Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

December 17, 2024

Sole-Source Contracts for Small Businesses

Introduction

Provisions of the Small Business Act authorize (and, in some cases, require) federal agencies to provide small businesses a preference when making a contract award. Preferences for small business contractors may take the form of contract set-asides, which may limit the competition for an award to small firms, or sole-source awards, which are contracts made to a firm without competition from other firms. Agencies may make sole-source awards to small businesses under some circumstances, subject to limits on the value of such awards.

This In Focus provides an overview of sole-source contracts for small businesses. For more information about contract set-asides for small businesses, see CRS In Focus IF12852, *Federal Contract Set-Asides for Small Businesses*. For detailed information on small business contracting policies and contracting programs for certain types of small business owners, see CRS Report R45576, *An Overview of Small Business Contracting*.

Origin of Small Business Contracting Preferences

Many existing small business contracting policies and programs reflect 1953 legislation, seeking, in part, to ensure that a "fair proportion" of federal contract and subcontract dollars is awarded to small businesses (P.L. 83-163, the Small Business Act (as amended)).

The Competition in Contracting Act of 1984 (CICA) (enacted as part of the Deficit Reduction Act of 1984, P.L. 98-369, §§2701-2753) requires that contracts be entered into after "full and open competition through the use of competitive procedures" unless otherwise authorized by law. To help facilitate contracting opportunities for small businesses, Congress has authorized federal agencies, *under specified circumstances*, to set aside contracts and award sole-source contracts to small businesses. Small businesses that may receive sole-source contract awards include participants in "socioeconomic" contracting programs. Authorizations for sole-source awards to firms in these programs were made through distinct pieces of legislation, as follows:

- **8(a) Program**; 8(a) Program participant sole-source awards were authorized by P.L. 95-507, To amend the Small Business Act and the Small Business Investment Act of 1958, §202;

- **Historically Underutilized Business Zone (HUBZone) Program**; HUBZone firm sole-source awards were authorized by P.L. 105-135, the HUBZone Act of 1997;

- **Service-Disabled Veteran-Owned Small Business (SDVOSB) Program**; SDVOSB sole-source awards were authorized by P.L. 108-183, the Veterans Benefits Act of 2003;

- **Women-Owned Small Business (WOSB) Program**; WOSB sole-source awards were authorized by P.L. 113-291, the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015.

The Department of Veterans Affairs (VA) has its own contracting preferences for veteran-owned small businesses (VOSBs), created by the Veterans Benefits, Health Care, and Information Technology Act of 2006 (P.L. 109-461). VA is the only agency with a contracting program specifically for VOSBs. This VA-only program exists alongside the government-wide SDVOSB program. Contracting officers at the VA may award contracts on a sole-source basis as long as the contract award will not exceed $5 million (including options) and the award can be made at a fair and reasonable price; they must also prioritize SDVOSBs first, and can only make sole source awards to a VOSB if no responsible SDVOSB has been identified.

Sole-Source Award Conditions

When determining whether to consider making a sole-source award, agencies generally consider the value of a contract and the number of available small businesses able to complete required work. If a contracting officer at an agency has a "reasonable expectation" of obtaining offers from two or more small businesses, a contract is typically set-aside for small firms. However, regulations direct an agency to make a sole-source award to a small business if it is the only firm that makes an "acceptable offer" in response to a set-aside and is "a responsible small business concern" (48 C.F.R. §19.502-2(a)).

For contracts above the "simplified acquisition threshold" of $250,000, a contracting officer must "first consider an acquisition for the small business socioeconomic contracting programs"—i.e., contracting programs for certain types of small businesses such as WOSBs, small businesses located within a HUBZone, and SDVOSBs—before setting aside a contract for small businesses in general (48 C.F.R. §19.203(c)). If applicable conditions are met, a contracting officer may choose to make a sole-source award to a qualified business that participates in one of the socioeconomic contracting programs.

Agencies may make sole-source awards in order to reach annual goals for small business participation in procurement. There are five government-wide statutory small business contracting goals, not only for small businesses generally, but for small businesses owned by socially and economically disadvantaged individuals (including 8(a) Program participants), WOSBs, HUBZone firms, and SDVOSBs. For information on small business contracting goal-making and attainment, see CRS Insight IN12018, *Federal Small Business Contracting Goals*.

Federal Contracting Program Certifications

Firms that wish to be eligible for contract set-asides or sole-source awards are subject to certification requirements. While firms may self-certify their status as small businesses, each socioeconomic small business contracting program has eligibility and certification requirements. Firms may obtain certification for their status through the SBA's online certification platform. Procedures for filing a challenge, or "protest" to a firm's socioeconomic status are outlined at 13 C.F.R. §126.800-126.805 for HUBZone firms, 13 C.F.R. §128.500 for SDVOSBs (and veteran-owned small businesses), and 13 C.F.R. §127.600-§127.605 for WOSBs. Among 8(a) Program participants, a firm's eligibility for award cannot be challenged or protested as part of the solicitation or proposed contract award (48 C.F.R. §19.805-2(d)).

Limits on Sole-Source Awards

Sole-source contract award limits generally range from $4 million to $7 million, depending on the type of small business contract recipient, as shown in **Table 1**.

Table 1. Sole-Source Award Limits

Small Business Type	Award Limit
Small Business	$250,000
8(a) Program Participant	$4.5 million ($7 million for manufacturing contracts)
WOSB	$4.5 million ($7 million for manufacturing contracts)
SDVOSB	$4 million ($7 million for manufacturing contracts)
VOSB (VA only)	$5 million
HUBZone	$4.5 million ($7 million for manufacturing contracts)

Source: 48 C.F.R. §19.502-2(a); 48 C.F.R. §19.805-1(a)(2); 48 C.F.R. §19.1506(a)-(c); 13 C.F.R. §128.405; 48 C.F.R. §819.7008; 48 C.F.R. §19.1306.

Notes: Sole-source awards in excess of the above limits may be made when the SBA accepts the contract on behalf of certain group-owned 8(a) Program participants.

In addition, there is a threshold at which 8(a) Program participants may not receive any additional 8(a) sole-source awards (though they can still receive set-asides). This amount is set forth at 13 C.F.R. §124.519 and is currently $168,500,000. SBA does not count awards of less than $250,000 toward this limit.

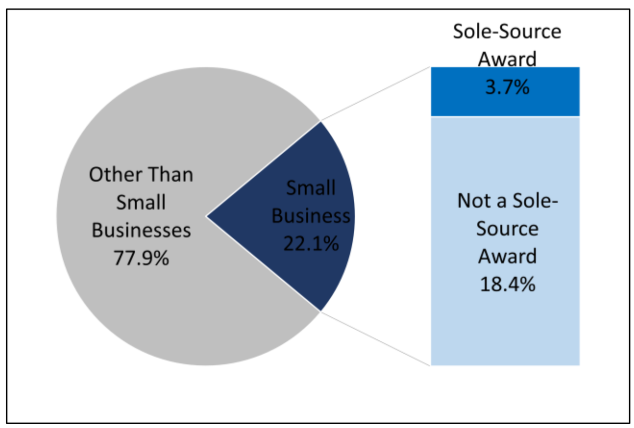
Firms owned by certain entities (group-owned firms) in the 8(a) Program may receive sole-source awards in excess of the limits for individually-owned firms. The firms include those owned by Alaska Native Corporations, Native Hawaiian Organizations, federally recognized Indian Tribes, and Community Development Corporations. For more information about the 8(a) Program, see CRS Report R48190, *SBA's 8(a) Business Development Program: Structure and Current Issues*.

For group-owned firms, P.L. 111-84, the National Defense Authorization Act for Fiscal Year 2010, §811, required federal contracting officers to execute written justifications and obtain approval for sole-source contracts in excess of $20 million, a threshold that was increased through regulatory updates to account for inflation. P.L. 116-92, the National Defense Authorization Act for Fiscal Year 2020, increased the threshold to $100 million for DOD (but not for other agencies).

Contracts Awarded to Small Businesses

The Small Business Act (P.L. 85-536) requires the General Services Administration (GSA) to provide a report on all prime contract procurements made each fiscal year. The report, "Federal Procurement Data System Report," tallies contracting preferences used by agencies. For example, the FY2023 report states that the dollar value of contracts made to small businesses as sole-source awards was $28.7 billion, or 3.7% of contract obligations (shown in **Figure 1**). This amount is provided relative to total contract expenditures of $775 billion, of which awards to "other than small businesses" totaled $604 billion and awards to small business totaled $171 billion. For more information about where to find data on federal contracts made to small businesses, see CRS Report R4818, *Sources of Data on Federal Small Business Contracts: In Brief*.

Figure 1. FY2023 Share of Small Business Contract Dollars Awarded as Sole-Source Awards



Source: GSA, "Final Data Report: FY2023 Federal Procurement Data System GSA Report," at https://www.gsa.gov/policy-regulations/policy/acquisition-policy/small-business-reports.

Notes: The GSA report is statutorily required to include "all procurements made for the period covered by the report and may not exclude any contract awarded," while SBA reporting on contracts awarded to small businesses excludes certain contracts when the work cannot realistically be performed by small businesses.

R. Corinne Blackford, Analyst in Small Business and Economic Development Policy

IF12853

Disclaimer