

**Mar 10, 2010**

**Federal court gives HUBZone program priority**

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**The Small Business Act makes it mandatory, not optional, to give HUBZone companies a preference over other small businesses, a judge rules**

By [Matthew Weigelt](#)

A federal judge has thrown a wrench into the Obama administration's small-business contracting policy by ruling that agencies must give priority to businesses in economically depressed areas when setting aside contracts for small businesses.

**The U.S. Court of Federal Claims determined that the Small Business Act requires contracting officers to consider companies in the Small Business Administration's Historically Underutilized Business Zone (HUBZone) program before opening contracts to firms in the 8(a) and service-disabled, veteran-owned small business set-aside programs.**

The Obama administration had argued that the HUBZone preference was simply an option available to contracting officers, but not a requirement. But Federal Judge Emily Hewitt disagreed, noting the text of the provision left little room for debate. "The court interprets the language of the HUBZone competition provision—'shall be awarded'—to be mandatory," the judge wrote in an opinion released March 2.

The case involved Mission Critical Solutions, a HUBZone company that had protested the Army's award of a one-year, \$3.45 million sole-source contract to Copper River Information Technology, a company owned by Alaska Natives. Mission Critical argued that the Army had failed to consider whether at least two HUBZone businesses would bid on the contract.

Hewitt's ruling affirms the Government Accountability Office's bid protest decisions in 2008 and 2009 that gave preference to HUBZone small businesses. The two GAO decisions contradicted SBA's long-standing interpretation that the agency's procurement programs should be treated equally when it comes to awarding contracts.

After last year's case involving Mission Critical Solutions, Peter Orszag, director of the Office of Management and Budget, told contracting officers to disregard GAO's decision. The decision had been written by then-GAO acting general counsel Daniel Gordon, who is now the administrator for federal procurement policy at OMB.

SBA still believes in its interpretation.

"SBA has consistently interpreted the Small Business Act to provide that federal contracting officers are to choose equally among all of SBA's procurement and business development programs, without giving one preference over the others. This is the rule of 'parity' between the programs," Jonathan Swain, SBA's associate administrator for the Office of Communication and Public Liaison, said in a statement March 9 statement.

As agency officials review the court's decision, "SBA will continue to present its views in that matter and in all ongoing judicial proceedings involving interpretation of the Small Business Act," he said.

This debate over priority has spurred members of Congress recently to change the HUBZone program's language in the law from "shall" to "may."

The Senate approved an amendment to the fiscal 2010 National Defense Authorization Act that would have taken any priority away from the HUBZone program. However, the amendment was stripped before the bill became law. Senators and House members have also introduced bills to make all the small-business programs equal, but none have made it to a vote.

“During these difficult economic times, it is imperative that small-business contractors possess an equal opportunity to compete for federal contracts on the same playing field with each other,” Sen. Olympia Snowe (R-Maine), ranking member of the Small Business and Entrepreneurship Committee, said on March 8. Snowe introduced a parity bill in July 2009. She also said the court’s ruling “highlights the critical need to enact small-business contracting parity once and for all.”

Justice Department lawyers argued before Hewitt that reaction by Senators and House members against GAO’s Mission Critical decision justifies SBA’s and the administration’s interpretation. However Hewitt wrote, “Congress’s statements about the proper interpretation of a statute subsequent to the statute’s passage are of little persuasive authority.”

## **March 2, 2010**

### **SBA Proposes Women-Owned Small Business Rule to Expand Access to Federal Contracting Opportunities**

WASHINGTON - The U.S. Small Business Administration today released a proposed rule aimed at expanding federal contracting opportunities for women-owned small businesses (WOSB). The proposed rule is available for public comment for 60 days. This proposed rule identifies **83 industries in which WOSBs are under-represented** or substantially under-represented in the federal contract marketplace. This differs from an earlier proposed version of the rule which identified only four industries in which women-owned small businesses were under-represented. The proposed rule allows women-owned small businesses to self-certify as "WOSBs" or to be certified by third-party certifiers, including government entities and private certification groups.

**The proposed rule requires WOSBs which self-certify to submit a robust certification at the federal ORCA Web site and also to submit a core set of eligibility-related documents to an online "document repository" to be maintained by the SBA.**

The public may submit comments to this proposed rule up until close of business **on May 3, 2010**, to [www.regulations.gov](http://www.regulations.gov), where they will be posted after 4 p.m. EST today, or by mailing them to Dean Koppel, Assistant Director, Office of Policy and Research, Office of Government Contracting, U.S. Small Business Administration, 409 3rd St. SW, Washington, DC 20416. Reference RIN 3245-AG06 when submitting comments.

More information go to [www.sba.gov/news](http://www.sba.gov/news)

## **February 9, 2010**

### **VA tightens rules for veterans contracting program**

By Robert Brodsky [rbrodsky@govexec.com](mailto:rbrodsky@govexec.com)

**The Veterans Affairs Department has set strict guidelines for bidding on contracts set-aside for veteran-owned small businesses.**

**Entrepreneurs will be allowed only one company at a time in the contracting program and must work full time in the business, according to a final rule published on Monday in the *Federal Register*.**

A May 2008 interim rule only required participants to "show sustained and significant time invested in the business." But comments on the proposal convinced agency officials to limit consideration to veteran-owned small businesses in which the owner has a day-to-day management role. Though the rule is final, VA is accepting comments on the owner-involvement change through March 10.

"VA has determined that this revision will ensure the integrity of the program," the rule stated. The regulation implements portions of the 2006 Veterans Benefits, Health Care and Information Technology Act and governs entry to a [VA set-aside contracting program](#) for veteran-owned and service-disabled veteran-owned small businesses, established in December 2009. The program would allow the department to let sole-source contracts to these firms, for awards of up to \$5 million.

To participate in the program, companies must register with the [VetBiz.gov Vendor Information Pages database](#) to verify they meet all eligibility requirements. Any company that misrepresents itself in the database could face debarment for up to five years. The department's Center for Veterans Enterprise will make the final decision on application denials.

"Any firm registered in the VA VetBiz VIP database that is found to be ineligible due to an SBA protest decision or other negative finding will be immediately removed from the VetBiz VIP database," the final rule stated.

Previously, vendors could self-certify the accuracy of the information provided. But now, officials with the Center for Veterans Enterprise must verify the data as part of the VetBiz application process. There are nearly 16,000 veteran-owned small businesses in the VetBiz database, including about 9,000 service-disabled veteran-owned small businesses. But, VA said it does not have the resources to conduct site visits to all firms applying to participate in the program.

"VA finds that mandatory site visits could be an unnecessary burden to vendors when VA can adequately verify firms through other means, such as document review," the rule stated. "The department will monitor awards to companies in the verification program and make decisions on which companies to inspect using a combination of factors, including staffing and funding."

Veteran-owned and service-disabled veteran-owned small businesses also must recertify their status annually to remain in the program.

**In October, the [Government Accountability Office](#) released a [report](#) showing the government wide service-disabled, veteran-owned small business contracting program was vulnerable to fraud and abuse.** By conducting 10 case studies, the watchdog agency found \$100 million in contracts had been collected through fraud or abuse of the program.

VA awarded 35 percent of its fiscal 2008 contract dollars to small companies, including 15 percent to veteran-owned small firms and 12 percent to service-disabled veteran-owned small businesses. In contrast, the government as a whole awarded 3 percent of contract dollars to veteran-owned firms and just 1.5 percent to small companies owned by service-disabled veterans. The government wide goal in both categories is 3 percent.

## Feb 05, 2010

### Bill would increase oversight of prime-subcontractor relations

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**The bill would pressure companies to keep a clean performance record by paying subcontractors on time**  
By [Matthew Weigelt](#)

A prime contractor's reputation could be tarnished if it fails to pay its subcontractors on time under a newly introduced bill. **Prime contractors would have to notify an agency's contracting officer whenever they reduce payment to subcontractors or when they are three months late in paying them even though the government has paid for the services, according to the Small Business Revitalization Act (S. 2989), which was introduced Feb. 4.** If the payment delays happen, contracting officers would be required to consider the company's failure to pay the subcontractors on time when evaluating the company's past performances as a government contractor, the bill states. Furthermore, contracting officers may require a company with a history of slow payments to subcontractors to enter into a funds control agreement so subcontractors would be paid, according to the bill.

An underlying reason for the bill is aiding small business in today's economy. The bill's sponsor, Sen. Mary Landrieu (D-La.), chairwoman of the Senate Small Business and Entrepreneurship Committee, said government contracting is one of the easiest ways to increase sales for small businesses.

The legislation also makes sure small businesses are actually small. The bill would irrefutably presume that a company stole money from the United States if it lied about its size in order to be awarded a small-business set-aside contract. And a company is saying it is indeed a small business when a company bids or submits a proposal

for a set-aside contract, the bill states. The bill also would require annual certifications of a small business' size or status in the Small Business Administration's Central Contractor Registration database or a similar database.

**December 11, 2009**

### **Veterans to receive priority in VA contract awards**

By Robert Brodsky [rbrodsky@govexec.com](mailto:rbrodsky@govexec.com)

**Small businesses owned by veterans have jumped to the front of the line for Veterans Affairs Department contracts.**

**VA published a [final rule](#) in the *Federal Register* on Dec. 8 creating a set-aside contracting program for veteran-owned and service-disabled veteran-owned small businesses.**

The rule, which has been [in development](#) for more than three years, requires VA contracting officers to set aside procurements between \$100,000 and \$5 million if they expect two or more eligible veteran-owned or service-disabled veteran-owned small businesses to submit a fair and reasonable offer. VA contracting officers also will be allowed to let sole-source contracts to these firms, for awards from \$3,000 to \$5 million. "Only a small percentage of veterans own small businesses," the rule states. "With this new procurement authority, additional businesses may be opened by veterans seeking to participate in the sole-source or set-aside procurement actions. More likely, [veteran-owned small businesses] not currently in the federal market may be expected to explore selling to VA."

To participate, companies must register with the [VetBiz.gov Vendor Information Pages database](#) to verify that they meet all eligibility requirements. Any company that misrepresents itself in the database could face debarment for up to five years.

Previously vendors could self-certify the accuracy of the information provided. But now, officials with the VA Center for Veterans Enterprise must verify the data as part of the VetBiz application process. There are nearly 16,000 veteran-owned small businesses in the VetBiz database, including about 9,000 service-disabled veteran-owned small businesses.

**The *Federal Register* notice also requires VA to give small businesses owned and controlled by veteran's priority over all other socioeconomic groups, such as firms in historically underutilized business zones and small disadvantaged businesses. Prime contractors that propose using veteran-owned firms as subcontractors also must receive preference.** Congress has not yet authorized a similar procurement program government wide.