for example, a protégé that qualifies as a WOSB could seek a WOSB set-aside with its SBA-approved mentor as a member of the joint venture).
- The mentor can purchase up to 40% of the protégé to provide the protégé with necessary capital.

For more on SBA's small business mentor-protégé program, see Title 13 of the Code of Federal Regulations (CFR), Part 125, Government Contracting Programs. For more on the SBA's 8(a) mentor-protégé program, see **https://www.sba.gov/contracting/government-contracting-programs/8a-business-development-program/mentor-protege-program**. For more information on current mentor-protégé programs operated by other agencies, see the agencies' FAR supplements (usually in part 19 of the supplement).

SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM

There is a preference program called the **Small Business Innovation Research (SBIR) Program** that requires all agencies with research and development (R&D) budgets of more than **$100,000,000** to set aside **3.2%** of their R&D budgets for small businesses. Approximately **$1.7 billion** is awarded to small businesses through the SBIR program each year.

In effect, the SBIR program is an R&D small business set-aside. The solicitations, proposal requirements, and regulations are simplified under this program to make it easier for small businesses to participate in government research and propose innovative approaches in areas of technology and research that interest the government. It is a trial program that is scheduled to expire September 30, 2022.

Participating Agencies and SBIR Requirements

The following 11 agencies take part in the SBIR program:

- Department of Agriculture
- Department of Commerce
- Department of Defense
- Department of Education
- Department of Energy
- Department of Health and Human Services
- Department of Homeland Security
- Department of Transportation
- Environmental Protection Agency
- National Aeronautics and Space Administration
- National Science Foundation

Under the SBIR program, a small business is defined as a concern with no more than **500 employees** (regardless of the applicable small business size standard) and is more than **50%** owned and controlled by U.S. citizens.

SBIR Phases

The SBIR program consists of **three phases**:

Phase I

Under Phase I of the SBIR program, an agency identifies topics in areas of research and technology that directly affect its functions and are suitable for small business participation. At least once a year (and more often if necessary), the agency prepares an SBIR solicitation. If the solicitation is expected to result in SBIR contracts exceeding $25,000, it must be synopsized in **FedBizOpps** at least 15 days before the solicitation is issued, and the solicitation must have a proposal due date that is at least 30 days after the solicitation is released.

The solicitation is not in the uniform contract format. Rather, it is in a "simple, standardized, easy-to-read, easy-to-understand format" that identifies the research topics in sufficient detail so potential small businesses know the agency's research goals.

The solicitation requires the small business offeror to submit a proposal that describes an effort up to **six months** long and costing no more than **$150,000** to conduct experimental or theoretical research related to one of the agency's topics. The proposal, which must not exceed **25 pages**, must include the following:

- A brief abstract of the technical problem;
- The technical questions that the proposed research will address;
- A work plan;
- A description of the related research previously performed by the small business;
- The key personnel who will perform the research and a bibliography of their related work;
- A description of the facilities the small business will use;
- The qualifications of any consultants who will assist in the research;
- Anticipated results of the proposed research;
- How the research will provide a basis for further funding (see Phase II below);
- The potential commercial applications; and
- Simplified cost or budget data.

In addition, the small business must agree to perform at least **two-thirds** of the research or analytical effort.

If several proposals appear promising, the agency may award more than one contract per SBIR solicitation. However, the agency is under no obligation to award any contracts if none of the proposals demonstrate sufficient scientific and technical merit.

An effort of this size permits the small business contractor to demonstrate the scientific merit and technical feasibility of its proposed effort, and for the government to judge the quality of the small business' execution. The government may decide to award contracts to more than one offeror if several different solutions and approaches have technical and scientific merit.

The SBA maintains a database of all current and future SBIR solicitations at **https://www.sbir.gov/sbirsearch/topic/current**.

Phase II

If the results of the Phase I contract are promising, the agency has the option of funding a Phase II of the research. Phase II expands on the Phase I results and allows the small business contractor to further pursue development of the research. Each agency selects the small business contractors it wants to submit proposals; only those contractors that participated in Phase I are eligible for Phase II (the **FedBizOpps** synopsis requirement does not apply to Phase II proposals). Proposals for Phase II funding may not be longer than **two years** or cost more than **$1,000,000**. The small business must agree to perform at least **one-half** of the research or analytical effort. However, the agency has *no obligation* to fund *any* Phase II proposal, even if Phase I is completed successfully. (Agencies may issue one additional Phase II contract to continue the work of an initial Phase II award.)

NOTE: The National Institutes of Health (part of the Department of Health and Human Services), the Department of Defense, and the Department of Education are authorized to award a Phase II contract to a small business that received an STTR Phase I contract (see below) to further develop the work performed under the STTR Phase I contract.

Phase III

Once Phase II is completed, the small business is encouraged to pursue commercial applications of the research through private funding under **Phase III**. If Phase II results in a product or process that meets the need of a federal agency, the agency is free to award a non-SBIR contract to the small business for the product, process, or additional research. No SBIR funds may be used for Phase III.

The SBIR program is not addressed in the FAR. For more information on the SBIR program, contact the agency's SBIR representative or go to the SBA's SBIR website at **https://www.sbir.gov/about/about-sbir**.

SMALL BUSINESS TECHNOLOGY TRANSFER (STTR) PROGRAM

The **Small Business Technology Transfer (STTR) Program** is similar to the SBIR in that all agencies with R&D budgets of more than **$1 billion** are required to set aside **0.45%** of their R&D budgets for small businesses. Approximately **$200,000,000** is awarded to small businesses through the STTR program each year. The STTR program is scheduled to expire September 30, 2022.

The following agencies participate in the STTR program:

- Department of Defense
- Department of Energy
- Department of Health and Human Services
- National Aeronautics and Space Administration
- National Science Foundation

The primary difference between the SBIR and the STTR programs is that small businesses *must* have a single nonprofit research institution as a partner to participate in the STTR program. The nonprofit research institution must be located in the U.S., and must be either: (1) a nonprofit college or university; (2) a domestic nonprofit research organization; or (3) a federally funded research and development center (FFRDC).

The SBA describes the reason for the STTR program like this:

> "Small business has long been where innovation and innovators thrive. But the risk and expense of conducting serious R&D efforts can be beyond the means of many small businesses. Conversely, nonprofit research laboratories are instrumental in developing high-tech innovations. But frequently, innovation is confined to the theoretical, not the practical. STTR combines the strengths of both entities by introducing entrepreneurial skills to high-tech research efforts. The technologies and products are transferred from the laboratory to the marketplace. The small business profits from the commercialization, which, in turn, stimulates the U.S. economy."

Like the SBIR program, the STTR program consists of three phases:

***Phase I*:**

An agency solicits proposals or grant applications from small businesses and their research partners to conduct feasibility-related experimental or theoretical research related to described agency requirements up to **one year** long and costing no more than **$150,000**. The small business partner must perform at least 40% of the R&D and the single partnering research institution must perform at least 30% of the R&D. The agency may make more than one award if several different approaches have merit, but the agency may choose not to make any award if none of the proposals demonstrate sufficient scientific and technical value.

As with the SBIR program, if the STTR solicitation is expected to result in contracts exceeding $25,000, it must be synopsized in **FedBizOpps** at least 15 days before the solicitation is issued, and the solicitation must have a proposal due date that is at least 30 days after the solicitation is released. Current and future STTR solicitations are available at **https://www.sbir.gov/sbirsearch/topic/current** (it includes SBIR solicitations as well).

***Phase II*:**

If the results of Phase I are promising, the agency may provide further funding to allow the small business and its research partner to expand and develop the research. The effort may be up to **two years** and cost no more than **$1,000,000**. However, the agency is under no obligation to fund a Phase II effort. The small business partner must perform at least 40% of the R&D and the single partnering research institution must perform at least 30% of the R&D. (Unlike the SBIR program, agencies are not authorized to award an additional STTR Phase II contract to continue an initial Phase II contract.)

Also note that the National Institutes of Health, the Department of Defense, and the Department of Education are authorized to award an SBIR Phase II contract to a small business that received an STTR Phase I contract to further develop the work performed under the STTR Phase I contract. The small business must perform at least 50% of the research or analytical effort, just like other SBIR Phase II contractors.

***Phase III*:**

Upon completion of the STTR Phase II effort, the agency may enter into a non-STTR funded agreement with the small business or contract with the small business for additional work. Phase III small businesses are encouraged to obtain non-federal funds for commercial applications of the research.

For more information on the STTR program, contact the agency's STTR representative or visit SBA's STTR website at **https://www.sbir.gov/about/about-sttr**.

FALSE STATEMENTS OR INFORMATION

Many of these set-asides and preference programs rely on the bidder's or offeror's representation that it is eligible. Others, such as applications for HUBZone certification, require the concern to submit personal and financial information about itself and its owners as part of its application. Participants in the 8(a) program must file annual reports and certifications to maintain their eligibility.

Anyone who misrepresents his concern's average annual gross revenue, number of employees, ownership, or other qualifying characteristics to obtain a set-aside contract or preference is subject to a fine up to **$500,000**, imprisonment up to **10 years**, suspension and debarment (see Chapter 7), penalties authorized by the Program Fraud Civil Remedies Act of 1986 ($5,000 for each false statement), and ineligibility to participate in any program or activity under the Small Business Act for up to **three years**. This is considered ***serious business***! See Chapter 17 for more on procurement integrity and ethics.