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Challenges Facing Transitioning Federal Small Businesses:
A Proposed Framework and Solution

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Introduction and Context

With its immense purchasing power, the U.S. government directly influences the economy through its fiscal policy. For federal prime contractors, the means and ways of federal procurement directly influences strategic decision-making. This is especially true for small and mid-sized firms that, due to limited resources, must often choose to participate exclusively in the government or private sectors. The government has heavily invested in cultivating a strong small business sector through the Small Business Administration (SBA) and various set-aside policies. However, existing literature suggests that small and mid-sized firms face tremendous difficulties when they transition from small to "other-than-small" and that very few successfully make the transition. Further, while the Government has adopted some recommendations to help businesses successfully make the transition, there has been no remedy to address the fundamental obstacle – that small businesses under the current structure are incentivized to remain small in order to benefit from government set-asides.

Data and Methodology

The study team began by conducting research into existing literature on small and mid-sized federal contractors. Prior research suggests that there are inherent obstacles to studying the performance of mid-sized contractors because there is no federally recognized definition for "mid-sized" businesses. Further, prior studies indicate that the federal government and various stakeholders are aware of the general lack of successful small business transitions among federal prime contractors. Stakeholders have also proposed several solutions, yet most are unsatisfactory because they either require significant effort from the Government and contracting agencies or because they unfairly benefit one business segment, within the small business spectrum, at the expense of others.

The team then turned to collecting data on NAICS 236220 in particular. The study team utilized publically available data from the Federal Procurement Data System (FPDS) aggregated through Fedmine to track small business participation in NAICS 236220 from fiscal year 2005-2020. The team tracked small business entrants, exits, award size, and transitions in NAICS 236220.[1] For comparison, the team also tracked award sizes for other than small businesses (OTSBs). Finally, by tracking individual company performances across the small business and OTSB data, the study team determined the rates at which small businesses in NAICS 236220 successfully made the transition from small to OTSB. Because there is no formally recognized definition of what constitutes a successful transition, the study team used winning OTSB awards for at least ten (10) of the 16 years studied as a metric for successful transitioning.

Results

The data shows that there is a sharp delineation between the size of small and OTSB business awards. Notably, awards of less than $5 million constitute 62 percent of total dollars obligated to small businesses and over 99 percent of the total number of actions awarded to small businesses. This disparity in award sizes represents a significant obstacle towards small business growth as contracting officers look to past performance when making future decisions. In other words, small businesses that successfully win and complete these small awards nonetheless have difficulties winning larger awards because they simply have little opportunity to build up past performance to compete for awards in those larger dollar band ranges.

[1] The study team tracked entrants and exits within NAICS 236220 from fiscal year 2005 through 2020. The pattern of declining entrants and few businesses successfully exiting from the small business market into the other-than-small market within NAICS 236220 mirrors the trends found in existing research of the entire federal contracting landscape. As such, this paper will not delve deeply into this particular data. Please see **Figures 1, 2, and 3** in the Appendix for data on entrants and exits.

Figure 1

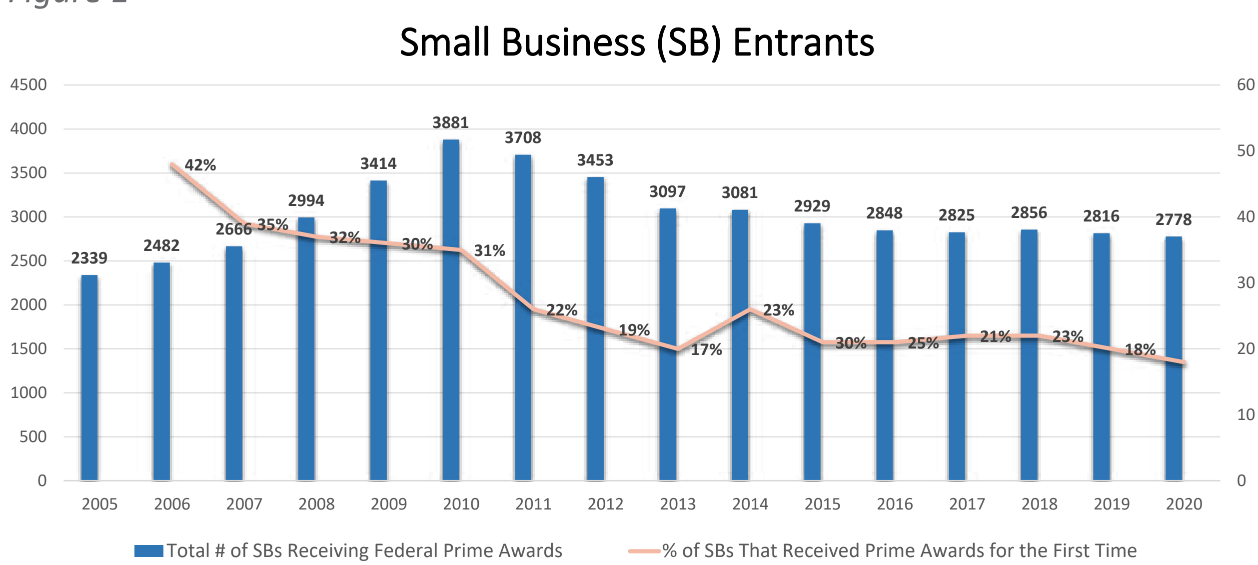


Figure 2

Avg. % of SBs That Transitioned from Winning SB Awards to OTSB Awards Per Year, 2006-2020

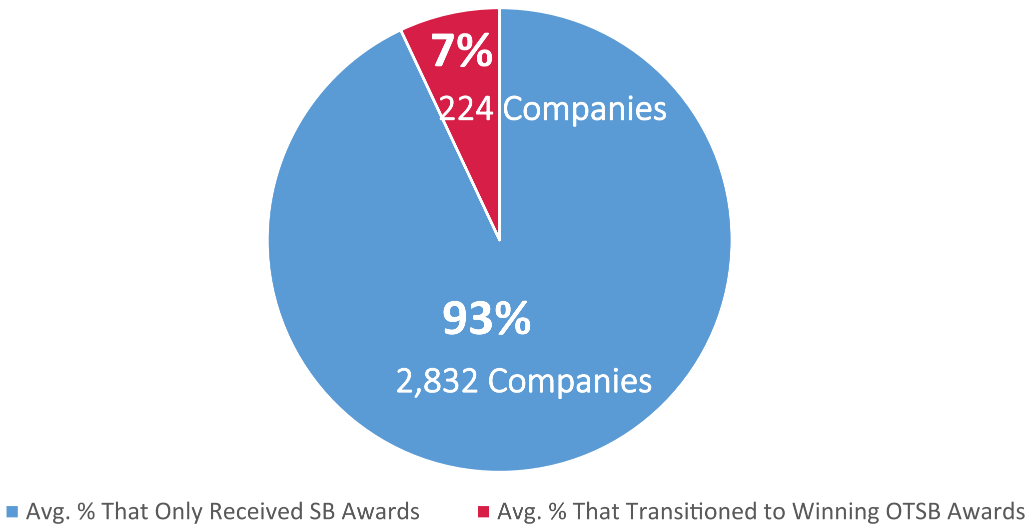
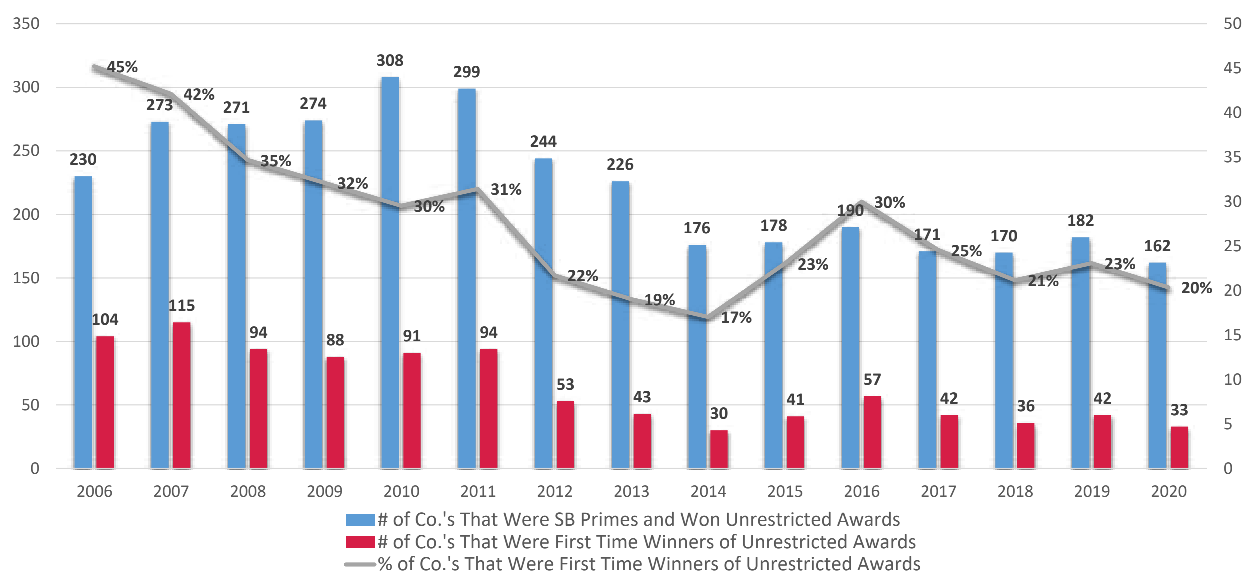


Figure 3

Fewer Firms are Successfully Exiting into the Unrestricted Federal Market



Additionally, the data suggests that very few small businesses in NAICS 236220 successfully transition from small to OTSB. Of the 1,228 companies that won both small business and OTSB awards during the period studied, only 75 successfully won OTSB awards for at least ten (10) of the 16 years. Although different studies have used different methodologies to represent successful transitioning, this figure is similar to those obtained from prior research across other sectors.

Discussion and Conclusion

Thus far, the government's main strategies for cultivating small business federal contractors have largely focused on set-aside programs. While the set-aside programs certainly help small businesses federal contractors gain initial success, the set-aside programs fail to support those small businesses looking to transition and scale beyond the small business size standards. In fact, prior research and data collected suggest that small businesses are currently incentivized to remain small in order to take advantage of set-asides. By the same token, small business owners are aware that once they grow beyond their size standards and enter the OTSB market, they must compete with significantly larger and more established companies should they wish to stay in the federal contracting arena.

The findings of this paper suggests that in order to foster healthy growth among small business federal contractors the government ought to reconsider its small business set-aside programs. In order to provide small businesses both an opportunity and incentive to grow, the government ought to create a moratorium program for growing small businesses in NAICS 236220. Under the moratorium program, once a small business outgrows its size standard, it will enter a 5-year moratorium "growth period". During the moratorium, the business will continue to respond to market research as a small business and may continue to pursue small business set-aside awards greater than $5 million. Businesses in moratorium will not be allowed to take advantage of Small Business Administration (SBA) programs such as the loan program, nor can they become protégés in the mentor-protégé program.[2]

The moratorium proposal, unlike prior recommendations, will benefit various stakeholders. The smallest businesses will lose a significant source of competition, as those awards under $5 million constitute the overwhelming majority of small business opportunities. Those more established small businesses with annual revenues closest to the size standard limits will have the opportunity to grow and build past performance without completely losing the small business benefits

[2] *See infra* Section V for a deeper discussion about the logistics of the proposed moratorium program.

they previously enjoyed. Additionally, those businesses that intentionally remain small to take advantage of said benefits would be incentivized to grow. Finally, the government will benefit from increased competition for medium and large awards without significant additional effort.

Given legislative authority, the SBA could implement this proposed moratorium as a Pilot Program within NAICS 236220. Eventually, this moratorium idea can be applied throughout various sectors to bolster the government's goals of fostering a strong small business base and strengthen the nation's defense industrial base. In turn, the moratorium "growth period" will incentivize and provide a runway for small businesses struggling to transition from small to "other-than-small".

THE CASE FOR THE FEDERAL GOVERNMENT TO CONSIDER THE IMPLEMENTATION OF A FIVE YEAR MORATORIUM PERIOD FOR BUSINESSES IN SECTOR 23 - CONSTRUCTION TO FOSTER GROWTH AND ENCOURAGE HEALTHY TRANSITIONS INTO THE UNRESTRICTED FEDERAL MARKETPLACE

I. INTRODUCTION

A. The Problem

On November 20, 2018, the Center for Strategic & International Studies (CSIS) published a report titled "*New Entrants and Small Business Graduation in the Market for Federal Contracts*" (CSIS Study).[3] Among other observations, the CSIS Study concluded (1) the number of vendors entering the federal arena has remained relatively low and constant since 2013 and (2) the survival rates show that around 40 percent of new entrants exit the market for federal contracts after three years, around 60 percent after five years, and only about one-fifth of new entrants remain in the federal contracting arena after ten years.

Interestingly, while the results indicate that small businesses tend to have higher survival rates than their non-small businesses across federal agencies, the low graduation rates of small businesses that survived for ten years is alarmingly low for the efficacy of small business set-aside programs. The CSIS Study suggests that "small businesses face a perverse incentive regarding their business model where

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[3] Samantha Cohen et al., Ctr. for Strategic & Int'l Stud., New Entrants and Small Business Graduation in the Market for Federal Contracts (2018), https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/181120_NewEntrantsandSmallBusiness_WEB.pdf?GoT2hzpdiSBJXUyX.lMMoHHerBrzzoEf.

since they have safety nets when they remain small, they could be avoiding normal business growth trajectories to maintain the advantages associated with small business status."[4]

On December 17, 2018, the Small Business Runway Extension Act ("Act") was signed into law, modifying the method for prescribing size standards for small businesses. The Act provides that, unless specifically authorized by statute, receipts-based size standards are based on annual average gross receipts over five years rather than the previous three-year calculation standard. The accompanying Congressional Report greatly emphasizes the unique challenges facing mid-sized firms. While the increased calculation standard may have helped some small businesses remain small for a longer period, its actual effect was to merely prolong the purgatory of those small businesses at the upper echelon of their industry size standards. Essentially the Act failed to carry out its intended benefits for the small sized businesses.

In August 2019, the United States Government Accountability Office (GAO) published a report which was presented to the Committee on Small Businesses, House of Representatives titled "Federal Contracting: Awards to Mid-Sized Businesses and Options for Increasing Their Opportunities" (GAO Study). The GAO study found that only 2.5 percent (%) of small businesses that outgrew their applicable U.S. Small Business Administration (SBA) size standard continued to win and compete in the federal market. Thus, the federal government's goal to attract and increase its competitive pool is not being realized and, in turn, small business federal contractors are not incentivized to scale. Those that want to scale their businesses look to other industries and eventually exit the federal marketplace. While the GAO Study made several recommendations for potential remedies, these recommendations nonetheless fail to adequately address the lack of growth among small businesses.

B. Background

1) The Concept of a Moratorium Period

The government and SBA goals of attracting more small businesses to compete in the federal market and encouraging larger small businesses to grow and compete with unrestricted business could be substantially met if the SBA were to consider implementing a five-year (5) moratorium program for businesses in NAICS Sector 23 that wish to transition into the unrestricted market.

[4] *Id.* at 12. Researchers found that in 2001 around 16-19 percent of small businesses that survive 10 years graduate from small business status; in 2006 only around 6-8 percent of small businesses that survive 10 years graduate from small business status.

Currently, most NAICS in Sector 23 Construction have revenue caps of $39.5 million. NAICS 236220, which constitutes over 80 percent of the governments procurements in non-civil work, is one of those NAICS.[5] This means that if a contractor exceeds $39.5 million in its average five-year revenues, it becomes ineligible to compete under small business set-aside programs. The purpose behind small business set-asides is to promote small business participation in the federal market. A five-year moratorium to aid the transition once the $39.5 million cap has been exceeded will substantially alleviate the current obstacles small businesses face as they transition into the unrestricted market.

2) This Paper Promotes the Concept of Adding a Moratorium Period as a Viable Means of Creating Opportunities for Small Businesses to Successfully Compete in the Federal Marketplace.

This paper is sponsored by Custom Mechanical Systems, Corp (hereinafter CMS Corporation), a sustaining Society of American Military Engineers (SAME) member and SAME fellow contributing to SAME's industry-government engagement initiative on "Size Standards" and the problems facing growing small businesses.[6]

The purpose of this paper is to more clearly identify the causes of the high failure rate of small businesses that outgrow their size standards in NAICS 236220 and to provide a recommendation for a plausible solution to the current problems within the industry as well as to provide a framework that can be used for federal contracting in other NAICS sectors. Generally, the SBA provides small businesses entering the federal construction market a plethora of opportunities for entry and success through its programs.[7] These programs represent the government's flagship efforts to develop and attract new competitors to the federal market. However, while the SBA satisfies its small business goals, the subsequent growth and scaling

[5] Sector 23 Construction comprises 24 different NAICS codes. Of those, two NAICS (237310 and 237990) relate to civil works construction (highway, street, bridge, and other heavy and civil construction).

[6] CMS is an award-winning small business construction contractor. Its scope of services encompasses new construction, renovations, fueling systems, and energy and sustainability for a wide range of commercial and federal government clients. As a prime contractor, it has the ability to execute a full range of construction disciplines. CMS has successfully captured Department of Defense multi-year contracts with $6.3 billion in contract capacity spanning 30 states and Guam.

[7] SBA programs include 8(a) Development Program, Woman-Owned SB Certification Program, Disabled Veteran-Owned, HubZone, All Small Mentor Protégé Program, etc.

required for businesses looking to expand beyond the small business size standard is dramatically hindered.[8] Businesses that outgrow SBA size standards often exit the federal marketplace in its entirety due to the difficulty of competing with unrestricted businesses in the absence of designated programs.

It has been the government's policy to support and promote small business growth by awarding government contracts to businesses that fall below certain size standards and are therefore eligible for special consideration. This practice of constraining eligibility for contracts to certain businesses is referred to as "set-aside" programs.[9] The expiration of program eligibility is referred to as "graduation" from the set-aside program. Once a business graduates, assuming that they grew beyond small business size standards, the graduate may continue to pursue full and open competition awards for government contracts.[10] This means that the graduating non-small businesses must be ready to compete with larger and better-resourced competitors should they remain in the federal market. As a result, the graduate non-small businesses are at a disadvantage when compared with larger and more established firms.[11] This phenomenon affects all small businesses regardless of their socioeconomic status.

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[8] Robert Jay Dilger, Cong. Rsch. Serv., An Overview of Small Business Contracting 32 (2021), https://fas.org/sgp/crs/misc/R45576.pdf. In recent years, the federal government has generally succeeded in meeting the government-wide goals of awarding 23% of the total value of all small business eligible prime contract awards to small businesses, 5% to small disadvantaged businesses (SDBs), and 3% to Service Disabled Veteran Owned Small Businesses (SDVOSBs).

[9] One group of such set-aside programs is the U.S. Small Business Administration (SBA) 8(a) Business development program. Under 8(a), the federal government limits competition for certain contracts for participating businesses that have the opportunity to remain in the program for up to nine years. Businesses may "graduate" early from 8(a) in the event they exceed $100M in 8(a) contract awards or if they scale beyond the small business size standards before the nine-year eligibility expires. As part of this transitioning program, the SBA administratively established 13 CFR §124.404 (a) with its *two stage program* where 8(a) Participants are considered to be in their "developmental" stage during the first 4 years of the 9 year process and in the "transitional" stage during their last 5 years of their 8(a) participation under 13 CFR §124.509.

[10] It is important to note that many 8(a) businesses, upon graduation, are not large enough to exceed their size standard and continue to compete for awards as small businesses.

[11] Because contracting officers look to past performance when selecting amongst bids, the small businesses that fail to build up sufficient past-performance for larger contracts have a hard time competing with well-established companies for full and open competition awards.

Due to the current nature of small business set-aside programs, the jump from the small business to the unrestricted market is one that requires both sufficient past performance and resources for future projects.[12] Thus, the success that came readily from participation in set-aside programs for small businesses is inherently linked to the set-aside opportunities.[13] However, once the otherwise small business graduates from SBA programs it can expect, through no fault of its own, loss of the business opportunity previously enjoyed in the absence of the advantage previously received by set-aside exclusivity. Based on research, this is a common occurrence.[14] One explanation is that recent graduates are forced to compete with larger enterprises with vastly more established connections, past performance, and resources. This dramatic shift in the competitive landscape often catalyzes the graduate to exit the federal marketplace, thus essentially frustrating the intentions behind SBA programs. The lack of successful transitions from SBA programs to the unrestricted market also contributes to the polarized landscape of government contracting which is increasingly dominated by consolidation-hungry large corporations on one end of the spectrum and small companies relying on SBA programs on the other.

Based on the GAO Study, of the number of businesses that received small business set-aside contracts in FY2008 and any kind of federal contract in FY2017, over 93 percent (%) remained small. Of the 5,339 small businesses that were awarded

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[12] For NAICS 236220, in addition to past performance, federal general contractors need sufficient bonding capacity requiring significant financial resources in order to compete for larger unrestricted awards.

[13] Robert Jay Dilger, Cong. Rsch. Serv., SBA's "8(a) Program": Overview, History, and Current Issues 1 (2021), https://fas.org/sgp/crs/misc/R44844.pdf. The 8(a) Business Development Program – commonly referred to as the "8(a) Program" – provides participating small businesses with training, technical assistance, and contracting opportunities in the form of set-aside and sole-source awards. The set-aside award is a contract in which only certain contractors may compete, whereas a sole-course award is a contract awarded, or proposed for award, without competition. In FY2019, 8(a) firms were awarded $30.4B in federal contracts, including $8.6B in 8(a) set-aside awards and $9.9B in 8(a) sole-source awards. Other programs provide similar assistance to other types of small businesses (e.g. women-owned, HubZone, and service-disabled veteran owned). 8(a) Program eligibility is generally limited to small businesses "unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of and residing in the United States" that demonstrate "potential for success."

[14] Cohen et al., *supra* note 3. Small businesses have higher survival rates when compared to other-than-small counterparts. However, despite surviving at a higher rate, small business graduation rates have declined in recent years and remain low. This dichotomy suggests that there is a "perverse incentive" for small businesses to remain small and continue to benefit from small business set-aside programs.

only set-aside contracts in FY2008 and awarded any kind of contract in FY2013, only 104 grew to be midsized by 2013.[15] More interestingly, a further analysis of those 104 businesses subsequently in FY2014-2017 showed that 17 became small again, while only 23 remained mid-sized and 3 became large.[16]

Overall, businesses that grow beyond their SBA size standards are not rewarded for their growth as evidenced by the majority who fail to become large sustainable federal contractors. While it is difficult to precisely study the fates of businesses that no longer win federal awards, it is safe to assume that the majority either left the federal market, terminated operations completely, cut back on operations to intentionally stay small, or implemented some other succession strategy.

C. The Department of Defense (DOD) Best Interest Concerns to Encourage Small Business

The DOD states that it is in the United States' best interest to garner small business programs that both support critical national security goals while sustaining the bottom line. In the DOD publication, "Small Business Strategy,"[17] October 2019, the Secretary of Defense, Dr. Mark T. Esper, laid out the DOD's program and objectives, which includes aligning DOD's small business goals with existing national security priorities by implementing a strategy aligned with three guiding documents:

1) The National Security Strategy (NSS) (2017)

The National Security Strategy (NSS) is prepared by the executive branch for Congress, which outlines the major national security concerns and communicates the administration's plans to address them. The NSS identifies a number of priorities that inform the DOD's small business strategy, namely leading in research and innovation; promoting and protecting the U.S. National Security Innovation Base; and reviewing America's competitive advantage and capabilities, which includes investing in a healthy defense industrial base.

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[15] U.S. Gov't Accountability Off., GAO-19-523, *Federal Contracting: Awards to Mid-Sized Businesses and Options for Increasing Their Opportunities* 2 (2019).

[16] *Id.* at 14. 24 of the businesses studied did not receive any federal contracts between FY2014-2017. The remaining businesses varied in size in those years. The sizes of some businesses varied because depending on the contract because businesses can submit solicitations under several NAICS codes and a business may be considered small under one NAICS code but not under others.

[17] Dep't of Def., Small Business Strategy, (2019) https://business.defense.gov/Portals/57/Documents/Small%20Business%20Strategy.pdf?ver=2019-11-19-115847-510

2) The National Defense Strategy (NDS) (2018)

The National Defense Strategy (NDS) translates and refines the NSS into broad military guidance. It outlines, among others, the key defense objective of establishing an unmatched 21st century National Security Innovation base that effectively supports department operations and sustains security and solvency. It both prioritizes the need to modernize key capabilities and highlights the need to cultivate civilian workforce talent to achieve mission success.

3) Executive Order 13806 and the associated report entitled Assessing and Strengthening the Manufacture and Defense Industrial Base and Supply Chain Resiliency of the United States (2018)

Former President Trump published Executive Order 13806 recognizing that the erosion of American manufacturing has been detrimental to national security. Among its requirements, the Order mandates a rigorous assessment identifying risks and proposing solutions to maintain a healthy and resilient defense industrial base. The Executive Order 13806 Report further calls out the need for initiatives in which small businesses can play a role.[18]

Concluding, the DOD believes that a dynamic, robust, and modernized small business industrial base is critical to the United States' efforts to maintain its technological superiority and military readiness. Through implementation of this Strategy, the Department will embed best practices across the DOD that spur maximum small business innovation, increase entry points for small businesses into defense markets, and streamline regulation and policy to simplify the process of the nation's innovators to contribute to the Department's mission requirements.[19] These efforts will enhance national security and invigorate a small business industrial base that can serve as the economic engine of the nation for the future.

[18] On February 24, 2021, President Joe Biden issued Executive Order 14017 embracing Executive Order 13806 and calling on various departments, including DOD, to expand on the initial research and initiatives that began with Executive Order 13806.

[19] Dep't of Def., *supra* note 17, at 14. The Strategy outlines a number of methods to unlock small business capabilities, change the culture of the Department towards small businesses, and improve the acquisition process to simplify and enhance how small companies do business with the DOD. The Department initiated several small business and innovation programs that specifically drive towards the strategic goals of enabling innovation, attracting small businesses, and reducing barriers to entry. Examples of these programs include SBIR, STTR, RIF, Manufacturing Technology Program (ManTech), Manufacturing Innovation Institutes (MIIs), the Rapid Reaction Technology Office (RRTO), National Security Innovation Network (NSIN), and Defense Innovation Unit (DIU) that fall under the USD (R&E) purview. Early engagement by small business will also enable the development of mechanisms to hold prime contractors accountable for meeting their small business subcontracting plans such as including small business subcontracting past performance during source selection.

However, one significant obstacle to achieving the Department's goals is that data has shown a decrease in the number of small businesses registered to do business with the federal government.[20] According to Congressman Chabot, "[w] e have a declining small-business participation rate, which could threaten the core principle of competition… the more competition you have, the better change you have for restraining prices from going up."[21] In addition to the decline in overall small business participation, the Department pledged to examine how programs might support mid-sized businesses that are no longer able to take advantage of traditional contracting preferences, yet are not large enough to compete with established traditional defense contractors.

4) The 2018 Naval Post Graduate Symposium Findings

At the Fifteenth Annual Acquisition Research Symposium, the Naval Postgraduate School presented its findings from a study to determine "what happens to firms after they are no longer eligible to receive 8(a) set asides."[22] The study concluded that 8(a) graduates do not fare well over time; more than 60 percent (%) no longer received federal prime contract obligations within a decade of graduation from set-aside eligibility.[23] Further, those that remained federal prime contractors gained very little additional government business. The average contract obligation increased only 3.3 percent (%) which, when adjusted for inflation, actually indicates

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[20] *Hearing on National Defense Authorization Act for Fiscal Year 2016 and Oversight of Previously Authorized Programs Before the Comm. on Armed Servs. H. Reps.,* 114th Cong. 10 (2015) (Statement of Hon. Steve Chabot, A Representative from Ohio).

[21] *Id.* "Within the last 2 years, we have lost over 25 percent of the small business firms registered to do business with the Federal Government. Within the Department of Defense, the number of small-business contract actions fell by almost 70 percent, but the size of the average individual small-business contract increased by nearly 290 percent. We have a declining small-business participation rate, which could threaten the core principle of competition. And, as we all know, it is basic supply and demand. The more competition you have, the better chance you have for restraining prices from going up."

[22] David J. Berteau, *The Impact of 8(a) Small Business Graduation*, 2018 Proc. Fifteenth Ann. Acquisition Rsch. Symp. 226, https://dair.nps.edu/handle/123456789/1602.

[23] *Id.* at 228. The research methodology involved using SBA Dynamic Small Business Search to identify the DUNS numbers of all "Previously 8(a) Certified" firms. The researchers then input the DSBS-generated list of DUNS numbers into a private FPDS database to identify all prime contract obligations since FY08. The results were filtered to include only those firms with 8(a) exit dates in 2009 and 2010. The private FPDS data was validated using spot checks of available data from USASpending.gov. Researchers then examined 10 years (FY08-FY17) of prime contract obligations for graduated firms (as represented by DUNS numbers) that continued to receive obligations. FY17 was used as the end point to determine which firms remained, from where they received money, and other characteristics of their interactions with the federal market.

a decline. Finally, the 8(a) graduates remaining in the federal market still relied on set-asides for over half of their federal prime contract dollars.[24]

The Symposium referenced a 2013 study, which used structural estimation techniques on data from Japanese public procurement auctions for civil engineering works conducted by the Ministry of Land, Infrastructure and Transportation (MLIT) to conclude that approximately 40 percent of small and medium enterprises (SMEs) would exit the procurement market if set-asides were removed.[25] Interestingly, the resulting lack of competition would *increase* government procurement costs more than it would offset the production cost efficiency. In other words, procurement costs to the Government are likely to increase as the competition decreases due to the drop off rate of small businesses. The symposium also referenced a 2011 study, which determined that while small business set asides lead to a healthy federal contracting market vis-à-vis increasing the competitiveness of participating firms, the success is jeopardized if, after graduation, those firms have difficulty remaining competitive or staying in business.[26]

5) Biden Announces 50 Percent Increase in Small Disadvantaged Business Contracting Goals

On June 1, 2021, President Biden announced the Biden-Harris Administration's plan to increase small disadvantaged business (SDB) contracting goals by fifty percent. The announcement launched an effort to expand contracting opportunities for underserved small businesses across the country. The new goal is to increase the share of government contracts going to SDBs by fifty percent by 2026, this translates to $100 billion over the next five years. This goal, if attained, will represent the biggest increase in SDB contracting since data was first collected thirty years ago. To meet this goal, the Administration is instructing agencies to assess every available tool to lower barriers to entry and increase opportunities for small businesses to compete for federal contracts.[27] The framework of the proposed solution herein aligns with the Administration's goals by decreasing barriers to entry and removing a major competitive obstacle for SDBs.

[24] Id. at 232. Researchers found that 8(a) graduates in 2009 received nearly 50 percent of their prime contract obligations from 8(a) program set-asides in their graduation year and received 22 percent of prime contract awards through other set-asides. In comparison, the proportion of obligations from other set-asides roughly tripled to 62 percent for 2017 graduates.

[25] Jun Nakabayashi, Small business set-asides in procurement actions: An empirical analysis, J. of Pub. Econ., Jun 2013, at 22.

[26] Max V, Kidalov, Small Business Contracting in the United States and Europe: A Comparative Assessment, Pub. Cont. L. J., Winter 2011, at 443.

[27] *Biden Announces 50 Percent Increase in Small Disadvantaged Business Contracting Goals: Key Details for Government Contractors*, Piliero Mazza (Jun. 22, 2021), https://www.jdsupra.com/legalnews/biden-announces-50-percent-increase-in-1989148/

II. THE SMALL BUSINESS SIZING STANDARDS

A. Background

Concerns of businesses transitioning from the small business designation to "other than small" have been voiced and addressed through multiple avenues. On December 5, 2019 SBA issued a final rule changing its method for calculating the average annual receipts used to prescribe size standards for small businesses. Pursuant to the Small Business Runway Extension Act, the rule increases the period for calculating annual receipts from the previous 3-year average to a 5-year average for all SBA receipts-based size standards.[28] Of note, the accompanying Report, H. Rept. 115-939 ("Congressional Report"), places great emphasis on the unique challenges facing mid-sized businesses.[29] Fundamental to the legislative intent is the "other-than-small conundrum" which Congress characterizes as a dilemma for newly graduated firms when "they no longer qualify for small business contracts" and "yet must compete in the open market against these titans of industry."[30] As a result, businesses that newly outgrow their SBA size standard must commonly sell to a larger corporation, restructure their business models to focus on subcontracting, or deliberately lose or impede their own success in order to remain small and eligible for small business set-aside contracts. Each of these alternatives involve significant harms to the new graduate. Businesses that choose to sell commonly risk significant devaluation from the value they previously had as small businesses while businesses that turn their emphasis towards subcontracting hinder their own ability to gain project management skills for future growth. The last option, deliberately remaining small, not only stifles the individual firms but also the entire industry.

The Congressional Report highlights additional challenges unique to medium-sized businesses due to the structural constraints of the statutory framework. First, there is a lack of empirical data examining the failure or success rate of small businesses exceeding their sizes. Because there is no federally-recognized definition of "mid-size", it is inherently difficult to quantitatively measure the success or failure of transitioning firms. This lack of data limits Congressional insight into how effective SBA's programs are in meeting national economic policies geared towards

[28] 13 C.F.R. § 121 (2020). On Dec. 5, 2019, SBA published a final rule modifying its method for calculating average annual receipts used to determine size standards for small businesses. Specifically, in accordance with the Small Business Runway Extension Act of 2018, Public Law 115-324, SBA is changing its regulations on the calculation of average annual receipts for all of SBA's receipts-based size standards from a three-year averaging period to a five-year averaging period. SBA's new size standard average annual receipts calculation rule took effect Jan. 6, 2020. SBA adopted a transition period through Jan. 6, 2022, during which firms could choose between using a three-year averaging period and a five-year averaging period.

[29] H.R. Rep. No. 115-939 (2018).

[30] *Id.* at 3.

encouraging small business growth and job creation. Second, newly-graduated small businesses are less able to compete against dominant large companies. Again, because there is no federally-recognized definition of "mid-size", businesses are categorized as "small" or "other-than-small". The "other-than-small" category runs the gamut from firms that exceed their size standard by mere dollars to billion-dollar companies. When compared to small *and* "mid-sized" firms, these behemoths have immense competitive advantages, making competition illusory.[31]

The Committee further voices concerns with the federal procurement landscape creating inherent challenges to growth. As government budgets continue to shrink, the use of consolidation and bundling has risen.[32] This procurement strategy combines several separate, smaller contracts into a single contract making it prohibitively difficult for small and "mid-sized" businesses to compete.[33] A parallel trend in government contracting is the increase in the use of government-wide contract vehicles and indefinite-delivery, indefinite-quantity (IDIQ) contracts.[34] Even when a small business is awarded a spot on a highly-competitive, long-term contract, they may be locked out of key markets and/or become subcontractors.[35] These small and mid-sized businesses lack the past performance to compete for these unrestricted IDIQ contracts with overly extensive past performance requirements. The Committee summarizes that "the shrinking federal market, increased use of large government-wide contracting vehicles, and increasing use of strict past performance qualifications on these contracting vehicles limits the government's opportunity to realize a return on its investment in emergent small firms and mid-sized businesses."

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[31] These advantages can also have a chilling effect by potentially freezing out emerging small companies. The Report also concludes that there is a pattern of large businesses increasingly going after smaller awards that were traditionally fulfilled by smaller businesses.

[32] A full description of consolidated and bundled contracts as well as the proliferation of their use in government contracting is beyond the scope of this paper. *See* Bloomberg Gov., The Mid-Tier Paradox: 2018 Company Report 6 (2018).

[33] The Federal Strategic Sourcing Initiative (FSSI), Category Management, and other executive branch initiatives continue to promote bundling and consolidation.

[34] There are three types of IDIQ contracts, an unrestricted IDIQ is one that businesses of all sizes may compete for. There are also set-aside IDIQ contracts exclusively for small businesses and others that are "mixed". Here, it is the unrestricted IDIQ contracts that have the most extensive past performance requirements and pose the greatest barriers for small and mid-sized firms.

[35] H.R. Rep. No. 115-939, at. 6 (2018).

B. The NAICS Code

Under the North American Industry Classification System (NAICS) the Sector 23, Construction, code generally provides for a receipts based industry size standard of $39.5M.[36] Due to the nature of strict revenue-based cutoffs, those companies that exist at the upper limits of the threshold are incentivized to remain small in order to take advantage of SBA benefits. This decision to remain small especially affects those emerging small businesses, closest to the lowest end of the revenue-based standard, by increasing the level of competition for small business set-aside awards. Just as businesses competing in the unrestricted market run the gamut of exceeding SBA size standards by dollars or billions of dollars, the small business landscape of NAICS 236220 runs the gamut of new businesses with thousands of dollars in revenue to established small businesses with average annual revenues mere dollars below the threshold.[37]

The Small Business Administration ("SBA") was created in 1953 as an independent agency of the federal government to aid, counsel, assist and protect the interests of small business concerns, preserve free competitive enterprise and maintain and strengthen the overall economy of the nation.[38] The SBA's mission is to help Americans start, build, and grow businesses. While many of the current initiatives benefit small businesses, these initiatives may fail to achieve the full potential precisely *because* they are so beneficial to small businesses. One example of this is the small business set-asides in federal contracting. In general, if there are at least two qualified small businesses that are likely to submit offers and could do the work for a fair price, the contract should be set aside exclusively for small businesses to compete. If there are fewer than two, contracting officers may be authorized to create a sole-source contract or otherwise solicit it as full and open competition.[39]

Small business set-asides are double-edged swords. On the one hand, without federal small business set-asides, small businesses would have little opportunity to compete with well-established federal contractors. On the other hand, small business set-asides are limited to those businesses that qualify as small based on SBA size standards. Consequently, the moment a business exceeds the size standard for its NAICS sector, it will lose a number of significant advantages including the ability to compete for small business set-asides. The current structure discourages

[36] NAICS Subsector 238, Specialty Trade Contractors, has a size standard of $16.5M.

[37] For example, at the top end, several federal prime contractors in NAICS 236220 have annual revenues in excess of several billion dollars.

[38] *Organization*, SBA, https://www.sba.gov/about-sba/organization (last visited Aug. 2, 2021).

[39] Set-aside procurement, SBA, https://www.sba.gov/partners/contracting-officials/small-business-procurement/set-aside-procurement (last visited Aug. 2, 2021).

otherwise capable businesses in revenue-based NAICS codes from pursuing awards that would result in five-year average annual revenues above SBA size standards. In other words, capable businesses are incentivized to remain small. This incentive is especially magnified in industries where there are additional barriers for competition with the established large corporations.[40]

III. THE 2019 GOVERNMENT ACCOUNTABILITY OFFICE (GAO) REPORT

A. The 2019 GAO Report

In August 2019, the Government Accountability Office (GAO) compiled a report for the House of Representatives Committee on Small Business titled "*Awards to Mid-Sized Businesses and Options for Increasing Their Opportunities*."[41] The GAO concluded that from FY 2008 to FY 2017, very few businesses grew to mid-size and continued to receive some type of federal contract.[42]

- Of the 5,339 small businesses that were awarded set-aside contracts in FY 2008 and awarded any sort of federal contract (including set-aside or competed) in 2013, only 104 became mid-sized by FY 2013.[43]
- Of those 104 businesses, 23 remained mid-sized through 2017 and won 75 contracts. 3 businesses became large and won three contracts.[44]

The GAO was asked to provide information on federal contracting opportunities for mid-sized businesses in response to questions that have been raised about the extent to which mid-sized businesses can compete with large companies

[40] See infra note 62 for a discussion of evaluation factors that serve as additional barriers to entry for small and mid-sized businesses looking to transition into the unrestricted market. In addition to evaluation factors, prime contractors in NAICS 236220 must obtain sufficient bonding capacity to compete and perform federal projects. The bonding capacity is generally directly related to the amount of cash assets a business maintains in its accounts. This poses an additional barrier for federal contractors in NAICS 236220 since, in order to secure bonding capacity, much of the business' assets are unavailable at any given time.

[41] U.S. Gov't Accountability Off., supra note 15.

[42] The methodology of this report analyzed (1) the extent to which small businesses grew to be mid-sized and continued to receive federal contracts; (2) instances in which mid-sized businesses can perform work on contracts set aside for small businesses; and (3) options for increasing federal contracting opportunities for mid-sized businesses and views on the strengths and limitations of the proposed options.

[43] GAO defined mid-sized businesses as having revenue or employees up to five times above the small business size standard.

[44] GAO defined large businesses as those with revenue or employees exceeding five times the small business size standard.

for federal contracts. The issue of mid-sized businesses' inability to succeed after graduating from SBA programs has been studied for many years, with no adequate solution found.[45]

B. GAO's Recommendations for Resolving the Non-Small Business Dilemmas Upon Graduation from the SBA Program and the SBA's Concerns

In its report, the GAO identified several options for increasing federal contracting opportunities for mid-sized businesses including,

- establishing a separate set-aside category for medium-sized businesses;
- changing the consideration of past contracting performance; and
- modifying the existing size standards.

Establish a separate set-aside	Modify rules for multiple- award contracts	Change how past performance is considered	Modify size standards
• Establish a set-aside for mid-sized businesses	• Move small businesses that outgrow their size standard to the unrestricted version of the contract	• Lower or eliminate quantitative requirements for past performance • Consider past performance of individual businesses in team arrangements • Require agencies to consider subcontracting past performance	• Allow companies to use the lowest 3 of the last 5 years of revenue to determine small business status. • Allow companies to subtract research and development expenses from revenue to determine small business status • Raise the current revenue-based size standards

The GAO noted, however, that some aforementioned options would help mid-sized businesses more than others.

- While a set-aside category for medium-sized businesses would increase opportunities for mid-sized businesses, stakeholders generally believed it could decrease opportunities available to small businesses and increase the burden on agencies vis-à-vis the time and costs to implement new set-asides.

[45] Examples of earlier studies include, Leaving the Nest: Challenges Facing Advanced Small Businesses, roundtable before the House Committee on Small Business, 115th Cong. (November 2017), and No Man's Land: Middle-Market Challenges for Small Business Graduates, House Committee on Small Business, Subcommittee on Contracting and Workforce, 115th Cong. (Apr. 26, 2018).

- Requiring agencies to consider business' past performance as subcontractors or as part of a team would help both mid-sized and growing small businesses by making them more competitive for contracts.[46]
- Stakeholders indicated that raising size standards based on revenue would allow a limited number of mid-sized businesses to remain eligible for set-asides, but would not help the vast majority of mid-sized businesses.

In its analysis, the GAO made the following observation and support for its opinion in making its recommendations:

> Because there is no statutory or regulatory definition of a mid-sized or large business, we applied multipliers to SBA's size standards. We considered businesses with revenue or employees up to five times above the SBA small size standard as mid-sized and businesses with revenue or employees of more than five times the small size standard as large[47]. We used five times the small-size standard to distinguish between mid-sized and large businesses based on the distribution of contracts and obligations among businesses in these two groups. We discussed this approach and methodology with SBA officials and officials at three federal agencies that had large obligations for small business contracts in fiscal year 2017.[48] These officials did not raise any questions about our approach, and some reiterated that there was no legal definition of mid-sized businesses. To determine whether businesses that grew to be mid-sized continued to secure contracts, we used FPDS-NG Data[49] to determine the number of businesses awarded set-aside contracts in 2008 that became mid-sized by 2013 and the extent to which they were awarded any sort of contract (including competed contracts) in fiscal years 2014 through 2017. We also determined the percentage of competed contracts awarded to small, mid-sized, and large businesses in fiscal year 2017.

[46] Recent changes have been made in this area with the SBA revising regulations for the evaluation of set-asides and past performance evaluations for small business' work as subcontractors and JVs. Revisions to the FAR following these changes are still in progress.

[47] For example, in an industry with a revenue-based size standard of $15 million, businesses with revenue of $15 million or less would be small, those with revenue above $15 million but below $75 million would be mid-sized, and with revenue of $75 million or more would be large.

[48] For purposes of this report, competed contracts are those competed using (1) full and open competition, (2) full and open competition after exclusion of sources, and (3) simplified acquisition procedures.

[49] GSA Federal Procurement Data System-Next Generation (FPDS-NG) Data.

The GAO concluded that a very small percentage grew to be mid-sized and continued to receive federal contracts in the 10-years between FY 2008-2017. Likewise, based on the GAO's review, a very small percentage, 2.5 percent, of the small businesses that were awarded set-aside contracts in FY 2008 grew to mid-sized in the subsequent years and continued to receive any type of federal contract. Of the 2.5 percent, the dominant industries where companies grew to mid-sized *and* continued to win awards were manufacturing and professional, scientific, and technical services.[50]

Stakeholders have proposed several options for assisting mid-sized businesses. The GAO grouped the options into four general categories:

- Establishing a set-aside for mid-sized businesses;
- Modifying the rules for multiple-award contracts;
- Changing how past performance is considered when evaluating bid proposals; and
- Modifying SBA's size standards.

Some of the comments regarding each proposal for assisting mid-sized companies include:

- Members of both industry and Congress have proposed establishing pilot programs that would help mid-sized businesses.51 Dedicated mid-sized set-asides could increase contracting opportunities for mid-sized firms, but most stakeholders believe the additional set-aside would take away from small business opportunities. SBA officials stated that a set-aside would have a negative effect on small business programs and would support the use of larger contracts, which would result in fewer contract awards to small businesses. Most stakeholders also believe that a mid-size business set-aside would increase agency burden, including additional time and costs to not only define and implement the set-aside but also carry additional tracking and reporting costs.
- Allowing small businesses that grow beyond their size standards to move to the unrestricted version of multiple-award contracts could help mid-sized businesses. However, this option is not available for all multiple-

[50] U.S. Gov't Accountability Off., *supra* note 15, at 12.

[51] For example, legislation proposed in 2011 would have created a pilot program in the General Services Administration in which contracting officers could have set aside unrestricted contracts for certain businesses with less than 1,500 employees, but it was not enacted. Small Business Growth Act, H.R. 1812, 112th Congress (2011). In 2012, a House bill included language that would have established a pilot program in the Department of Defense to assist "advanced small businesses." The provision was in the version of H.R. 4310 (2012) that became the National Defense Authorization Act for Fiscal Year 2013. The version that passed the Senate did not include the advanced small business pilot program. The Conference Committee report from December 18, 2012, states the two chambers agreed to the bill without the advanced small business pilot program. H.R. Rep. No 112-479, at 291 (2012).

award contracts and it would mean that the effort of those businesses that grew and are not able to transition to the unrestricted track would be wasted. Stakeholders offer differing views about the burden that allowing transitions would cause. Some stakeholders believe it would be less disruptive for agencies if businesses continue their contracts; others argue it might take longer for an agency to evaluate proposals for unrestricted task order competitions if the pool of competitors grow. Further, while many stakeholders argue this change would give mid-sized firms more time to prepare for the transition into the unrestricted marketplace, others argue that it would give any mid-sized firms who are already in the unrestricted pool additional competition.

- Stakeholders argue that changing past performance requirements may increase prime contracting opportunities for mid-sized and small businesses, yet this may carry a risk for contracting agencies. "Quantitative past performance requirements" are those based on the size or number of past contracts is a key barrier to entry for mid-sized firms.[52] One option proposes lowering or eliminating quantitative requirements for past performance.[53] In essence, what businesses lack in strict quantitative past performance can be substituted for qualitative measures. While stakeholders generally agree that this proposal would lower the barriers to entry and increase contracting opportunities for mid-sized and small firms, there are notable tradeoffs for agencies by increasing burden and risk. Agencies would likely require longer evaluation periods due to a larger pool of bidders and they may not have staff with the technical expertise to assess bids based on a strictly qualitative evaluation. Agencies may face greater risks for unsatisfactory job completion when employing qualitative selection criteria; however, it is also important to note that qualitative criteria are also not absolute guarantees of future performance.

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[52] Tonya Saunders, *The mid-tier paradox: too small to compete, too large to survive*, Bloomberg Gov. (May 13, 2016), https://about.bgov.com/blog/the-mid-tier-paradox-too-small-to-compete-too-large-to-survive/. *See also No Man's Land: Middle-Market Challenges for Small Business Graduates: Hearing Before the Subcomm. on Contracting and Workforce of the H. Comm. on Small Bus.*, 115th Cong. (2018). According to the testimony of Mehul Sanghani, Chief Executive Officer, Octo Consulting Group, an example of a quantitative past performance requirement would be requiring offerors to submit five past prime contracts with a minimum combined annual obligated value of at least $25 million.

[53] Saunders, *supra* note 52. *See also No Man's Land: Middle-Market Challenges for Small Business Graduates: Hearing Before the Subcomm. on Contracting and Workforce of the H. Comm. on Small Bus.*, 115th Cong. (2018). Testimony of Mehul Sanghani, Chief Executive Officer, Octo Consulting Group, indicates that mid-sized firms struggle to compete against large firms based on size and number of past contracts but can compete on quality, value, and innovation. He said eliminating quantitative past performance requirements would allow small firms that grew to mid-sized to continue to compete for contracts.

- Another option for changing past performance requirements is requiring agencies to consider past performance of each company in a team arrangement rather than the aggregate past performance of contractors in team arrangements.[54] It is suggested that requiring agencies to consider each team member's past performance would provide incentives for mid-sized businesses to work together and compete for contracts with past performance requirements for which each individual firm may not qualify. This option may benefit small businesses more than mid-sized firms. Stakeholders point out that many mid-sized firms have likely won prime contracts and may have the requisite past performance for many awards. This option may pose risks for agencies because team arrangements are at the companies' creation and the government has no involvement in administering them; there is more risk that the team might not be able to complete the contract.
- It has also been suggested that agencies could be required to consider a business' past performance as a subcontractor when competing for prime awards or that agencies could be required to count the past experience of both the prime contractor and its significant subcontractors towards a solicitation's past performance requirements. This paper will not delve into the merits of this proposal as SBA officials announced in May 2019 that they are working on implementing legislation that requires SBA to create a pilot program to provide past performance ratings for small business subcontractors.[55]
- Stakeholders express reservations about the proposal to change the calculation for revenue-based size standards and allow businesses to pick the lowest 3 of the 5 years of revenue. While this may help offer some mid-sized firms a brief respite, it fails to address the fundamental obstacles in the way of successful transitions. While this proposal would safeguard against businesses prematurely sizing out due to an outlier year of revenue, stakeholders also point out that it may harm small firms by increasing

[54] Currently, a solicitation could require teams to have past performance projects in the name of the existing joint venture, not the individual members. That is, if Company A, Company B, and Company C formed a joint venture called ABC Incorporated, only projects in the name of ABC Incorporated would be eligible past performance projects. Alternatively, a solicitation could allow the past performance projects of each joint venture partner to be submitted for the joint venture entity.

[55] The National Defense Authorization Act for Fiscal Year 2017 included a provision that requires SBA to create a pilot program to establish past performance ratings for small business subcontractors. Pub. L. No. 114-328, § 1822, 130 Stat. 2000, 2654-2656 (2016) (codified at 15 U.S.C. § 637(d)(17)). The program will permit small businesses without a past performance rating as a prime contractor to request a rating for work done as a subcontractor if the small business is a first-tier subcontractor under certain contracts. The provision also stipulates the procedures under which the ratings are to be created. In April 2018, SBA stated that the pilot program will increase opportunity for small businesses to compete for federal contracts. See Information Collection; Subcontractor Past Performance Pilot Program, 83 Fed. Reg. 17583 (Apr. 20, 2018).

competition from those more mid-sized firms qualifying as small. SBA officials also note that this proposal is unfair for those industries using employee-based standards.

- Another proposed change to the calculation of size standards is to subtract research and development expenses from total revenue. This option might encourage businesses to increase research and development investments, yet it may disproportionately benefit only those sectors that require significant research and development and use revenue-based size standards.[56] From an agency perspective, this proposal is difficult to implement because research and development costs may be difficult to verify and there is a significant chance of abuse.
- Finally, a perennially proposed change is to simply raise the revenue-based size standards. This would certainly allow some mid-sized firms to re-qualify as small, yet the number of firms that actually benefit is limited only to those firms with revenues within the increased threshold. Further, increases to size standards may especially impact the smallest of firms in a sector by increasing both the number and quality of competitors for set-aside awards. SBA officials voiced concerns that increases to revenue-based standards might allow firms that are dominant in the industry to qualify as small, contrary to statute.[57] Finally, SBA officials stated that "just raising size standards without taking into account industry structure and market conditions would enable more experienced businesses to qualify as small and hurt small businesses that need federal assistance the most, especially in competing for set-aside contracts."[58]

C. Summary and Conclusions

In summary, the GAO report's objective was to analyze (1) the extent to which small businesses grew to be mid-sized and continued to receive federal contracts; (2) instances in which mid-sized businesses can perform work on contracts set aside for small businesses; and (3) options for increasing federal contracting opportunities for mid-sized businesses.

[56] For example, manufacturing businesses invest heavily into research and development relative to other sectors but primarily use employee-based size standards.

[57] 15 U.S.C. § 632(a)(1). "A small business concern… shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation."

[58] U.S. Gov't Accountability Off., supra note 15, at 34. SBA officials also pointed out that they comprehensively review all the size standards every 5 years and that the size standards for revenue-based sectors have increased as a result of adjustments for inflation.

For its first objective, the GAO looked at businesses awarded only small business set-aside contracts in FY 2008 and determined whether those businesses were awarded any type of federal contract in FY 2017. The GAO also determined the size of those businesses and whether they experienced size changes. In addition, the GAO analyzed the extent to which small businesses that grew to be mid-sized by FY 2013 continued to receive any type of federal contract between FY 2014-2017. Taking the total number of small businesses awarded *only* set-aside contracts in FY 2008 and awarded *any* sort of federal contract in 2013, the GAO further analyzed the size and performance of those businesses through FY 2017. Most notably, more than 93 percent of the businesses that were awarded only set-aside contracts in FY 2008 and received any federal contract in FY 2017 remained small and only 2.5 percent of those businesses grew to mid-sized.

For its second objective, the GAO reviewed FAR and small business laws and regulations to identify provisions allowing mid-sized businesses to provide services and goods on contracts set aside for small businesses. If a business qualified as small at the time it was awarded a single-award contract under a small business set-aside, it generally would be considered small for the lifetime of that contract and agencies can continue to counting that contract towards its small business goals. The same is true for multiple award contracts.[59] Another option for mid-sized businesses to participate in small business set-asides is through forming joint ventures with small businesses under SBA 8(a) and All Small Mentor-Protégé programs.

For its third objective, the GAO looked to options for increasing federal contracting opportunities for mid-sized businesses. While there are several plausible options for increasing mid-sized business opportunities in the federal market, they carried significant drawbacks by way of encroaching into the number of opportunities available to small businesses, increased agency burden, and increased agency risk.

[59] There are exceptions to this general proposition. Mergers and acquisitions, for example, generally require businesses that become other than small as a result to recertify its size. Additionally, there are certain requirements for recertification effect immediately before the end of the fifth year on multiple-award contracts. Multiple-award contracts that run for more than five years, including options, require businesses to recertify its size within 120 days before the end of the fifth year. A contracting officer may also require a business to recertify its size status in response to a solicitation; this recertification determination is based on the size as of the date the business submits its response to the offer. Finally, blanket purchase agreements where the agreement is a set-aside or reserve award to any small business requires the business to qualify as small at the time of the offer and at the time of the order to be considered; the agency may count the business toward its small business goal if the business is small at the time of the offer.

IV. THE CURRENT SIZE STANDARD AND EXISTING SBA PROGRAMS ARE INSUFFICIENT TO FOSTER SUCCESSFUL TRANSITIONS FOR FEDERAL PRIME CONTRACTORS IN NAICS 236220

A. Background

NAICS 236220, Commercial and Institutional Building Construction, comprises establishments primarily responsible for the construction of commercial and institutional buildings and related structures. 236220 includes commercial and institutional building general contractors, commercial and institutional building for sale builders, commercial and institutional design-build firms, and commercial and institutional building construction management firms.[60] Within Sector 23, Construction, the federal government purchases approximately 80 percent of all non-civil works under 236220 **(see Figure 4)**.[61] For businesses in the federal market, solicitation requirements for general contractors require sufficient bonding capacity in addition to the past performance and technical capability requirements typical of federal contracts.[62]

B. Objectives, Scope, and Methodology

In the absence of federally recognized definitions of "mid-sized" and "large" businesses, there is no established research methodology to measure the performance of medium sized firms.[63] This study analyzes (1) the extent to which small businesses in NAICS 236220 successfully transition to the unrestricted federal marketplace

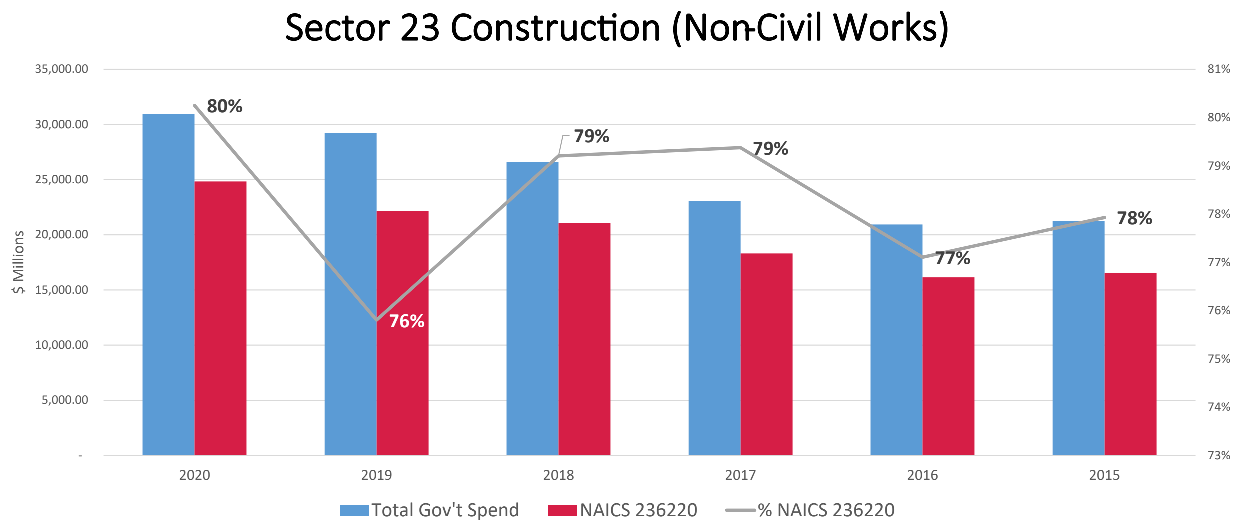
[60] *236220 – Commercial and Institutional Building Construction*, NAICS Association, https://www.naics.com/naics-code-description/?code=236220 (last accessed Aug. 3, 2021).

[61] *See supra* Note 5 for a brief discussion of civil works NAICS code. Of the 24 NAICS codes contained in Sector 23, 22 NAICS codes are non-civil works. Of those, the government makes 80 percent of its purchases in 236220.

[62] For example, a typical solicitation evaluates proposals on several non-price factors including Technical Approach, Safety, Corporate Experience, Technical Solution, and Past Performance. When evaluating the Corporate Experience factor, the Government looks to relevant past construction projects to determine diversity in project types, significant construction and design experience, significant design-build experience, experience working as a design-build team with the proposed designer of record, and demonstrated ability to perform simultaneous projects. For the Past Performance factor, the Government looks at relevant sample construction projects. Thus, given that prime contractors in NAICS 236220 are heavily evaluated based on prior relevant experience, it is extremely difficult for small businesses to accumulate relevant experience and obtain large awards in the future without requisite large projects in their repertoire.

[63] The federal government only categorizes businesses as "small" or "other than small". Because there is no legislative definition for "mid-sized" businesses, researchers have implemented differing metrics for defining this category.

Figure 4



and continue to win federal prime awards; (2) conditions in the federal marketplace that inhibit successful transitions; and (3) options for increasing federal contracting opportunities to encourage small business growth and successful transitions into the unrestricted federal marketplace.

For our research, we used federal data through Fedmine.us, the largest library of aggregated federal data sets on the internet.[64] Fedmine.us automatically aggregates the real-time federal government data sets from FPDS-NG, SAM.gov, and other government sources. Fedmine then assigns unique Fedmine IDs to government contractors and tracks all federal awards.

For the *first objective*, we analyzed data from Fedmine for fiscal years 2005 through 2020 (the most recent complete data available). To determine the extent to which small businesses in 236220 successfully transitioned from small to other than small, we separately compiled all "small business" and "other than small business" awards made in 236220 per year. We compiled the lists of Fedmine IDs for award recipients and cross-referenced them to determine which Fedmine IDs appeared on the "small business" recipient list and also on the "other than small" list. From there we further analyzed how many of those Fedmine IDs appeared on the "other than small" list for at least ten of the 16 years studied.

For the *second objective*, we analyzed market conditions and patterns that inhibit successful small business growth in 236220. We used Fedmine to analyze several trends including the increase in the government's use of IDIQs and the distribution of awards by dollar bands. For IDIQs, we looked at the total number of

[64] *About Fedmine*, Fedmine, https://www.Fedmine.us/about-us/ (last visited Aug. 2, 2021).

awards by contract type in fiscal year 2005 and compared that to the total number of awards by contract type in fiscal year 2020. For our dollar bands analysis we organized the total annual awards into the following sizes: < $1 Million, $1-$5 Million, $5-$10 Million, $10-$25M, $25-$50M, $50-$75M, $75-$100M, and > $100M. From there, we assessed the distribution within those dollar bands between small business and other than small business awards. We then calculated the average percentage of awards in each dollar band that went to small businesses between fiscal year 2005 and fiscal year 2020. Finally, we looked at the total dollars awarded to small businesses each year in fiscal years 2005 through 2020 and categorized the total dollars awarded by contract size into those same dollar bands.

For the *third objective*, we read the existing literature and prior research combined with our own analysis of NAICS 236220 to determine the best option for not only increasing federal contract opportunities for mid-sized businesses but also to foster growth.

C. Only Six Percent (6%) of Small Businesses in 236220 Successfully Transition into the Unrestricted Federal Market

Based on our research, very few businesses in NAICS 236220 successfully transition from small to other than small and continue to win federal prime awards. During the 16 years from FY 2005 to 2020, 1,228 companies won both small business and other than small business awards. Of those companies, only 75 won other than small business awards in at least 10 of the 16 years.[65] This represents only 6 percent (%) of the total companies that won both small and unrestricted awards **(see Figure 5)**. This indicates that while many small businesses are able to win unrestricted awards, very few continued to regularly win unrestricted awards.[66]

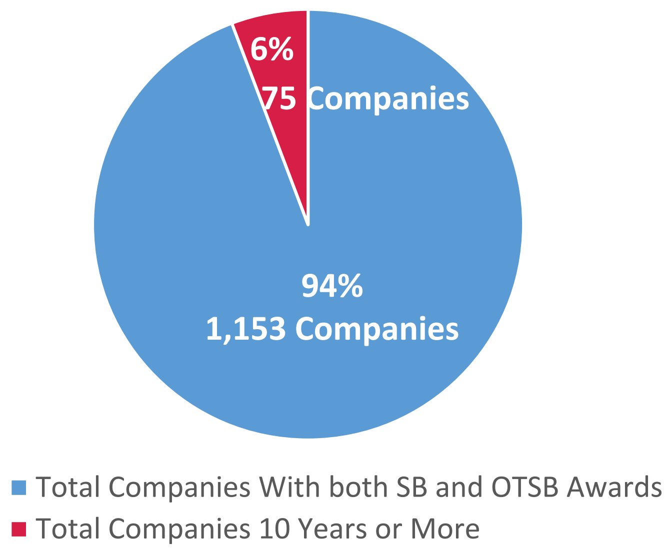
[65] For our methodology, we used ten years as a benchmark for successful transitions from small to unrestricted. Unlike the GAO study, we did not use multipliers to estimate "mid-sized" and "large-sized" firms. Rather, we simply wanted to measure how many small businesses, as indicated by winning a small business award, successfully won not only one unrestricted award but also went on to do so for at least 10 of the years. Rather than tracking only a baseline group of businesses that received awards in one year and looking at their status at the end of the observation timeframe, we tracked all businesses winning awards in 236220 each year. By tracking all businesses annually over the entirety of the 16 years, we accounted for those businesses that may have won awards in non-consecutive years or perhaps just did not win federal awards for a few years.

[66] Of the 75 businesses that won unrestricted awards for at least 10 years, it is important to note that some were well established companies that may have won the small business awards in joint ventures or as a mentor in the mentor protégé program. In other words, it is possible that several of those businesses we not truly small businesses at any point during the 16 years studied. This may be attributed to human errors when contracting officers filled out company information on FPDS, but in order to maintain the integrity of the data we did not exclude these companies.

Figure 5

SBs Winning OTSB Prime Awards for 10 Years or More Between 2005-2020

Total Companies = 1,228



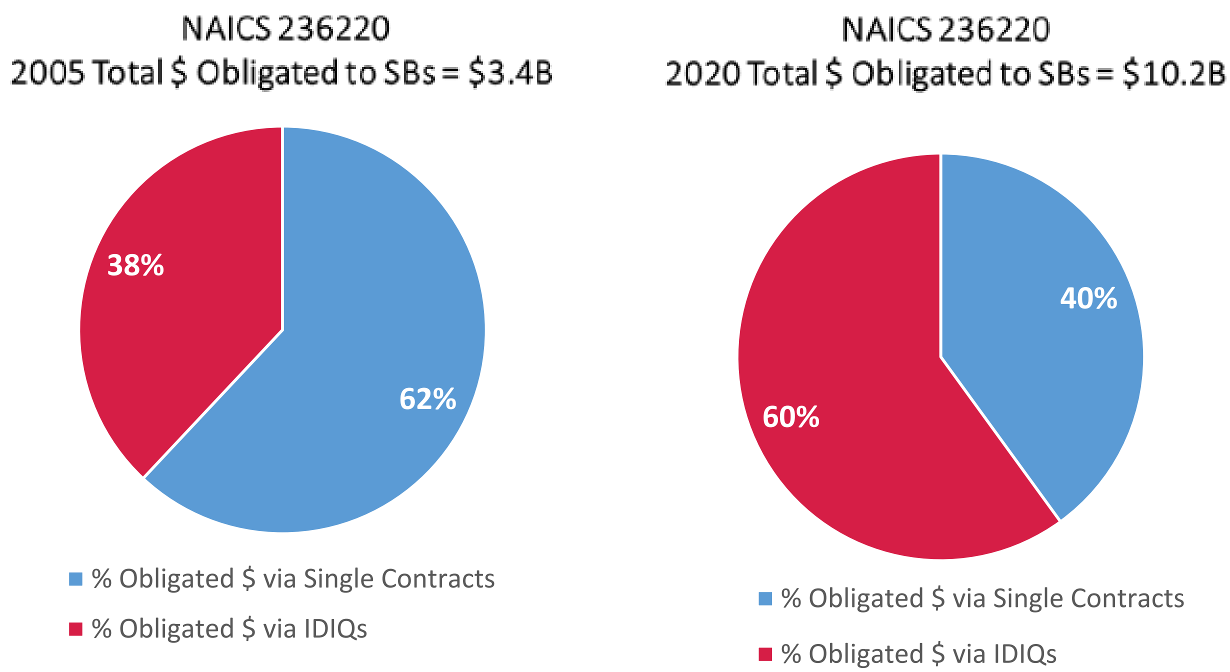
While there is no universally adopted methodology for measuring successful small business transitions, this figure is similar to results from other studies.[67]

D. The Increased Use of IDIQ Contracts and the Disparity Between the Contract Sizes of Small and "Other Than Small" Awards Inhibit New Entrant Competition and Growth

In fiscal year 2005, the federal government obligated small businesses 38 percent of total dollars in NAICS 236220 through IDIQ contracts. In fiscal year 2020, 60 percent of total dollars awarded to small businesses in NAICS 236220 were through IDIQs **(see Figure 6)**. The drastic increase in the use of IDIQs places the

[67] Cohen et al., Ctr. for Strategic & Int'l Stud., *supra* note 3, at 20. The study team calculated the graduation rates of small businesses using a different methodology but reached similar conclusions. For the aforementioned study, the researchers considered small-business graduation to occur through either organic firm growth or acquisition by a larger company. A small business is considered to graduate when it changed during the 10-year observation period from small-business status to medium- or large-business status for the majority of its contract obligations with the federal government. The graduation rate is calculated by dividing the number of graduated firms that also survived in year 10 over the 10-year observation period by the total number of small firms that entered the market in the baseline year. Across 6 samples comprised of small business entrant classes from 2001 to 2006, the graduation rates of small businesses consistently decrease. In 2001, around 14 percent of small businesses contracting with all federal agencies that survived for 10 years graduated from small business status. In 2006, only around 7 percent of small businesses that survived 10 years graduate from small business status.

Figure 6



smallest-small businesses at a distinct disadvantage compared to their larger-small business counterparts.[68]

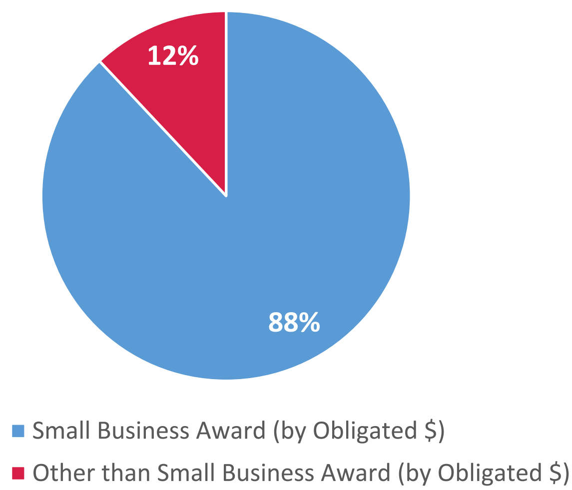
At the same time, there is an inverse relationship between contract size and small business participation. During the 2005-2020 period, small businesses received 88 percent (%) of total dollars awarded in the less than $1 million dollar band. Small businesses received 70% of dollars awarded in the 1-5 million dollar band and 62% of the dollars awarded in the 5-10 million dollar band. However, we found that in the 10-25 million dollar band range the majority, 63% were awarded to other than small businesses (small businesses received only 37% of awards in that range). As the dollar bands increase, small business participation sharply declines. In the 75-100 million-dollar range, only 3% of the total dollars obligated went to small businesses. In the greater than $100 million range, the figure is only 1% **(see Figure 7)**.[69]

[68] *See supra* note 31-35 and accompanying text for a discussion of the effects of IDIQ contracts on small and mid-sized businesses in general. For our research we looked specifically at the increase in the use of IDIQ contracts within small business procurements. The data within small business procurement reflects the same trend of federal procurements in general whereby the government is increasing its use of IDIQ contracts. In the same way that IDIQ contracts pose an obstacle for mid- and small-sized firms as compared to large business counterparts, the increased use of IDIQ contracts within small business is especially disadvantageous for the smallest firms *within* the small business sector compared to the more established small businesses (those closest to the size standard cap).

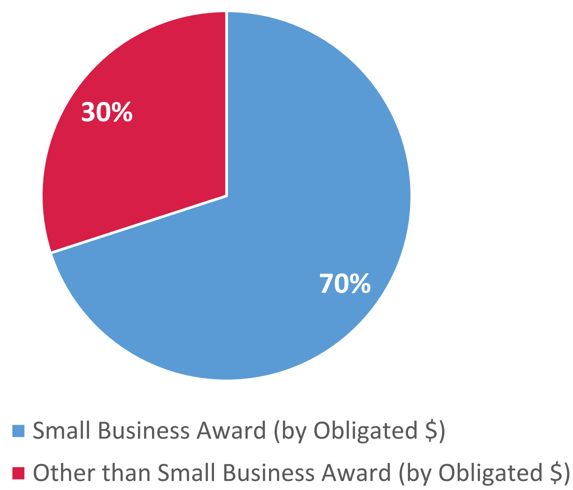
[69] These figures reflect the average distribution of awards over 16 years between 2005 and 2020.

Figure 7

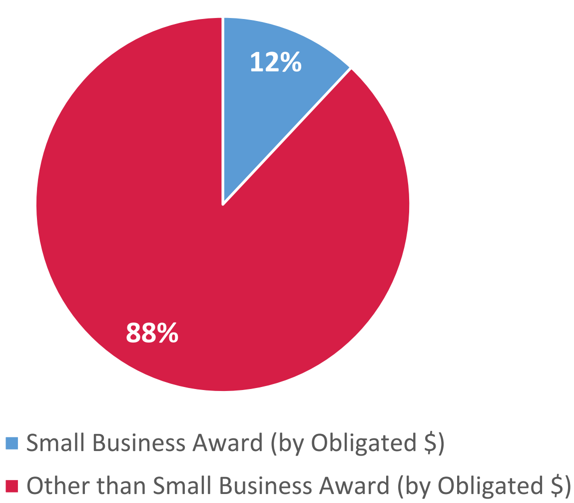
< $1M Dollar Band Avg. 2005-2020



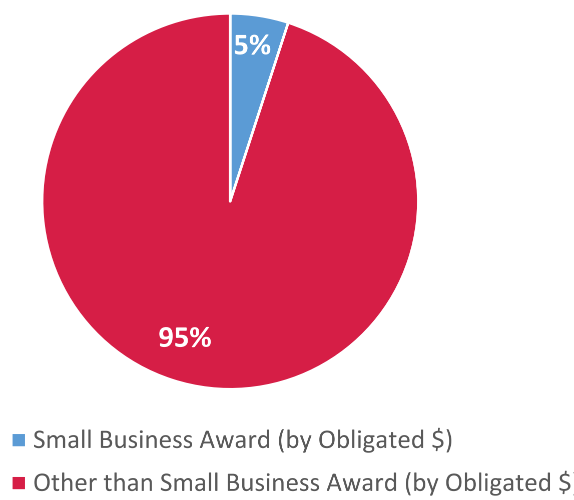
$1M-$5M Dollar Band Avg. 2005-2020



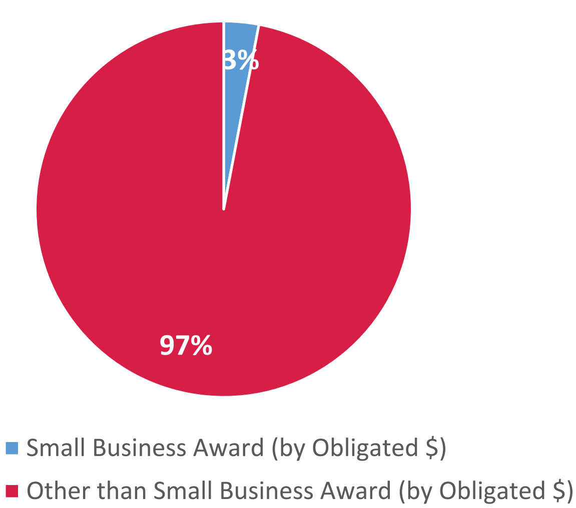
$25M-$50M Dollar Band Avg. 2005-2020



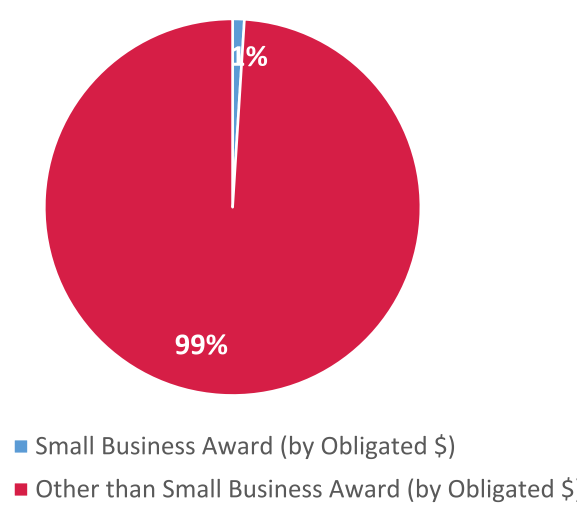
$50-$75M Dollar Band Avg. 2005-2020



$75M-$100M Dollar Band Avg. 2005-2020



>$100M Dollar Band Avg. 2005-2020



By the same token, of the total dollars obligated to small businesses in NAICS 236220 each year, 62 percent (%) derives from awards of less than $5 million **(see Figure 8)**. Calculated by number of actions, contract awards in the less than $5 million range constitute over 99 percent of total actions awarded to small businesses **(see Figure 9)**.[70] This figure, combined with the aforementioned dollar bands analysis, inhibits small businesses in NAICS 236220 because federal solicitations require sufficient past performance of projects in similar size and scope.[71] The data indicates that small businesses have been unsuccessful when competing with larger businesses for larger awards. This creates a cycle whereby the small businesses cannot compete for future large awards because they lack the requisite past performance.

E. Policy Changes to Promote Successful Transitions Must Not Encroach Upon Small Business Opportunities or Increase Agency Burden and Risk

The research into NAICS 236220 supports both the conclusions of the GAO study and some of the reservations from stakeholders about the study's proposed options. The GAO report found that only 2.5 percent of small business that outgrew their applicable size standards continued to win and compete in the federal market. The researchers in this study found that only 6 percent of companies in NAICS 236220 who won both small and other than small business awards continued to win other than small business awards for at least ten of the sixteen years studied. This suggests that few companies successfully make the transition from small to other than small and continue to compete in the federal marketplace.

However, recommendations from the GAO report are unsatisfactory as applied to our study of NAICS 236220. In order to increase opportunities for successful transitions, the solution ought to not impede the opportunities available to the smallest firms or increase agency burden and risk. Between fiscal years 2005 and 2020, the federal government awarded roughly 62 percent of dollars and over 99 percent of total actions awarded to small businesses in 236220 each year through contracts less than $5 million. As such, the reservations about larger small business firms encroaching upon small business opportunities are valid. When larger small businesses with better past performance remain in the small business marketplace and compete with the "smaller smalls", they are at a distinct advantage over their smaller counterparts; this advantage parallels the advantages large businesses have over small businesses. The increase in IDIQ contracts within NAICS 236220

[70] While the data in **Figure 6** represents the average distribution of dollars obligated to small business and OTSB over 16 years studied, the dollar bands analysis in **Figure 7** and **Figure 8** reflect the distribution by contract size each year.

[71] *See supra* note 62 for a discussion of Federal solicitation requirements and the significance of past performance in proposal evaluations.

Figure 8

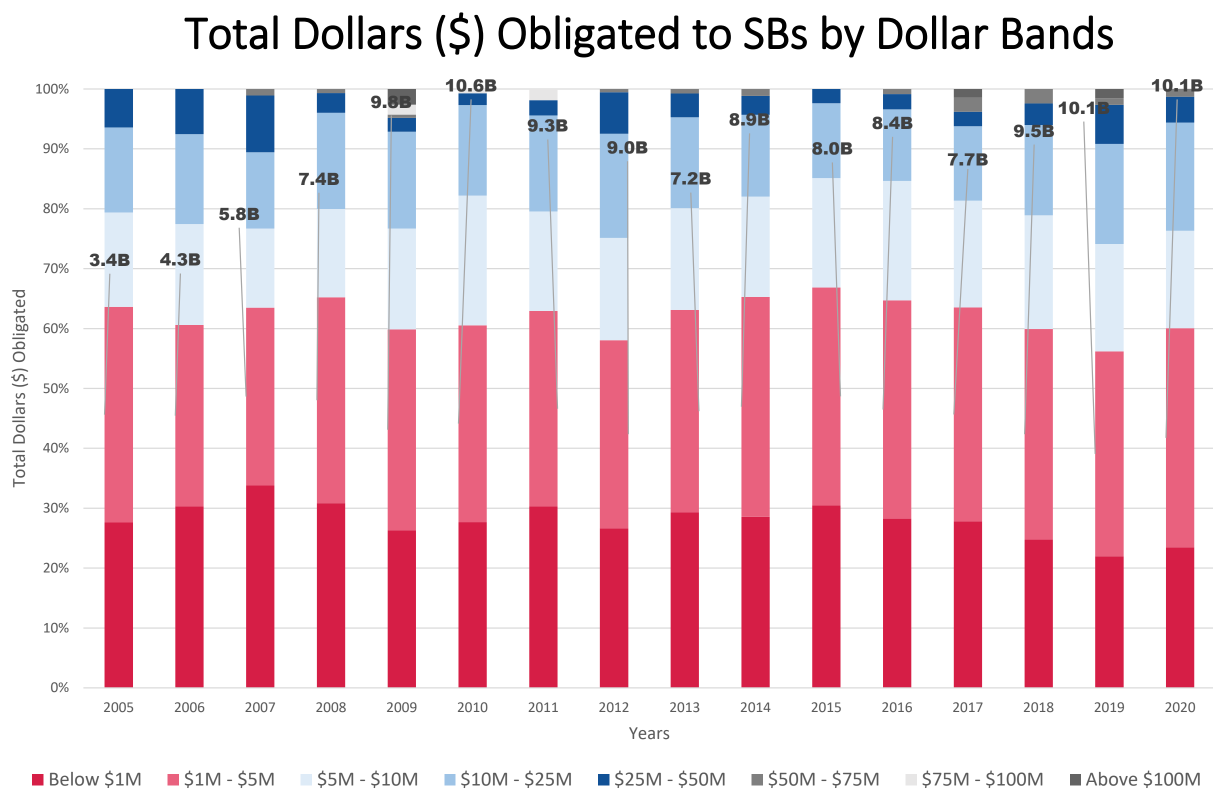
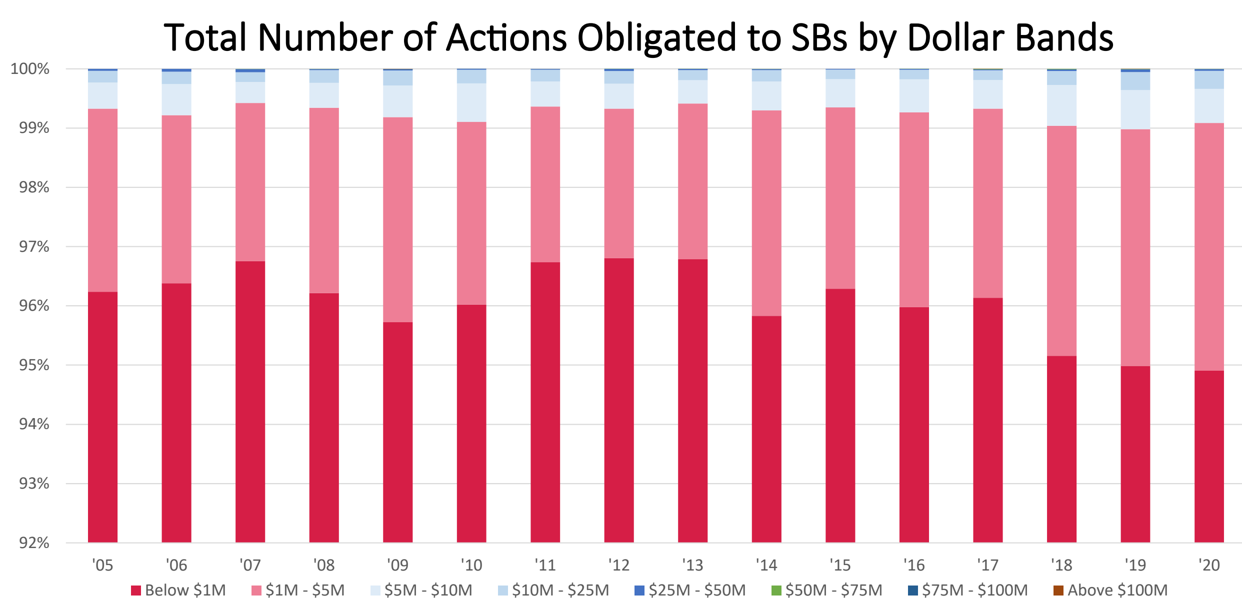


Figure 9



follows the government wide trend of reducing procurement agency burden. When considering potential solutions, it is important to acknowledge the reality of limited agency resources.

F. The Benefits of Remaining Small and the Burdens of Competing in the Unrestricted Market Encourages Otherwise Capable Businesses to Remain Small

While designated small business set-aside programs benefit small businesses by providing more opportunities, as small business owners improve and win more awards they are often faced with a difficult question – whether or not they should intentionally handicap business growth. As a general matter, most business owners and entrepreneurs want their companies to remain as profitable as possible. In the federal market, however, because small businesses set-asides are so beneficial, it makes more sense sometimes for businesses to intentionally remain small in order to maintain small business status. Once a business sizes out, they find themselves competing in the unrestricted market where their competitors may have several times its resources, capital, and past performance.

When faced with the daunting proposition of competing with Goliaths against whom the newly graduated small business has little chance, the proposition of remaining small and taking advantage of small business programs appears all the more attractive. By the same token, these larger small businesses making the decision to remain at the outer limits of size standards become the Goliaths and leave fewer opportunities for the smaller small businesses and new small business entrants. In effect, the businesses that intentionally hover at the upper limits of size standards position themselves in the most advantageous position at the expense of smaller businesses and the industry as a whole.

V. THE GOVERNMENT OUGHT TO AUTHORIZE A PILOT MORATORIUM PROGRAM TO HELP FOSTER SUCCESSFUL TRANSITIONS AND ENCOURAGE THE GROWTH OF CAPABLE FIRMS

A. The Proposed Solution

After conducting research into the market conditions of NAICS 236220 and reviewing existing literature on the subject of mid-sized firms, we believe the best solution to the lack of successful transitions is a "moratorium period" for transitioning small businesses.

- This program facilitates successful transitions whereby a small business in the process of outgrowing its $39.5 million size standard may formally declare its intention to participate in the moratorium period.

- Once the business declares itself in moratorium, it will have five (5) years during which it can continue to qualify as a small business but may ***only* pursue small business awards larger than $5 million** and unrestricted awards.
- Businesses in moratorium may participate in IDIQ contracts, unless it is established that all task orders under such an IDIQ fall below $5 million in size. During this time, the business in moratorium may no longer take advantage of SBA programs such as SBA and 7(j) loans nor can it be a protégé in the All Small Mentor-Protégé Program.

B. The Proposed Moratorium Period is the Next Logical Step to Foster Small Business Growth and a Healthy Competitive Small Business Marketplace

The moratorium period proposed herein is an enhancement of the existing regulations, furthering the Congressional policy objectives, promoting the health of growing businesses, and supporting free market competition.

The proposed moratorium provides both the opportunity and the incentive to grow. Currently, many small firms are capable of competing for larger awards but intentionally remain small in order to receive SBA benefits. When making plans for strategic growth, or lack thereof, businesses consider the realities of competing in the unrestricted market. Not only must businesses compete against corporations several times larger, but also they must do so quickly to build requisite past performance to remain competitive. That less than six percent of businesses successfully make this transition is indicative of the underlying systemic obstacles.[72] As the size of federal awards continue to increase, this obstacle becomes greater.

C. The Moratorium Period Provides a Transition Period for Growing Businesses, While Encouraging New Small Business Entrants

As explained elsewhere in this whitepaper, while the Government currently provides support for businesses while they remain small, there is a significant concern with the viability of these companies as they grow beyond the small business size standard. The tremendous number of companies that fail to remain competitive in the federal market after leaving the protection of the small business domain signals the necessity for action. The moratorium will not only benefit those companies growing beyond SBA size standards, but also support the smallest of companies and ensure fair competition.

[72] *See supra* Note 65-66 for a discussion of the six percent figure.

The companies that are growing from small to other-than-small business status face substantial obstacles as they move into the competitive marketplace. They are moving away from a position of being proverbial big fish in the little pond of small business contracting to being tiny fish in the huge ocean of competitive procurements. These transitioning companies – many with revenues not significantly in excess of the size standard – face the prospect of competing with long-standing corporate behemoths whose revenues extend into the multiple *billions* annually. At the same time, they lose the safety net of small business set-aside work and protections from administrative requirements.[73] With all of these obstacles in mind, it is no wonder that few businesses attempt to make this transition and even fewer find success.

The moratorium period provides a softer transition from small to other-than-small businesses than the abrupt change that businesses currently face. It allows for the transitioning companies to remain small with regard to administrative requirements and protections, thereby allowing for a longer, more organic growth period to develop processes and systems before these requirements come into effect. It also provides a weaning period, gently removing the companies that are in the moratorium period from their reliance on small business set-aside work by requiring them to meet certain target rates of non-small business set-aside work.[74]

The moratorium period would allow for a slower, more sustainable transition from small business to other-than-small business. This benefits the Federal Government in two regards. ***First***, the Government will benefit from a more robust and competitive market in the unrestricted sector including those businesses that otherwise may not participate either because they intentionally remained small or because they could not survive in the unrestricted federal market. ***Second***, the Government benefits from a more competitive small business market as those firms at the top of the small business market transition into the unrestricted federal arena, more new small businesses will have incentive to enter the market.

Given the additional stipulation that businesses in moratorium cannot pursue those contracts below the $5 million threshold, the moratorium eliminates a major hurdle for the smallest businesses to successfully compete within the small business arena. It has been suggested that that those small businesses intentionally remaining small, the big fish in the little pond, pose a significant burden to both the smallest businesses and potential new entrants. The reality is that the current

[73] Examples of administrative requirements that benefit small businesses are Cost Accounting Standards (CAS) requirements, small business subcontracting plans, etc.

[74] *See supra* note 9 for a discussion of target requirements for 8(a) participants. The target for non-small business set-aside work increases each year during the five-year moratorium period, requiring the businesses in moratorium progressively become less reliant on set-asides. This is akin to the non-8(a) business activity targets outlined in 13 CFR § 124.509.

all-or-nothing size standard system encourages this kind of competitive behavior.[75] By implementing policies that make growth feasible, those businesses that have intentionally remained small will be incentivized to take the plunge. As more small businesses transition into the unrestricted market and begin competing for larger awards, contracting officers, following the *Rule of Two*, will begin to set aside larger awards as small businesses evidence their capabilities for the solicitation. This will go a long way towards closing the current stark gap that exists between small business awards and other-than-small business awards as well as helping transitioning businesses build the past performance required for continued success.

D. The Moratorium Period Naturally Follows the SBA 8(a) Program with Regard to Transitions

The term "moratorium period" as applied herein is new – no other Government program is known to utilize this term. However, the idea behind it is very similar to existing programs that have proven to aid small businesses.

For instance, the SBA's 8(a) program includes the concept of transitioning businesses out of the 8(a) program. 13 CFR § 124.404(a) establishes two stages for 8(a) participants: during the first four years in the program the participants are considered to be in their "developmental" stage; in their last five years the 8(a) participants are in their "transitional" stage.[76]

The moratorium period similarly would be a "transitional" period, for those businesses moving from small to other-than-small. The proposed moratorium period encompass the first five years after the business outgrows its size standard, which is a similar period of time in which 8(a) participants' transition out of the 8(a) program.

In the 8(a) program, the transitioning 8(a) participants are required under 13 CFR § 124.509 to achieve certain targets of non-8(a) set-aside contract revenue each year. These targets, as a percentage of total revenue for the transitioning 8(a) business, increase each transition period year. If an 8(a) participant fails to meet its target, it may be removed from the 8(a) program.[77]

[75] One option to propel these "intentionally-small" businesses into the unrestricted market would be to lower the size standards. While this option would push many businesses into the unrestricted market, the downside is that these businesses are unlikely to survive in the unrestricted market federal marketplace. Further, the same problem would repeat whereby businesses will continue to hover close to, without exceeding, the new size standard.

[76] 13 CFR § 124.404(a).

[77] 13 CFR § 124.509.

Similarly, under the proposed moratorium period, a company in its moratorium years will be required to also achieve certain targets of non-small business set-aside revenue each year. The percentage of total revenue required to derive from non-small business set-aside contracts will increase each year for the company during its moratorium Years. If the company in its moratorium years fails to meet its required target, it will lose its eligibility to participate in the moratorium program.

These established methods used in transitioning participants out of the 8(a) program can similarly be used to help transition small businesses to other-than-small businesses.

E. The Moratorium Period Requires Little Maintenance Effort From SBA and Federal Contracting Agencies

While the moratorium Period concept is envisioned to provide substantial benefits to transitioning businesses, it requires very little work on the part of the SBA, federal contracting agencies, and federal contracting officers.

The transitioning companies (companies within the first five years of exceeding their small business size standards) will be required to self-certify in SAM.gov their moratorium period status. If the moratorium status is questioned, it can be the subject of protest. Improper certification would be a basis for removal from the program and potential False Claims Act actions.

Further, the moratorium period contractors would still be considered small businesses during their transition period, therefore contracting agencies would still be able to treat them as small businesses. No changes to the Federal Acquisition Regulations or existing contracts would be required, as no provision or clauses would be necessary to address the moratorium period. To the contracting agencies, the participants would remain small businesses as it relates to contracting activity and execution until they exit the moratorium program.

As proposed, the moratorium program would be virtually self-governed and would not require audits or time-consuming certification processes to be conducted by the SBA. The self-certification process would be policed by the bid protest process instead.[78]

This program would ideally bring a large number of benefits to the participating contractors, the government, and the overall American economy without significant additional effort required on the Government's part.

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[78] The SBA handles all small business size protests. In the event that there are protests, it is acknowledged that this may slightly increase SBA workload.

VI. RECOMMENDATION AND CONCLUSION

It is therefore recommended that the SBA consider the proposition that a moratorium period program for the Construction NAICS 236220 would supplement the existing size standards and foster a healthier market.[79] The program may also serve as a pilot program for other NAICS codes in the future. The current size standard methodology does not take into consideration the reality that federal contractors in NAICS 236220 are unlikely to find success if they transition into the unrestricted marketplace, thereby encouraging those businesses to intentionally remain small or in the alternative to exit the federal market altogether. Further, a structured moratorium period would free up contracting opportunities below $5 million for the smallest businesses and increase small business participation for larger awards.

Unlike other proposed solutions, the moratorium period program takes into account the interests of all stakeholders including small businesses with relatively little experience, mid-sized firms looking to transition, and contracting agencies looking to get jobs done at competitive prices. The moratorium period also takes into account the realities of government contracting today whereby awards are increasingly larger and more complex, leaving businesses little opportunity to grow and survive in the unrestricted marketplace. Were this program adopted, it would go a long way towards fostering sustainable growth and maintaining a balanced competitive landscape.

Respectfully submitted,

CMS CORPORATION

Fanyi (Lele) Meng

[79] While this whitepaper focuses on NAICS 236220, we believe that there are opportunities to apply such a moratorium model across different sectors and NAICS codes. Based on the various studies referenced, there is a pervasive problem among small and mid-sized firms as a whole. As such, we believe this moratorium program could serve as a pilot program for research to be done into other industries. For example, we found that 99% of the total number of awards or 62% of the total dollars awarded to small businesses in NAICS 236220 fell in the below $5 million range; as such, the safeguard that moratorium companies cannot compete for awards below $5 million is a strong safeguard to ensure that small businesses remain viable. For other industries this number may vary but the underlying principle is widely applicable.

Appendix

Figure 1

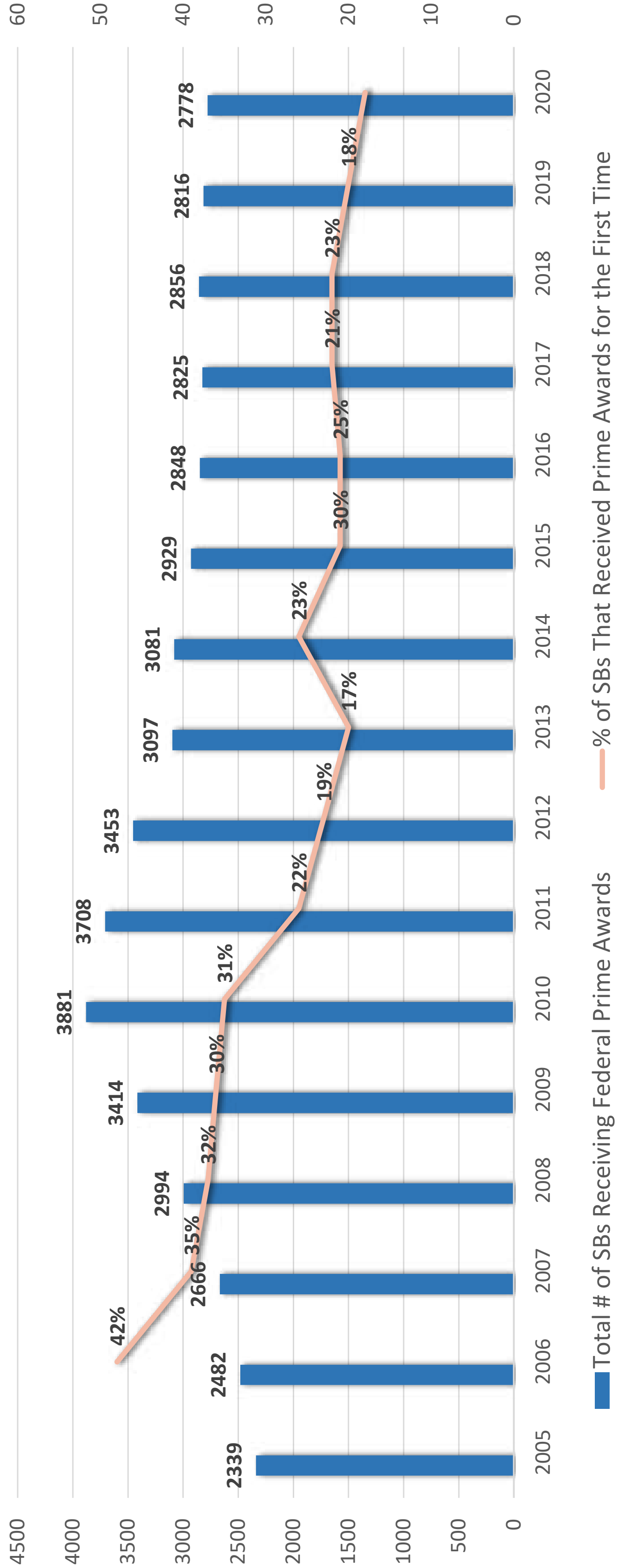


Figure 2

Avg. % of SBs That Transitioned from Winning SB Awards to OTSB Awards Per Year, 2006-2020

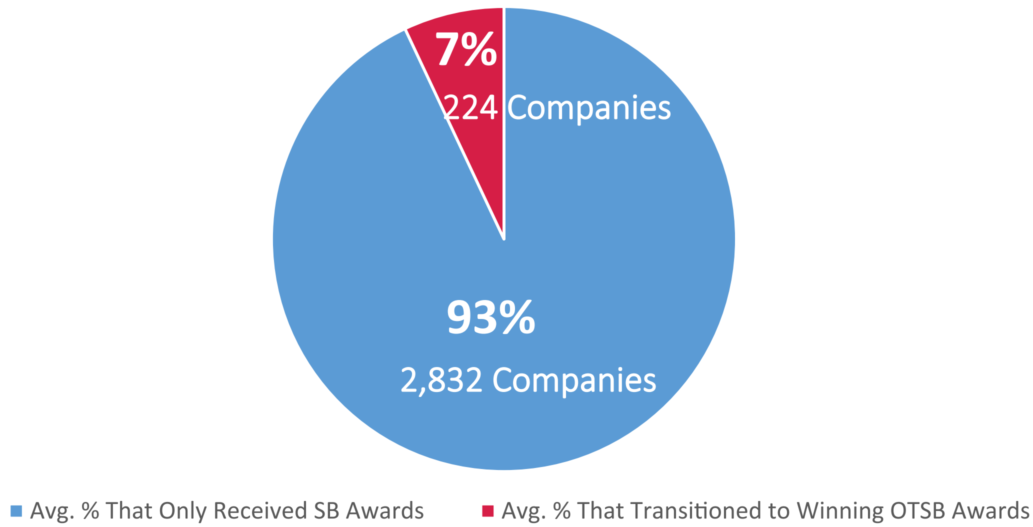
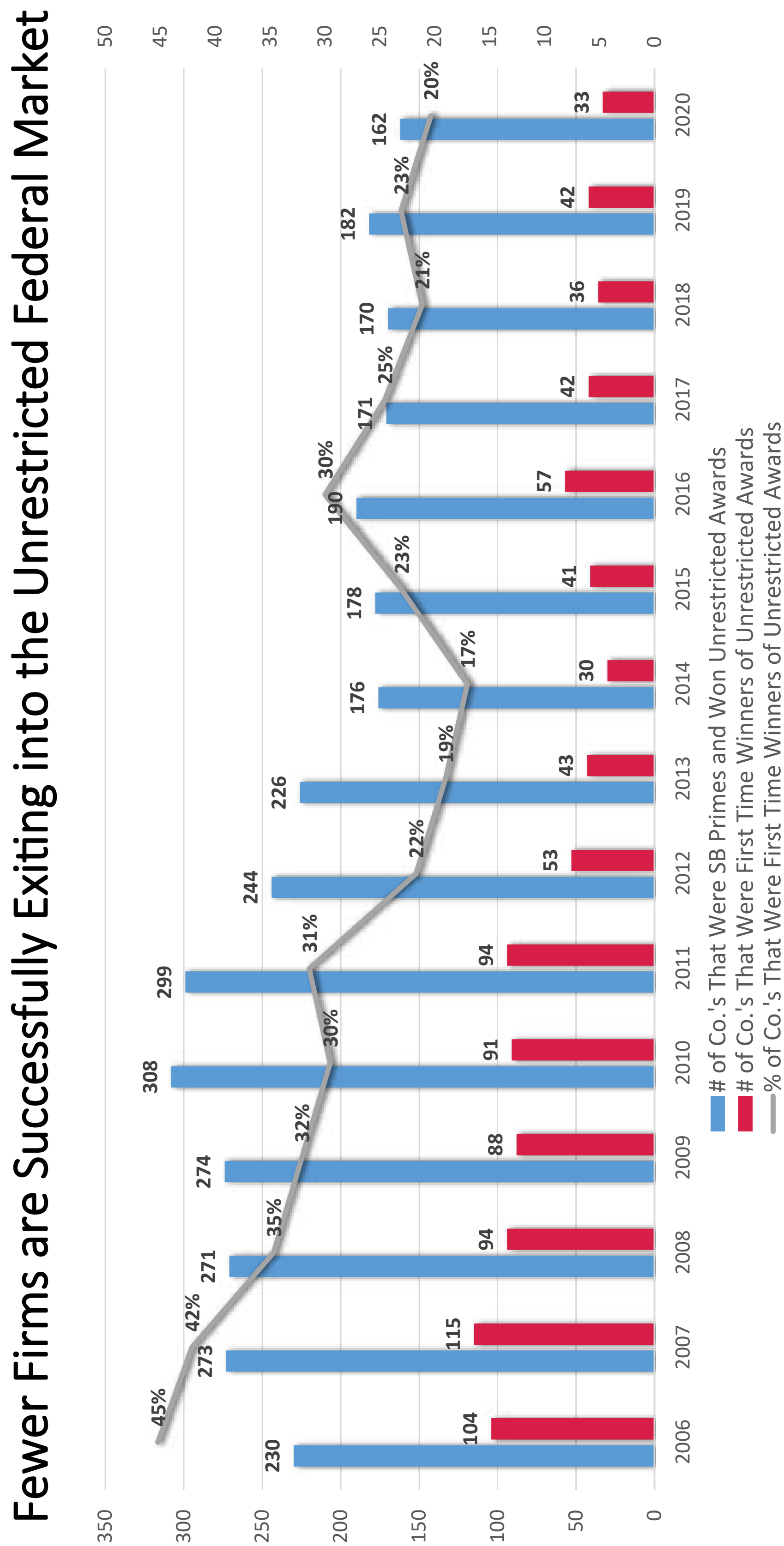


Figure 3



Fewer Firms are Successfully Exiting into the Unrestricted Federal Market
350
300
250
200
150
100
50
0
50
45
40
35
30
25
20
15
10
5
0
2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020
230 273 271 274 308 299 244 226 176 178 190 171 170 182 162
104 115 94 88 91 94 53 43 30 41 57 42 36 42 33
45% 42% 35% 32% 30% 31% 22% 19% 17% 23% 30% 25% 21% 23% 20%
# of Co.'s That Were SB Primes and Won Unrestricted Awards
# of Co.'s That Were First Time Winners of Unrestricted Awards
% of Co.'s That Were First Time Winners of Unrestricted Awards

Figure 4

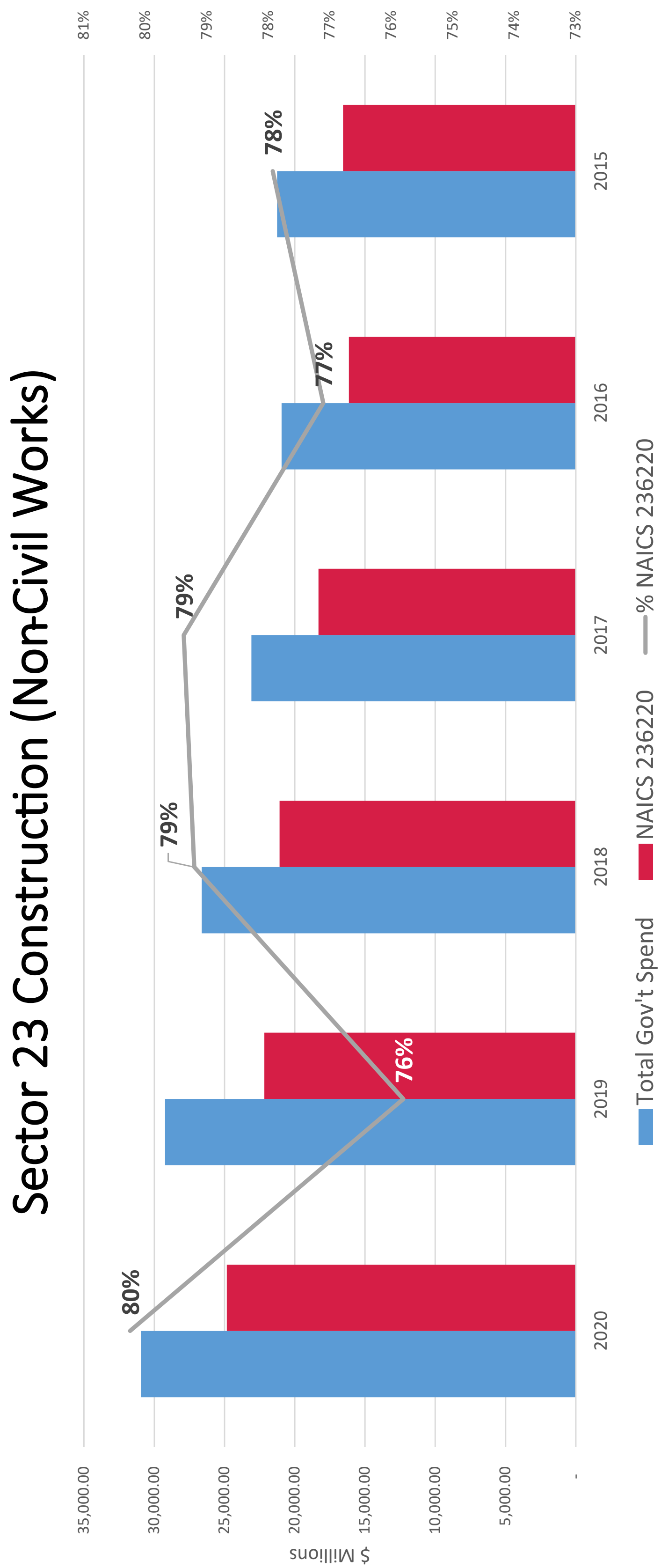

Sector 23 Construction (Non-Civil Works)
$ Millions
35,000.00
30,000.00
25,000.00
20,000.00
15,000.00
10,000.00
5,000.00
-
81%
80%
79%
78%
77%
76%
75%
74%
73%
2020
2019
2018
2017
2016
2015
80%
76%
79%
79%
77%
78%
Total Gov't Spend
NAICS 236220
% NAICS 236220

Figure 5

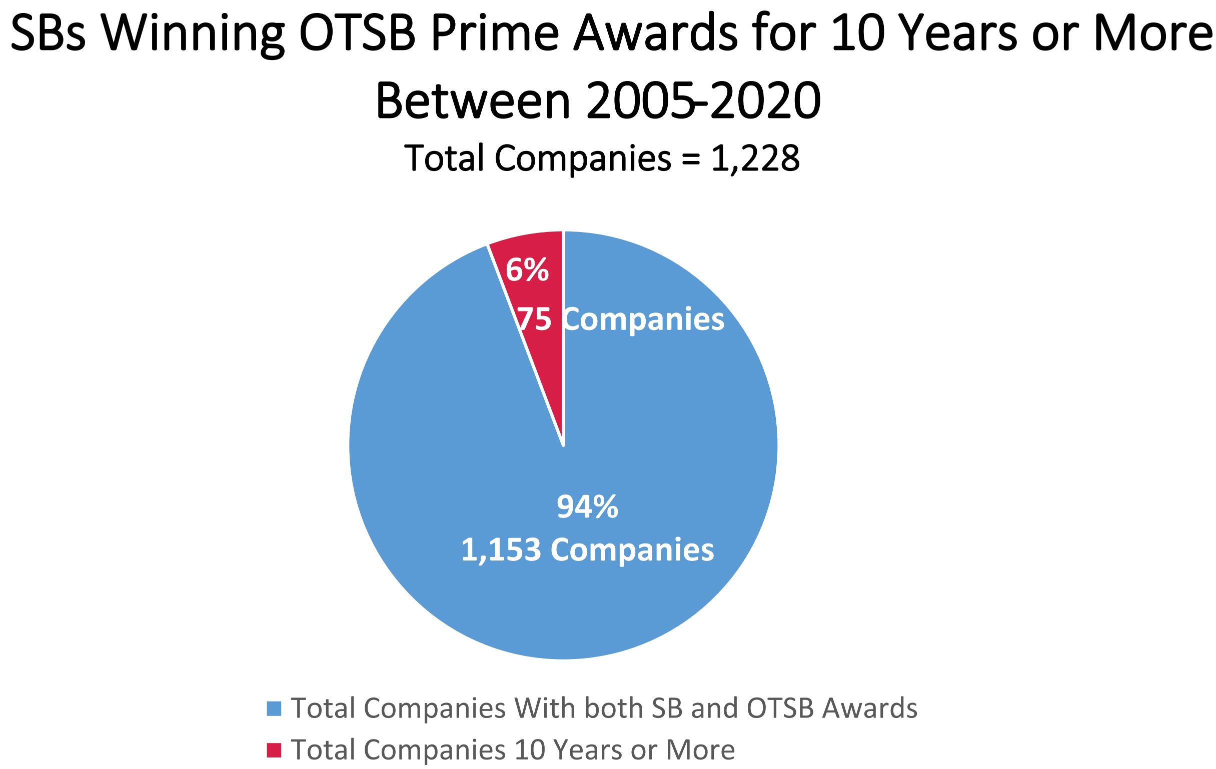
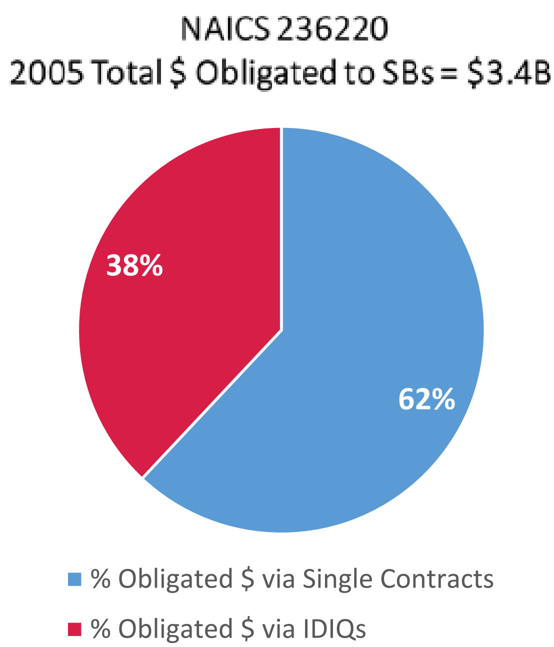


Figure 6



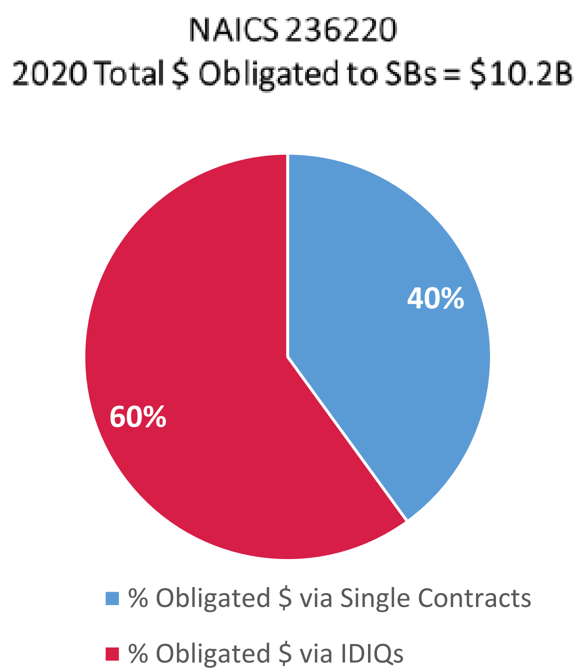


Figure 7

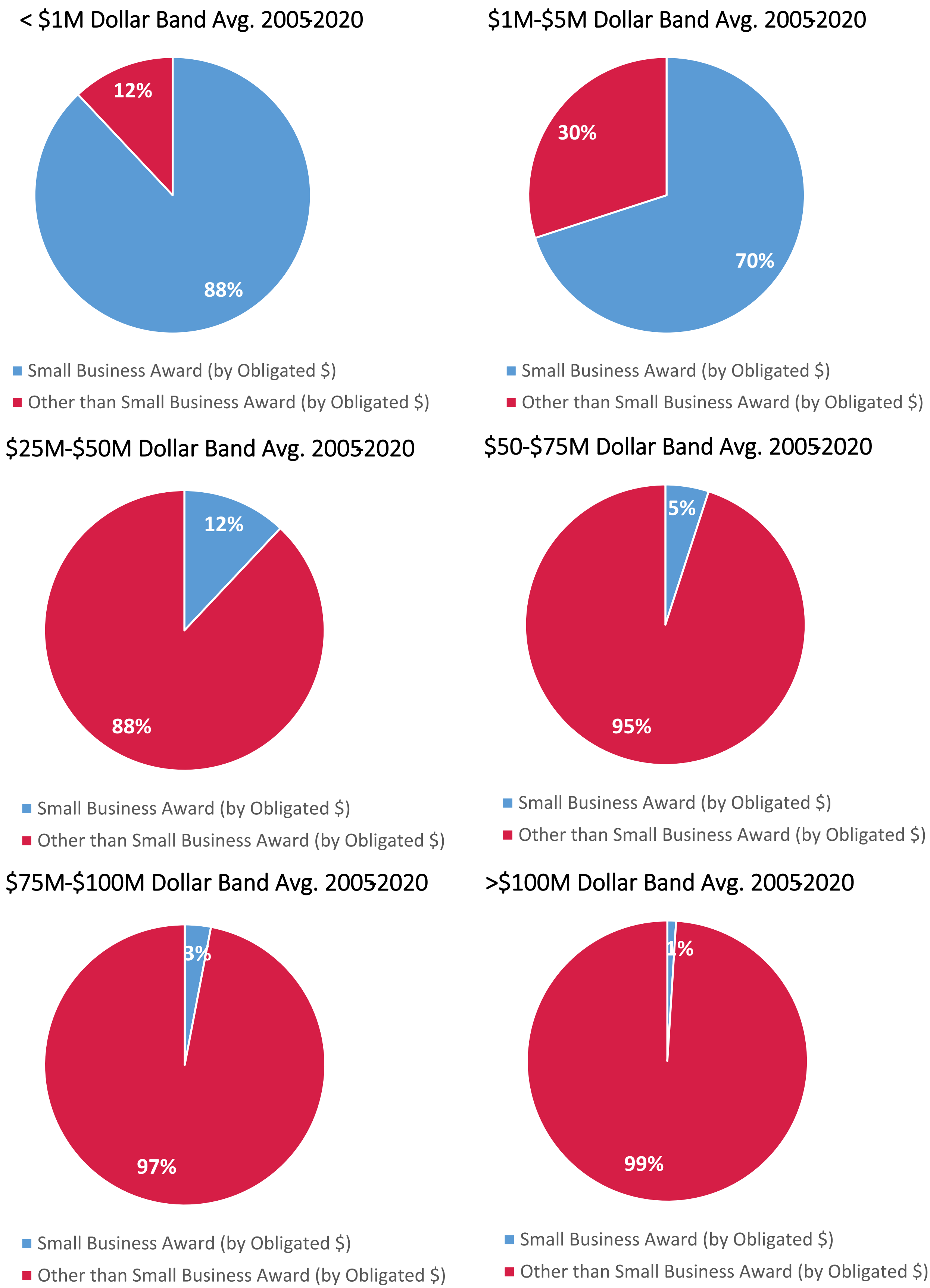

< $1M Dollar Band Avg. 2005-2020
12%
88%
Small Business Award (by Obligated $)
Other than Small Business Award (by Obligated $)
$1M-$5M Dollar Band Avg. 2005-2020
30%
70%
Small Business Award (by Obligated $)
Other than Small Business Award (by Obligated $)
$25M-$50M Dollar Band Avg. 2005-2020
12%
88%
Small Business Award (by Obligated $)
Other than Small Business Award (by Obligated $)
$50-$75M Dollar Band Avg. 2005-2020
5%
95%
Small Business Award (by Obligated $)
Other than Small Business Award (by Obligated $)
$75M-$100M Dollar Band Avg. 2005-2020
3%
97%
Small Business Award (by Obligated $)
Other than Small Business Award (by Obligated $)
>$100M Dollar Band Avg. 2005-2020
1%
99%
Small Business Award (by Obligated $)
Other than Small Business Award (by Obligated $)

Figure 8

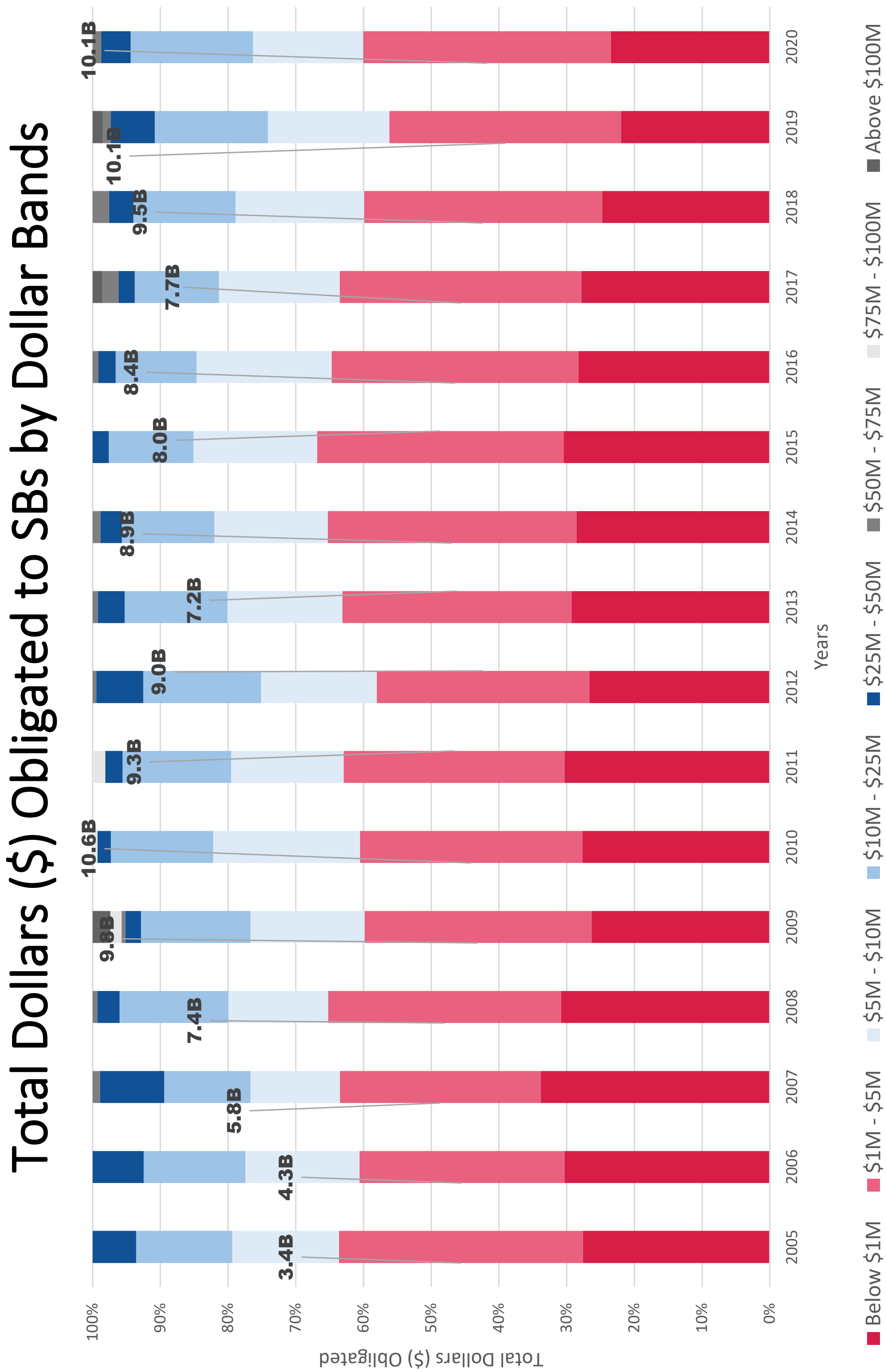
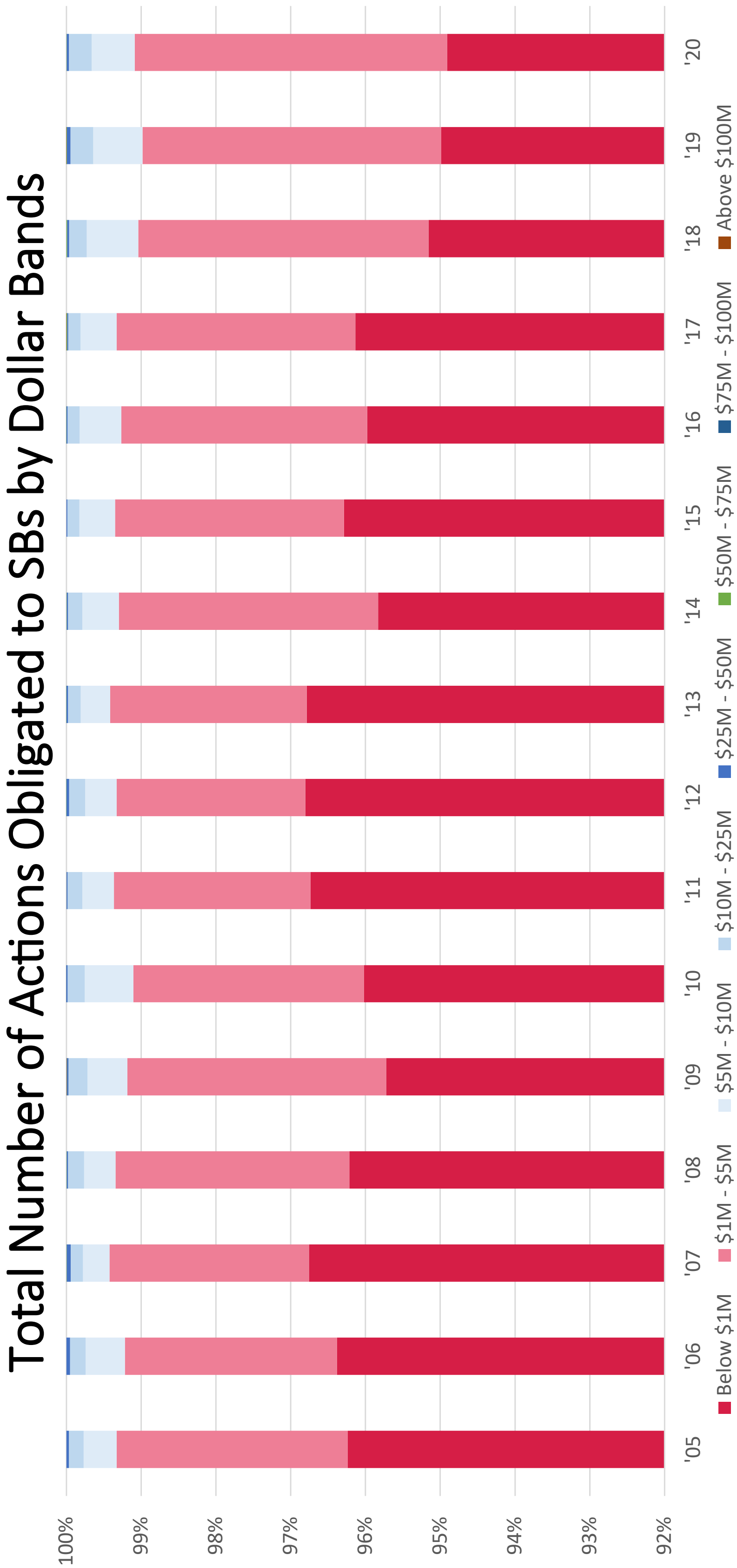

Total Dollars ($) Obligated to SBs by Dollar Bands
Total Dollars ($) Obligated
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Years
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
3.4B
4.3B
5.8B
7.4B
9.8B
10.6B
9.3B
9.0B
7.2B
8.9B
8.0B
8.4B
7.7B
9.5B
10.1B
10.1B
Below $1M
$1M - $5M
$5M - $10M
$10M - $25M
$25M - $50M
$50M - $75M
$75M - $100M
Above $100M

Figure 9


Total Number of Actions Obligated to SBs by Dollar Bands
100%
99%
98%
97%
96%
95%
94%
93%
92%
'05
'06
'07
'08
'09
'10
'11
'12
'13
'14
'15
'16
'17
'18
'19
'20
Below $1M
$1M - $5M
$5M - $10M
$10M - $25M
$25M - $50M
$50M - $75M
$75M - $100M
Above $100M