



Testimony

An Examination of SBA Programs: Eliminating Inefficiencies, Duplications, Fraud and Abuse

Kevin M. Baron
Director of Government Affairs
American Small Business League

Senate Committee on Small Business and Entrepreneurship
The Honorable Mary Landrieu, Chair

June 16, 2011

Thank you Madam Chairwoman Landrieu, Ranking Member Snowe and committee members for drawing attention to these important small business issues, and for the opportunity to speak before you today.

My name is Kevin Baron, Director of Government Affairs for the American Small Business League (ASBL), an independent small business advocacy organization focused on creating the greatest opportunities for small businesses to work with the federal government, and on ending the diversion of billions of dollars a month in federal small business contracts to large corporations. The ASBL reaches a constituency of approximately 100,000 small businesses nationwide, the majority of whom are small federal contractors or small businesses wanting to work with the federal government.

Considering the current economic climate, small businesses are a vital asset to the U.S. economy. We must ensure is not only provided all possible help, but the greatest opportunity to effectively work within the federal marketplace.

According to the latest data from the U.S. Census Bureau, small businesses are currently creating over 90 percent of all net new jobs. Furthermore, small businesses are responsible for over half of GDP and more than 50 percent of the non-farm private sector workforce. Historically, small businesses have driven our nation's job creation, and created the economic growth necessary to pull America out of times of recession.

This is key to understanding the important role small business contracting programs play in the health of our nation's economy.

In 2005, the Small Business Administration Office of Inspector General (SBA IG) released Report 5-15 stating, "One of the most important challenges facing the Small Business Administration (SBA) and the entire Federal Government today is that large businesses are receiving small business procurement awards and agencies are receiving credit for these awards." For the past six consecutive years, the SBA IG continues to list the same issue as one of the agency's top management challenges.

In addition to Report 5-15, since 2003 a series of federal investigations have uncovered rampant fraud and abuse in small business contracting programs. This fraud and abuse has materialized in the diversion of billions of dollars a year in small business contracts to: large companies, Fortune 500 firms, multinational corporations and businesses otherwise not qualified as small. To further illustrate the magnitude of the problem, the ASBL has conducted a series of investigations into contracting data, as provided by the government's own Federal Procurement Data System – Next Generation (FPDS-NG). FPDS-NG is a repository of federal contracting data maintained by the General Services Administration (GSA). Using data pulled directly from FPDS-NG, the ASBL was able to conduct analyses of the top 100 recipients of federal small business contracts for the past three fiscal years (FY).

- During FY 2008, the ASBL found 60 out of the top 100 recipients of federal small business contracts were actually large businesses. Those 60 firms received \$9.7

billion in small business contracts or 64.36 percent of the total dollars the government claimed to have awarded to small businesses.

- During FY 2009, the ASBL found much of the same with 61 large businesses in the top 100 recipients of federal small business contracts, which received \$10.7 billion in small business contracts or 64.5 percent.
- Recently, the ASBL completed its initial analysis of the government's FY 2010 small business contracting data, and found 52 large corporations in the top 100 recipients of federal small business contracts, which received \$9.5 billion in small business contracts or 59.5 percent of contracts the government claims to have awarded to small businesses.

The ASBL's investigations into the recipients of small business contracts have yielded household names such as: Lockheed Martin, Raytheon, L-3 Communications, AT&T, Hewlett-Packard, 3M Corporation, General Dynamics, Xerox, Office Depot, Honeywell, Harris Corporation, and ManTech Corporation. Additionally, foreign-owned companies such as British Aerospace Engineering (BAE), Rolls-Royce, QinetiQ, Finmeccanica (Italy), Ssangyong Corporation (South Korea), and Thales Communications (France) have received federal small business contracts.

To further compound the issue, the ASBL has uncovered the yearly awarding of a significant volume of contracts to generic categories such as "Miscellaneous Foreign Contractors," "Small Business Consolidated Reporting," and "Classified Domestic Contractor." Companies classified into these generic categories have received hundreds of millions of dollars in federal contracts with little oversight or accountability. These contract dollars are annually included in the federal government's small business goaling achievement. ASBL requests under the Freedom of Information Act (FOIA) have indicated that there is no government wide monitoring of the awarding of contracts to these generic categories and no public accountability.

Based on these federal investigations, and the ASBL's own internal research, we have long maintained that between 50 and 80 percent of all federal contracts the government claims to have awarded to small businesses actually went to businesses that were not small at the time of award. This equates to more than \$100 billion a year, and an aggregate total of more than \$1 trillion over the last decade. This also equates to a significant shortfall in the government's achievement of the congressionally mandated 23 percent small business procurement goal on a year-to-year basis.

Adding to the government's shortfall of the 23 percent goal is the loss of an average of \$100 billion in contracts through SBA reporting methods that fail to adhere to the Small Business Act. Section 15(g)(1) of the Small Business Act clearly states, "The Government-wide goal for participation by small business concerns shall be established at not less than 23 percent of the total value of all prime contract awards for each fiscal year." However, the SBA calculates the government's small business goal based on "small business eligible" actions and dollars. We are not aware of a legal basis for this

method. For example, in Fiscal Year (FY) 2009, the SBA reported that the government awarded approximately \$96 billion to small businesses out of a total \$442 billion, when in fact, according to FPDS-NG, the total dollar volume of prime contracts awarded in FY 2009 was approximately \$545 billion. Twenty-three percent of \$545 billion is \$125 billion, whereas the SBA claimed that \$96 billion was just under 22 percent. By simply taking into account the omitted \$103 billion in prime contracts, the government's claimed small business goaling achievement drops by 5 percent, to 17 percent.

Small business contracting programs run through the SBA can be credited with helping millions of small business achieve success. This success translates to real economic growth and job creation at a local level. Without these programs, scores of minority-owned, woman-owned, economically disadvantaged, and veteran-owned businesses would not have been able to grow into thriving economic successes. As we address issues of fraud, abuse and problems within federal small business contracting programs, I must stress again, the vital importance these programs play, not just to small businesses, but to the U.S. economy as a whole.

In these tough economic times, recent discussion in Washington has focused on fiscal responsibility. Small business contracting programs are one major answer. As previously stated, the latest U.S. Census Bureau data shows that small businesses create over 90 percent of all net new jobs. Federal small business contracting programs are a deficit-neutral means of creating jobs and stimulating economic growth. The program infrastructure is in place, and that infrastructure has already been paid for. That said, the ASBL is a major proponent of maximizing the effectiveness of government small business contracting programs by simply ensuring that small businesses are getting the 23 percent of federal funds directed to them by federal law.

The fact is that the government does not make computers, construct buildings or create any of the thousands of goods and services that are contracted for annually. Every federal agency has a procurement budget in place, thus the money is already budgeted to be spent regardless. That is why the small business contracting programs and meeting or exceeding the 23 percent goal is a deficit neutral and vital economic tool to drive demand and growth.

Senator Landrieu, in February of last year you said, "Government contracts are perhaps one of the easiest and most inexpensive ways the government can help immediately increase sales for America's entrepreneurs, giving them the tools they need to keep our economy strong and create jobs. By increasing contracts to small businesses by just 1 percent, we can create more than 100,000 new jobs – and today, we need those jobs more than ever." I could not agree more.

The ASBL's research into the actual recipients of federal small business contracts suggests that the government has consistently failed to award more than 5 percent of the total value of all federal contract dollars to small businesses. This represents an 18 percent shortfall from the government's 23 percent goal, and a stark contrast from the SBA's claims that it awarded small businesses 21.5 percent during FY 2008, and 21.89

percent during FY 2009. With the aforementioned shortfall in mind, the ASBL has estimated that ending fraud and abuse in small business contracting programs, and meeting the congressionally mandated 23 percent small business procurement goal would create more than 1.8 million jobs.

It is our understanding that some agency and SBA employees believe that the government's 23 percent small business goal is not achievable. I am here to tell you that that belief could not be further from the truth. In fact, the government's small business goal could be achieved or surpassed by implementing a series of targeted reforms to small business programs. The following steps could be taken to easily achieve, and or surpass the government's small business goals:

1. Pass a Senate companion bill to the Fairness and Transparency in Contracting Act. Congressman Hank Johnson (D-GA-4) previously introduced the bill in the 111th Congress. Specifically, the bill would clarify the definition of a small business as stated in the Small Business Act by including the additional requirement that no publicly traded business concern be qualified as a small business. This would mean that a publicly traded business concern, subsidiary of a publically traded business concern, foreign owned business concern, or subsidiary of a foreign owned business concern could no longer be counted as a small business for the purpose of government contracting and subcontracting, including for procurement goals. The ASBL is confident that the passage of the Fairness and Transparency in Contracting Act would end the diversion of billions of dollars a year in federal small business contracts to corporate giants, and redirect those funds to the nation's small business community, creating vital economic growth in every state and a multitude of jobs.

In addition, the bill would strengthen enforcement – requiring timely action on complaints and at least a five-year debarment for a firm that falsely claims to be a small business. It also allows any person to file a complaint with the SBA, and the affected federal agency, if the person feels a small business contract was improperly awarded. Finally, the bill requires the SBA to submit an annual report to Congress detailing the nature of the complaints and their resolution. The ASBL strongly recommends the Fairness and Transparency in Contracting Act as an effective legislative remedy.

2. Establish a small business set-aside program for task orders placed against GSA schedules and other Government Wide Acquisition Contracts (GWAC) or large government contract vehicles. Years ago, Congress passed legislation mandating that any contract with a value less than \$100,000 be set-aside for small businesses. Shortly after passage, the Federal Acquisition Regulation (FAR) Council passed a rule exempting GSA schedule contracts from that set-aside. Contracting data shows that over one-fifth of all federal contract actions are under \$100,000, however a majority of those contracts go to large firms. Simply removing that exemption and putting a set-aside rule in place for other GWAC's, and government contract vehicles, would significantly increase the pool of contracts available to small businesses. This would have a profound and measurable impact on the government's ability to meet or exceed its 23 percent small business procurement goal.

3. Pass S. 633, the Small Business Contracting Fraud Prevention Act of 2011. As a means of addressing small business contracting programs, it is vital that large companies or firms not qualified as small businesses, who receive small business contracts, are held accountable for their actions with criminal or administrative punishment. To that end, S. 633, as introduced by Ranking Member Snowe and Madam Chairwoman Landrieu, takes a necessary step forward toward addressing fraudulent companies. The ASBL loudly applauds those efforts. In order to prevent fraud and abuse, potential offenders must know that there are real consequences for their actions. S. 633 furnishes existing law with teeth that will facilitate prosecution of offenders, and afford government officials and small business advocates with a new arsenal of tools that may yield prosecutions of fraudulent contractors.

--

Over the past several years, investigations from the U.S. Government Accountability Office (GAO) have shown widespread fraud and abuse within federal contracting programs like the 8(a) business development program, the HUBZone program, and the Service-Disabled Veteran Owned Small Business program. As implementation of the women-owned small business program has begun, the ASBL is concerned that problems will begin to arise within that program as well. With that in mind, the ASBL reminds the committee that we must maintain a broad perspective while working towards solutions to the many challenges facing small business contracting programs. While examining the intricacies of each individual program is important; in doing so, we risk losing sight of the important role these programs play in support of small businesses across the country in general. Each of the aforementioned programs plays a vital role for small businesses, and economic growth.

With that in mind, we believe that it should be the committee's first priority to address the broader issue of large businesses and other fraudulent contractors receiving billions of dollars in federal contracts intended for small businesses. Fixing this problem will benefit small businesses in every state across the United States, including small firms operating within the government's small business set-aside programs.

Members of the Committee, it begins with you. Thank you for not only drawing attention to these vital issues, but for your willingness to enhance the quality of the business environment for small government contractors. I would also like to thank you for affording me the time to speak with you, and look forward to responding to any questions you may have.