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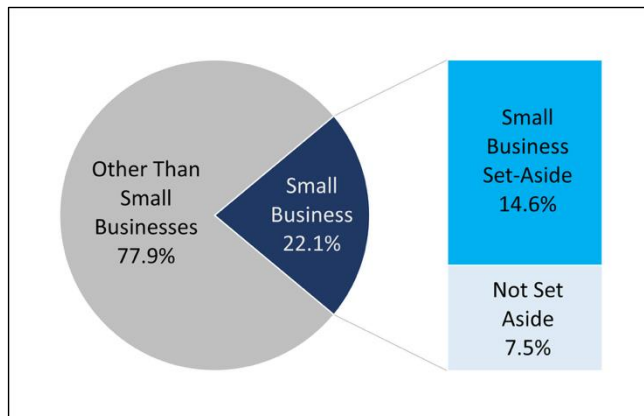
The Rule of Two in Federal Procurement

Background and Overview

The so-called Rule of Two underpins the small business contracting policy known as a contract set-aside, through which the federal government limits competition for contract awards to small firms. The Rule of Two directs agencies to set aside contracts for bids by small businesses when there is a reasonable expectation of obtaining offers from two or more responsible small businesses that are competitive in terms of market prices, quality, and delivery.

According to FY2023 annual General Services Administration (GSA) reporting, more than \$171 billion of almost \$776 billion in federal contracts, or about 22%, were awarded to small businesses (as shown in **Figure 1**). Of those small business contracts, more than \$113 billion, nearly two-thirds, were awarded through set-asides. Thus, set-asides for small businesses accounted for over 14% of contract expenditures in FY2023.

Figure 1. FY2023 Share of Contract Dollars Awarded Through Small Business Set-Asides



Source: GSA, “Final Data Report: FY 2023 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 Small Business Administration reporting on contracts awarded to small businesses excludes certain contracts when the work cannot realistically be performed by small businesses.

For an overview of set-asides, see CRS In Focus IF12852, *Federal Contract Set-Asides for Small Businesses*.

Statutory and Regulatory Requirements

There exist both statutory Rule of Two provisions and regulatory Rule of Two provisions that are not statutorily mandated. Part 19 of the Federal Acquisition Regulation (FAR) contains provisions related to small business contracting programs, including the Rule of Two requiring

agencies to set aside procurements for small businesses. The regulatory Rule of Two stems from the Small Business Act directive to ensure a “fair proportion” of federal contracts are made to small businesses (Section 15(a)(1)(C) of the Small Business Act, 15 U.S.C. §644(a)(1)(C)).

Application of the Rule of Two is statutorily required for certain small contracts that are valued below the simplified acquisition threshold (currently \$350,000 for most contracts), but is otherwise a regulatory requirement. As provided by 15 U.S.C. §644(j)(1),

Each contract for the purchase of goods and services that has an anticipated value greater than the micro-purchase threshold, but not greater than the simplified acquisition threshold shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

For contracts above the simplified acquisition threshold, FAR §19.502-2(b) stipulates that agencies must also generally set aside contracts exclusively for small businesses as long as a contracting officer expects that offers will be obtained from at least two responsible small businesses and the award will be made at a fair market price.

Further, FAR §19.203(c) provides that before making a small business set-aside for acquisitions above the simplified acquisition threshold, a contracting officer must “first consider an acquisition for the small business socioeconomic contracting programs”—that is, contracting programs for certain types of small businesses, such as businesses located within a Historically Underutilized Business Zone (HUBZone), service-disabled veteran-owned small businesses (SDVOSBs), women-owned small businesses (WOSBs), and 8(a) Program participants.

Proposed Rule Expansion

A proposed rule announced in October 2024 would extend the Rule of Two to task and delivery orders placed under government-wide contracts. According to the rule announcement, the Department of Navy first adopted the Rule of Two in 1964, followed by other agencies prior to the FAR extending the Rule of Two for government-wide application in 1984. The proposed Rule of Two expansion also provides exceptions, including for orders made under the Federal Supply Schedule (FSS). When an agency is unable to set aside an order over the micro-purchase threshold (\$15,000) and an exception does not apply, the

contracting officer must document their rationale and provide the documentation to the agency's small business specialist or the Office of Small and Disadvantaged Business Utilization (OSDBU). For more information on the roles and responsibilities of agency OSDBUs, see CRS Report R47851, *Offices of Small and Disadvantaged Business Utilization: An Overview*.

Legislative Options

Some in Congress have expressed interest in the application of the Rule of Two. Legislation introduced in the 119th Congress, the Protecting Small Business Competitions Act of 2025 (H.R. 2804), would make the proposed Rule of Two expansion described above a statutory mandate. Legislation introduced in the 118th Congress (H.R. 6320)

would have stipulated that the Rule of Two should be applied to “part or parts of a multiple award contract.”

Congress may consider whether this expansion would advance its procurement and small business policy priorities. Alternatively, Congress may codify the Rule of Two for contracts above the simplified acquisition threshold without reference to task or delivery orders, so as to establish a statutory mandate for existing policy.

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