Service-Disabled Veteran-Owned Small Business Procurement Program

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SUMMARY

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Service-Disabled Veteran-Owned Small Business Procurement Program

The Service-Disabled Veteran-Owned Small Business (SDVOSB) Procurement Program is intended to provide SDVOSBs greater access to federal contracting opportunities. The program is designed to help federal agencies achieve the government's statutory goal of awarding SDVOSBs at least 3% of the total value of all prime and subcontract dollars awarded each fiscal year. The program is federal government-wide with two sets of similar, but not identical, regulations; one issued by the Secretary of the Department of Veterans Affairs (VA) and another issued by the U.S. Small Business Administration's (SBA's) Administrator for all other federal agencies.

Under this program, federal contracting officers may set aside (reserve) federal contracts (or orders) for bidding by SDVOSBs exclusively. Federal agencies may also award sole source contracts, without competition, to SDVOSBs under the following conditions:

- the contracting officer does not have a reasonable expectation that it will receive offers from two or more eligible SDVOSBs;
- the contract requirement is not currently being performed (or accepted to be performed) by an 8(a) Business Development Program participant;
- the SDVOSB has been determined to be a responsible contractor with respect to performance; the award can be made at a fair and reasonable price; and
- the contract's anticipated total value, including any options, does not exceed $4 million ($7 million for manufacturing contracts).

To participate in the program, an SDVOSB must

- be small, as defined in Section 3(q) of the Small Business Act (15 U.S.C. §632(q)) and the SBA's implementing regulations (13 C.F.R. §125);
- be at least 51% unconditionally and directly owned and controlled by one or more service-disabled veterans;
- have one or more service-disabled veterans manage day-to-day operations and make long-term decisions; and
- be owned by one or more eligible veterans that have a service-connected disability as determined by VA (see 38 U.S.C. §101(2) and 13 C.F.R. §125.11).

SDVOSBs generally self-certify their eligibility for contracting preferences and are subject to criminal and civil sanctions if they are found to have made false or fraudulent claims. SDVOSBs may be suspended or debarred, which would preclude them from being awarded new federal contracts for the duration of the suspension or debarment, to ensure that federal agencies award contracts to responsible contractors capable of successful performance. SDVOSBs seeking VA contracts with an SDVOSB contracting preference must be certified as such through VA's VETS First Verification Program.

P.L. 106-50, the Veterans Entrepreneurship and Small Business Development Act of 1999, authorized the 3% SDVOSB procurement goal. P.L. 108-183, the Veterans Benefits Act of 2003, provided the authority allowing federal procurement officers to award SDVOSB set-aside and sole source awards. The federal government achieved the 3% SDVOSB procurement goal for the first time in FY2012, and it has met the goal each fiscal year since then (4.28% in FY2020).

This report examines the SDVOSB program's legislative origins, SDVOSB contracting data, and recent congressional action relating to SDVOSB program certification. The report discusses P.L. 116-283, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, which requires VA to transfer, by January 1, 2023, the maintenance of its SDVOSB database to the SBA, provide the SBA compensation for doing so, and abolish VA's Center for Verification and Evaluation and transfer its function to the SBA. In addition, the SBA is required to establish a government-wide SDVOSB certification and periodic recertification process by January 1, 2023. VA is to continue to determine whether an individual qualifies as a service-disabled veteran.

Contents

Figures

Tables

Contacts

Introduction

The Service-Disabled Veteran-Owned Small Business (SDVOSB) Procurement Program is one of several contracting programs Congress has approved to provide greater opportunities for small businesses to win federal contracts. Congress's interest in promoting small business contracting dates back to World War II and the outbreak of fighting in Korea. At that time, Congress found that war-induced shortages of materials, coupled with an inability to obtain defense contracts or financial assistance, threatened thousands of small businesses.[1] In 1953, concerned that many small businesses might fail without government assistance, Congress passed, and President Dwight D. Eisenhower signed into law, the Small Business Act (P.L. 83-163). The act authorized the U.S. Small Business Administration (SBA).

The Small Business Act specifies that it is Congress's declared policy to promote the interests of small businesses to "preserve free competitive enterprise."[2] Congress indicated that one way to preserve free competitive enterprise was to increase market competition by ensuring that small businesses receive a "fair proportion" of federal contracts and subcontracts.[3]

Since 1953, Congress has used its broad authority to impose requirements on the federal procurement process to help small businesses receive a fair proportion of federal contracts and subcontracts, primarily by establishing federal procurement goals and various contracting preferences—including restricted competitions (set-asides), sole source awards, and price evaluation adjustment/preference in unrestricted competitions—for small businesses.[4] Congress has authorized the following:

- government-wide and agency-specific procurement goals for the percentage of federal contract dollars awarded to small businesses generally (at least 23%) and for the percentage of federal contract and subcontract dollars awarded to small businesses owned and controlled by socially and economically disadvantaged individuals (at least 5%), women (at least 5%), and service-disabled veterans (at

[1] U.S. Congress, Senate Select Committee on Small Business, *Small Business Administration*, committee print, 83rd Cong., 1st sess., August 10, 1953 (Washington, DC: GPO, 1953), p. iii; and U.S. Congress, House Committee on Banking and Currency, *Small Business Act of 1953*, report to accompany H.R. 5141, 83rd Cong., 1st sess., May 28, 1953, H.Rept. 83-494 (Washington, DC: GPO, 1953). For further information related to small business contracting, see CRS Report R45576, *An Overview of Small Business Contracting*, by Robert Jay Dilger.

[2] For more information about P.L. 83-163, the Small Business Act of 1953 (as amended), see https://www.govinfo.gov/content/pkg/COMPS-1834/pdf/COMPS-1834.pdf; and 15 U.S.C. §631(a).

[3] U.S. Congress, House Committee on Small Business, *Small Business Contracting Program Improvements Act*, report to accompany H.R. 3867, 110th Cong., 1st sess., October 22, 2007, H.Rept. 110-400 (Washington, DC: GPO, 2007), p. 4.

[4] *Set-aside* is a commonly used term to refer to a contract competition in which only small businesses, or specific types of small businesses, may compete. Set-asides can be total or partial, depending on whether the entire procurement, or just a severable segment of it, is restricted.

Sole source awards are noncompetitive procurements made after soliciting and negotiating with one source.

A *price evaluation adjustment/preference* involves a reduction in the price of bids or offers by eligible parties (in this case for small businesses located in a Historically Underutilized Business Zone [HUBZone]). The reduction is generally equivalent to a certain percentage of the price of the bid or offer. For example, a 10% price evaluation adjustment made to a $100,000 bid would result in the bid being reduced for comparative purposes by $10,000 to $90,000. $90,000 would then be used in determining which bid or offer is lowest priced or represents the "best value" for the government. "Best value" is determined based on price and various nonprice evaluation factors selected by the federal agency. For more information related to best value, see 48 C.F.R. §15.304.

least 3%), and for small businesses located in a Historically Underutilized Business Zone (HUBZone) (at least 3%);[5]

- an annual Small Business Goaling Report and Small Business Procurement Scorecards to measure progress in meeting those procurement goals;
- a general requirement for federal agencies to reserve (set aside) contracts that have an anticipated value greater than the micro-purchase threshold (generally $10,000) but not greater than the simplified acquisition threshold (generally $250,000);[6]
- under specified conditions, a requirement for federal agencies to set aside exclusively for small businesses contracts that have an anticipated value greater than the simplified acquisition threshold (*set-aside* is a commonly used term to refer to a contract competition in which only small businesses, or specific types of small businesses, may compete);[7]
- federal agencies to make *sole source* awards, without competition, to small businesses when the award could not otherwise be made (e.g., only a single source is available, under urgent and compelling circumstances);
- federal agencies to set aside contracts for, or grant other contracting preference to, specific types of small businesses (e.g., 8(a) Business Development Program participants, HUBZone small businesses, women-owned and controlled small

[5] For the small businesses generally procurement goal, see P.L. 100-656, the Business Opportunity Development Reform Act of 1988 (20%), and P.L. 105-135, the Small Business Reauthorization Act of 1997 (23%). For the small disadvantaged businesses (SDBs) procurement goal, including 8(a) Business Development Program participants, see P.L. 100-656, the Business Opportunity Development Reform Act of 1988. For the women-owned small businesses (WOSBs) procurement goal, see P.L. 103-355, the Federal Acquisition Streamlining Act of 1994. For the HUBZone small businesses procurement goal, see P.L. 105-135, the HUBZone Act of 1997—Title VI of the Small Business Reauthorization Act of 1997. For the small businesses owned and controlled by a service-disabled veteran-owned small business (SDVOSB) procurement goal, see P.L. 106-50, the Veterans Entrepreneurship and Small Business Development Act of 1999.

The federal government uses aspirational procurement goals instead of requiring federal agencies to award specific percentages of federal contracts to various types of small businesses primarily to avoid legal challenges under the equal protection component of the Fifth Amendment's Due Process Clause. See, for example, City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) (finding unconstitutional a municipal ordinance that required the city's prime contractors to award at least 30% of the value of each contract to minority subcontractors) and Adarand Constructors, Inc. v. Pena 515 U.S. 200 (1995) (finding that all racial classifications, whether imposed by federal, state, or local authorities, must pass strict scrutiny review).

[6] The contracting officer must have a reasonable expectation that offers will be obtained from two or more responsible small businesses (Rule of Two) that are competitive in terms of market prices, quality, and delivery of the goods or services being purchased. See P.L. 115-91, the National Defense Authorization Act for Fiscal Year 2018; 15 U.S.C. §644(j)(1); and Federal Acquisition Regulation (FAR) §19.502-2.

[7] See FAR §19.203(c):

> For acquisitions of supplies or services that have an anticipated dollar value exceeding the simplified acquisition threshold … 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 (see FAR §19.502-2(b)). However, if a requirement has been accepted by the Small Business Administration (SBA) under the 8(a) Program, it must remain in the 8(a) Program unless the SBA agrees to its release in accordance with 13 C.F.R. parts 124, 125, and 126.

Before setting aside an acquisition over the simplified acquisition threshold for small businesses, the contracting officer must have a reasonable expectation that offers will be obtained from two or more responsible small businesses (Rule of Two) that are competitive in terms of market prices. See FAR §19.502-2.

businesses [WOSBs], and small businesses owned and controlled by service disabled veterans [SDVOSBs]);[8] and

- the SBA and other federal procurement officers to review and restructure proposed procurements to maximize opportunities for small business participation.

The small business procurement goals are designed to encourage federal procurement officers to award contracts to small businesses. There are no punitive consequences for not meeting these procurement goals. But, the SBA's annual government-wide and agency-specific Small Business Procurement Scorecards (SBA scorecards) and the General Services Administration's (GSA's) annual Small Business Goaling Report (which serves as the SBA scorecards' data source), are distributed widely, receive media attention, and heighten public awareness of small business contracting.[9] For example, Members often cite agency performance, as reported in the SBA scorecards, during their questioning of federal agency witnesses during congressional hearings. As a result, senior agency officials may encourage federal procurement officers to increase contracting opportunities for small businesses generally, or for specific types of small businesses, to address any perceived weaknesses in the SBA's scorecards or GSA's Small Business Goaling Report.

Occasionally, presidential statements, directives, or executive orders also encourage federal procurement officers to award contracts to small businesses. For example, on June 1, 2021, the Biden Administration announced that it

> is launching an all-of-government effort to expand contracting opportunities for underserved small businesses across the country. At its center is a new goal: increasing the share of contracts going to small disadvantaged businesses by 50 percent by 2026 [from 10% of small business eligible contract dollars to 15%]—translating to an additional $100 billion to SDBs [small disadvantaged businesses] over the 5-year period. To achieve this goal, agencies will assess every available tool to lower barriers to entry and increase opportunities for small businesses and traditionally-underserved entrepreneurs to compete for federal contracts.[10]

Additional requirements are in place to maximize small business participation as prime contractors, subcontractors, and suppliers. For example, before issuing a solicitation, federal contracting officers must do the following, among other requirements:

- divide proposed acquisitions of supplies and services (except construction) into reasonably small lots to permit offers on quantities less than the total requirement;

[8] For 8(a) Business Development Program participants, see P.L. 95-507, A bill to amend the Small Business Act and the Small Business Investment Act of 1958; and 15 U.S.C. §637(a). For HUBZone participants, see P.L. 105-135, the HUBZone Act of 1997—Title VI of the Small Business Reauthorization Act of 1997; and 15 U.S.C. §657a. For WOSBs, see H.R. 5654, the Small Business Reauthorization Act of 2000, incorporated by reference in P.L. 106-554, the Consolidated Appropriations Act, 2001; and 15 U.S.C. §637(m). For SDVOSBs, see P.L. 108-183, the Veterans Benefits Act of 2003; and 15 U.S.C. §657f.

[9] See SBA, "Small business procurement scorecard overview," at https://www.sba.gov/document/support-small-business-procurement-scorecard-overview; and U.S. General Services Administration (GSA), "SAM.gov: DATA Bank Static Reports, Small Business Goaling Reports," at https://sam.gov/reports/awards/static.

[10] The White House (Biden), "FACT SHEET: Biden-Harris Administration Announces New Actions to Build Black Wealth and Narrow the Racial Wealth Gap," June 1, 2021, at https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/01/fact-sheet-biden-harris-administration-announces-new-actions-to-build-black-wealth-and-narrow-the-racial-wealth-gap/.

- plan acquisitions such that, if practicable, more than one small business concern may perform the work if the work exceeds the amount for which a surety may be guaranteed by the SBA against loss under 15 U.S.C. §694b (generally \$6.5 million, or \$10 million if the contracting officer certifies that the higher amount is necessary);[11]
- encourage prime contractors to subcontract with small business concerns, primarily through the agency's role in negotiating an acceptable small business subcontracting plan with prime contractors on contracts anticipated to exceed \$750,000 or \$1.5 million for construction contracts;[12] and
- under specified circumstances, provide a copy of the proposed acquisition package to an SBA procurement center representative (PCR) for review, comment, and recommendation at least 30 days before the issuance of the solicitation. If the contracting officer rejects the PCR's recommendation, the officer must document the basis for the rejection and notify the PCR. The PCR may appeal the rejection to the chief of the contracting office and, ultimately, to the agency head.[13]

Under the SDVOSB program, federal contracting officers may set aside federal contracts (or orders) for bidding by SDVOSBs exclusively when it is in the interest of (1) maintaining or mobilizing the nation's full productivity, war, or national defense programs; or (2) ensuring that small businesses receive a fair proportion of government contracts in each industry.[14] The contracting officer must have a reasonable expectation that offers will be obtained from two or more responsible SDVOSBs (Rule of Two) that are competitive in terms of market prices, quality, and delivery of the goods or services being purchased.

If the contracting officer does not expect the Rule of Two to be met, federal agencies may award SDVOSBs sole source contracts if all of the following conditions are met:

- the contract requirement is not currently being performed (or accepted to be performed) by an 8(a) Business Development Program participant;

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[11] For additional information and analysis concerning the Small Business Administration's (SBA's) Surety Bond program, see CRS Report R42037, *SBA Surety Bond Guarantee Program*, by Robert Jay Dilger.

[12] FAR §19.702(a). Subcontracting plans are not required from small businesses, for personal services contracts, for contracts or contract modifications that will be performed entirely outside of the United States and its outlying areas, or for modifications that were within the scope of the contract. "[A]ny contractor or subcontractor failing to comply in good faith with the requirements of the subcontracting plan is in material breach of its contract." FAR §19.702(c). In addition, see FAR §19.702:

> Any contractor receiving a contract with a value greater than the simplified acquisition threshold must agree in the contract that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance.

[13] See FAR §19.202-1 for the specified conditions:

> (i) The proposed acquisition is for supplies or services currently being provided by a small business and the proposed acquisition is of a quantity or estimated dollar value, the magnitude of which makes it unlikely that small businesses can compete for the prime contract; (ii) The proposed acquisition is for construction and seeks to package or consolidate discrete construction projects and the magnitude of this consolidation makes it unlikely that small businesses can compete for the prime contract; or (iii) The proposed acquisition is for a consolidated or bundled requirement.

See FAR §19.505 for a description of the appeals process.

[14] FAR §19.502-1 and FAR §19.1403; and 13 C.F.R. §125.12-§125.16.

- the SDVOSB has been determined to be a responsible contractor with respect to performance;
- the award can be made at a fair and reasonable price; and
- the contract's anticipated total value, including any options, does not exceed $4 million ($7 million for manufacturing contracts).[15]

To participate in the SDVOSB procurement program, an SDVOSB must

- be *small*, as defined in Section 3(q) of the Small Business Act (15 U.S.C. §632(q)) and in the SBA's implementing regulations (13 C.F.R. §125);
- be at least 51% unconditionally and directly owned and controlled by one or more service-disabled veterans;
- have one or more service-disabled veterans manage day-to-day operations and make long-term decisions; and
- be owned by one or more eligible veterans that has a service-connected disability as determined by VA (see 38 U.S.C. §101(2) and 13 C.F.R §125.11).[16]

SDVOSBs generally self-certify their program eligibility and are subject to criminal and civil sanctions for making false or fraudulent claims. SDVOSBs also may be suspended or debarred, which would preclude them from being awarded new federal contracts for the duration of the suspension or debarment, to ensure that federal agencies award contracts only to responsible contractors that are capable of successful performance.[17] SDVOSBs seeking VA contracts with a SDVOSB contracting preference must be certified as such through VA's VETS First Verification Program. As of July 6, 2022, the SBA's Dynamic Small Business Search database of small businesses interested in bidding on federal contracts included 43,540 veteran-owned small businesses (VOSBs), including SDVOSBs, and 24,411 self-certified SDVOSBs.[18]

This report examines the SDVOSB program's legislative origins, SDVOSB contracting data, and recent congressional action relating to SDVOSB program certification. P.L. 116-283, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, requires VA, by January 1, 2023, to transfer the maintenance of its SDVOSB database to the SBA, provide the SBA compensation for doing so, and abolish VA's Center for Verification and Evaluation and transfer its function to the SBA (see "VA-SBA Coordination Issues"). The SBA is required to establish a government-wide SDVOSB certification and periodic recertification process by January 1, 2023. VA is to continue to determine whether an individual qualifies as a service-disabled veteran.

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[15] FAR §19.1406. Sole source award limits are adjusted for inflation on October 1 of each year that is evenly divisible by five. As a result, sole source award limits may differ from those in statute. The next inflation adjustment will take place on October 1, 2025. See P.L. 111-350, To enact certain laws relating to public contracts as Title 41, *U.S. Code*, "Public Contracts" (as amended); and 41 U.S.C. §1908(c)(2).

[16] FAR §19.1403.

[17] For additional information and analysis, see CRS Report R45322, *Selected Legal Tools for Maintaining Government Contractor Accountability*, by David H. Carpenter. Also, see 18 U.S.C. §1001 (false statements); 18 U.S.C. §287 (false claims); 18 U.S.C. §371 (conspiracy to defraud the government); and 48 C.F.R. §9.400-§9.409 (suspension and debarment). The SBA's regulations on penalties for misrepresentations and false statements are contained in 13 C.F.R. §121.108 for small businesses, 13 C.F.R. §124.501 for 8(a) small businesses, 13 C.F.R. §124.1004 for SDBs, 13 C.F.R. §125.29 for veteran-owned small businesses (VOSBs) and SDVOSBs, 13 C.F.R. §126.900 for HUBZone small businesses, and 13 C.F.R. §127.700 for WOSBs.

[18] U.S. Small Business Administration (SBA), "Dynamic Small Business Search," accessed on July 6, 2022, at http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm.

The SDVOSB Program's Origins

The following sections provide an overview of the history of small business contracting preferences, focusing on executive and legislative actions that led to the SDVOSB program's creation.

The First Federal Small Business Procurement Programs

In 1942, Congress authorized the Smaller War Plants Corporation (SWPC) to make loans and provide grants to small businesses to finance plant construction, conversion, or expansion and to enter into contracts with other federal agencies "to furnish articles, equipment, supplies, or materials to the government." Congress authorized the SWPC to subcontract those contracts to small businesses to ameliorate small businesses' financial difficulties while mobilizing "the productive facilities of small business in the interest of successful prosecution of the war."[19] The SWPC's subcontracting authority expired along with the SWCP at the end of World War II.

In 1951, at the onset of the Korean War, Congress authorized the Small Defense Plants Administration (SDPA), which generally was provided with the same powers as the SWPC.[20] In 1953, Congress authorized the transfer of the SDPA's subcontracting and other authorities to the newly created SBA,[21] with the intent that it would authorize these powers both in peacetime and wartime.[22]

When the Small Business Act of 1958 transformed the SBA into a permanent agency, this subcontracting authority was included in Section 8(a) of the act.[23] At its inception, the SBA's subcontracting authority was not limited, as it is today, to small businesses owned and controlled by socially and economically disadvantaged individuals and specified disadvantaged groups (collectively referred to as small disadvantaged businesses, SDBs).[24] Initially, the SBA reportedly rarely used this subcontracting authority, focusing instead upon its loan and other programs.[25]

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[19] P.L. 77-603, the Small Business Mobilization Act (June 11, 1942).

[20] P.L. 82-96, An Act To amend and extend the Defense Production Act of 1950 and the Housing and Rent Act of 1947, as amended (July 31, 1951).

[21] P.L. 83-163, Reconstruction Finance Corporation Liquidation Act (July 30, 1953).

[22] See U.S. Congress, House Committee on Banking and Currency, *Small Business Act of 1953*, report to accompany H.R. 5141, 83rd Cong., 1st sess., May 28, 1953, H.Rept. 83-494 (Washington, DC: GPO, 1953), p. 2 (stating that the SBA would "continue many of the functions of the [SDPA] in the present mobilization period and in addition would be given powers and duties to encourage and assist small-business enterprises in peacetime as well as in any future war or mobilization period"). Also, see U.S. Congress, Senate Committee on Banking and Currency, *Small Business Act*, report to accompany H.R. 7963, 85th Cong., 2nd sess., June 16, 1958, pp. 9, 10 (stating that the act would "put the procurement assistance program on a peacetime basis").

[23] P.L. 85-536, as amended, §8(a)(1)-(2) (July 18, 1958).

[24] The SBA's 8(a) Business Development Program eligibility was expanded during the 1980s to include four disadvantaged groups: Community Development Corporations in 1981 (P.L. 97-35, the Omnibus Budget Reconciliation Act of 1981); Indian tribes and Alaska Native Corporations in 1985 (P.L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985); and Native Hawaiian Organizations in 1988 (P.L. 100-656, Business Opportunity Development Reform Act of 1988). For further information and analysis of the 8(a) Business Development Program, see CRS Report R44844, *SBA's "8(a) Program": Overview, History, and Current Issues*, by Robert Jay Dilger.

[25] Thomas Jefferson Hasty, III, "Minority Business Enterprise Development and the Small Business Administration's 8(a) Program: Past, Present, and (Is There a) Future?," *Military Law Review*, vol. 145 (Summer 1994), pp. 1, 8 (hereinafter Jefferson Hasty, III, "Minority Business Enterprise Development and the SBA's 8(a) Program"). ("[B]ecause the SBA believed that the efforts to start and operate an 8(a) program would not be worthwhile in terms of

During the 1960s, President Lyndon B. Johnson created the Test Cities Program (PTCP), which involved a small-scale use of the SBA's authority under Section 8(a) to award contracts to small businesses willing to locate in urban areas and hire unemployed individuals, largely African Americans, or sponsor minority-owned businesses by providing capital or management assistance.[26] In 1970, under the Nixon Administration, the SBA issued the 8(a) program's first regulations, articulating the SBA's policy of using Section 8(a) to "assist small concerns owned by disadvantaged persons to become self-sufficient, viable businesses capable of competing effectively in the market place."[27]

In 1978, P.L. 95-507, an act to amend the Small Business Act and the Small Business Investment Act of 1958, provided the SBA express statutory authority for its 8(a) Minority Small Business and Capital Ownership Development Contracting Program (now called the 8(a) Business Development Program and commonly referred to as the 8(a) program).[28] Under the 1978 amendments, the SBA can only subcontract under Section 8(a) with "socially and economically disadvantaged small business concerns";[29] or businesses that are least 51% owned by one or more socially and economically disadvantaged individuals and whose management and daily operations are controlled by such individual(s).[30]

P.L. 95-507 also authorized federal procurement officers to let (send) contracts to the SBA when the SBA certifies to the officer that it can award the contract to competent and responsible small businesses owned and controlled by socially and economically disadvantaged individuals. As a result, the SBA's 8(a) program became a federal government-wide procurement program.

During the 1980s, SBA 8(a) program eligibility was expanded to include four disadvantaged groups:

- Community Development Corporations in 1981 (P.L. 97-35, the Omnibus Budget Reconciliation Act of 1981),
- Indian tribes and Alaska Native Corporations in 1985 (P.L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985), and
- Native Hawaiian Organizations in 1988 (P.L. 100-656, the Business Opportunity Development Reform Act of 1988).

Federal procurement laws continue to refer to small businesses owned and controlled by socially and economically disadvantaged individuals. However, these four disadvantaged groups are

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developing small business, the SBA's power to contract with other government agencies essentially went unused. The program actually lay dormant for about fifteen years until the racial atmosphere of the 1960s provided the impetus to wrestle the SBA's 8(a) authority from its dormant state.")

[26] Jefferson Hasty, III, "Minority Business Enterprise Development and the SBA's 8(a) Program," pp. 11, 12.

[27] 13 C.F.R. §124.8-1(b) (1970).

[28] P.L. 95-507, To amend the Small Business Act and the Small Business Investment Act of 1958 (October 24, 1978). The Clinton Administration changed the program's name from the 8(a) Minority Small Business and Capital Ownership Development Program to the 8(a) Business Development Program in 1988 "to emphasize that individuals need not be members of minority groups and to stress the importance of assisting participating firms in their overall business development." See SBA, "Small Business Size Regulations: 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals," 63 *Federal Register* 35727, June 30, 1998.

[29] P.L. 95-507, To amend the Small Business Act and the Small Business Investment Act of 1958; and 15 U.S.C. §637(a)(4)(A)-(B).

[30] P.L. 95-507, To amend the Small Business Act and the Small Business Investment Act of 1958; and 15 U.S.C. §637(a)(4)(A)-(B).

defined by law as socially and economically disadvantaged small business concerns.[31] As a result, GSA, which collects and reports federal procurement data used by the SBA, includes contracts awarded to these four disadvantaged groups when reporting contract awards for meeting federal procurement goals for small businesses owned and controlled by socially and economically disadvantaged individuals (now called the SDB procurement goal).

Government-Wide Small Business Procurement Goals and Set-Aside and Sole Source Authority[32]

In 1978, P.L. 95-507 indicated that "it is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency."[33] The act requires federal agency heads to establish federal procurement goals annually, in consultation with the SBA, "that realistically reflect the potential of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals" to participate in federal procurement.[34] The act required each agency, at the conclusion of each fiscal year, to report its progress in meeting these goals to the SBA, and the SBA was required to submit this information to the House and Senate Small Business Committees. In 2013, this reporting requirement was expanded to require the SBA to submit a report on federal agency progress in meeting small business procurement goals to the President and Congress and to make the report (now called the Small Business Procurement Scorecard) available on a public website.[35]

As mentioned, federal government-wide procurement goals have been established for

- small businesses generally (23%),
- SDBs (which include SBA-certified SDBs, self-certified SDBs, 8(a) Business Development Program participants, and 8(a) Business Development Program joint ventures) (5%),
- WOSBs (5%),
- HUBZone small businesses (3%), and
- SDVOSBs (3%).

These government-wide goals and the percentage of contracts awarded to small businesses, by type, in FY2020 are provided in **Table 1**. The percentage of federal small business eligible contract dollars awarded to small businesses, including the required double counting of specific types of contracts since FY2019, is used to determine if the goal has been achieved (see the second and third columns).

[31] 15 U.S.C. §637(a)(4)(A)-(B).

[32] For an overview of small business contracting programs, see CRS Report R45576, *An Overview of Small Business Contracting*, by Robert Jay Dilger.

[33] P.L. 95-507, a bill to amend the Small Business Act and the Small Business Investment Act of 1958; and 15 U.S.C. §644(g)(1)(B).

[34] P.L. 95-507, a bill to amend the Small Business Act and the Small Business Investment Act of 1958; and 15 U.S.C. §644(g)(2).

[35] P.L. 112-239, the National Defense Authorization Act for Fiscal Year 2013; and 15 U.S.C. §644(h)(2).

As will be discussed, federal agencies may award sole source contracts to and set aside contracts for bidding by small businesses or specific types of small businesses to help them meet these goals.

Table 1. Federal Contracting Goals and Percentage of FY2020 Federal Contract Dollars Awarded to Small Businesses, by Type

Business Type	Federal Goal	% of Small Business Eligible Federal Contracts (including required double counting, see Table notes)	% of Small Business Eligible Federal Contracts (excluding required double counting)	% of All Federal Contracts (excluding required double counting)
Small Businesses	23.0%	26.02%	25.42%	21.89%
Small Disadvantaged Businesses	5.0%	10.54%	10.39%	9.08%
Women-Owned Small Businesses	5.0%	4.85%	4.71%	4.10%
HUBZone Small Businesses	3.0%	2.44%	2.39%	2.04%
Service-Disabled Veteran-Owned Small Businesses	3.0%	4.28%	4.23%	3.92%

Sources: U.S. Small Business Administration (SBA), "Government-Wide Performance, FY2020 Small Business Procurement Scorecard," at https://www.sba.gov/document/support-small-business-procurement-scorecard-overview; and data generated using U.S. General Service Administration, "Sam.Gov Data Bank: Ad Hoc Report," July 31, 2021, at https://sam.gov/reports/awards/adhoc (all reported contract dollars).

Notes: In accordance with federal law, the SBA provided double credit, for scorecard purposes only, for prime contracts awarded in disaster areas that are awarded as a local set aside and a small business or other socioeconomic set aside when the vendor state is the same as the place of performance (see 15 U.S.C. §644(f)) and for prime contracts awarded to businesses in Puerto Rico and covered territories (see 15 U.S.C. §644(x)(1)). The Department of Energy's (DOE's) first-tier subcontract awards are also included as required by P.L. 113-76, the Consolidated Appropriations Act, 2014 (§318).

The FY2020 Small Business Procurement Scorecard was made available on July 30, 2021, and reflects contracting data as of February 22, 2021. Small business eligible contracts totaled $559.981 billion in FY2020 and $145.8 billion was awarded to small businesses ($142.4 without double counting), $59.0 billion to small disadvantaged businesses ($58.2 billion without double counting), $27.1 billion to women-owned small businesses ($26.4 billion without double counting), $13.6 billion to SBA-certified HUBZone small businesses ($13.4 billion without double counting), and $23.9 billion to service-disabled veteran-owned small businesses ($23.7 billion without double counting). DOE's first-tier subcontract awards in FY2020 were $3.36 billion to small businesses, $0.81 billion to small disadvantaged businesses, $0.76 billion to small women-owned businesses, $0.24 billion to SBA-certified HUBZone small businesses, and $0.23 billion to service-disabled veteran-owned small businesses.

Small Businesses Generally and Small Disadvantaged Businesses[36]

P.L. 100-656, the Business Opportunity Development Reform Act of 1988, established a federal government-wide goal of providing not less than 20% of the total value of all prime contract

[36] For additional information and analysis of the SDB procurement goal and the 8(a) Business Development Program, see CRS Report R44844, *SBA's "8(a) Program": Overview, History, and Current Issues*, by Robert Jay Dilger.

awards for each fiscal year to small businesses generally (increased to not less than 23% by P.L. 105-135) and not less than 5% of the total value of all prime contract and subcontract awards for each fiscal year to small businesses owned and controlled by socially and economically disadvantaged individuals (now called the SDB procurement goal).[37] These government-wide goals became the SBA's benchmark, and often its minimum floor, when negotiating procurement goals with individual federal agencies each year.

P.L. 100-656 also authorized the SBA to set aside contracts for bidding by 8(a) program-eligible participants exclusively if (1) there is a reasonable expectation that at least two eligible 8(a) program participants will submit offers that can be made at a fair market price; and (2) the contract's anticipated total value, including any options, generally exceeds $5.0 million for manufacturing contracts (now $7.5 million) and $3.0 million for all other acquisitions (now $4.5 million). The act also authorized the SBA to award sole source contracts to any 8(a) program-eligible small business recommended by a federal procuring agency offering the contract opportunity when (1) the small business is determined to be a responsible contractor with respect to performance of the contract opportunity; (2) the award is consistent with the 8(a) program participant's business plan; and (3) the contract's anticipated total value, including any options, does not exceed the set-aside thresholds (initially $5.0 million for manufacturing contracts [now $7.5 million] and $3.0 million for all other acquisitions [now $4.5 million]).[38]

P.L. 100-656 authorizes the SBA to enter into all types of contracts with other federal agencies. This allows the SBA to enter into partnership agreements and memoranda of understanding with other federal agencies to delegate its 8(a) program authority, including the authority to set aside contracts for and award sole source contracts to 8(a) program-eligible small businesses, to these agencies.[39]

As shown in **Table 1**, in FY2020, the federal government exceeded the 23% government-wide procurement goal for small businesses generally and the 5% government-wide goal for SDBs.

Women-Owned Small Businesses[40]

P.L. 103-355, the Federal Acquisition Streamlining Act of 1994, established a WOSB federal government-wide procurement goal of not less than 5% of the total value of all prime contract and subcontract awards for each fiscal year. In 2000, federal agencies were authorized to set aside contracts for WOSBs (then capped at $5.0 million for manufacturing contracts and $3.0 million for all other acquisitions, including any options) to help federal agencies meet the 5% goal.[41] In 2013, the set-aside caps were removed.[42] In 2014, to help federal agencies meet the 5% procurement goal, federal agencies were authorized to award WOSBs sole source contracts when the contract's anticipated total value, including any options, does not exceed $5.0 million for

[37] P.L. 105-135, the HUBZone Act of 1997—Title VI of the Small Business Reauthorization Act of 1997.

[38] FAR §19.805-1.

[39] See 13 C.F.R. §124.501. For example, see SBA and U.S. Department of Defense, "Partnership Agreement between the U.S. Small Business Administration and the U.S. Department of Defense," January 7, 2013, at https://business.defense.gov/Portals/57/Documents/dod-sba-8a-partnership.pdf?ver=2020-03-11-131448-290.

[40] For additional information and analysis of the WOSB federal contracting program, see CRS Report R46322, *SBA Women-Owned Small Business Federal Contracting Program*, by Robert Jay Dilger.

[41] H.R. 5654, the Small Business Reauthorization Act of 2000, incorporated by reference in P.L. 106-554, the Consolidated Appropriations Act, 2001; and 15 U.S.C. §637(m)(2).

[42] P.L. 112-239, the National Defense Authorization Act for Fiscal Year 2013; and 15 U.S.C. §637(m)(2).

manufacturing contracts (now $7.0 million) and $3.0 million for all other acquisitions (now $4.5 million).[43]

As shown in **Table 1**, in FY2020, the federal government did not met the 5% government-wide procurement goal for WOSBs.

HUBZone Small Businesses[44]

In 1997, P.L. 105-135 established a federal government-wide goal of providing not less than 3% of the total value of all prime contract awards for each fiscal year (phased-in over five years) to small businesses located within a HUBZone.[45] P.L. 111-240, the Small Business Jobs Act, added the total value of subcontracts to the HUBZone government-wide procurement goal, bringing the goal into conformity with other small business subtype procurement goals.

To help federal agencies meet the 3% procurement goal, P.L. 105-135 also authorized them to set aside contracts for HUBZone small businesses and to award these businesses sole source contracts when the contract's anticipated total value, including any options, does not exceed $5.0 million for manufacturing contracts (now $7.5 million) and $3.0 million for all other acquisitions (now $4.5 million).[46]

In addition, when a contract is awarded on the basis of full and open competition and price is a selection factor, HUBZone small businesses are generally provided up to a 10% price evaluation preference over other businesses (other than another small business).

As shown in **Table 1**, in FY2020, the federal government did not met the 3% government-wide goal for HUBZone small businesses.

SDVOSBs' Government-Wide Procurement Goal

P.L. 105-135 also required the SBA to study and submit to the House and Senate Small Business Committees a final report within nine months of enactment. The report was to document SDVOSB needs, the availability and use of SBA programs by SDVOSBs, the percentage and dollar value of SDVOSB federal contracts, and suggested or recommended methods to improve the SBA's and other agencies' programs to serve SDVOSBs' needs.

Several veterans' organizations, including the American Legion and the Association for Service Disabled Veterans, supported this requirement. It was generally viewed as a first step toward establishing a SDVOSB government-wide procurement goal and including SDVOSBs in the SBA's 8(a) Minority Small Business and Capital Ownership Development contracting program (now called the 8(a) Business Development Program).

These organizations argued that P.L. 93-237, an act to amend the Small Business Act [1974], required the SBA to "give special consideration to veterans of the Armed Forces of the United States and their survivors or dependents." Given this statutory directive, these organizations

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43 See P.L. 113-291, the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015; 15 U.S.C. §637(m)(7)-(8); and FAR §19.1506.

44 For additional information and analysis of the HUBZone program, see CRS Report R41268, *Small Business Administration HUBZone Program*, by Robert Jay Dilger.

45 The HUBZone contracting goal was not less than 1% of the total value of all prime contract awards for FY1999, not less than 1.5% for FY2000, not less than 2% for FY2001, not less than 2.5% for FY2002, and not less than 3% for FY2003 and each fiscal year thereafter.

46 See P.L. 105-135, the Small Business Reauthorization Act of 1997; 15 U.S.C. §657a; and FAR §19.1306.

argued that the SBA had erred in 1987 when it rejected a petition from John K. Lopez, chairman of the Association for Service Disabled Veterans, to include disabled veterans in its list of groups presumed to be socially disadvantaged in the 8(a) program.[47]

The SBA argued at that time that the 8(a) program was designed to address chronic and long-term social discrimination by providing contracting preferences for minorities. The SBA acknowledged that disabled veterans had experienced socioeconomic hardships but determined that (1) these hardships were related to the disability itself, not prejudice against disabled veterans; (2) these hardships did not meet the requirement of chronic and long-term social discrimination because they did not predate the Vietnam era; (3) the petition did not make a distinction between disabled veterans and disabled civilians (leading the SBA to conclude that the appropriate protections sought were not to be found in the 8(a) program but through the Rehabilitation Act); and (4) P.L. 93-237's special consideration for veterans' provision neither necessitated mandatory eligibility for SBA programs or created a presumptive social disadvantage for disabled veterans.[48]

In December 1998, the SBA contracted with the University of Massachusetts at Boston to prepare the mandated report concerning the SBA's assistance to disabled veterans. The law directed the SBA to have the study completed and submitted to Congress by September 2, 1998. Due to various budgetary issues and difficulties in obtaining data, the study was not completed until November 10, 2000.[49]

In the meantime, on July 2, 1998, the SBA announced the formation of a Veterans Affairs Task Force for Entrepreneurship, composed of 39 representatives of veterans' service organizations and advocacy groups, SBA officials, and SBA management and training resource partners, to recommend ways the agency can better serve VOSBs.[50] The task force completed its work in October 1998 and presented its final report to then-SBA Administrator Aida Alvarez on November 9, 1998.

The task force issued several high priority recommendations, including that the SBA promote a 10% government-wide procurement goal for VOSBs (including SDVOSBs) and recognize

[47] U.S. Congress, House Committee on Veterans' Affairs, Subcommittee on Education, Training, Employment and Housing and House Committee on Small Business, Subcommittee on Government Procurement, *SBA Programs to Assist Veterans in Readjusting to Civilian Life*, joint hearing, 104th Cong., 2nd sess., July 31, 1996, SBC Serial No. 104-91 and VAC Serial No. 104-28, pp. 4-15. For additional information concerning the SBA's administrative decisions on groups seeking to be presumed socially disadvantaged, see George R. LaNoue and John C. Sullivan, "Presumptions for Preferences: The Small Business Administration's Decisions on Groups Entitled to Affirmative Action," *Journal of Policy History*, vol. 6, no. 4 (1994), at https://www.cambridge.org/core/journals/journal-of-policy-history/article/presumptions-for-preferences-the-small-business-administrations-decisions-on-groups-entitled-to-affirmative-action/99AFFC9D3FF1C1F1D520D9D3600B1E32 (hereinafter LaNoue and Sullivan, "Presumptions for Preferences: The SBA's Decisions on Groups Entitled to Affirmative Action").

[48] LaNoue and Sullivan, "Presumptions for Preferences: The SBA's Decisions on Groups Entitled to Affirmative Action," pp. 454, 455.

[49] U.S. Congress, House Committee on Small Business, *The Implementation of* P.L. 106-50, *the Veterans Entrepreneurship and Small Business Development Act of 1999*, hearing, 106th Cong., 2nd sess., March 14, 2000, Serial No. 106-46 (Washington, DC: GPO, 2000), pp. 7, 8, 27, 47; and Paul R. Camacho, "Phase IV, Final Report: The Status and Needs of Small Businesses Owned and Controlled by Disabled Veterans," William Joiner Center for the Study of War and Social Consequences, University of Massachusetts at Boston, November 10, 2000, at https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1000&context=joinercenter_pubs.

[50] U.S. Congress, House Committee on Veterans' Affairs, *1998 National Convention of the Disabled American Veterans*, committee print, prepared by communication from the Executive Secretary of the Disabled American Veterans, 105th Cong., 2nd sess., December 18, 1999, H.Doc. 105-353 (Washington, DC: GPO, 1999), p. 129.

SDVOSBs as socially and economically disadvantaged (making them eligible to participate in the 8(a) program).[51]

Citing the task force's recommendations and hearing testimony provided by SDVOSB advocates, the sponsors of H.R. 1568, the Veterans Entrepreneurship and Small Business Development Act of 1999, included a provision establishing a government-wide SDVOSB procurement goal of not less than 5% of the total value of all prime contract and subcontract awards for each fiscal year. The House Committee on Small Business reported the bill on June 29, 1999, and the House passed the bill by voice vote that same day.

During congressional deliberations, the lack of data collected on veteran procurement made it difficult to determine an appropriate procurement threshold for SDVOSBs. The House bill started with a not less than 5% procurement goal primarily because that was the goal provided for WOSBs.[52] The bill's sponsors argued on the House floor that the 5% goal for SDVOSBs would ensure that veterans, especially those fighting for their country, have equal opportunity to government contracts.[53]

The Senate Committee on Small Business reported its version of the bill on August 4, 1999. It included a government-wide SDVOSB procurement goal of not less than 3% of the total value of all prime contract and subcontract awards for each fiscal year "as an incentive to Federal agencies to undertake a major effort to make their procurement activities more accessible to veterans who sacrificed their health and limbs for our Nation."[54] The following day, the Senate Committee on Small Business's version of the bill was agreed to by unanimous consent in the Senate and was agreed to in the House without objection that same day. President Bill Clinton signed the bill into law (P.L. 106-50, the Veterans Entrepreneurship and Small Business Development Act of 1999) on August 17, 1999.

After the SDVOSB 3% government-wide procurement goal's authorization, SDVOSB advocates directed their attention to providing federal agencies authority to award sole source contracts to and set aside contracts for SDVOSBs.

SDVOSBs' Sole Source and Set-Aside Authority

SDVOSB advocates, as well as the George W. Bush Administration, supported efforts to provide federal agencies authority to award sole source contracts to and set aside contracts for SDVOSBs

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[51] U.S. Congress, House Committee on Small Business, H.R. 1568*: The Veterans Entrepreneurship and Small Business Development Act of 1999*, hearing, 106th Cong., 1st sess., June 23, 1999, Serial No. 106-20 (Washington, DC: GPO, 1999), pp. 167-187; and Rep. James Talent, "Veterans Entrepreneurship and Small Business Development Act of 1999," House floor debate, *Congressional Record*, vol. 145, part 94 (June 29, 1999), p. H5022.

[52] U.S. Congress, House Committee on Small Business, H.R. 1568: The Veterans Entrepreneurship and Small Business Development Act of 1999, 106th Cong., 1st sess., June 23, 1999, Serial No. 106-20 (Washington, DC: GPO, 1999), pp. 3, 10; U.S. Congress, House Committee on Small Business, Veterans Entrepreneurship and Small Business Development Act of 1999, report to accompany H.R. 1568, 106th Cong., 1st sess., June 29, 1999, H.Rept. 106-206, Part 1 (Washington, DC: GPO, 1999), pp. 14, 15; and U.S. Congress, Senate Committee on Small Business, Veterans Entrepreneurship and Small Business Development Act of 1999, report to accompany H.R. 1568, 106th Cong., 1st sess., August 9, 1999, S.Rept. 106-136 (Washington, DC: GPO, 1999), pp. 3, 10.

[53] Rep. James Talent, "Veterans Entrepreneurship and Small Business Development Act of 1999," House floor debate, *Congressional Record*, vol. 145, part 94 (June 29, 1999), p. H5022.

[54] U.S. Congress, Senate Committee on Small Business, *Veterans Entrepreneurship and Small Business Development Act of 1999*, report to accompany H.R. 1568, 106th Cong., 1st sess., August 4, 1999, S.Rept. 106-136 (Washington, DC: GPO, 1999), p. 2.

to help them meet the 3% goal. As one Bush Administration official testified before Congress, "the Federal government has done an abysmal job of providing federal contracting opportunities for our veterans" (see **Table 2**).[55]

During the 108th Congress, Representative Rick Renzi introduced H.R. 1460, the Veterans Entrepreneurship and Benefits Improvement Act of 2003. The bill, among other provisions, would have authorized federal agencies to set aside contracts for and award sole source contracts (capped at $5 million for manufacturing contracts and $3 million for other contracts, including any options) to SDVOSBs as a means to help federal agencies meet the 3% goal. The bill, as amended, was reported by the House Committee on Veterans' Affairs on June 5, 2003, and passed by the House unanimously on June 24, 2003.

In the meantime, H.R. 2297, the Veterans Benefits Act of 2003, introduced in the House on June 2, 2003, was reported by the House Committee on Veterans' Affairs on July 15, 2003, and passed by the House unanimously on July 15, 2003. The House bill did not mention SDVOSB sole source or set-aside authority. During Senate consideration, the bill was amended to include the legislative language concerning SDVOSBs' set-aside and sole source authority in H.R. 1460 (as agreed to in the Senate on November 11, 2003). The House agreed to the Senate amendment (which included SDVOSB set-aside and sole source authority) by voice vote on November 20, 2003. President George W. Bush signed the bill into law (P.L. 108-183, the Veterans Benefits Act of 2003) on December 16, 2003. The act created what is currently known as the SDVOSB Procurement Program.

SDVOSB Contracting Data

As shown in **Table 2**, the dollar amount of contracts awarded to SDVOSBs has generally increased from year-to-year, and the 3% government-wide SDVOSB procurement goal was met for the first time in FY2012 and in each fiscal year since then. The percentage of federal small business eligible contract dollars awarded to SDVOSBs, including the required double counting of specific types of contracts since FY2019, is used to determine if the goal has been achieved (see the third column for FY2019 and FY2020 and the fourth column for previous years).

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[55] U.S. Congress, House Committee on Veterans' Affairs, H.R. 1460, *the Veterans Entrepreneurship Act of 2003;* H.R. 1712, *the Veterans Federal Procurement Opportunity Act of 2003; and* H.R. 1716, *the Veterans Earn and Learn Act*, hearing, 108th Cong., 1st sess., April 30, 2003, Serial No. 108-10 (Washington, DC: GPO, 2003), pp. 33, 34; and U.S. Congress, House Committee on Veterans' Affairs, *Veterans Entrepreneurship and Benefits Improvement Act of 2003*, report to accompany H.R. 1460, 108th Cong., 1st sess., June 5, 2003, H.Rept. 108-142, part 1 (Washington, DC: GPO, 2003), p. 6.

Table 2. Service-Disabled Veteran-Owned Small Business (SDVOSB) Contract Awards, Amount and Percentage of Small Business Eligible Contracts, FY2001-FY2020

($ in billions)

Fiscal Year	Amount	% of Small Business Eligible Federal Contracts (including required double counting, see Table notes)	% of Small Business Eligible Federal Contracts
2020	$23.707	4.28%	4.23%
2019	$21.782	4.39%	4.34%
2018	$20.618	NA	4.27%
2017	$17.938	NA	4.05%
2016	$16.337	NA	3.98%
2015	$13.832	NA	3.93%
2014	$13.495	NA	3.68%
2013	$12.023	NA	3.38%
2012	$12.256	NA	3.03%
2011	$11.206	NA	2.65%
2010	$10.793	NA	2.50%
2009	$8.751	NA	1.98%
2008	$6.267	NA	1.39%
2007	$3.816	NA	1.01%
2006	$2.960	NA	0.87%
2005	$1.940	NA	0.61%
2004	$1.200	NA	0.38%
2003	$0.549	NA	0.20%
2002	$0.298	NA	0.13%
2001	$0.554	NA	0.25%

Sources: U.S. Congress, House Committee on Small Business, Subcommittee on Regulatory Reform and Oversight, *SBA's Procurement Assistance Programs*, hearing, 109th Cong., 2nd sess., March 30, 2006, serial no. 109-45 (Washington, DC: GPO, 2006), p. 31 [FY2001-FY2004]; U.S. General Services Administration (GSA), "Sam.Gov Data Bank, Static: Small Business Goaling Report [FY2005-FY2020]," at https://sam.gov/reports/awards/static; GSA, "Federal Procurement Data System—Next Generation," accessed on August 14, 2020 (WOSB and economically disadvantaged WOSB [EDWOSB] set-aside and sole source awards, FY2011-FY2019); and data generated using GSA, "Sam.Gov Data Bank, Ad Hoc report," August 2, 2021 [2020], at https://sam.gov/reports/awards/adhoc.

Notes: The small business eligible baseline excludes certain contracts that the U.S. Small Business Administration (SBA) has determined do not realistically reflect the potential for small business participation in federal procurement (such as those awarded to mandatory and directed sources), contracts funded predominately from agency-generated sources (i.e., nonappropriated funds), contracts not covered by the

Federal Acquisition Regulations System, acquisitions on behalf of foreign governments, and contracts not reported in the GSA's Federal Procurement Data System—Next Generation (such as government procurement card purchases and contracts valued less than $10,000). About 15%-18% of all federal contracts are excluded in any given fiscal year.

In FY2019 and FY2020, in accordance with federal law, the SBA provided double credit, for scorecard purposes only, for prime contracts awarded in disaster areas that are awarded as a local set-aside and a small business or other socioeconomic set-aside when the vendor state is the same as the place of performance (see 15 U.S.C. §644(f)) and for prime contracts awarded to businesses in Puerto Rico and covered territories dated on or after August 13, 2018, and only for awards that do not already qualify for double credit under 15 U.S.C. §644(f) (see 15 U.S.C. §644(x)(1)). With double credits, SDVOSBs received $22.0 billion in small business eligible contracts in FY2019 and $23.9 billion in FY2020. See SBA, "Small Business Procurement Scorecard Overview," at https://www.sba.gov/document/support-small-business-procurement-scorecard-overview.

For comparative purposes, **Figure 1** shows the percentage of small business eligible federal contracts awarded to small businesses generally, SDBs, WOSBs, SDVOSBs, and HUBZone small businesses from FY2005 through FY2020.

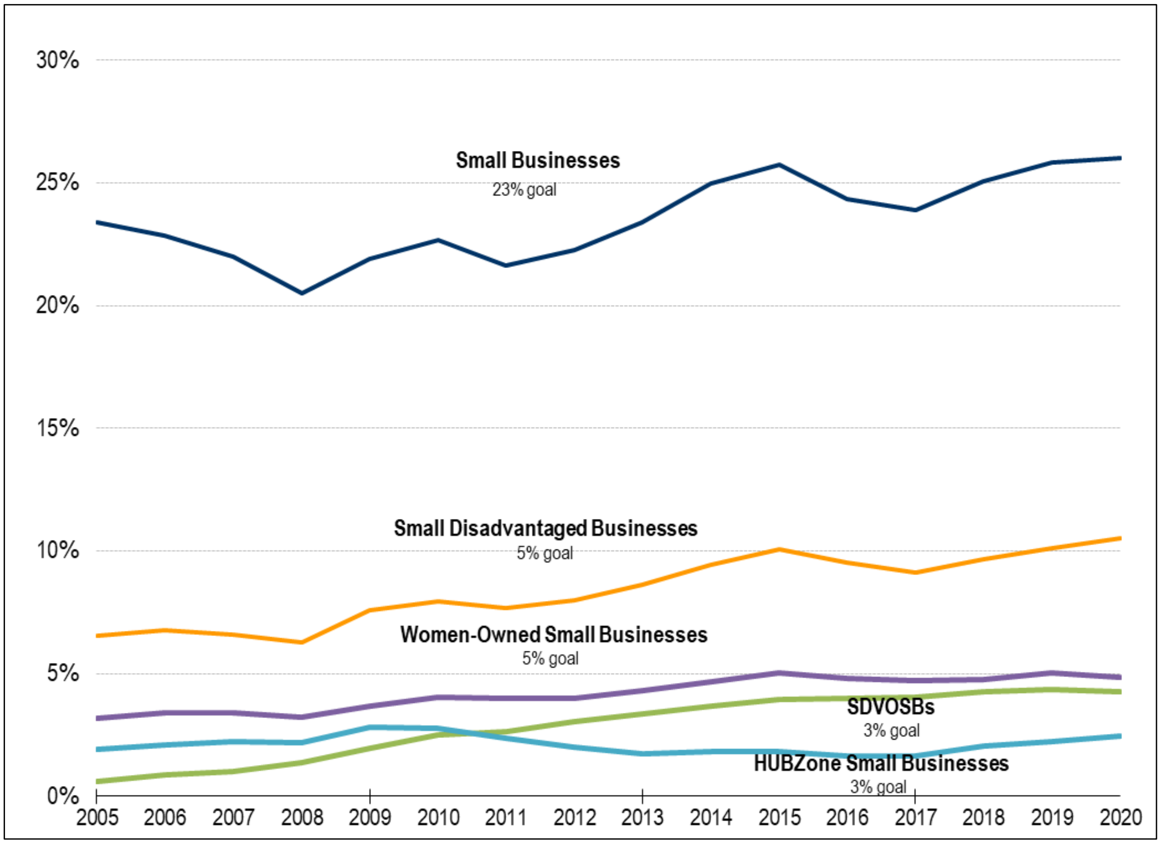
As detailed in the figure's notes, the small business eligible baseline excludes certain contracts that the SBA has determined do not realistically reflect the potential for small business participation in federal procurement. About 15%-18% of all federal contracts are excluded in any given fiscal year.

The federal government has had difficulty meeting the WOSB and HUBZone small business procurement goals. The 5% WOSB procurement goal was achieved in 2 of the 16 fiscal years (FY2015 and FY2019) reported in the figure. The 3% HUBZone procurement goal was not achieved in any of the 16 fiscal years.

In contrast, the 23% small business procurement goal was achieved in 9 of the 16 fiscal years reported in the figure (FY2005 and FY2013-FY2020), including the past 8 fiscal years. The 5% SDB procurement goal was achieved in each of the 16 fiscal years. The 3% SDVOSB procurement goal was achieved in 9 of the 16 fiscal years (FY2012-FY2020), including the last 9 fiscal years.

Figure 1. Small Business Contracting, Performance, by Type of Small Business, FY2005-FY2020

(percentage of small business eligible federal contracts)



Sources: U.S. General Services Administration (GSA), "Sam.Gov Data Bank, Static: Small Business Goaling Report [FY2005-FY2020]," at https://sam.gov/reports/awards/static; and U.S. Small Business Administration (SBA), "Government-Wide Performance: FY2020 Small Business Procurement Scorecard," data as of April 15, 2021, at https://www.sba.gov/document/support-small-business-procurement-scorecard-overview.

Notes: The small business eligible baseline excludes certain contracts that the SBA has determined do not realistically reflect the potential for small business participation in federal procurement (such as those awarded to mandatory and directed sources), contracts funded predominately from agency-generated sources (i.e., nonappropriated funds), contracts not covered by the Federal Acquisition Regulations System, acquisitions on behalf of foreign governments, and contracts not reported in the GSA's Federal Procurement Data System—Next Generation (such as government procurement card purchases and contracts valued less than $10,000). About 15%-18% of all federal contracts are excluded in any given fiscal year.

SDVOSB Set-Aside and Sole Source Contract Authority Use

The procurement figures provided in **Table 2** and **Figure 1** encompass all SDVOSB federal contracts, including contracts awarded through an open competition with no small business-related preferences, through another small business preference program (8(a), WOSB, HUBZone, etc.), through an SDVOSB sole source award, and through an SDVOSB set-aside award. As a result, it is useful to know the extent to which the SDVOSB Procurement Program (the provision of SDVOSB set-aside and sole source awards) is being used by federal procurement officers.

In FY2020, about 37.0% of all SDVOSB contracts were awarded with an SDVOSB preference (1.0% by an SDVOSB sole source award and 36.0% by an SDVOSB set-aside award), 30.6%

were awarded through another small business preference program, and 32.4% were awarded in open competition.[56]

For comparative purposes, in FY2020

- about 15.7% of all HUBZone contracts were awarded with an HUBZone preference (0.5% by an HUBZone sole source award, 14.8% by an HUBZone set-aside award, and 0.4% with a price evaluation preference), 55.0% were awarded through another small business preference program, and 29.3% were awarded in open competition;[57]
- about 4.6% of all WOSB contracts were awarded with a WOSB preference (0.4% by a WOSB sole source award and 4.2% by a WOSB set-aside award), 61.2% were awarded through another small business preference program, and 34.2% were awarded in open competition;[58] and
- about 60.1% of all 8(a) contracts were awarded with an 8(a) preference (32.7% by an 8(a) sole source award and 27.4% by an 8(a) set-aside award), 33.4% were awarded through another small business preference program, and 6.5% were awarded in open competition.[59]

VA's VOSB and SDVOSB Procurement Goals and Certification Requirements

As the SDVOSB program got underway, some Members were concerned that allowing SDVOSBs to self-certify their status might not be a sufficient safeguard against fraud. The only process in place to detect fraud in the SDVOSB program at that time involved a formal bid protest process at the SBA, where interested parties to a contract award could protest if they felt a firm misrepresented its small business size or SDVOSB eligibility in its bid submission.

Due to VA's relatively low VOSB and SDVOSB procurement levels (4.5% for VOSBs and 2.3% for SDVOSBs in FY2005) and concerned that SDVOSBs were not being verified by VA, Representative John Boozman introduced H.R. 3082, the Veteran-Owned Small Business Promotion Act of 2005 (later retitled the Veterans Small Business and Memorial Affairs Act of 2006), on June 28, 2005.[60] The bill would have required VA to award at least 9.0% of the total value of its prime and subcontract awards to VOSBs, with at least one-third of that amount awarded to SDVOSBs. Among other provisions, VA would have been required to establish a VOSB database, verify that the business owner is a veteran or a service-disabled veteran, and, when providing preferences, provide SDVOSBs first priority and VOSBs second priority. The bill would have also allowed surviving spouses who inherit ownership rights in the small business to be treated as if they were that veteran. The Committee on Veterans' Affairs reported the bill, as amended and retitled, on July 24, 2006, and the House agreed to the bill by voice vote that same day.

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[56] Data generated using GSA, "Sam.Gov data bank," August 3, 2021, at https://sam.gov/reports/awards/adhoc.

[57] Data generated using GSA, "Sam.Gov data bank," August 3, 2021, at https://sam.gov/reports/awards/adhoc.

[58] Data generated using GSA, "Sam.Gov data bank," August 3, 2021, at https://sam.gov/reports/awards/adhoc.

[59] Data generated using GSA, "Sam.Gov data bank," August 3, 2021, at https://sam.gov/reports/awards/adhoc.

[60] U.S. Congress, House Committee on Veterans' Affairs, *Veterans Small Business and Memorial Affairs Act of 2006*, report to accompany H.R. 3082, 109th Cong., 2nd sess., July 24, 2006, H.Rept. 109-592 (Washington, DC: GPO, 2006), pp. 15-17.

The amended bill would have required VA's Secretary to establish procurement goals for VOSBs and SDVOSBs each fiscal year. The SDVOSB goal had to be not less than the government-wide SDVOSB procurement goal for that fiscal year (currently 3%). Also, when providing preferences, VA would be required to provide SDVOSBs first priority and VOSBs second priority. VA would also be required to maintain a database of VOSBs and, at a minimum, verify that the owner was a veteran or service-disabled veteran. Listing in this database would be required as a condition for participating in the VA procurement program. The bill would have allowed surviving spouses who inherit ownership rights in the small business to be treated as if they were that veteran until the date on which the surviving spouse remarries, relinquishes an ownership interest in the small business, or the date that is 10 years after the veteran's death.

In 2006, these provisions (with an additional requirement that the surviving spouse was married to a veteran with a 100% disability rating or who died as a result of a service-connected disability) were added by the House on December 8, 2006, to S. 3421, an act to authorize major medical facility projects and major medical facility leases for the Department of Veterans Affairs for Fiscal Years 2006 and 2007, and for other purposes (retitled the Veterans Benefits, Health Care, and Information Technology Act of 2006 by House amendment). The Senate agreed to the House amendments by unanimous consent the following day and President George W. Bush signed the bill into law on December 22, 2006 (P.L. 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006).

In FY2022, VA's procurement goals are at least 17.0% for VOSBs and at least 15.0% for SDVOSBs.[61] In FY2021, VA awarded 25.1% of its contracts to VOSBs.[62]

VA-SBA Coordination Issues

For many years, VA and the SBA had similar, but not identical, regulations concerning SDVOSB eligibility. As examples, VA's regulations required the veteran to be the businesses' highest compensated employee, SBA's regulations did not; and by statute, surviving spouses of deceased veterans may be eligible for SDVOSB verification by VA under specified circumstances, but they were not eligible under SBA's regulations. Because of these and other differences, some companies qualified as an SDVOSB under VA standards but not under SBA standards, and vice versa.[63]

[61] U.S. Department of Veterans Affairs (VA), *FY 2023 Budget Submission: Supplemental Information and Appendices, Volume 1 of 4*, March 2022, p. 125, at https://www.va.gov/budget/docs/summary/fy2023-va-budget-volume-i-supplemental-information-and-appendices.pdf; and VA, Office of Small & Disadvantaged Business Utilization, "Small Business Program Goals and Accomplishments," at https://www.va.gov/osdbu/library/accomplishments.asp.

[62] VA, *FY 2023 Budget Submission: Supplemental Information and Appendices, Volume 1 of 4*, March 2022, p. 125.

[63] A veteran "means a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable." See 38 U.S.C. §101(2).

A service-disabled veteran (see 13 C.F.R. §125.11) is

> a veteran who possesses either a valid disability rating letter issued by the Department of Veterans Affairs, establishing a service-connected rating between 0 and 100 percent, or a valid disability determination from the Department of Defense or is registered in the Beneficiary Identification and Records Locator Subsystem maintained by Department of Veterans Affairs' Veterans Benefits Administration as a service-disabled veteran. Reservists or members of the National Guard disabled from a disease or injury incurred or aggravated in line of duty or while in training status also qualify.

Also, the business must be small, as defined in §3(q) of the Small Business Act (15 U.S.C. §632(q)) and the SBA's implementing regulations (13 C.F.R. §125).

To address this issue, P.L. 114-328, the National Defense Authorization Act for Fiscal Year 2017, required the use of SBA regulations to determine VOSB and SDVOSB ownership and control, allowed VA to continue to determine whether individuals are veterans or service-disabled veterans, and directed that challenges to a VOSB's or SDVOSB's status based on ownership or control were to be decided by the SBA's Office of Hearings and Appeals' administrative judges. The law applied VA's statutory language allowing surviving spouses under specified circumstances to be eligible for SDVOSB status to all SDVOSBs, eliminating that discrepancy.

In addition, P.L. 116-283 (see "Introduction") requires VA to transfer, by January 1, 2023, the maintenance of VA's database of SDVOSBs interested in participating in VA's small business contracting program to the SBA, provide compensation to the SBA for doing so, and abolish VA's Center for Verification and Evaluation and transfer its function to the SBA. VA is to continue to determine whether an individual qualifies as a veteran or service-disabled veteran.

The SBA is also required to establish a government-wide SDVOSB certification and periodic recertification process by January 1, 2023. This requirement was designed to address concerns about the potential for fraud in the SDVOSB program. For example, in 2009, the Government Accountability Office (GAO) concluded that the SBA's reliance on bid protests to investigate allegations of SDVOSB program fraud "has allowed ineligible firms to receive millions of dollars in federal contracts," and the only efforts to put fraud prevention controls in place prior to contract bidding are those at VA (and those controls apply only to VA contracts).[64]

The GAO argued that

> a well-designed fraud-prevention system should consist of three crucial elements: (1) up-front preventive controls, (2) detection and monitoring, and (3) investigations and prosecutions. For the SDVOSB program this would mean (1) front-end controls over program eligibility prior to contract award, (2) fraud detection and monitoring of firms already receiving SDVOSB contracts, and (3) the aggressive pursuit and prosecution of individuals committing fraud to include suspension and debarment, or requirement to terminate the contract.[65]

In response to the GAO's findings, the SBA argued that it was

> only authorized to perform eligibility reviews in a protest situation, including where the SBA itself has reason to believe that a firm has misrepresented its SDVOSB status. In this area, the SBA believes that it has been diligent and responsible as all protest determinations have been provided to the appropriate contracting officer in a timely manner.[66]

Later, the SBA indicated that "our self-certification program for the service-disabled community for the rest of the Federal government has been effective in self-policing itself" and expanding the SBA's role to certify all SDVOSBs would have "significant allocations questions."[67]

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[64] U.S. Government Accountability Office (GAO), Service-Disabled Veteran-Owned Small Business Program: Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts, GAO-10-108, October 23, 2009, p. 21, at https://www.gao.gov/products/gao-10-108 (hereinafter GAO, Service-Disabled Veteran-Owned Small Business Program).

[65] GAO, *Service-Disabled Veteran-Owned Small Business Program*, p. 16.

[66] GAO, *Service-Disabled Veteran-Owned Small Business Program*, pp. 27, 28.

[67] U.S. Congress, House Committee on Small Business, Subcommittee on Contracting and Workforce, and House Committee on Veterans' Affairs, Subcommittee on Oversight and Investigations, *Consistently Inconsistent: Challenges for Service-Disabled Veteran-Owned Small Businesses*, joint hearing, 113th Cong., 1st sess., March 19, 2013, Doc. No. 113-006 (Washington, DC: GPO, 2013), pp. 25, 32.

On July 6, 2022, the SBA published a proposed rule in the *Federal Register* to establish the statutorily required certification process for VOSBs and SDVOSBs. Public comment on the proposed rule is due by August 5, 2022.[68]

Legislation of Interest

During the 116th Congress, P.L. 116-315, the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020, authorized the Department of Veterans Affairs to provide contracting preference to contractors that employ veterans on a full-time basis, with the preference based on the percentage of the contractor's full-time employees that are veterans.[69]

Several bills have been introduced during the 117th Congress that would affect the SDVOSB program:

- H.R. 3065, the Expanding Contracting Opportunities for Small Businesses Act of 2021, would increase the sole source limit for WOSBs, SDBs, HUBZone small businesses, and SDVOSBs to $10 million for manufacturing contracts and $8 million for other contracts, including any options.

S.Amdt. 2443 to S.Amdt. 2137 to H.R. 3684, the Infrastructure Investment and Jobs Act, would have increased the sole source limit for WOSBs, SDBs, HUBZone small businesses, and SDVOSBs to $10 million for manufacturing contracts and $8 million for other contracts, including any options. The amendment would have also increased the government-wide procurement goal for small businesses generally to 25%; for HUBZone small businesses to 4%; for SDBs to 11% in FY2022, 12% in FY2023, 13% in FY2024, and 15% in FY2025 and each fiscal year thereafter; for WOSBs to 6% for each of FY2022 and FY2023 and 7% in FY2024 and each fiscal year thereafter; and for SDVOSBs to 5%.

Concluding Observations

Congressional oversight of the SBA's implementation of the SDVOSB certification process, which Congress imposed to deter fraud and promote uniformity of treatment among SDVOSBs, is likely to be a congressional priority for the next several years. For example, Members may consider the following questions:

- Will the SBA's SDVOSB certification process, which is likely to include an online application portal, be user-friendly and free of technical difficulties, such as those experienced by the SBA's Paycheck Protection Program and Shuttered Venue Operators Grant program's online application portals?[70]
- Will the SDVOSB documentation requirements be onerous?
- Will the documentation requirements prove effective in deterring fraud?

[68] SBA, "Veteran-Owned Small Business and Service-Disabled, Veteran-Owned Small Business—Certification," 87 *Federal Register* 40141, July 6, 2022.

[69] U.S. Department of Veterans Affairs, Office of Acquisition and Logistics (OAL), "Acquisition Policy Flash! 21-28," at https://www.va.gov/oal/business/pps/flash21-28.asp.

[70] For additional information and analysis of the Paycheck Protection Program and Shuttered Venue Operators Grant program, see CRS Report R46284, *COVID-19 Relief Assistance to Small Businesses: Issues and Policy Options*, by Robert Jay Dilger, Bruce R. Lindsay, and Sean Lowry; and CRS Report R46689, *SBA Shuttered Venue Operators Grant Program (SVOG)*, by Robert Jay Dilger and Sean Lowry.

- Will the SDVOSB certification decision be made in a timely manner?
- Will the SBA have sufficient administrative capacity to manage its increased responsibilities to ensure an orderly transition from VA to the SBA?

Congress may also continue monitoring federal agency performance in meeting the SDVOSB 3% government-wide procurement goal. As mentioned, the federal government has met the SDVOSB 3% procurement goal every year since FY2012, leading some SDVOSB advocates to seek a higher threshold (see S.Amdt. 2443 in "Legislation of Interest"). Advocates of doing so argue that increasing the SDVOSB procurement goal could lead to more contracting with SDVOSBs and small businesses generally. Others worry that it could redistribute available small business contract dollars from other types of small businesses to SDVOSBs and result in no overall increase in small business contracting. Still others worry that increasing other small business procurement goals, such as the proposed significant increase for SDBs (see the aforementioned S.Amdt. 2443), could adversely affect the volume of SDVOSB contracts.

Congress could also examine the pros and cons of legislation concerning sole source contract limits, including proposals to increase the limits, exclude options in the determination of those limits, or both.

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