

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6515

MEMORANDUM

TO: Members, Subcommittee on Contracting and Infrastructure
FROM: Jared Golden, Chairman
RE: Subcommittee Hearing: “SBA Management Review: Office of Government Contracting and Business Development”
DATE: September 15, 2020

The Committee on Small Business, Subcommittee on Contracting and Infrastructure, will hold a hybrid hearing titled: “SBA Management Review: Office of Government Contracting and Business Development.” The hearing is scheduled to begin at **10:00 A.M. on Tuesday, September 15, 2020, in Room 2360 of the Rayburn House Office Building.** Participating members can also join remotely via **CISCO Webex.**

The hearing will allow members to learn more about SBA’s Office of Government Contracting and Business Development (GCBD), which assists small businesses that participate in the federal procurement space by administering SBA’s business development and contracting programs. The purpose of the hearing is to examine GCBD’s operations, administrative challenges and the ongoing efforts to address them. The sole witness for the hearing is:

- Dr. Francis Spampinato, Associate Administrator, Office of Government Contracting and Business Development, U.S. Small Business Administration, Washington, D.C.

Background

In 1953, Congress passed the Small Business Act (the Act) authorizing the U.S. Small Business Administration (SBA) to aid, counsel and protect small business concerns to ensure a fair proportion of contracts and subcontracts for the Federal Government were placed with small businesses; preserve free markets and competition; and strengthen the overall economy.¹ In turn, the Federal Government benefits from the quality goods and services small firms have to offer.

In accordance with this mandate, the Act sets forth the government-wide goal of awarding at least 23% of all eligible federal contracting dollars to small businesses. The Act also sets the goals of awarding 5% of prime contracts and subcontracts for women-owned small businesses and small disadvantaged businesses; and 3% of prime contracts and subcontracts for service-disabled veteran-owned small businesses and HUBZone-certified small businesses.² These goals are tracked based on the dollar amount of the contracts awarded.

¹ The Small Business Act of 1953, P.L. 83- 163, 67 Stat. 232 (1953), as amended.

² 15 U.S.C. §644(g)(1)(A)

Within SBA, GCBD is the umbrella office that oversees the Federal Government's performance against the contracting goals. The office also administers and sets the policies for the 8(a) program, the Women-Owned Small Business (WOSB) Program, the HUBZone Program and the Service-Disabled Veteran-Owned Small Business (SDVOSB) Program, which provide contracting preferences based on socioeconomic categories and assist in the achievement of these contracting goals. Other programs administered by GCBD include the All Small Mentor-Protégé Program and the 7(j) Program.³ Given its importance in maximizing small business participation within federal procurement, it is imperative to guarantee that the GCBD office and its contracting programs are working properly, especially in these trying times when the COVID-19 pandemic has severely impacted small businesses.

Administrative Challenges

Small Business Participation in Prime Contracts and Goals Achievement

In recent years, the Federal government has been successful in achieving the 23% goal. In FY 2019, for example, the Federal government awarded 26.5% or \$132.9B of all eligible prime contracting dollars to small businesses.⁴ However, the overall participation of small firms has declined significantly over the years. In fact, the small business count in FY 2019 was 102,422, a 9% reduction from FY 2018, which was 113,135.⁵ Because the Federal Government is awarding fewer contracts worth higher values, it has been able to achieve the prime contracting goal despite the decline in small business participation. In the hearing, the Committee hopes to understand what steps SBA is taking to ensure the small business base does not continue to shrink.

Additionally, not all of the contracting goals have been met. While in FY 2019, the Federal Government met the prime contracting goals for small and disadvantaged businesses, WOSBs and SDVOSBs; it failed to meet the 3% prime contracting goal for HUBZone program (2.28%).⁶ In fact, the goal of awarding 3 percent of prime eligible contracts to HUBZone firms has never been met. Moreover, the subcontracting goals were not met for Small and Disadvantaged Businesses (4.17%), SDVOSBs (1.95%) and HUBZones (1.37%).⁷ The Committee is interested in learning more about efforts to increase and surpass the statutorily mandated small business goals.

8(a) Program

The Minority Small Business and Capital Ownership Development Program, known as the 8(a) program, was created in 1978 as a business assistance program for small businesses owned by socially and economically disadvantaged individuals.⁸ In the 1980s, the program was further expanded to include small businesses owned by certain disadvantaged groups.

³ The 7(j) program provides management and technical assistance training to 8(a) participants and other small businesses.

⁴ U.S. Small Business Admin., FY 19 Small Business Federal Procurement Scorecard, available at: <https://www.sba.gov/document/support-small-business-procurement-scorecard-overview>

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ To amend the Small Business Act and the Small Business Investment Act of 1958, P.L. 95-507, 92 Stat. 1757, (October 24, 1978).

The number of participants in the 8(a) program has continually declined, from about 7,000 in 2010 to about 4,600 as of August 2016.⁹ While SBA engaged in efforts to increase participation in the program, such as instituting a streamlined certification process, the number of 8(a) participants continues to decrease. As of August 2019, there were a total of 4,450 firms participating in the 8(a) program.¹⁰ The Committee hopes to understand why participation is decreasing, as well as what actions are being implemented to reverse this trend and strengthen the program.

Women-Owned Small Businesses

The WOSB program levels the playing field by restricting competition for federal contracts to qualified women-owned small businesses in certain industries where women are substantially underrepresented. Additionally, there is a subset of contracts reserved solely for Economically Disadvantage Women-Owned Small Businesses (EDWOSBs). EDWOSBs can receive contracts in either WOSB or EDWOSB eligible industries.

Through the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Congress granted sole-source authority to the WOSB Program, removed small businesses’ ability to self-certify eligibility and required SBA to create a formal certification process for the Women-Owned Small Business (WOSB) Program.¹¹ To date, only the sole-source authority has been fully implemented.

SBA is currently in the process of implementing the WOSB certification process. In fact, the corresponding final rule detailing the changes to the certification process was issued in May.¹² Earlier this year, it was announced on SBA’s website that the formal certification process would start operating in the summer of 2020. However, the timeline shifted due to information technology and staffing resources being reallocated to the coronavirus pandemic response.

According to SBA’s newest timeline, on July 15, 2020, SBA began intake of WOSB applications in accordance with the new certification process.¹³ However, it will not be until October 15, 2020, that SBA will begin issuing decisions on certification applications. The current self-certification process will remain in place until October 15, 2020.¹⁴ As of that date, all WOSBs and EDWOSBs interested in competing for set aside contracts will need to be certified either through SBA’s free online certification process or through an approved third-party entity, at a cost. The Committee wishes to know how many applications have been received so far, if SBA is already reviewing applications and if SBA foresees any challenges or bottlenecks given the

⁹ SMALL BUS. ADMIN. OFF. OF INSPECTOR GEN., REPORT 20-01, REPORT ON THE MOST SERIOUS MANAGEMENT AND PERFORMANCE CHALLENGES FACING THE SMALL BUSINESS ADMINISTRATION IN FISCAL YEAR 2020 (OCT. 2019) [hereinafter SBA OIG 20-01].

¹⁰ *Id.*

¹¹ Pub. L. No. 113-291, §825, 128 Stat. 3292, 3437 (2014).

¹² U.S. Small Business Admin., “Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business Certification.” 85 Fed Reg 27650 (May 11, 2020).

¹³ US Small Business Admin., Women-Owned Small Business Federal Contracting Program, available at: <https://www.sba.gov/federal-contracting/contracting-assistance-programs/women-owned-small-business-federal-contracting-program>

¹⁴ *Id.*

agency will start issuing application decisions on the same day formal certification will be required.

Certify.SBA.gov

Certify.SBA.gov is an IT system that SBA envisioned would serve primarily as a certification management system to enhance service delivery across the contracting programs, including the 8(a), HUBZone and WOSB programs.¹⁵ However, the platform lacked basic functionalities and certain key capabilities were never implemented. For example, certify.SBA.gov was supposed to be used to monitor 8(a) participants' business development but it never had this capability.

In FY 2019, after SBA had spent 4 years and \$30 million on the platform, they decided to abandon Certify.SBA.gov altogether, alleging it was unsustainable on a long-term basis; had unaddressed security vulnerabilities and latent defects; and that it was difficult to understand and improve.¹⁶ It was reported that new development would be migrated to a Microsoft Dynamics 365-based platform. In terms of milestones, it was projected that initial project applications for WOSB and HUBZone would be completed by January 2020 and that the 8(a) and all Small Mentor Protégé program would be migrated by September 2020.¹⁷ Accordingly, SBA awarded a \$3.5 million contract for the development of new certification management applications on the Dynamics 365 platform and a replacement for the Dynamic Small Business Search.¹⁸

Yet, in February 2020, Certify program managers could not provide updates in terms of the WOSB and HUBZone milestones.¹⁹ Furthermore, SBA's website keeps presenting certify.SBA.gov as the platform that will be used for the WOSB certification process. The Committee is interested in knowing more about the scope of this new IT initiative, its costs, timelines and potential delays or cost overruns that SBA might be currently encountering.

HUBZone Program

The HUBZone program was created in 1997, with the purpose of promoting economic development by providing federal assistance to firms located in economically distressed areas (i.e., areas with high unemployment rates, low income, and/or high poverty rates).²⁰ The National Defense Authorization Act for Fiscal Year 2018 brought several changes to the HUBZone program,²¹ which for the most part the agency has implemented through regulations. Among the changes, it required SBA to measure the program's success in meeting its objective of promoting economic growth by publishing performance metrics, collecting data that demonstrates how the program is performing in light of those metrics and reporting to Congress. It is unknown how much progress SBA has made in creating these performance metrics and in building the processes that would be needed to collect this data, which is something the Committee would like to know.²²

¹⁵ SMALL BUS. ADMIN. OFF. OF INSPECTOR GEN., REPORT 20-17, EVALUATION OF Certify.SBA.gov (JUL. 2020)

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Small Business Reauthorization Act of 1997, Pub. L. No. 105-135, §601, 111 Stat. 2592, 2627 (1997).

²¹ Pub. L. No. 115-91, §1701, 131 Stat. 1283, 1802 (2017).

²² Pursuant to the 2018 NDAA, the due date for publishing performance metrics is not later than January 1, 2021.

In its latest HUBZone report, the OIG found weaknesses in the HUBZone certification process that allowed two firms to be certified notwithstanding fraud indicators in their application documents.²³ According to the report, among the reasons why the program office inappropriately certified these firms were that it did not have a standardized process to review applications and it lacked updated HUBZone guidance.²⁴

All Small Mentor-Protégé Program

The All Small Mentor-Protégé Program allows small business to form joint ventures with small or large firms to receive business assistance from their mentors. One of the main advantages of the program is that joint ventures are able to compete for set aside small business contracts.

The latest OIG report regarding the program highlights multiple challenges, such as that program officials were not effectively and consistently implementing established processes to review initial applications and annual evaluations.²⁵ For example, 9 out of 12 case files did not contain sufficient documentation demonstrating whether mentors were qualified to serve as mentors, although according to program officials, they in fact reviewed said requirement but did not document their assessments.²⁶ Moreover, program officials failed to collect annual certification reports from program participants and only conducted annual evaluations for 24 percent of the required evaluations due during the scope of the OIG's investigation. These annual reviews also lacked proper documentation. Finally, while the program counts with a process to measure the its effectiveness, did not collect sufficient data to accurately measure program success.²⁷ The Committee is interested in knowing what SBA is doing to ensure internal processes are followed.

Conclusion

GCBD is a key office within SBA because of its crucial role in enabling small business participation in the federal procurement space. However, this office confronts a wide variety of challenges that need to be overcome to ensure these programs function adequately and efficiently, particularly now when these contracting programs are needed the most. IT issues, lack of internal controls and delays implementing key legislation are some of the many challenges that members will have the opportunity to discuss with GCBD in this hearing.

²³ SMALL BUS. ADMIN. OFF. OF INSPECTOR GEN., REPORT 19-08, SBA'S HUBZONE CERTIFICATION PROCESS (MARCH 2019).

²⁴ *Id.*

²⁵ SMALL BUS. ADMIN. OFF. OF INSPECTOR GEN., REPORT 19-17, EVALUATION OF SBA'S ALL SMALL MENTOR-PROTÉGÉ PROGRAM (SEPT. 2019).

²⁶ *Id.*

²⁷ *Id.*