

U.S. Small Business Administration - Notice of Public Meetings

SUMMARY: The U.S. Small Business Administration's (SBA) Office of Government Contracting and Business Development (GC/BD) is tasked with implementing several provisions of the Small Business Jobs Act of 2010 (SBJA). On Monday, March 7, 2011, SBA announced a series of public meetings on its implementation of these provisions. The dates, times and locations, as well as registration information, are set forth below. SBA is providing this supplementary information on the government contracting provisions of the SBJA to provide background and focus input.

DATES: The meetings will be held on the dates and times specified in the Event Information section of the Supplementary Information below. It is recommended that all attendees register at least one week prior to the scheduled meeting date. In addition, comments to SBA docket number SBA-2011-0006 must be received on or before April 16, 2011.

ADDRESSES: The meetings will be held at the locations specified in the Event Information section of the Supplementary Information below. Parties interested in attending a meeting must register by providing the requested registration information at www.sba.gov/jobsacttour. In addition, you may submit comments, identified by SBA docket number SBA-2011-0006 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Small Business Jobs Act Tour – Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third Street, SW, Suite 8000, Washington, DC 20416.
- Hand Delivery/Courier: Richard L. Miller, Small Business Jobs Act Tour - Office of Government Contracting and Business Development, 409 Third Street, SW, Washington, DC 20416.

SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the information to Mr. Miller, address above. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

SUPPLEMENTARY INFORMATION

On September 27, 2010, President Obama signed the SBJA, which makes many significant small business program improvements. The new law provides critical resources to help small businesses continue to drive economic recovery and create jobs. The new law extended the successful SBA enhanced loan provisions while offering billions more in lending support, tax cuts, and other opportunities for entrepreneurs and small business owners. The new law also contained numerous provisions to help enhance small businesses ability to compete in government contracting and subcontracting. For example, the law addresses small business set-asides on multiple award contracts, contract consolidation, and timely payments to small business subcontractors. The contracting provisions also dovetail with recommendations released by the Interagency Task Force on Small Business Contracting in September (<http://www.sba.gov/content/interagency-task-force-federal-contracting-opportunities-small-businesses>). The Task Force was established by the President in April 2010 to identify ways in which to increase small business participation in the federal marketplace so that agencies meet and exceed their small business contracting goals.

Accordingly, SBA will conduct a Small Business Jobs Act Tour that will cover 13 cities. The objective of the tour is to provide information on SBJA provisions and to receive input on key SBJA provisions.

Strengthening Small Businesses' Ability to Compete for and Win Federal Contracts

The federal government awards hundreds of billions of dollars each year in federal contracts, nearly one-fourth of which goes to small firms. The Small Business Jobs Act contained 19 provisions that will help small businesses compete more effectively for federal contracts and subcontracts. SBA is rolling out these provisions that will help ensure more fairness, more opportunities, and more tools to help match federal agencies with small businesses that provide high-quality products and services. SBA wants to hear from interested parties about how it can effectively roll out new provisions, such as those relating to Multiple Award Contract set asides, subcontracting, Mentor Protégé Programs, and, at select events, its size process. Small business contractors are encouraged to attend, learn more about these new tools, and share their thoughts on improving the environment for small business contracting. In addition, SBA seeks input and suggestions on the following specific SBJA government contracting provisions:

➤ **Multiple Award Contract Set-Asides** (Public Law 111-240 §§ 1311 1331).

Section 1311 of the SBJA defines the term “multiple award contract.” In addition, § 1331 of the SBJA requires the Administrator of SBA and the Administrator for Federal Procurement Policy, in consultation with the Administrator of the General Services Administration (GSA) to issue regulations under which “Federal agencies may, at their discretion— (1) set aside part or parts of a multiple award contract for small business concerns, including the subcategories of small business concerns . . . (2) notwithstanding the fair opportunity requirements under section 2304c(b) of title 10, United States Code, and section 303J(b) of the Federal Property and Administrative Services act of 1949 (41 U.S.C. 253j(b)), set aside orders placed against multiple award contracts for small business concerns, including the subcategories of small business concerns . . . and (3) reserve one or more contract awards for small business concerns under full and open multiple award procurements, including the subcategories of small business concerns.” In reviewing these provisions, the SBA would like input and suggestions on the following questions:

1. How should guidance differentiate between a total set-aside, a partial set-aside, and a procurement otherwise “reserved” for small businesses When it is appropriate for each to be used? When would it be inappropriate for each to be used? What types of “reserves” might be effective in a full and open competition for a task and delivery order contract to facilitate access to small businesses (e.g., designating a certain number of the multiple awards for award to small businesses or subcategories of small business, or permitting a small business to receive a multiple award contract to compete for only a specified subset of functions on the task or delivery orders issued against the contract)? Should small businesses compete solely against other small businesses for contracts that are “reserved” for small business?
2. Should set-asides be authorized under GSA’s Multiple Award Schedule (MAS) contracts? Should they be required under certain circumstances? Why or why not? What additional steps might be considered to increase small business participation on the Schedules? (Note: GSA has created a new section of its GSA MAS website focused on small business contracting at <http://www.gsa.gov/portal/content/202261>. Readers are encouraged to review this site in considering their response to this question).
3. Will small business utilization under "multiple award contracts" including GSA MAS contracts be increased through mandatory or discretionary use of set-asides?
4. If small business set-asides are mandated either at the contract level or ordering level, how will it affect a procuring agency's use of "multiple award contracts" including MAS contracts?

5. If set-asides are applied to "multiple award contracts" including GSA MAS contracts at the order level, what are some of the potential benefits or drawbacks?
6. At what time should small business size be determined for a multiple-award contract – at the time of (1) submission of a proposal for the contract, (2) submission of a quotation for the order, or some combination? What affect would requiring size determinations at the order level have on the procurement process for multiple award contracts?
7. How should the small business requirements (e.g., limitation on subcontracting; non-manufacturer rule) apply to orders set aside for small business?

➤ **Bundling Accountability, Consolidation of Contracts Requirements** (Public Law 111-240 §§ 1312-1313)

Section 1313 of the SBJA provide that an agency may not conduct an acquisition involving contract requirements with a total value of more than \$2,000,000, unless the senior procurement executive or Chief Acquisition Officer for the Federal agency, before carrying out the acquisition strategy--(A) conducts market research;(B) identifies any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements;(C) makes a written determination that the consolidation of contract requirements is necessary and justified;(D) identifies any negative impact by the acquisition strategy on contracting with small business concerns; and(E) certifies to the head of the Federal agency that steps will be taken to include small business concerns in the acquisition strategy. In addition, § 1312 of the SBJA requires agencies to post their rationale for a bundled requirement. In reviewing these provisions, the SBA would like input and suggestions on the following questions:

1. If you are a small business, do you frequently form teams (i.e., when small businesses joint venture or form a prime and subcontractor relationship) for bundled contracts? Do you ever enter into any other types of arrangements besides joint ventures or prime/subcontract relationships to compete for bundled contracts? If so, please describe these arrangements.

➤ **Subcontracting; misrepresentations, plan improvements, and timeliness of payment** (Public Law 111-240 §§ 1321, 1322, 1334).

The SBJA requires the Administrator to establish a policy on small business subcontracting compliance, including assignment of periodic oversight and review responsibilities between contracting offices, small business offices, and program offices (see § 1321). It further provides that for contracts requiring subcontracting plans, a large business contractor must notify the contracting officer in writing when the prime fails to use a small business concern in contract performance that the prime used in preparing the bid or offer (see § 1322). In addition, the SBJA provides that for contracts requiring subcontracting plans, a large business contractor must notify the contracting officer in writing when the prime has been paid, the subcontractor has performed, and the prime's payment to the subcontractor is 90 days past due, or the prime has paid the subcontractor a reduced amount. Finally, the SBJA further provides that a contracting officer may record the identity of a contractor with a history of unjustified, untimely payments in the Federal Awardee Performance and Integrity System (see § 1334). In reviewing these provisions, SBA would like input and suggestions on the following questions:

1. With respect to Section 1321, who is currently responsible for monitoring small business subcontracting plan compliance and performance? Is there a function or office that can better monitor performance and compliance?
2. In implementing sections 1322 and 1334, what factors should SBA take into account to ensure the provision facilitates opportunities for small businesses in a manner that is consistent with economy and efficiency in federal contracting? For example, should the contracting officer be responsible for determining whether a

prime contractor used a particular subcontractor in creating a bid or proposal? Should the contracting officer be responsible for determining whether the subcontractor has satisfactorily completed performance? How should the prime contractor report to the contracting officer? How should the contracting officer use the reported information? Are subcontractors able to report to the contracting officer when a prime contractor fails to utilize a subcontractor or fails to pay a subcontractor, or do prime contractors restrict subcontractors' ability to contact the contracting officer?

3. With respect to section 1334, what, if any, consequences should a prime contractor's late or reduced payment to a small business subcontractor have on that contractor's future ability to receive federal contracts?

➤ **Mentor Protégé Programs for WOSB, HUBZONE, and SDVOSB (Public Law 111-240 §§ 1331-1343).**

The SBA's 8(a) Business Development Program currently authorizes a Mentor-Protégé Program as a tool to aid small Participant firms gain needed business development assistance, including expertise within their specific industries to successfully compete in the marketplace. The SBA authorizes SBA to implement a Mentor-Protégé Program for HUBZone small businesses, service disabled veteran owned (SDVO) small businesses, and women-owned small businesses (WOSB) similar in structure to the current SBA 8(a) Mentor-Protégé Program. SBA is seeking input and suggestions on the following questions:

1. If SBA implements a Government-wide Mentor-Protégé program for HUBZone small businesses, SDVO small businesses and WOSBs, how should these government-wide programs interact with Mentor-Protégé programs sponsored by individual agencies? Should agency-specific Mentor-Protégé programs of other agencies be maintained? What, if any, challenges might this pose?
2. Should the Mentor-Protégé programs be identical for each of the programs (HUBZone, SDVO, WOSB) or should current differences contained in the programs be continued (e.g., HUBZone program regulations currently allow joint ventures for HUBZone contracts only between 2 or more certified HUBZone firms; if continued, a mentor that is not a HUBZone firm could not perform a HUBZone contract as a joint venture with its HUBZone protégé firm)?
3. Are there specific industry sectors where small business development through Mentor-Protégé programs should be focused?
4. What types of incentives should be considered to encourage the formation of Mentor-Protégé relationships? Are there examples of incentives used by other agencies in their Mentor-Protégé programs (other than those requiring additional outlays of funds) that would benefit SBA's program?
5. What metrics should be considered to gauge a successful Mentor Protégé relationship?
6. What controls should be considered to mitigate potential fraud, waste, and abuse in the Mentor-Protégé relationship?
7. Would small businesses be better served if created a Government-wide Mentor-Protégé program to provide oversight and offer best practices, or would small businesses prefer Mentor-Protégé programs for each individual socioeconomic group?

➤ **Presumption of Loss/Misrepresentation and Annual Certification of Size (Public Law 111-240 §§ 1341-1343)**

Section 1341 of the SBA provides that there shall be a presumption of loss equal to the value of the contract, subcontract, grant, cooperative agreement or cooperative research and development agreement set aside or intended for award to a small business when a concern willfully sought and received the award by misrepresentation. Section 1341 also provides that the submission of a bid or proposal for a contract, subcontract, grant, cooperative agreement or



cooperative research and development set aside for small business concerns shall be deemed an affirmative, willful and intentional certification of size or status. Section 1341 further provides that an offer or application for a contract, subcontract or grant shall contain a certification of size or status signed by an authorized official on the same page containing the certification. Finally, Section 1341 also provides that SBA shall promulgate regulations to protect concerns from liability for misrepresentations in the case of unintentional errors, technical malfunctions and other situations. Section 1342 of the SBJA provides that concerns shall update their size or status in federal procurement databases at least annually, and firms that fail to update its status shall no longer be identified as small or some other status in the database. SBA is seeking input and suggestions on the following questions:

1. How does the deemed certification provision interact or relate to the requirement to provide a signature in connection with a size or status representation or certification?
2. How can an individual or firm claim a misrepresentation was unintentional or a technical malfunction when the individual signed a certification that contained the precise size or status being claimed?
3. What effect will the requirement to update size or status in federal procurement databases annually have on multi-year contracts?

FOR FURTHER INFORMATION CONTACT: Richard L. Miller, Small Business Job's Act Tour - Office of Government Contracting and Business Development, 409 Third Street, SW, Washington, DC 20416, at (202) 205-6895; Fax: (202) 481-4291; email: richard.miller@sba.gov.