

ALERT: CONTRACTING PROGRAM "PARITY" NEEDS YOUR SUPPORT
PROPOSED NEXT STEPS

IMMEDIATE ACTION NEEDED:

Contact your Senators to urge that they co-sponsor S. 3190, the Small Business Programs Parity Act of 2010, to ensure that federal contracting officers will be able to use whatever small business contracting program they wish – 8(a), SDB, SDVOB, WOB, or HUBZone – and not be required to use only HUBZone contracting.

BACKGROUND:

Under the SBA's Parity policy and regulations, before setting aside a contract for small businesses, federal agency contracting officers may choose among SBA's procurement and business development programs -- 8(a), HUBZone, Service Disabled Veteran-owned small businesses (SDVOBs) and Women-owned small businesses (WOBs¹) -- without giving one preference over the others.

In Mission Critical v. U.S. (09-864 C, Ct. of Fed Claims, Feb. 26, 2010), the Court of Federal Claims held that the Small Business Act requires contract opportunities to be set aside for HUBZone firms whenever two HUBZone firms are available to perform the contract at a fair price, because the Act says HUBZone "shall" be used.

In a new protest decision on an Air Force contract, the Government Accountability Office (GAO) has ruled that HUBZone small businesses are entitled to absolute contracting priority over 8(a) in all cases where two or more HUBZones are available to perform the task. Absent legislative intervention, GAO will decide ALL HUBZone protests in favor of this absolute HUBZone priority on a summary, expedited basis.

SBA, other federal departments, and many private contracting groups strongly support legislation to substitute "shall" with "may" in Section 31(b)(2)(B) of the Small Business Act to clarify and confirm contracting officers' discretion to treat SBA's programs equally.

WITHOUT "PARITY" THE FOLLOWING ADVERSE IMPACTS COULD OCCUR:

- Fewer opportunities for Native and other socially and economically disadvantaged, SDVOSBs and WOSBs
- Substantially fewer federal contracting dollars awarded 8(a), SDB, SDVOB, WOB
- Based on contracting data for FY2008, \$29.3 BILLION went to small businesses (of which \$16.2 BILLION went to 8(a) firms, \$14.7 BILLION to WOBs, and \$6.5 BILLION to SDVOBs.
- The Court's reading of the Act, applied to other procurements, could re-direct to HUBZone firms tens of BILLIONS in federal dollars currently spread across 8(a)s, SDVOBs, WOBs and other small businesses.
- An absolute HUBZone preference could have a devastating economic impact upon thousands of non-HUBZone firms, including companies that are Native-owned, 8(a), SDB, SDVOB or WOSB and currently participate in government contracting, and the hundreds of thousands of jobs these firms provide.
- A flood of protests in any non-HUBZone procurement could paralyze the procurement process and make litigation-avoidance a primary contracting objective.

The Obama Administration's position, communicated to the contracting community, is that the Mission Critical decision controls only the contract at issue in the Mission Critical procurement, and the SBA's regulations promoting "parity" remain in force. The Administration is committed to "parity" while Congress considers statutory clarifications.