

GAO Highlights: Key Issues from Select Small Business Contracting Reports

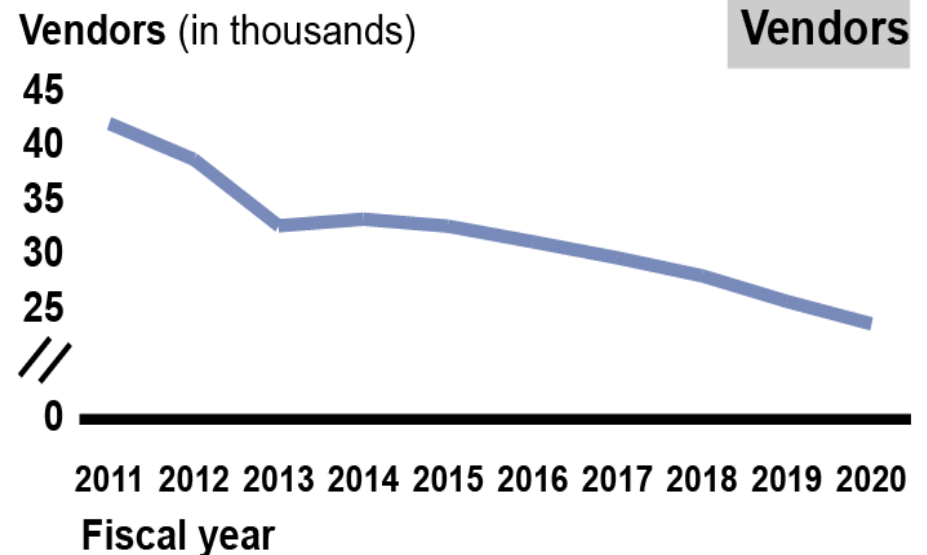
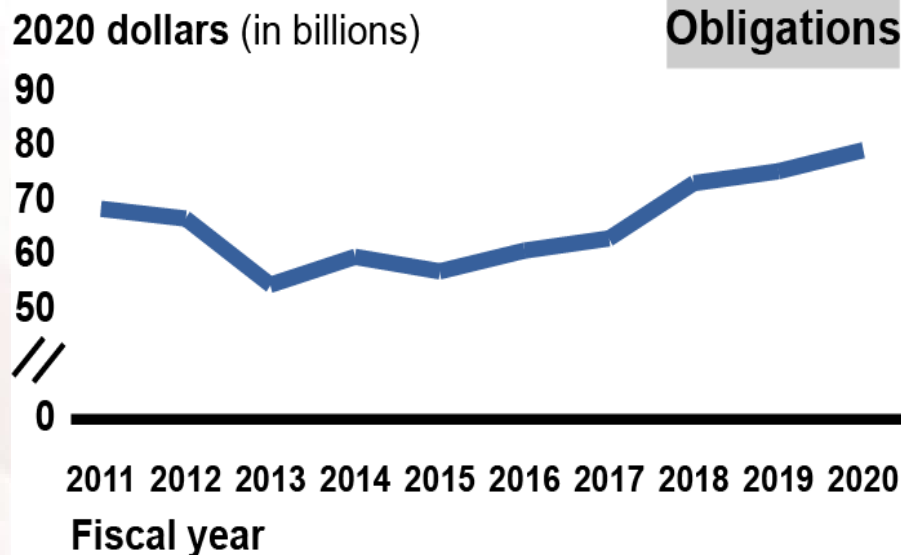


GAO-22-104621

**SMALL BUSINESS CONTRACTING: Actions
Needed to Implement and Monitor DOD's Small
Business Strategy**

What GAO Found

- DOD has consistently met small business contracting goals.
- DOD small business contracting obligations increased since 2011, while the number of vendors declined.

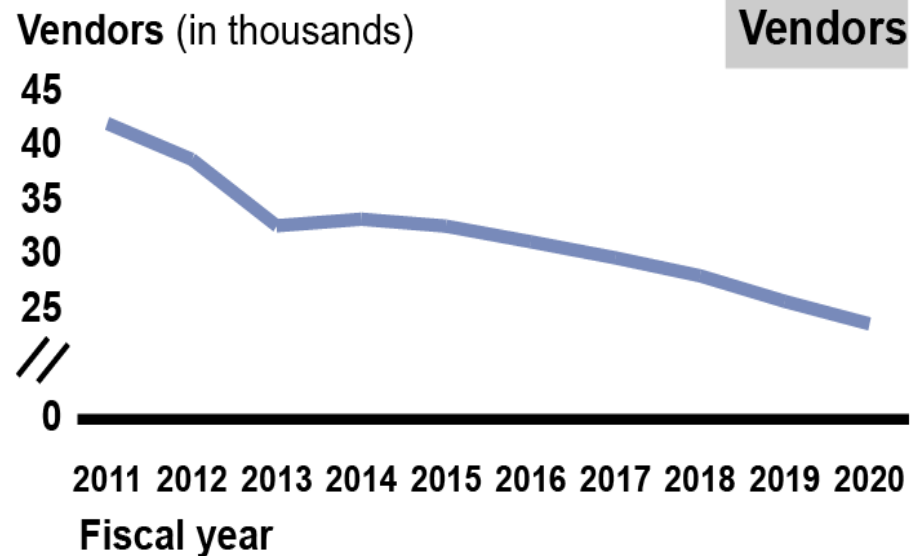
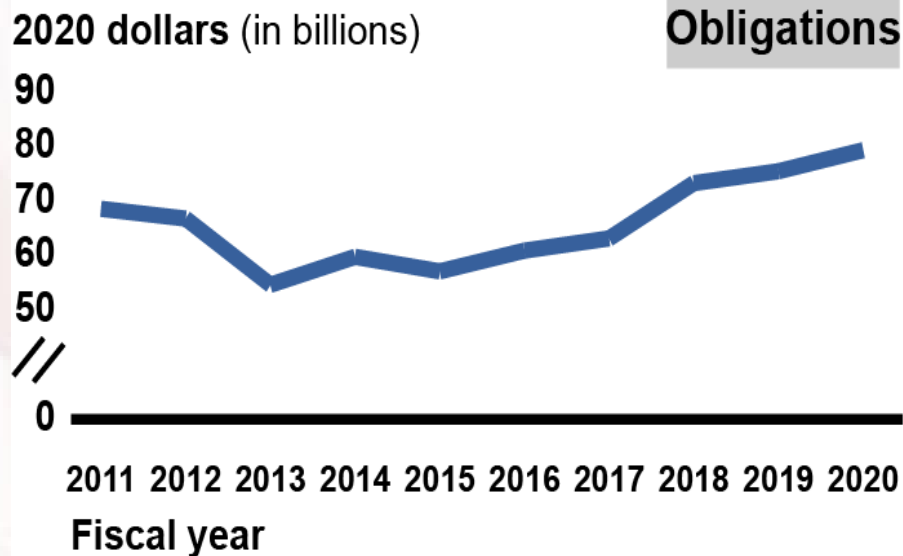


Source: GAO analysis of Federal Procurement Data System data. | GAO-22-104621

What GAO Found

Possible factors:

- Government-wide contracting initiatives consolidating purchases of goods and services.
- Administrative difficulty of working with DOD, including new cybersecurity requirements.



Source: GAO analysis of Federal Procurement Data System data. | GAO-22-104621

What GAO Found

- DOD offices and service branches engage small business contractors through a variety of activities and initiatives.
- DOD's **2019 Small Business Strategy** described some of these efforts and initiatives to improve the effectiveness of DOD's small business programs. However...
 - Lacked mechanisms to implement the strategy
 - No policy to implement a unified management structure to formalize coordination between USD for Acquisition and Sustainment and the USD for Research and Engineering
 - No formal process for monitoring and reporting on the implementation of its Small Business Strategy.

Recommendations

- GAO recommended that DOD...
 - develop an implementation plan for its Small Business Strategy;
 - develop a policy to guide the implementation of a unified management structure; and
 - establish a formal process by which DOD can monitor and report on its progress in implementing the Small Business Strategy.

Thank You

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GAO-20-464

SMALL BUSINESS SUBCONTRACTING: Oversight of Contractor Compliance with Subcontracting Plans Needs Improvement

Background

- Report provides results on GAO's audit covering the following:
 - Extent to which selected agencies conduct oversight related to small business subcontracting plans in the pre-award phase of the federal contracting process;
 - Extent to which selected agencies conduct oversight of such subcontracting plans in the post-award phase; and
 - *Steps SBA has taken to encourage agencies to conduct oversight related to small business subcontracting plans.*
- Conducted work from January 2019 to May 2020

Methodology

- Reviewed requirements for reports contractors submit on their subcontracting activities, and corresponding agency oversight requirements for the submitted reports.
- Judgmentally selected two military agencies and two civilian agencies for review:
 - Defense Logistics Agency (DLA)
 - Department of the Navy (Navy)
 - General Services Administration (GSA)
 - National Aeronautics and Space Administration (NASA)

Methodology

- Agencies selected based on factors including:
 - Type (military or civilian)
 - Dollar amounts of federal contracts awarded in fiscal years 2016–2018.
- Reviewed documentation for a non-generalizable sample of 32 contracts—8 per agency—awarded in fiscal years 2016–2018.
 - 26 contracts had subcontracting plans; 6 did not
 - Randomly selected contracts from a set of contracts that met several criteria, such as contract award amounts above \$1.5 million.

Methodology

- Reviewed pre-award and post-award documentation.
- Reviewed reports on contractor submissions on small business subcontracting activity and agency reviews of the submissions from the Electronic Subcontracting Reporting System (eSRS).
 - Individual Subcontracting Report (ISR)
 - Summary Subcontract Report (SSR)
- Interviewed officials from each agency about their efforts related to oversight of small business subcontracting plans.

What GAO Found (Pre-Award)

- Agencies demonstrated that contracting officers reviewed and approved subcontracting plans in most of the contracts in our sample.
 - *FAR §§ 19.705-4 and 19.705-5 contain contracting officer responsibilities related to reviewing a proposed subcontracting plan and determining its acceptability.*
 - 25 of the 26 contracts we reviewed with a subcontracting plan had documentation showing the contracting officer reviewed the subcontracting plan.
- DOD's guidance on subcontracting program business rules and processes contains a specific (*optional*) checklist for subcontracting plan reviews.

What GAO Found (Pre-Award)

- Some agencies could not demonstrate they followed procedures for making a determination of subcontracting possibilities for the 6 contracts we reviewed without a subcontracting plan.
 - Issues – no documentation explaining lack of subcontracting plan; documentation prepared years later
 - DLA contracts we reviewed had appropriate documentation.
 - *We did not review Navy contracts without a subcontracting plan because the two Navy contracts we had selected for this component of our review ended up having a subcontracting plan.*

What GAO Found (Pre-Award)

- Agencies could not demonstrate they followed procedures related to SBA procurement center representative (PCR) reviews in about half of the contracts reviewed.
 - PCRs may review small business subcontracting plans and provide recs for improving small business participation.
 - When awarding a contract that includes a subcontracting plan, contracting officers are required to notify PCRs of the opportunity to review the proposed contract.
 - DLA and Navy – 5 of 6 contracts (at each agency) with subcontracting plans lacked appropriate documentation.

What GAO Found (Post-Award)

- Agencies provide periodic training to contracting officers related to monitoring subcontracting plans.
- FAR § 19.705-6(f) requires contracting officers to monitor the prime contractor's compliance with subcontracting plans.
 - Ensure subcontracting reports (ISRs and, where applicable, SSRs) are submitted in eSRS in the required time frames.
 - Contracting officer review of ISRs and SSRs in required time frames; acknowledge receipt and accept or reject the reports.

What GAO Found (Post-Award)

- Contracting officers did not ensure contractors met their subcontracting reporting requirements for more than half of the 26 contracts we reviewed with a subcontracting plan.
- DLA
 - Five of the six contracts we reviewed did not have all of the required ISR or SSR contractor submissions.
 - Examples of issues - the agency could not explain why the reports were missing for two contracts; contractors were not aware of the SSR reporting requirement for two other contracts (according to DLA).

What GAO Found (Post-Award)

- Navy
 - Four contracts we reviewed did not have all the required report submissions.
 - Examples of issues – contractor reports were submitted in initial year of contract but then stopped; SSRs missing for three contracts.
 - Navy officials could not explain missing submissions.
- We found similar issues with NASA's contracts. GSA's contracts had all required report submissions.

What GAO Found (Post-Award)

- Officials from all four agencies told us they conduct some type of periodic review related to oversight of subcontracting plans.
 - Reviews may examine compliance with the subcontracting plan and related reporting requirements.
 - In some of these reviews, the agencies had similar findings to GAO's.
- In 2018, DOD OIG also had similar findings regarding oversight of contractor compliance with subcontracting plan requirements, including contractor reporting requirements.

What GAO Found (Post-Award)

- Incorrect information submitted in subcontracting reports:
 - 21 of the 26 contracts we reviewed specifically required contractor ISR submissions (contain information on approved subcontracting goals and progress).
 - For 9 contracts, the contracting officers accepted one or more submissions with errors or unexplained conflicting information related to subcontracting plan goals.
 - *Example: subcontracting goal submitted by contractor in ISR did not match the agreed upon goal in contract.*
 - All nine contracts lacked explanations of the discrepancies in the ISR or other documentation we reviewed.
 - DLA (2 out of 4 contracts); Navy (2 out of 6 contracts).

Recommendations

- Key recommendations for agencies:
 - Include a step for the opportunity for PCR review of the proposed contract and subcontracting plan; develop a mechanism for documenting whether the opportunity for PCR review was provided.
 - Take steps to fulfill the requirement that contracting officers ensure that subcontracting reports are submitted by contractors in a timely manner.
 - Take steps to ensure contracting officers compare subcontracting goals in contractor report submissions to goals in the approved subcontracting plan and address any discrepancies.

Final Thoughts

- Improved monitoring of submitted contractor reports on subcontracting activities would identify errors in the submissions and increase agencies' ability to assess contractor performance.
- Given the many responsibilities of contracting officers, steps to ensure that contractor report submissions on meeting subcontracting goals are accurate would assist agencies' oversight efforts.

Thank You

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GAO-24-106225

SMALL BUSINESS SUBCONTRACTING: Some Contracting Officers Face Challenges Assessing Compliance with the Good Faith Standard

Background

- When is a small business subcontracting plan required?
 - Federal prime contractors who are not small businesses themselves are required to have small business subcontracting plans for contracts that exceed \$750,000 (or \$1.5 million for construction contracts), when subcontracting opportunities exist.
- What is the good faith standard?
 - The good faith standard requires contractors to make a good faith effort to achieve negotiated small business subcontracting goals included in subcontracting plans.
 - Examples of good faith efforts include conducting market research to identify potential small business subcontractors and soliciting small businesses early in the acquisition process to allow them time to submit an offer.

Methodology

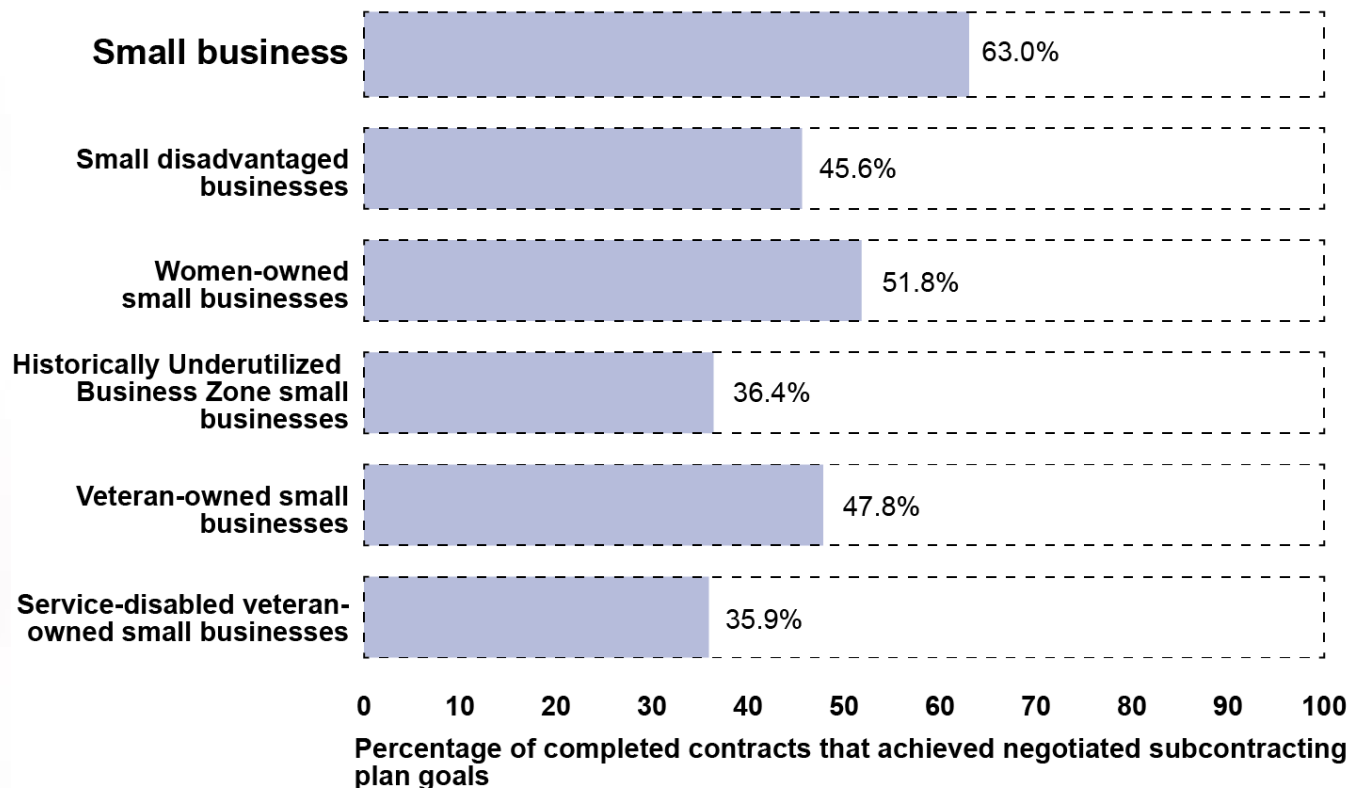
- Reviewed how contracting officers assess contractors' compliance with the good faith standard, the extent to which they find contractors noncompliant, and the benefits and challenges associated with good faith standard assessments.
- Judgmentally selected two military agencies and four civilian agencies for review:
 - Department of the Air Force (Air Force)
 - Department of the Army (Army)
 - Department of Homeland Security (DHS)
 - Department of Health and Human Services (HHS)
 - Department of Veterans Affairs (VA)
 - National Aeronautics and Space Administration (NASA)
- Randomly selected two contracting activity offices at each agency for further review, then interviewed office leadership and conducted small-group, semi-structured interviews with contracting officers.

What GAO Found

- Contracting officials said it is difficult to determine that a contractor has not made a good faith effort because doing so requires evidence that the contractor has acted willfully or intentionally in not complying with the subcontracting plan.
- Contracting officials said they rarely identify a contractor who is not achieving the goals of its small business subcontracting plan.
 - Explanations provided:
 - Collaborative approach
 - Focus on the future
 - Effective planning
 - Effect on future bids

What GAO Found

- SBA data from eSRS on governmentwide contracting for contractors who submitted final ISRs in fiscal year 2022.



Source: GAO analysis of Small Business Administration data. | GAO-24-106225

What GAO Found

- It is difficult to explain the differences between the contracting officers' experiences and the governmentwide data.
 - Non-generalizable selection of contracting officers.
 - Data generally are not broken down by agency.
 - Five of six agencies in our review did not fully collect, review, and report data on the extent to which contractors achieve their subcontracting plan goals.
 - NASA directed each of its contracting activity offices to submit annual reports to the agency's Office of Small Business Programs.
 - The Small Business Act, as amended, requires each contracting agency to collect and report data on the extent to which contractors achieve the goals and objectives of their subcontracting plans.

Recommendations

- Recommendation for agencies:
 - Agencies should periodically collect, review, and report data on the extent to which contractors achieve the goals and objectives of their subcontracting plans.
- Recommendation for SBA:
 - SBA should develop and implement actionable steps to ensure compliance with the statutory requirement to include agency-level data in its annual report to Congress on status of small business subcontracting plan goals.

What GAO Found

- There are benefits of the standard for small businesses. However, there are also challenges for COs as they apply it.

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- **Benefits**
 - Additional focus on small businesses
 - Flexibility
- **Challenges**
 - Flexibility can lead to different interpretations.

What GAO Found

- To address this issue, SBA regulations and the FAR include a nonexclusive list of examples of positive and negative activities contractors may conduct related to a contractor's good faith efforts.

Positive examples of good faith effort

- Breaking out work into economically feasible units to facilitate small business participation.
- Conducting market research to identify potential small business subcontractors through all reasonable means.
- Soliciting small businesses early in the acquisition process to allow them sufficient time to submit a timely offer for the subcontract.
- Providing interested small businesses with adequate and timely information about plans, specifications, and requirements for performance of the prime contract to assist them in submitting a timely offer for the subcontract.

Negative examples of good faith effort

- Failure to submit an acceptable Individual Subcontracting Report or Summary Subcontracting Report in the Electronic Subcontracting Reporting System by the report due dates.
- Failure to designate and maintain a company official to administer the subcontracting program and monitor and enforce compliance with the plan.
- Failure to pay small business subcontractors in accordance with the terms of the contract with the prime contractor.
- Failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan including subcontracting flowdown requirements.

What GAO Found

- There are benefits of the standard for small businesses. However, there are also challenges for COs as they apply it.
- **Benefits**
 - Additional focus on small businesses
 - Flexibility
- **Challenges**
 - Flexibility can lead to different interpretations.
 - Exposure to small business subcontracting plans can vary.

Recommendations

- Recommendation for agencies:
 - Agencies should work with relevant contracting staff, such as small business specialists, to develop and implement just-in-time training for contracting officers related to good faith assessments.

Thank You

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GAO-19-523

FEDERAL CONTRACTING: Awards to Mid-Sized Businesses and Options for Increasing Their Opportunities

Background

- Small businesses that have received federal contracts set asides may outgrow the size standards the SBA uses to define small businesses.
- Businesses, which have outgrown the SBA standards, are unable to take advantage of the Federal set-aside contracting opportunities but cannot compete with large corporations for federal contracts.
- What happens when businesses grow to mid-size and the various small business set-asides are not available to them?

Background

- In 2019, GAO looked at how the volume of small businesses, which had previously received set aside opportunities, grew to mid-size and the potential options for increasing federal contracting opportunities for mid-sized businesses.
- The report did not include any recommendations for agencies.

A Very Small Number of Small Businesses That Grew to Mid-Size Continued to Obtain Federal Contracts

- We found most small businesses awarded set-aside contracts in 2017 were well below SBA size standards.
- From fiscal year 2008 through 2017, very few small businesses that were awarded set-aside contracts grew to be mid-sized and continued to receive contracts.

A Very Small Number of Small Businesses Grew to Mid-Size Continued to Obtain Federal Contracts

- Of the 5,339 small businesses awarded set-aside contracts in fiscal year 2008 and awarded any sort of federal contract (including set-aside or competed) in 2013, 104 became mid-sized by fiscal year 2013.
- Of those 104 businesses, 23 remained mid-sized through 2017 and won 75 contracts. Another three businesses became large and won six contracts.

Possible Options for Assisting Mid-Sized Businesses to Secure Federal Contracts Varied

- We interviewed a number of stakeholders, including small and mid-sized businesses; researchers, who wrote on issues related to federal contracting; Directors of Offices of Small and Disadvantaged Business Utilization at the Departments of Defense and Homeland Security and General Services Administration; and trade associations representing small and mid-sized businesses.
- The stakeholders identified three potential options to assist mid-sized businesses in the federal contracting arena:
 - Establishing a set aside for mid-sized business;
 - Modifying the rules for multiple awards contracts; and
 - Changing the past performance.

Establishing a Set Aside for Mid-Sized Business

- A mid-sized set-aside program could increase contracting opportunities but affect other businesses and agencies
 - Stakeholders cited more limitations than benefits for agencies and small businesses if this option was implemented:
 - Benefits: Agencies could benefit from having a larger supplier base and more choices for services and products.
 - Disadvantages: The new set aside would take away opportunities for small business resulting in fewer federal contracts for small businesses; have limited impact on mid-sized businesses; and would increase agency burden, including additional time and cost to define and implement the new set-aside.

Modifying the Rules for Multiple Awards Contracts

- Small businesses on the restricted track of a multiple-award contract that outgrow the contract's small business size standard could be moved to the unrestricted track. This practice can be referred to as “on-ramping.”
- Stakeholders cited a few benefits and disadvantages for agencies:
 - Benefits: Agencies would benefit from being able to retain contractors even if the contractors outgrew their size standard and increase contracting opportunities for growing small or mid-sized businesses.
 - Disadvantages: A federal agency may need a longer timeframe for evaluating proposals for unrestricted task order competitions if the pool of competitors grew.

Changing Past Performance Requirements

- Stakeholders suggested changing past performance requirements could increase prime contracting opportunities for mid-sized and small businesses but could increase risk for federal agencies.
 - Nearly all the stakeholders we interviewed said that lowering quantitative requirements would increase contracting opportunities for mid-sized businesses, small businesses, or both.
 - However, several stakeholders told us lowering the quantitative requirements for past performance would increase the risk to the agency of awarding contracts to firms that cannot successfully complete the project.

Thank You

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GAO-20-462

SMALL BUSINESS CONTRACTING: Better Documentation and Reporting Needed on Procurement Center Representatives

Role of Procurement Center Representatives (PCR)

- PCRs play an important role in helping small businesses gain access to federal contracting and subcontracting opportunities.
- PCRs' key responsibilities include reviewing proposed agency contracts, making set-aside recommendations to agency contracting officers, reviewing agency small business programs, and counseling small businesses.
- PCRs also provide advice and recommendations to contracting officers on large prime contractors' proposed subcontracting plans.

Objectives

- GAO's report addressed (1) the documentation SBA maintains on PCR activities; (2) PCR staffing levels and assignments and the extent to which SBA has met its requirement to report to Congress on PCR staffing; and (3) challenges PCRs face in carrying out their activities and their views on the information, training, and supervisory support they receive from SBA.

Key Findings

- SBA does not maintain complete documentation to support data on the activities of procurement center representatives (PCR), which is information used to oversee PCRs and assess their performance.
- SBA area offices generate a monthly report that summarizes data on PCRs' activities and accomplishments, and SBA procedures require PCRs to maintain these reports and the supporting documentation. GAO found that they do not consistently do either.
- SBA said the agency recently implemented a new database and established a policy requiring the monthly reports to be maintained in the database. However, SBA has not established a centralized means of maintaining the supporting documentation.
- A central repository for PCRs to store their supporting documentation would provide greater assurance that the documentation is maintained as required and help SBA verify the accuracy of the data PCRs report on their activities.

Key Findings

- SBA assigns PCRs to buying activities, divisions in federal agencies that purchase goods and services based on geographic coverage and other factors. Specifically, PCRs are assigned
 - within one of six regional areas to ensure geographic coverage,
 - at specific federal agencies, and
 - at buying activities that have significant opportunities for small business contracting.

Key Findings

- SBA has not submitted required reports to Congress on its rationale for assigning PCRs to cover buying activities. The Small Business Act, as amended, requires that SBA submit a report (1) identifying each area for which SBA has assigned a PCR, (2) explaining why SBA selected the areas for assignment, and (3) describing the activities performed by PCRs.
- SBA was required to submit the first report to Congress by December 26, 2010, and subsequent reports every 3 years thereafter. SBA officials told GAO they were not aware of the reporting requirement.

Recommendations

- GAO recommended that SBA (1) develop a central repository for PCRs to store the supporting documentation for the data they report on their activities and (2) ensure that it submits required reports to Congress on PCRs' assignments and activities.
 - SBA implemented both recommendations. For example, in February 2021, SBA required Procurement Center Representatives (PCR) to begin using a PCR data repository the agency developed as the official records retention site for SBA's Prime Contracts Program. PCRs are required to maintain two logs in the repository—one for agency coordination and one for outreach/counseling. PCRs also are required to enter, upload, and maintain data in the repository no later than five business days after the end of the previous month.
 - SBA also submitted its required triennial report to Congress on Procurement Center Representative (PCR) and Commercial Market Representative (CMR) positions and assignments in January 2021. The report (1) identified each area for which SBA has assigned a PCR or CMR, (2) explained why SBA selected the areas for assignment, and (3) described the activities performed by PCRs and CMRs.

Thank You

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