ACHIEVING SOCIAL DIVERSITY THROUGH THE USE OF SUPPLIER PREFERENCES IN THE PROCUREMENT PROCESS

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REVIEW OF THE WORLD BANK’S PROCUREMENT POLICIES

ACHIEVING SOCIAL DIVERSITY THROUGH THE USE OF SUPPLIER PREFERENCES IN THE PROCUREMENT PROCESS

Summary and Preliminary Conclusions

One of the areas to explore as part of the World Bank’s review of its procurement policies was the experience of a sample of countries/regions in their efforts (if any) to achieve social diversity in public procurement. The goal was to provide a lay-of-the-land on how countries address the question of using public procurement to attain diverse social goals with the intention of helping to inform the Bank as it reviews its own policies.

The experiences of ten countries/regions were examined as part of this desk study: Australia; Canada; Chile; the European Union; Japan; Malaysia; Mexico; the United Kingdom; the United States; and South Africa. Their experiences vary. Australia, Canada, Malaysia, the United States, and South Africa have the greatest number of formal preference and technical assistance programs in place. The groups generally targeted by such social diversity efforts include: women; indigenous populations; racial and ethnic minority populations; disabled populations; and Small- and Medium-Sized Enterprises (SMEs). The tools used include efforts such as explicit preferences (e.g., set-asides for specific groups of vendors, award preference during the bidding process, and locale-specific targeting of preferences within specific regions of a country) and targeted pre-bid assistance (e.g., simplified bidding requirements, technical assistance, training, and locale-specific targeting of pre-bid assistance within specific regions of a country).

Bidding and Award Preference

Australia, Canada, Malaysia, the United Kingdom, the United States, and South Africa all have formal programs that entail preferences in public procurement. In Australia, Canada, Malaysia, and South Africa, the focus is primarily on indigenous and historically disadvantaged populations. Australia also has programs for disabled and SMEs and it is currently undertaking a review of procurement policies and opportunities for indigenous populations with plans to strengthen and expand these initiatives. In the case of South Africa, the Constitution establishes preferences in the bidding process to redress inequalities with explicit reference to black economic empowerment. South Africa’s scoring system is quite complex and a company’s compliance scores affect future ability to bid and which vendor wins. The UK (Northern Ireland) has pursued pilot programs for religious and racial minorities, women, disabled, regionally economically disadvantaged, and the unemployed that now have been mainstreamed. The UK has set a target for the share of procurement going to SMEs. The US has programs for SMEs, disabled, veterans, women, racial and ethnic minorities, indigenous populations, and economically challenged urban/rural areas. These programs include increased flexibility in
sourcing goods and services; exemptions from mandatory procurement procedures; special requirements for review of certain vendors; requirements for training and employing certain populations and using certain suppliers for approved contracts in designated areas; set-aside requirements; teaming-subcontracting-partnering requirements; domestic preference for small businesses; prequalification and direct tendering; preference margins in scoring; restricted invitations; elimination of prequalification questionnaires; and exclusion at end of process for failure to comply with fair employment legislation.

Targeted Technical Assistance

Australia, Canada, Malaysia, the United Kingdom, the United States, and South Africa also have formal technical assistance programs in place. Most of these are for SMEs, with additional programs in Australia for indigenous populations, the UK-Northern Ireland for the unemployed, and the US for disabled, veterans, women, racial and ethnic minorities, indigenous populations, economically challenged regions, and victims of natural disasters. These programs include reduced or eliminated fees for accessing tender listings, contracting opportunities, and related data systems; information and advisory activities; loans; outreach; and training, evaluation, and follow-up.

Other/Limited/No Social Diversity Efforts

Among the sample countries, there are several that have not included preferences in their public procurement regimes or provide only limited preferences. Chile gives very limited preference in specific situations such as emergency technical need, earthquake victims, etc. The EU (so far under its current policies) does not have formal preference or technical assistance programs, but rules exist for when bidders must be excluded (for example, if the vendor does not have an equal opportunity policy). Japan has set-asides for SMEs limited to construction. Mexico has no particular program.

Snap-Shot of Experiences, Results and Targets

For the countries included in this study, experiences in realizing their policy goals and targets vary:

- **Australia**: All agencies must hit a minimum 10% of contracting by value with SMEs; 57% of all contracts (32% of value) went to SMEs (2009-2010). Australian agencies exceeded the 10% SME guideline for the last five fiscal years.
- **Canada**: Less than 50% of government contracting agencies are achieving their own performance objectives regarding aboriginal procurement: there is no national requirement but all agencies have an internal Aboriginal Procurement Coordinator and set their own targets. In 2004, 78% of contracts to aboriginal populations were to aboriginal businesses through non-set-aside competition; the proportion of set-asides is decreasing. There is no specific target for SMEs, although the awards are tracked: an average of 43 percent of contracts by value were awarded to SMEs.
• Chile: Although there is no general preference program or target, 65% of suppliers are SMEs.
• European Union: In this case, too, there is no specific target but 64% of contracts go to SMEs (42% of value). This varies widely from member state to member state (e.g., 78% in Slovenia, 35% in France).
• Japan: Following a considerable opening of Japan’s public procurement to competition, there are limited construction set-asides for SMEs amounting to 50% of construction projects. In 2010, total Japanese procurement was 73% open, 26% single-tender.
• Malaysia: 30% of value of Malaysian works contracts are set-asides for the Bumiputera population (indigenous Malays who are the political majority but historically economically disadvantaged). The Bumiputera population enjoys privileged procurement status under the constitution.
• Mexico: There is no preference program and procurement data are not broken down.
• South Africa: It is reported that full compliance with the requirements of the preference program is relatively low, at about 25%.
• United Kingdom: For the unemployed, 20 pilot projects were launched in 2002 to look at the effect of a preference program for the unemployed in Northern Ireland. The pilot was successful and resulted in increased contract awards to this group without additional costs or workload for the contracting process. Many construction entities now make use of this process. For SMEs, the Cabinet Office’s goal is 25% of procurement by value to go to SMEs, starting from a baseline of 6.5% in 2009/10. As of 2011/12, the share to SMEs had reached 13.5%.
• United States: The goal set for the programs is 23% of all Federal prime contracts by value to eligible small businesses, with specific sub-targets for veterans, women, and other disadvantaged groups. In FY 09, 22% of all Federal prime contracts by value went to populations covered by the SBA programs with 7.6% to eligible SMEs; 3.7% to women-owned; 2% to veteran-owned and 2.8% to economically disadvantaged regions.

Initial Observations and Reactions

While the findings of this background paper provide only a snapshot of the approaches taken in the selected countries, they serve to illuminate a number of issues and patterns that emerge as follows:

• The most usual form of preference among the countries covered is to have deliberate set-asides for specific groups and/or apply a preference on the contract award. In some cases, these are in the context of limited competition for public procurement overall.

• Countries that have pursued such explicit preferences have generally done no better, for example, in the participation of SMEs, than countries/regions such as Canada, Chile and the EU that have not adopted explicit preferences.
• These latter countries seem to be able to diversify their supplier base using alternative means such as simplifying bidding requirements, offering business outreach and training services, and targeting pre-bid assistance programs.

• Countries with explicit preferences, further, do not tend to track the costs of such preference or apply any cost-benefit metric, particularly in terms of the eligibility requirements, certification, and compliance. Available information points to problems with fraud, among other things.

• Moreover, there is a general weakness in the overall institutional monitoring and evaluation framework for many such programs with limited impact assessment and systematic program evaluation.

• The experience of some countries shows that once preferences are provided to one group, it is difficult to curb extending such benefits to other groups, or grandfathering the benefits.

These findings point in the same direction as other literature and research findings. This is against the backdrop that any preferential treatment, by definition, discriminates among suppliers, which goes against open competition, and has the potential to be divisive. Compliance can become an issue along with the risks of fraud. It is also clear that, as a general rule, such programs should be subject to cost-benefit analysis against all available policy tools, not just public procurement.

This is a topic that the Bank can continue to explore. There is more research that can be mined to demonstrate the costs and benefits of the use of preferences. In addition, rather than focusing on limiting governments from discriminating among bidders, it may be better for the Bank to learn from what governments are able to do to encourage domestic industry and to develop mechanisms, like e-procurement, to enhance transparency and fairness and to lower costs to bidders. Capacity building efforts become even more paramount.
Overview and Organization of the Report

This report provides a lay-of-the-land of diversity and public procurement policy frameworks for the following countries: Australia, Canada, Chile, European Union, Japan, Malaysia, Mexico, South Africa, United Kingdom and United States. These countries were selected as they have relatively advanced national public procurement systems and/or were known to have adopted specific policies and programs to advance social goals using public procurement as the policy instrument.

The objective of the report is to provide for each country/region a summary of each one’s overall supplier diversity policy and related institutional framework, including general principles, practices, and standards applied. It is organized into the following sections for each country:

1. Policy Framework

This section discusses the supplier diversity policies and structures at various levels of government, focusing on the agencies and institutions that develop, implement, and monitor or enforce procurement by diverse suppliers.

2. Program and Scope

This section provides key programs designed to meet the requirements of supplier diversity. The section also covers the key aspects of principles upon which governments base their policies, and how governments generate standards and propose certain practices with respect to supplier diversity in procurement.

3. Metrics

This section provides statistical information about some of the metrics, indicators, and other data related to supplier diversity practices and their impacts.

The remainder of the paper consists of the country-by-country accounts. It should be noted that the definitions of the eligible target groups used in the paper are those applied by each country. There is no common set of definitions. Data used is generally the latest available as of 2011.

References are provided. In addition, Annex 1 provides a summary of studies done by various US Government Agencies to assess the effectiveness of US social diversity programs. Annex 2 provides a similar summary for studies done by the OECD on social diversity programs among its members.
**AUSTRALIA**

**Currency Conversions**:  
AUD $1 = USD $1.0684  
USD $1 = AUD $0.9360

1.1 Policy and Framework

Policy is regulated by the *Department of Finance and Deregulation* with the core policies laid out in the Financial Management and Accountability Act of 1997. Updated regulations are provided in Commonwealth Procurement Guidelines 2008. A central Procurement Coordinator position was created in 2009; this official represents the entire Commonwealth government to the business community and reports to the Minister of Finance and Deregulation.

Individual agencies determine their own specific practices, within the core policy guidelines. There is an effort towards cross-agency coordination and aggregation of procurements to reduce duplication and waste. Use of the AusTender e-procurement information system is mandatory to announce procurements above AUD $10,000 and to ensure transparency and accountability.

All procurements (with the exception noted in Section 1.2 below) that are greater than AUD $80,000 for most agency non-construction procurements are subject to mandatory procurement procedures. For Commonwealth Authorities and Companies, non-construction projects, the threshold is AUD $400,000; and for construction projects, the threshold is AUD $9 million.

1.2 Programs and Scope

“The Government believes that procurement policies can play a role in expanding opportunities for disadvantaged Australians.” (Australian Government Procurement Statement 2009).

**Disability Business Services (DBS)** are businesses that primarily exist to provide the services of persons who have a disability. Agencies have increased flexibility when sourcing goods or services from DBS. DBS procurements are exempt from Mandatory Procurement Procedures; this eliminates the need for DBS firms to spend resources on tender bidding.

For projects that have an expenditure over AUD $5 million (AUD $6 million for construction), if they are established in an area with a significant indigenous population that suffers limited employment and training opportunities, the **Indigenous Procurement Opportunities** policy requires agencies to review the procurement project and the capabilities of local indigenous suppliers in collaboration with the Department of Employment, Education, and Workplace Relations. The Council of Australian Governments (Commonwealth, State, Territory, Local) is currently reviewing federal procurement policy regarding opportunities for indigenous people and is planning to strengthen and expand current efforts. In 2009, the Commonwealth

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1 Currency exchange rates provided in each country summary are as of 7 July 2011. Some conversion calculations are from an earlier draft that used 1 July 2011 rates.
Government set up the **Australian Indigenous Minority Supplier Council (AIMSC)**, a 3-year pilot program to encourage large corporations in the private sector to partner with, and purchase from, indigenous-owned vendors (51% ownership; principal executive officer is indigenous; and the majority of directors are indigenous). In its first 18 months of operation, “it has facilitated almost AUD $9 million in contracts and AUD $4.5 Million in transactions between members and certified suppliers”.

Australian procurement policy requires that attention be paid to ensure that procurements do not unfairly disadvantage **Small and Medium Enterprises (SMEs)**. A commitment of at least 10% (by value) of all procurements from SMEs is the norm that is imposed on all agencies.

New procurement rules announced in May 2011 by the Ministers for Finance & Deregulation and Indigenous Employment and Economic Development create exemptions from the Mandatory Procurement Procedures for **SMEs owned (at least 50%) by indigenous peoples**. Also among the new rules, as of July 1, 2011, in regions with a significant indigenous population, tenderers for government contracts over $5 million ($6 million for construction projects), **must have approved plans** for employing and training local indigenous people and for using indigenous suppliers.

### 1.3 Metrics

The AusTender procurement information system contains annual procurement plans for all agencies, as well as contract award data above AUD $10,000. The Australian Government spends AUD $24 billion annually on procurement activities (Australian Government Procurement Statement, 2009). Australian-based goods and services are AUD $16.5 billion (69%) of this total (89% when defense spending is excluded).

A report from the Department of Finance and Deregulation (data from AusTender) shows that for Fiscal Year 2009-2010, government procurement (contracts of AUD $10,000 or more) totaled AUD $42,694.3 million (80,969 contracts). Of these, AUD $13,763.6 million (32.2% of value) went to SMEs. That represents 45,811 contracts (56.6% of total).

According to the Australian Bureau of Statistics (ABS), in 2006, six percent of employed indigenous people worked in their own business (compared with 17% of employed non-Indigenous people).

Also according to the ABS, in 2001, the small business sector employed nearly 50% of all people working in the private sector. As noted above, the target for SME participation is 10%. The actual SME participation rates were as follows: 29% in 2008-09; 37% in 2007-08; 41.6% in 2006-07; and 35.8% in 2005-06.

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2 The ownership definition moves to 51% on January 1, 2013.
2.1 Policy and Framework

Public Works and Government Services Canada (PWGSC) is the cabinet ministry responsible for conducting centralized procurement functions on behalf of Canada’s federal agencies. The Treasury Board of Canada Secretariat (TBS) sets procurement policy and regulates procurement activities, through its Procurement and Project Management Policy Directorate (PPMPD). The Office of Small and Medium Enterprises (OSME) within PWGSC was created in 2005 and works to reduce barriers and simplify requirements for small- and medium-sized businesses.

2.2 Programs and Scope

The **Procurement Strategy for Aboriginal Business** (PSAB) is administered by Aboriginal Affairs and Northern Development Canada (AANDC). Launched in 1996, it is an effort to increase the number of aboriginal-owned vendors bidding for and winning federal contracts. It accomplishes this through set-asides and encouraging aboriginal businesses to team or subcontract with other aboriginal and non-aboriginal businesses. “Aboriginal” is defined as a Status or Non-Status Indian, Métis, or Inuit person who is a Canadian citizen and a resident in Canada. “Aboriginal-Owned Business” is defined as: (1) at least 51% of the firm (or joint venture) is owned and controlled by aboriginal people; and (2) at least 1/3 of the firm’s employees, if it has six or more full-time staff, are aboriginal.

Procurements estimated at CAD $2 million and over are subject to the standard procurement review process. When a procurement has been set aside, it is not subject to the international trade agreements (NAFTA, WTO-AGP).

**Set-Asides:** *Mandatory* set-aside policy applies to all contracts that serve a primarily aboriginal population (i.e., at least 80 percent) and that are worth more than CAD $5,000. *Voluntary* set-asides may be applied to other contracts by federal buyers whenever practical.

**Subcontracts:** Work can be subcontracted out in a set-aside to a non-aboriginal firm as long as at least 33% of the total value of the work performed (contract total less materials) is done by the aboriginal firm.

There is no statutory fixed target for percentage of business that government agencies must purchase through the program. As per TBS’ directive, departments and agencies that purchase more than CAD $1 million annually in goods, services and construction must establish their own multi-year performance objectives and metrics for increased procurement with aboriginal suppliers and report them to the Procurement Coordinator at AANDC. It appears that -- although there is an increasing trend of more aboriginal businesses winning contracts, both in competition, as well as in set-asides – less than 50% of agencies are achieving their performance objectives.
In addition to AANDC/PSAB regional representatives, each of the agencies within the Government of Canada has an Aboriginal Procurement/Business Promotion Coordinator. Aboriginal vendors register through the Aboriginal Business Directory within Industry Canada’s Strategis system for contracts subject to trade agreements (over CAD $25,000). Aboriginal vendors register through the PWGSC’s Supplier Registration Information service, for contracts not subject to trade agreements (under CAD $25,000). In addition to the PSAB program, contracts that affect populations within Comprehensive Lands Claims Agreements (CLCAs) are subject to special procurement restrictions, including set-asides for aboriginal-owned businesses and rights of first refusal for provision of goods and services and other impacts of the procurement.

While there is currently no preference program targeted at SMEs, OSME has a mandate to advise policymakers on SME concerns and recommend improvements to procurement plans and instruments to ensure SMEs are treated fairly. In 2006, OSME set up 6 regional offices to work more closely with SMEs throughout the country. Previously there were fees associated with accessing contracting opportunities posted on the electronic tendering system. Due to OSME advocacy, the Government eliminated the fees for suppliers, starting in 2007.

**Domestic preference** is also used as a policy in Canada, whereby competition is limited, in certain circumstances, to Canadian suppliers.

### 2.3 Metrics

Since 2006, PWGSC has awarded, on average, more than **43% of the total value of contracts** transacted with businesses located in Canada to SMEs.\(^3\) PWGSC maintains the Contract History Database ([http://csi.contratscanada-contractscanada.gc.ca/index-eng.cfm](http://csi.contratscanada-contractscanada.gc.ca/index-eng.cfm)), which provides data on public Canadian contracts over CAD $10,000 that were let via PWGSC in the last three years.\(^4\)

TBS regulates 500,000 transactions each year related to goods, services, and construction, with a collective annual contract value of **CAD $10-13 billion**. TBS produces the annual Purchasing Activity Report, which provides a snapshot of procurement spending by all departments and agencies. In 2009, the Canadian Government awarded 324,451 contracts, totaling CAD $20.35 billion. Of these, 80.2% were competitive and 19.8% were non-competitive. Non-competitive percentages, by category, were: 26.8% Goods; 17.5% Services; 11.3% Construction.

AANDC analyzes expenditures under the PSAB program. In the most recent PSAB Performance Report available online (2004), some program accomplishments were highlighted: **5,980 federal contracts worth CAD $244.91 million were awarded to aboriginal-owned firms in 2004**. Of those contracts that were over CAD $25,000 (n=891), 78 percent (n=697) were awarded to aboriginal businesses under open competition (not set-aside). Of all national contracts over CAD $2 million, only 3% needed intervention (for set-aside compliance) from the AANDC.

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4 There are significant exclusions; see the disclaimer on the database for more information.
procurement review committee. The use of set-asides by federal departments decreased in quantity and value from 2002 to 2004 (the date of the report), and aboriginal firms were awarded contracts primarily through open competition.
**CHILE**

**Currency Conversions:**

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*UTM = Unidades Tributarias Mensuales (Monthly Tax Units), an inflation-adjusted, variable contract valuation unit used in Chile.

1 UTM = CLP $38,441.00 or USD $84.5702

### 3.1 Policy and Framework

As part of a larger modernization effort, new procurement legislation was passed in 1999 and 2003 that substantially overhauled and centralized the public procurement system in Chile. In 1999, the Government Procurement Act and related Executive Orders established administrative requirements for *ChileCompra*, an electronic procurement information system and web portal. In 2003, the new Public Procurement Law established the Dirección Nacional de Compras y Contratación Pública (DCCP, National Directorate for Purchasing and Public Procurement) within the Treasury Ministry. The DCCP is responsible for regulating and operating the public procurement market. The 2003 Public Procurement Law also established the transactional phase of *ChileCompra*, making use of the system mandatory for agency buyers and bidding suppliers.

### 3.2 Programs and Scope

It does not appear that any preference programs exist within the Chilean procurement system. Legislation (Articles 10, 13, 34, 35 of public law 19,886) lays out prequalification rules for vendors, the detailed circumstances in which pre-selection using non-price factors (project complexity, technical ability, experience or quality of the proposals), circumvention of competitive rules, and when direct tendering can be permitted in limited cases.

These direct tendering exceptions include the following circumstances, among others, when:

- No relevant, interested supply bid during the tendering process;
- The predecessor contract was terminated due to negligence, and the remaining cost is under the 1000 UTM* (USD $80,726) threshold;
- Urgent extensions;
- Emergencies (e.g., natural disasters, earthquakes);
- Only one supplier of a product or service exists;
- Confidential services are needed because of an impact on national security, licensing, copyrights, trademarks, patents, etc.;
- A restocking order for parts or supplies requires compatibility with legacy equipment;
- The procurement is under 100 UTM* (USD $8,073); or
- The procurement is under 3 UTM* (USD $242), in which case it does not have to go through *ChileCompra*.
3.3 Metrics

*ChileCompra* includes an analytical module, *Analiza*, which offers several daily and monthly reports on the functioning of the system, contract data, and basic analyses.\(^5\) The report for May 2011 indicated that during the month: CLP $558 million (USD $1.17 million) was traded – a decrease of 22% from the previous month but a 27% increase from May 2010; 172,857 requisitions were listed and 30,512 listings closed; and **cumulatively, 65% of contracted suppliers in the system were small businesses, followed by 22% microenterprises.**

\(^5\) Annual reports and comprehensive evaluations do not seem to exist.
4.1 Policy and Framework

The legal basis for public procurement within the EU is provided by “the Procurement Directives,” 2004/17/EC and 2004/18/EC. These Directives provide a basis for including social considerations in procurement, provided that certain conditions are met: they are linked to the subject matter of the contract; they are proportionate to the contract requirements; and the principles of value for money and equal access for all EU suppliers are observed.

The Directives cover contracts above certain thresholds (which were to be updated in November 2011): public works contracts worth over €4,845,000; and public supply and service contracts worth over €125,000 in the case of central government authorities, €193,000 for sub-central entities, or €387,000 for entities operating in the water, energy, transport, and postal services industries.

4.2 Programs and Scope

SIMAP is the EU gateway to centralized online information about legislation, submission of notices, forms, links to national procurement databases of the member nations, and procurement opportunities through TED (Tenders Electronic Daily), the single official source for EU procurements.

For EU procurements covered by the directives (meeting the threshold value), there are two sets of rules governing the inclusion of social considerations in the procurement. One set of rules is for when bidders must be excluded. Candidates can be excluded if, for example, they have failed to pay obligatory social contributions, are not in compliance with social regulations (e.g., where the vendor has not included a mandated equal opportunity policy), or where the vendor has been convicted of misconduct. The other set of rules is for when bidders must be included, based on technical and economic capacity. The EU does not use preferences or set-asides.

4.3 Metrics

A 2008 EC report estimated that the market for public procurement in the EU Member States in 2006 was €1,800 billion, 16% of the EU GDP. The same report estimated that in 2005, SMEs won 42% of above-threshold procurement by value, or 64% of the number of contracts. SME shares vary widely from one Member State to another (e.g., 78% and 77% in Slovenia and Slovakia, compared to 35% and 31% in France and the UK). Between 2006 and 2008, SMEs won approximately 60% of contracts covered by the EU directives; the total value of public contracts awarded to SMEs was around 34% for these years.6

6 These figures only count where the SME was the prime contractor and do not include subcontracts.
JAPAN

Currency Conversions: JPY ¥1 = USD $0.0124
USD $1 = JPY ¥80.9200

5.1 Policy and Framework

Japan has a highly decentralized procurement system. Procurement regulations in Japan derive from the Account Act, the Local Autonomy Act (LAA), and internal procurement rules of the relevant agencies. Procurement is regulated by the Cabinet Secretariat, which also issues an annual report. Prior to Japan becoming a signatory of the GATT agreement in 1981, there was little open competitive bidding in Japanese procurement. Long-term, local suppliers were the primary vendors. Single tendering without public notice was used for 90% of contracts. Major changes came about in 1981 as well as a result of the 1996 WTO agreement.

5.2 Programs and Scope

Japan does not appear to have any selective or single tendering programs related to social diversity goals with the exception of SMEs for construction. Analysis (Nakabayashi) of small-business set-asides found that about 50% of the procurement budget for construction projects in Japan was set aside for SMEs, and public investment in construction was just over 45% of total. The same study found that 30% of SMEs would likely exit the market if the set-asides were removed.

5.3 Metrics

Tenders are listed and contracting data compiled by the Japan External Trade Organization. From the Cabinet Secretariat’s 2010 report, the total value for government procurements of goods and services for 2009 was ¥1,854 billion, an increase of 35.9% from the previous year. The total number of contracts was 14,462, an increase of 13.5% from the previous year. Of these contracts, 58.3% of value was Goods, 41.7% of value was Services; furthermore, 72.9% of value was awarded through Open Tendering, 26.1% through Single Tendering, and 1.0% through Selective Tendering.
6.1 Policy and Framework

Procurement in Malaysia is largely decentralized. The Government Procurement Division of the Ministry of Finance sets procurement policy and rules. The Minister of Finance appoints a tender board in each procuring agency to administer specific requirements. In 2009, the Malaysian Government consolidated all of its information and advisory activities for small and medium enterprises into the Small and Medium Enterprise Corporation Malaysia (SME Corp. Malaysia).

In an effort to reduce fraud and corruption, increase transparency, and provide centralized information regarding procurements, the Malaysian Government launched “e-Perolehan,” the main procurement mechanism for government agencies and suppliers, in 1999. Central contract and supplier registration has been in place since 2000. The Direct Purchasing module was added in 2002, and Quote and Tender modules in 2003. The e-bidding module has been in development for a long period and was scheduled to launch in 2007. Statistics for 2011 year-to-date indicate a low level of usage for e-bidding. During the period January to May 2011, there were 467,699 transactions in the system, of which 434,391 (92.9%) were Direct Purchase; 31,609 (6.8%) were Ministry Contracts; 1,205 (0.3%) were Quotation Contracts; 315 were Tenders; 179 were e-Bids; and 0 were Central Contracts.

There are three basic types of procurements in the Malaysian system:

- **Direct Purchase**, for contracts valued up to MYR $20,000 (USD $6,646) for works and up to MYR $50,000 (USD $16,615) for goods/services.
- **Quotation Contracts**, for contracts valued at MYR $20,000-$500,000 (USD $6,646-$166,150) for works and MYR $50,000-$500,000 (USD $16,615-$166,150) for goods/services, in which bids are solicited (a minimum of 5 is required).
- **Tenders**, for procurements valued above MYR $500,000 (USD $166,150), where suppliers must be registered, and international vendors will be invited if no local suppliers are available. Bidders must pay for tender documents, and non-registered local suppliers must make tender deposits (the amount depends on the size of the contract).

Anecdotal reports indicate that there are concerns about corruption and the lack of transparency in Malaysian procurement. In 2004, the Prime Minister announced an effort towards requiring procurements to be done by open tender as much as possible in order to limit corruption, and thereby limiting direct contracting to special cases, and in 2006, the Government released several publications on procurement best practices for both government buyers and suppliers. However, Malaysia’s tendering process still has room for improvement according to a 2010 US Department of State analysis.
6.2 Programs and Scope

There are several distinct ethnic groups in Malaysia that are grouped as being *bumiputeras*. *	extbf{Bumiputeras} ("sons of the soil") are the political majority but are historically economically disadvantaged. Constitutionally, they are defined as the predominantly Muslim, indigenous Malays (50% of the population). However, other Muslim and non-Muslim indigenous peoples (*Orang Asli*, "original people") are also defined as *bumiputera* (11%) including Thais, Khmers, Indonesians, natives of the islands of Sabah and Sarawak, Eurasians of Portuguese descent, and many other groups. Those of *ethnic Chinese descent (24%) and Indian descent (7%)* are not considered *bumiputera*.

At the time of independence, in an attempt to deal with the political and economic imbalance between the various ethnic groups, Malaysia built into its Constitution privileged status for *bumiputeras*, which includes privileged access to public procurement. These were analyzed in a 1997 WTO report that highlighted the preference margins and set-asides used in Malaysian procurement in an effort to give advantage to *bumiputera*-owned companies and help create a Malay middle class. More recent information about the rules and regulations regarding *bumiputera* preference in procurement was difficult to find.

There do not appear to be any preference programs in place for SMEs.

6.3 Metrics

Data are limited. The 1997 WTO report found that at least 30% of the annual value of works contracts was set aside for *bumiputera*-owned businesses.\(^7\)

On both value and number-of-contracts bases, single tendering decreased over 10% from 2005 to 2009 and open tendering increased over 10% during the same period. Reasons for this include that 78% of single tenders were awarded because "only a small number of suppliers is expected", and 20% because "use of open tendering is expected to be disadvantageous for the procurer".

\(^7\) Malaysia is not a signatory to the WTO government procurement agreements, in part due to the use of preferences.
7.1 Policy and Framework

The legal framework for Mexico’s public procurement regime is laid out in Article 134 of the Constitution (in general, public tenders, sealed offers). These guidelines are codified in the Law on Public Procurement and Works (LAOP, 1993); the Public Works and Related Services Law (PWRS) and the Buying of Goods, Leasing, and Rendering of Services of the Public Sector Law (BGLRS), both enacted in 2000 and amended in 2005; the Administrative Regulations of the PWRS and BGLRS; and the various free-trade agreements entered into by Mexico.

There are two basic types of procurement: public tendering and restricted invitations/direct awards. Only Mexican suppliers and goods made in Mexico (national content at least 50%) may participate in national tenders, except when international tenders are required under bilateral and multilateral free trade agreements.

Mexico is highly decentralized, with 33 Federal and State procurement frameworks (national procurement; 31 states; and the Federal capital district, Mexico City). There is no central procurement office. Legislation is implemented by the Ministry of Finance, the Ministry of Trade and Industry, and the Ministry of the Comptroller and Administration.

During 2008-2009, a new procurement regime was enacted in order to regulate procurement at the state-owned oil company, PEMEX, because of the significance of the role that PEMEX procurement plays in the Mexican economy and concerns about possible corruption.

7.2 Programs and Scope

Mexico has an electronic system providing transparency and accountability, with access to tenders, legislation, and limited award data called CompraNet. CompraNet is managed by the Secretaría de Contraloría y Desarrollo Administrativo (SECODAM, Ministry of the Comptroller and Administration).

Agency procurement plans are published on the agencies’ own websites, not centrally. New laws enacted in 2009 require electronic tendering and bidding and make bidding documents publicly available electronically. Suppliers do not need to enroll in a registry to bid.

It does not appear that Mexico has any special preference programs for SMEs or disadvantaged groups.
7.3 Metrics

In 2005, the Mexican Federal Government spent USD $37 billion on goods (40%), services (27%), and public works (33%) (Secretaría de Economía, 2005). Further breakdown of data are not available publicly.
8.1 Policy and Framework

The Department of Trade and Industry (DTI) regulates procurement. The Black Economic Empowerment Unit (BEE) within DTI “works towards ensuring, through equity and empowerment policies and strategic interventions, that the South African economy is restructured, to enable the meaningful participation of black people, women, and rural or underdeveloped communities in the mainstream economy, in a manner that has a positive impact on employment, income redistribution, structural re-adjustment and economic growth.”


The BEE preference program was laid out in 2001. Act 53 (2003) is the latest version of the legislation and establishes the Codes of Good Practice for Black Economic Empowerment under the Broad-Based Black Economic Empowerment Act (B-BBEE). Code 500 governs Preferential Procurement.

DTI’s Small Enterprise Development Agency (SEDA) provides business development and support for small enterprises and implements programs targeted at business development in areas prioritized by the government.

8.2 Programs and Scope

Broad-Based Black Economic Empowerment (B-BBEE) is a government policy established to redress inequalities by providing access for disadvantaged groups to economic opportunities not previously available to them. The policy includes measures such as employment equity, skills development, ownership, management, and preferential procurement, among other components.

All enterprises receive weighted scores in 7 areas based on their compliance with B-BBEE codes. The 7 areas are: Equity Ownership; Management; Employment Equity; Skills Development; Preferential Procurement; Enterprise Development; and Socio-Economic Development. In addition, the scoring weights are different, depending on the size of the company. Act 53 (2003) divides all enterprises in South Africa into one of three categories:

- **Generic Enterprises** (turnover greater than ZAR $35 million);
- **Qualifying Small Enterprises** (turnover between ZAR $5 and $35 million); and
- **Exempted Micro Enterprises** (turnover less than ZAR $5 million).
Additional scoring criteria apply during the bid, regarding price and social policy goals. The scoring system is extremely complex and has a significant impact on eligibility. Compliance scores are verified by accredited agencies and require documentation to back up the scores in each of the 7 areas. A company’s compliance scores affect its eligibility to bid on procurements, and the total scores affect which vendor wins the business.

The Black Business Supplier Development Programme (BBSDP) is a cost-sharing grant offered to black-owned small enterprises to assist them to improve their competitiveness and sustainability. The program provides grants up to ZAR $1 million.

8.3 Metrics

According to an April 2010 statement at a meeting of the B-BBEE Advisory Council by the Minister of Trade and Industry [http://www.seda.org.za/MyBusiness/BEE/Documents/b-bbee.pdf](http://www.seda.org.za/MyBusiness/BEE/Documents/b-bbee.pdf), the compliance of the private sector with B-BBEE is low, less than 25%, even less in terms of skills development and enterprise development procurement.
9.1 Policy and Framework

The Office of Government Commerce (formerly within Treasury and now within the Efficiency and Reform Group of the Cabinet Office) is the central office responsible for setting procurement policy, supporting SMEs, and compiling data. The UK procurement structures are currently undergoing revision, including major changes in 2011 to how the Government contracts with small businesses, charities, and voluntary organizations.

The 2006 Public Contracts Regulations, as amended, govern public procurement in England, Wales, and Northern Ireland. Scotland enacts its own legislation. Additional European Directives are in place, as well as the international treaties. Each government agency in the UK manages its own procurement.

In Northern Ireland, the procurement policy regulations follow from the UK Procurement Regulations of 2006, European Directives, and international treaties. Procurement is regulated in Northern Ireland by the Central Procurement Directorate of the NI Department of Finance and Personnel (NIDFP). The Equality Commission for Northern Ireland and the Central Procurement Directorate of the NIDFP jointly developed the “Equality of Opportunity and Sustainable Development in Public Sector Procurement” guidance.

Legislation enacted in 1976 prohibited discrimination on grounds of religious belief or political opinion, while legislation in 1989 enacted an affirmative action-like process to ensure fair participation by both religious communities. One of the enforcement techniques was that failure by businesses to follow the law would lead to their being rendered ineligible to compete for government contracts, a policy which continues. Section 75 of the Northern Ireland Act of 1998 (“s 75”) supplemented this by requiring public authorities “to have due regard to the need to promote equality of opportunity and regard to the desirability to promote good relations between different groups of people”. (The policy is not just to ensure avoidance of discrimination; it requires promotion of opportunity and good relations.) Assessments must be conducted when it is likely that there will be a significant impact on equality of opportunity.

9.2 Programs and Scope

Enhancements for SMEs include the following: ensuring that contract listings are available free of charge to bidders; a contracts listing database on the web for procurements over £10,000; appointment of a “Crown Commercial Representative” within the Cabinet Office especially for SMEs to ensure more strategic communication between the Government and suppliers; elimination of “Pre-Qualification Questionnaires” for all central government procurements under £100,000 and adding the ability for firms to submit their prequalification data once for all
procurements in common commodities\textsuperscript{8}; and mandate of a new “LEAN” review process across all government departments as of January 2012.

**Northern Ireland provides a case study of experience with attempts to combat discrimination on grounds of religion, race, gender, disability, or regional economic disadvantage.** In selecting or shortlisting bidders, candidates can be excluded for specific failings, including criminal offenses or failure to comply with fair employment legislation. The selection process also enables authorities to assess candidates’ ability to deliver the contract requirements (including requirements for sustainability and equal opportunity) via pre-qualification questionnaires.

In 2002, the Northern Ireland Government launched 20 pilot projects to provide preference for unemployed individuals. Under the scheme, the contractor must provide, in their bid, an employment plan that utilizes unemployed individuals. The plan could not be the primary selection criterion, but its omission would cause the bid to be rejected. The plan was used in the event of a tie on scoring based on price or cost/quality. The pilot was successful and did not incur greater costs or workloads for the contracting process. Many contractors, especially in the construction sector, have made the plan a part of their own policies and practices.

### 9.3 Metrics

The 2008 Public Sector Procurement Expenditure Survey (PSPES, published by the Office of National Statistics and Treasury) showed a total central government procurement expenditure of **£204 billion** (USD $326.033 billion) in 2007-08. Data on awarded contracts are available from ContractsFinder at [http://contractsfinder.businesslink.gov.uk](http://contractsfinder.businesslink.gov.uk). It is anticipated that the Northern Ireland guidance will affect £6 billion of procurement business during 2008-2011, and nearly £20 billion during 2008-2018. The Cabinet Office, as of the 2011 changes, has a goal of awarding 25% of all government contracts by value to SMEs. This is against a baseline in 2009/10 of 6.5%, and actual of 13.5% as of 2011/12.

\begin{footnotesize}
\footnotespace
8 These are major process changes that will enable purchasers to choose the best route for their needs, and enable vendors and purchasers to save time and money.
\end{footnotesize}
The central procurement policymaking function for the US Government is the Office of Federal Procurement Policy (OFPP) within the Executive Office of the President, Office of Management and Budget. The OFPP works in conjunction with two other US Government-wide entities to set policy on procurement. The first is the Federal Acquisition Regulatory Council (FAR Council), which is comprised of the Administrator of the General Services Administration, the Administrator of the National Aeronautics and Space Administration, and the Secretary of Defense. A strategic priority of the Federal Acquisition Council (FAC) is to “effectively integrate socio-economic programs in the Federal Procurement System”. The second is the Chief Acquisition Officers Council (CAOC) comprised of the procurement executives and other senior procurement officials of all of the Executive Branch agencies in the US Government. The CAOC has many working groups and committees, among which are two that include supplier diversity-related issues in their portfolios: the Multi-Sector Workforce Management Working Group, and the Small Business Contracting Working Group.

The US Small Business Administration (SBA) is the Federal Agency that addresses small business concerns, including management of the US Government’s contract procurement initiatives for women, minorities, veterans, and those in economically challenged areas. SBA also offers loan programs for small businesses and victims of natural disasters, and a number of specialized training, technical assistance, support and outreach programs for women-, minority, veteran-owned and HUBZone-eligible (Historically Underutilized Business Zones) businesses. The SBA oversees a number of federal procurement initiatives aimed at the social goals of supplier diversity, building capacity, and developing small businesses. Today’s SBA provides federal contract procurement assistance through specialized outreach to women, minorities, veterans, and those from economically disadvantaged areas. The SBA and its supplier diversity programs are authorized by the Small Business Act, 15 USC Ch.14A § 631-633.

To qualify for “small business” designated programs, a business must be within the designated size standard for the NAICS (North American Industry Classification System) classification that describes the goods or services sold and the particular program they are bidding under. For most industries, this is defined in terms of the average number of employees over the past 12 months, or average annual receipts over the past three years.

The 8(a) Business Development Program provides assistance to businesses that are owned and controlled at least 51% by a US citizen who is a “socially and economically disadvantaged individual”. The Small Business Act presumptively defines individuals from the following groups as socially disadvantaged: African-Americans, Hispanic Americans, Asian Pacific Americans, Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians), and
Subcontinent Asian Americans. An individual who is not a member of one of the groups listed can be admitted to the program if he/she shows social disadvantage due to race, ethnic origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar causes. Participants are eligible for sole-source contracts, up to a ceiling of USD $4 million for goods and services, and USD $6.5 million for manufacturing, as well as for teaming with other prime contractors. Teaming allows the small business to gain experience on larger contracts, as well as overcome the effects of contract bundling. Firms that participate in the program must balance their government and commercial portfolios, and there is a total dollar limit of USD $100 million or 5 times the value of the firm’s primary NAICS code. Firms receive specialized training and counseling, business planning, and mentorship from the SBA, as well as annual reviews and evaluations.

The Service-Disabled Veteran-Owned Small Business Concern (SDVOSBC) procurement program provides federal contracting officers with the option to restrict competition to SDVOSBCs and to award a sole source or set-aside contract when certain criteria are met. The government-wide goal is not less than 3% of the total value of all prime contract and subcontract awards for participation by small business concerns owned and controlled by service-disabled veterans. Sole-source contracts are limited to USD $5 million for the purchase of manufactured goods and USD $3 million for other purchases. The Service Disabled Veteran (SDV) must have a service-connected disability that has been determined by the Department of Veterans Affairs or Department of Defense, must own at least 51% of the business, and must control the daily management and operations. The business must meet the “small” definition under the NAICS code for its goods/services. There are limitations on subcontracting, depending on the sector: 50% for service and supply contracts; 15% for general construction; and 25% for construction by special trade.

The SBA has a number of initiatives for Native Americans (American Indians, Eskimos, Aleuts, and Native Hawaiians). The Indian tribal governments and Alaska Native Corporations (ANC, the Alaska equivalent of tribes) have primary responsibility for promoting economic development within their reservations. In order to assist local economies on reservations, Congress has created special incentives for these agencies and special rights for the tribes and ANCs within the Federal Government’s procurement activities. To qualify, 51% of the direct labor must be provided by tribal and ANC-owned firms. Special rights exist under the SBA 8(a) Program in which Tribal- and ANC-owned 8(a) firms are eligible to receive sole source 8(a) contracts regardless of dollar size, with no upper limit. Other firms have a limit of USD $3 million for services and USD $5 million for manufacturing.

Special rights also exist under the A-76 Program with regard to outsourcing of defense procurement. The A-76 program imposes cumbersome procedures on government facilities that wish to outsource an activity if that activity employs ten or more civilians: the average review process for takes 23 months. Language in the Defense Appropriations Act provides that a command does not have to go through the A-76 process and can directly outsource the activity to a private contractor, regardless of the number of civilian employees, if the command contracts with a firm that is 51% or more Native American owned, as long as the conversion is cost-effective. Finally, a 5% subcontracting bonus exists in which a Department of Defense
A contractor that subcontracts with a firm that is 51% or more Native American owned is entitled to receive a bonus equal to 5% of the amount of the subcontract award.

The SBA has two set-aside programs for women-owned businesses. The first is the Economically Disadvantaged Women-Owned Small Business (EDWOSB) program for small businesses that are at least 51% owned and controlled by one or more women who are US citizens and who are “economically disadvantaged”. The second is the Women-Owned Small Business (WOSB) program for small businesses that are at least 51% owned and controlled by one or more women who are US citizens. A woman is considered “economically disadvantaged” if she has a personal net worth of less than USD $750,000; her 3-year, averaged, adjusted gross yearly income does not exceed USD $350,000; and the fair market value of all her assets (including her primary residence and the value of the business concern) does not exceed $6 million. There are 83 NAICS (industry classification) codes that are eligible under these two programs; in 45 of those, WOSBs are “underrepresented” and in 38, WOSBs are “substantially underrepresented”.

A contracting officer (CO) can create a set-aside for the WOSB program if four criteria are met. The CO can create a set-aside for the EDWOSB program if the same four criteria are met and the NAICS code falls in the “underrepresented” category. These four criteria are:

- The NAICS code is one in which SBA has determined that WOSBs are “substantially underrepresented”;
- The CO has a reasonable expectation that two or more WOSBs will submit offers (“the rule of two”);
- The anticipated amount of the award is under USD $5 million for manufacturing or under USD $3 million for all others; and
- The contract can be awarded at a fair and reasonable price.

The HUBZone (Historically Underutilized Business Zones) Program creates preferred access to federal procurement for small businesses in specially designated disadvantaged communities in designated urban and rural areas. The HUBZone is defined by the following:

- A census tract that is designated by the Internal Revenue Code;
- A non-metropolitan county designated by the Internal Revenue Code that has a median household income of less than 80% of the state median household income, or with an unemployment rate of not less than 140% of the statewide average, based on US Department of Labor data; or
- Lands within the boundaries of federally recognized Indian reservations.

The SBA determines which businesses are eligible to receive HUBZone contracts, and maintains a directory of qualified vendors for federal agencies. To be eligible for the program, businesses must meet the SBA definition for “small business” within their NAICS codes: be 51% owned by US citizens; have their offices located within the HUBZone; and at least 35% of the employees must reside within the HUBZone. Qualified businesses are eligible for sole-source and set-aside
procurements, subcontracting opportunities, and a 10% price evaluation preference in full and open contract competitions.

10.3 Metrics

As shown below, statutory and agency goals for SBA’s programs establish that 23% of all federal prime contract dollars should be awarded to eligible small businesses. Within that, there are sub-targets for women-owned and disabled veteran-owned small businesses, 5% and 3%, respectively; and 3% for federal prime contracts to HUBZone-certified small businesses. Over the recent past, the aggregate target has roughly been met while some sub-targets have fallen short.

<table>
<thead>
<tr>
<th>Indicator</th>
<th>FY06 Actual</th>
<th>FY07 Actual</th>
<th>FY08 Actual</th>
<th>FY09 Actual</th>
<th>FY09 Goal</th>
<th>FY10 Goal</th>
<th>FY11 Goal</th>
<th>FY12 Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fed Awards to SB (USD’ billion)</td>
<td>$78.0</td>
<td>$83.0</td>
<td>$93.0</td>
<td>$96.8</td>
<td>$90</td>
<td>$90</td>
<td>$90</td>
<td>$90</td>
</tr>
<tr>
<td>% of Total Fed Contract Dollars</td>
<td>22.8%</td>
<td>22.0%</td>
<td>21.5%</td>
<td>21.9%</td>
<td>23%</td>
<td>23%</td>
<td>23%</td>
<td>23%</td>
</tr>
<tr>
<td>Award to 8(a)</td>
<td>6.76%</td>
<td>6.58%</td>
<td>6.76%</td>
<td>7.57%</td>
<td>n/a</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
</tr>
<tr>
<td>Award to WOSB</td>
<td>3.41%</td>
<td>3.42%</td>
<td>3.39%</td>
<td>3.68%</td>
<td>n/a</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
</tr>
<tr>
<td>Award to Vet</td>
<td>0.87%</td>
<td>1.01%</td>
<td>1.49%</td>
<td>1.98%</td>
<td>n/a</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
</tr>
<tr>
<td>Award to HUBZone</td>
<td>2.11%</td>
<td>2.24%</td>
<td>2.34%</td>
<td>2.81%</td>
<td>n/a</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
</tr>
</tbody>
</table>

There are few metrics that assess program impacts. Audits by the GAO of the programs managed by the SBA, show that systems and procedures for detecting fraud in the HUBZone program are weak. Further, a report by the SBA's Office of Inspector General on the Program for Alaska Native Corporations concluded that the SBA had not evaluated how this program affected other companies, the program's overall effectiveness, and whether it had achieved its goals, noting that there had been no independent evaluation of effectiveness and little oversight. Annex 1 provides details of the extent to which social diversity programs in public procurement have been evaluated by US government agencies.
References


Government Accountability Office. HUBZone Program: Fraud and Abuse Identified in Four Metropolitan Areas, GAO-09-440, Washington, DC, March 25, 2009


Studies on the US Government’s Social Diversity Efforts in Procurement

INTRODUCTION

This desk study sought to gather information from US Government sources regarding social diversity efforts in US Government procurement. Analyses that incorporated metrics to examine program outcomes and program effectiveness (outcome evaluations) were particularly sought. Unfortunately, most of the available reports were process evaluations and audits which: 1) examined whether the programs were being operated as intended by the regulations and authorizing legislation, 2) conducted budget audits, or 3) investigated allegations of fraud and abuse. Many audits made the recommendation that performance and effectiveness studies be conducted, but to date, only a few have occurred. Despite their limitations, these process evaluations illustrate some of the issues with the social diversity initiatives and map out a landscape from which basic conclusions can be drawn. The Minority Business Development Agency of the US Department of Commerce provides useful baseline data on minority-owned businesses. The most relevant of these reports, and House and Senate testimony, are cited and summarized here.

SOURCES

The US Government Accountability Office (GAO, formerly the “General Accounting Office”), under the direction of the Comptroller General of the United States, is an independent, nonpartisan agency that serves the US Government’s Legislative Branch (Congress) as a watchdog and auditor, investigating and evaluating how the Federal Government’s Executive Branch spends taxpayer dollars. GAO works to ensure that Congress meets its Constitutional responsibilities, helps to improve Government performance, and ensures the accountability of the Government to the American people.

The US Small Business Administration (SBA) is the Federal agency that assists small business concerns, including management of the US Government’s contract procurement initiatives for women, minorities, veterans, the disabled, and those in economically challenged areas (“HUBZones”: Historically Underutilized Business Zones). The SBA oversees a number of Federal procurement initiatives aimed at the social goals of supplier diversity, building capacity, and developing small businesses. The SBA’s Office of Inspector General (OIG) is an independent office within the SBA that conducts and supervises audits, inspections, and investigations of the agency and its programs.
The US Minority Business Development Agency (MBDA), within the US Department of Commerce, operates a number of programs in support of the minority business sector, in an effort to assist large, medium, and small minority-owned businesses in achieving effective and equitable participation in American commerce and in overcoming the social and economic disadvantages that have limited the participation of these groups in the past. The Agency works across the business, industry, and government (including procurement) sectors to achieve these goals. The Agency also compiles statistics and demographics on minority business activity.

**SUMMARY**

The GAO and the SBA’s Office of Inspector General have conducted a number of audits and analyses that examine the implementation and management of the SBA’s programs, agency performance, and analysis of whether the operation of the programs is in compliance with regulations. However, outcome evaluations that look at program effectiveness as regards supplier diversity efforts have not been conducted for the most part. In fact, such effectiveness studies were recommended in the conclusions of many GAO and SBA OIG audits, but only a handful have been conducted to date, in specific sectors (such as the pipeline industry study cited below). Indeed, a 2012 GAO report stated “…few evaluation studies have been completed and little evaluative information exists that assesses the programs’ effectiveness.”

The audit analyses and House and Senate testimony compiled by SBA OIG and GAO are cited and summarized below. The MBDA provides useful baseline data on minority-owned businesses.

Fraud and abuse, duplicative procurement programs, and lack of interagency coordination and standardization are the main issues identified in these process evaluations. Many problems stem from fact that programs are Government-wide, and there is a lack of coordination and oversight, since the programs are merely overseen by SBA, which provides policy guidance and reports on statutory targets to Congress, but the actual procurement implementation is left up to each agency. Much of the fraud and abuse that occurs is a result of self-certification of eligibility by the bidding firms. Often, neither the SBA nor the procuring agency is performing surveillance and monitoring of the firms’ eligibility, or re-evaluation of eligibility upon the firms’ recertification.
REPORT CITATIONS AND SUMMARIES

Reports by the US Government Accountability Office
(Reports Since 2004; Listed Newest to Oldest, by Topic)

SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS PROGRAM

US GAO, Report GAO-12-967T, 8/2/12. SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS PROGRAM: Vulnerability to Fraud and Abuse Remains.
- [http://gao.gov/products/GAO-12-967T](http://gao.gov/products/GAO-12-967T)

US GAO, Report GAO-12-697, 8/1/12. SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS PROGRAM: Vulnerability to Fraud and Abuse Remains.

US GAO, Report GAO-12-443T, 2/7/12. SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS PROGRAM: Governmentwide Fraud Prevention Control Weaknesses Leave Program Vulnerable to Fraud and Abuse, but VA Has Made Progress in Improving Its Verification Process.


US GAO, Report GAO-10-306T, 12/16/09. SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS PROGRAM: Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts.

US GAO, Report GAO-10-255T, 11/19/09. SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS PROGRAM: Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts.

SUMMARY

- 8/2/12 report updates previous studies; program continues to be vulnerable to fraud and abuse.
- US Dept. of Veterans Affairs (DVA) has made inconsistent statements about progress in verifying the eligibility of Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) and Veteran-Owned Small Businesses (VOSBs) after the implementation of a new, more thorough process in 2010.
- There are 6,178 SDVOSBs listed as eligible in the DVA’s VetBiz data system; of those, 3,717 (60%) were not verified using the more thorough process. This basically allows businesses to self-certify as SDVOSB and leaves the program vulnerable to fraud.
- Of the 3,717 not verified with the more rigorous process, 134 received $90 million in new set-asides or sole-source contracts in the 4-month period ending April 1, 2012.
- In FY 2010, Federal agencies awarded $10.8 billion to firms participating in the SDVOSB program (SBA data).
- SBA administers the Government-wide SDVOSB program but does not verify firms’ eligibility, leaving the responsibility to the agencies to meet their contracting goals. DVA awards approximately 30% of the SDVOSB dollars, but is bound by its own authorizing legislation to verify firms’ eligibility for DVA dollars.
EQUAL OPPORTUNITY

US GAO, Report GAO-12-896R, 8/2/12. EQUAL OPPORTUNITY: Ownership by Minority, Female, and Disadvantaged Firms in the Pipeline Industry.


SUMMARY

- In FY 2007, the US pipeline industry and the 2.5 million miles of US pipeline across the US generated nearly $200 billion in receipts and employed nearly 275,000 workers.
- Minority- or female-owned, minority-owned, and female-owned firms represented, respectively, 15%, 6%, and 10% of firms in the US pipeline industry in FY 2007.
- Minority- or female-owned firms accounted for $484 million (16%) of the $3 billion Federal contract dollars spent on the pipeline industry in FY 2007 to FY 2011. The majority went to minority-owned firms for pipeline construction contracts. 8% ($246 million) went to disadvantaged pipeline firms, which may be minority-owned or female-owned. These were also for construction contracts in 2007-2011.

ENTREPRENEURIAL ASSISTANCE AND ECONOMIC DEVELOPMENT


- http://gao.gov/products/GAO-12-601T

US GAO, Report GAO-12-553T, 3/21/12. ECONOMIC DEVELOPMENT: Efficiency and Effectiveness of Fragmented Programs Are Unclear.

- http://gao.gov/products/GAO-12-553T


SUMMARY

- GAO looked at 53 of the 80 economic development/entrepreneurial assistance programs in place across the Federal Government, including the programs of the SBA and the Departments of Commerce, Housing and Urban Development, and Agriculture. These Departments were chosen because their programs overlap the most. 19 of the programs are at SBA.
- Together, these programs spent an estimated $2.6 billion in FY 2010 on economic development efforts.
- The programs that support entrepreneurs overlap, not just in their shared assistance purpose but in the type of assistance being offered. Much of the overlap is in programs that assist disadvantaged and small businesses. The programs operate in both rural and urban areas.
- Most (45) of the 53 economic development programs have reasonable performance measures and tend to meet their annual performance goals, but “few evaluation studies have been completed and little evaluative information exists that assesses the programs’ effectiveness.”
- GAO found that agencies on cooperate on the overlapping programs on a case-by-case basis.

8(A) PROGRAM

  • http://gao.gov/products/GAO-11-440T
US GAO, Report GAO-10-425, 3/30/10. 8(A) PROGRAM: Fourteen Ineligible Firms Received $325 Million in Sole-Source and Set-Aside Contracts.
  • http://gao.gov/products/GAO-10-425
US GAO, Report GAO-10-353, 3/30/10. SMALL BUSINESS ADMINISTRATION: Steps Have Been Taken to Improve Administration of the 8(a) Program, but Key Controls for Continued Eligibility Need Strengthening.
  • http://gao.gov/products/GAO-10-353
US GAO, Report GAO-09-16, 11/21/08. SMALL BUSINESS ADMINISTRATION: Agency Should Assess Resources Devoted to Contracting and Improve Several Processes in the 8(a) Program.
  • http://gao.gov/products/GAO-09-16
SUMMARY

- The 8(a) program, named for the section of the Small Business Act which authorizes it, is a development program that was created to assist small, disadvantaged businesses compete in the American economy and access the Federal procurement market. To participate, a firm must be certified as meeting certain criteria, including: size standard (“small” as defined by SBA); being majority-owned and controlled by one or more socially and economically disadvantaged individuals who are of “good character” and citizens of the US; and show potential for success.

- Once certified, firms can obtain Federal contracts without full competition for up to 9 years, through set-asides (restricted competition) or sole-source arrangements.

- GAO conducted two studies: one that looked at SBA’s controls that were implemented to ensure that only eligible firms were participating and one that looked at fraud prevention.

- In the fraud prevention study, GAO found that ineligible firms were participating; 14 firms received $325 million in set-aside or sole-source funds through fraud or abuse. These 14 firms received another $1.2 billion since entering the program, including $17 million in ARRA funds (American Recovery and Reinvestment Act of 2009). Officials at 13 of the firms had fraudulently misrepresented their eligibility for the programs by underreporting net worth and serving as an illegal pass-through for non-8(a) companies.

- In several cases, SBA staff allowed a firm to remain certified after an annual review that clearly demonstrated they were no longer eligible.

- GAO also went undercover and conducted applications for bogus companies using fabricated documentation and fictitious owner information. The SBA process ruled 3 of the bogus companies ineligible, but 1 passed.

- In the study of SBA’s controls, GAO reviewed policy guidance, interviewed SBA officials, and conducted site visits/file reviews of 123 randomly selected firms, covering the past 2 fiscal years, at 5 SBA locations.

- Annual reviews are the primary mechanism that SBA relies on for recertification of 8(a) firms. Inconsistencies in the annual review process limit the ability of the agency to perform oversight consistently. In 55% of cases, SBA failed to correctly conduct review procedures designed to assess basic program eligibility, such as economic disadvantage. 17% of firms sampled exceeded one or more eligibility criteria for 2 consecutive years, yet were recommended by SBA for retention in the program.

HUBZONE PROGRAM
SUMMARY

- SBA’s Historically Underutilized Business Zone (HUBZone) program provides contracting assistance to small businesses located in economically distressed areas with low income levels or high unemployment rates. To be eligible, a firm must, among other criteria: have at least 35% of full-time employees living in the HUBZone; and the principal place of business must be located in the HUBZone. As of July 2010, 9,300 firms were participating.
- Ongoing studies by GAO have found that SBA lacks an effective fraud prevention program.
- GAO identified 10 firms that were from the Washington DC that participated in the HUBZone program without meeting eligibility criteria. 19 additional ineligible firms were identified in Alabama, California, and Texas.
- Using fictitious employee and owner information, and other fabricated documentation, GAO went undercover to test the fraud detection capabilities of SBA. GAO was able to obtain HUBZone certification for 4 bogus firms.
- In FY 2009, agencies spent nearly $3 billion in sole-source and set-aside contracts to firms participating in the HUBZone program.


Alaska Native Corporations (ANCs) were created by the Alaska Native Claims Settlement Act (ANCSA). The ANCSA is the mechanism for distributing land and monetary benefits to Alaska Natives. With ANCSA’s passage, Alaska Natives relinquished their land claims for the return promise of the establishment of ANCs, which are state-chartered for-profit corporations, with the ability and resources to advance the real economic and social needs of Alaska Natives. Since 1986, Congress has authorized ANC-owned businesses to participate in the 8(a) program.

Beyond the usual 8(a) benefits, ANCs enjoy special procurement privileges. They are exempt from: limits on the number of firms that ANCs can own, as long as each is in a different primary industry; the $5.5 million and $3.5 million competitive thresholds on the value of sole-source contracts; the cap on the number of sole-source awards; and the requirement that 8(a) firms be managed by socially and economically disadvantaged owners.

Federal 8(a) obligations to current and former ANCs grew by 1,386% since FY 2000, tripling from $1.1 billion in FY 2004 to $3.9 billion in FY 2008. Approximately 84% of the $3.9 billion went to current ANC participants, and 16% went to ANC firms that had graduated from the program.

In FY 2008, obligations to ANCs represented 26% of total 8(a) dollars, although ANC participants represent just 2% of companies and alumni companies in the 8(a) program.

Although the percentage of ANC 8(a) obligations made to ANC firms increased, the majority of those obligations went to just a few participants, mostly through sole-source awards. For example, in FY 2007, 50% of Federal 8(a) obligations made to ANC participants went to just 11 ANC firms (6% of firms).

The ability of ANC firms to obtain unlimited sole-source awards, which is probably one of the most powerful advantages the ANC program affords to bidders, is the main reason for the increase in awards to ANCs. The top 11 firms received 82% of their 8(a) obligations non-competitively.

Unlike other 8(a) businesses, where profits just go to one of two disadvantaged individuals, the ANC structure affords the sharing of profits by hundreds, and sometimes thousands, of tribal members and Native shareholders. Many ANC parent companies
derive most of their revenue from the 8(a) program, and profits from those revenues help pay shareholder dividends and fund cultural programs, employment assistance, jobs, scholarships, internships, subsistence activities, and other services to communities.

• The growth in obligations to ANCs and the complex business relationships of ANCs has challenged the SBA’s ability to provide effective oversight of subsidiaries regarding primary industry, majority ownership, etc., to monitor joint ventures, and to track ANC activities.

• Increases in awards to ANCs may have resulted in diminished opportunities for other 8(a) participants, and GAO is looking at whether ANC-owned firms should continue to be exempt from competitive threshold limits on sole-source awards and award caps.

US SBA OIG Report 6-15, 3/16/06. *Audit of Monitoring Compliance with 8(a) Business Development Regulations During 8(a) Business Development Contract Performance.*

- This study examined whether Federal agencies were ensuring companies’ compliance with 8(a) contracting requirements when awarding contracts, and that the awardees of those contracts were complying with requirements in the performance of those contracts.
- Neither SBA nor the procuring agencies (to whom authority was delegated by SBA) had mechanisms in place to ensure compliance with 8(a) program requirements in the completion of contracts.
- As a result of this study, changes were made in oversight and surveillance procedures.


- Among the recommendations of this report, which concluded that the 8(a) program needed to be “re-engineered”, were that: the SBA’s 8(a) program needs to be modified so that more firms receive access to business development; standards for determining economic disadvantage are clear and objective; and more eligible firms receive contracts.
- The report found that SBA’s 8(a) program was not enhancing firms’ ability to compete, was not ensuring that only 8(a) firms with economically disadvantaged owners were remaining in the program, and was not ensuring that contracting opportunities be equitably distributed to participants. In FY 2002, 50% of the value of 8(a) contracts went to 2% of the 8(a) firms, and over half the firms in the program received no contracts.


- Among the findings of this 2004 report were that the SBA needs to improve its “managing for results” processes and performance data collection. In 2012, SBA is still
not conducting outcome evaluations that would examine the effectiveness of its programs.

**Reports by the Minority Business Development Agency**


- In FY2011, MBDA assisted minority-owned businesses in obtaining $3.9 billion in contracts and capital.
- For the 3-year period of the Obama Administration, MBDA assisted minority-owned firms in obtaining $10.9 billion, a 101% increase over the prior 3-year period and the highest 3-year performance in the history of the Agency.


- African American-owned firms increased 61% (1.9 million firms) from 2002 to 2007. Employment at these firms grew 22% (754,000 to 921,000 workers). (As a comparison, job growth at non-minority-owned firms during the same period was less than 1%.)
- The African American adult population represents 12% of the US adult population, and African American-owned firms only 7% of US firms.


• Hispanic-owned firms increased 44% (2.3 million firms) from 2002 to 2007, more than
twice the national average for US businesses. Employment at these firms grew 26% (1.5
million to 1.9 million workers). (As a comparison, job growth at non-minority-owned
firms during the same period was less than 1%). Receipts for Hispanic owned firms
increased 56% to approximately $345 billion.
• Hispanic-owned firms represent 8.6% of US firms.

Growth and Global Reach*.

- [http://www.mbda.gov/pressroom/news-and-announcements/asian-owned-firms-generate-
- Source: US Census Bureau, 2007 Survey of Business Owners (released June 2011); 2002
Survey of Business Owners (released September 2006); Annual Population Estimates,

• Asian-owned firms increased 40% (1.5 million firms) from 2002 to 2007, more than
twice the national average for US businesses. Employment at these firms grew 28% (2.2
million to 2.8 million workers). (As a comparison, job growth at non-minority-owned
firms during the same period was less than 1%). Receipts for Asian-owned firms
increased 55% to approximately $508 billion.
• Asian-owned firms represent 5.9% of US firms.

Alaska Native-Owned Business Growth and Global Reach*.

- Source: US Census Bureau, 2007 Survey of Business Owners (released June 2011); 2002
Survey of Business Owners (released September 2006); Annual Population Estimates,

• American Indian and Alaska Native owned firms increased 18% (236,967 firms) from
2002 to 2007. Receipts for these firms increased 28%, to $34.4 billion.
• The American Indian and Alaska Native adult population represents 1.5% of the US adult
population, and American Indian and Alaska Native-owned firms only 0.9% of US firms.
Native Hawaiian- and Other Pacific Islander-owned firms increased 31% (37,957 firms) from 2002 to 2007. Employment at these firms grew 32% (29,319 to 38,750 workers). (As a comparison, job growth at non-minority-owned firms during the same period was less than 1%.) Receipts for these firms increased 52%, to $6.5 billion.

The Native Hawaiian and Other Pacific Islander adult population represents 0.3% of the US adult population, and Native Hawaiian- and Other Pacific Islander-owned firms only 0.1% of US firms.

- Menu of all fact sheets.


Reports on Supplier Diversity in Procurement by the Organization for Economic Cooperation and Development (OECD)

As is the case with the US Government programs, the OECD has not conducted comprehensive analyses specifically on supplier diversity and social entrepreneurship initiatives within public procurement, nor have studies been done on the impacts of those initiatives on accomplishing larger social goals and objectives. However, several studies provide general data (albeit in a disconnected way) on procurement, social diversity, SMEs, social entrepreneurship, and women entrepreneurs.

Financing SMEs and Entrepreneurs 2012: An OECD Scoreboard. OECD, 4/19/12.
- Examines the challenge of access to financing among small- and medium-size enterprises. Identifies the lack of evidence and data as an obstacle to policymaking and establishes a framework for addressing this. Countries examined include: Canada, Chile, Denmark, Finland, France, Hungary, Italy, Korea, the Netherlands, New Zealand, Portugal, the Slovak Republic, Slovenia, Sweden, Switzerland, Thailand, the United Kingdom, and the United States.
- The chapter on the United States examines the US Small Business Administration’s methodology for establishing its business size standards, borrowing and loan practices.

- The chapter on the “Size of the Public Procurement Market” examines the percentage of GDP in each country that is represented by public procurement and displays data on national procurement markets, by country.
Entrepreneurship at a Glance 2012. OECD, 6/1/12

• A special chapter addresses measurement issues on women and entrepreneurship; selected indicators on the entrepreneurial activities of women are given.

• Among the findings are that women are less likely than men to start an entrepreneurial activity. Typically, 2% of employed women own a business and employ others (half the rate seen in some countries among men). Over the past 10 years, the share of employers who are women has been rising in countries where women have increased their labor market participation (for example, Chile, Korea, Mexico).

• The percentage of firms with employees whose sole proprietor is a woman varies greatly across countries and sectors, 20 to 40 percent.

• Firms started by women perform successfully at the same rates as those started by men.

• http://www.oecd.org/industry/entrepreneurshipataglance2012.htm (Executive Summary)

• http://www.oecd.org/std/entrepreneurshipandbusinessstatistics/50537806.pdf (Notes on Women and Entrepreneurship)

Reviews on Boosting Local Entrepreneurship and Enterprise Creation (OECD LEED Study in Progress, 2011-2012)

• Ongoing study being conducted by OECD’s Local Economic and Employment Development (LEED) Program.

• Project is examining the capacity of local economies to support new enterprise creation and the development of small- and medium-sized enterprises (SMEs), including social entrepreneurship projects. Policy analysis is being conducted with a focus on determining the local framework and conditions that would enhance new enterprise creation.

• Issues being addressed in the study include social entrepreneurship; entrepreneurship skills; SME workforce skills; business support framework finance; and knowledge networks.

• The study is being conducted via questionnaire; international peer review; and policy development roundtable, as well as specialized reviews of social entrepreneurship and entrepreneurship skills.

• http://www.oecd.org/cfe/leedprogrammelocaleconomicandemploymentdevelopment/reviewsonboostinglocalentrepreneurshipandenterprisecreation.htm
Job Creation Through Social Entrepreneurship and the Social Economy (OECD LEED Study in Progress, 2011-2012)

- Ongoing study being conducted by OECD’s Local Economic and Employment Development (LEED) Program.
- Project builds on the results of the 2009-2010 LEED project on "Improving the Social Inclusion Capacity of the Social Economy" and attempts to identify what factors contribute to, as well as hinder, the ability of social entrepreneurship and social economies to create and sustain jobs. In particular, it looks at the way in which social economy organizations and social enterprises can create and sustain quality employment for individuals who face difficulties in entering the open labor market, including younger and older people, women, and vulnerable groups. The project will also look at differences between sectors and between the target groups, and what role policymakers play in helping these organizations create employment.
- The study will use case studies, literature reviews, and a questionnaire sent to subjects in government and social economy roles.
- [http://www.oecd.org/cfe/leedprogrammelocaleconomicandemploymentdevelopment/jobcreationthroughsocialentrepreneurshipandthesocialeconomy.htm](http://www.oecd.org/cfe/leedprogrammellocaleconomicandemploymentdevelopment/jobcreationthroughsocialentrepreneurshipandthesocialeconomy.htm)