

**SBA MANAGEMENT REVIEW: OFFICE OF
GOVERNMENT CONTRACTS AND BUSINESS
DEVELOPMENT**

HEARING
BEFORE THE
SUBCOMMITTEE ON CONTRACTING AND
WORKFORCE
OF THE
COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTEENTH CONGRESS
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CONTENTS

OPENING STATEMENTS

	Page
Hon. Richard Hanna	1
Hon. Mark Takai	2

WITNESS

Mr. John Shoraka, Associate Administrator, Office of Government Contracts and Business Development, United States Small Business Administration, Washington, DC, accompanied by Mr. Eugene Cornelius, Deputy Associate Administrator for Field Operations, United States Small Business Administration, Washington, DC	3
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APPENDIX

Prepared Statement:	
Mr. John Shoraka, Associate Administrator, Office of Government Contracts and Business Development, United States Small Business Administration, Washington, DC, accompanied by Mr. Eugene Cornelius, Deputy Associate Administrator for Field Operations, United States Small Business Administration, Washington, DC	17
Questions for the Record:	
None.	
Answers for the Record:	
None.	
Additional Material for the Record:	
None.	

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WEDNESDAY, FEBRUARY 3, 2016

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
SUBCOMMITTEE ON CONTRACTING AND WORKFORCE,
Washington, DC.

The subcommittee met, pursuant to call, at 3:00 p.m., in Room 2360, Rayburn House Office Building. Hon. Richard Hanna [chairman of the subcommittee] presiding.

Present: Representatives Hanna, Hardy, Kelly, Takai, and Clarke.

Chairman HANNA. I call this hearing to order. Thank you, everyone, for being here.

The Small Business Committee has spent the past month conducting intensive oversight of the Small Business Administration. Today, this Subcommittee is going to examine the Office of Government Contracts and Business Development (GCBD), which faces similar challenges, as do other parts of the agency. Specifically within this program, SBA needs to do a better job with human capital management, information technology, and reducing organizational duplication. SBA's untargeted use of voluntary early retirement authority and voluntary separation incentive payments appear to have left the GCBD without the personnel required to perform a statutory mission. It is unclear why the SBA offers buyouts to procurement center representatives (PCRs) knowing that under the current law they would only replace a fraction of the employees who just left. Likewise, why would the SBA buy out the individual responsible for drafting procurement regulations at the time when the SBA is not meeting its own statutory deadlines? Similarly, the Inspector General found that the GCBD's attempt to implement a unified IT system to track HUBZone and 8(a) participants violated contract law and failed to meet the office's requirements. The fact that a system designed to reduce fraud and implement program oversight has not yet been put into use is not acceptable. We can do better, and we will do better. Additionally, GCBD seems to have offices with duplicative and unclear missions, and too frequently relies on evaluated field staff. Given that in Fiscal Year 2014 nearly 40 percent of all Federal contract dollars went to small business, taxpayers deserve an organization that can effectively manage prime contracting, subcontracting, 8(a) HUBZones, women-owned

businesses, and service-disabled veteran-owned businesses contracting programs.

Indeed, GAO identified seven open recommendations with which the GCBD agreed but had not yet done anything towards implementation. Some of these requirements are simple to accomplish since they would only require that the SBA take actions already required by the law. These include submitting the annual bundling and consolidation reports or tracking post-completion success rates for participants in the mentor-protégé relationships. I also hope today we will get an honest answer and candid answers from the SBA on what we need to do to fix these problems.

With that, I yield to Ranking Member Takai for his opening remarks.

Mr. TAKAI. Thank you, Mr. Chairman, and aloha. I know we were supposed to have this hearing last week. I was looking forward to it. I want to wish you a happy belated birthday.

Chairman HANNA. You got snowed in in Hawaii?

Mr. TAKAI. Yes. Last week, Monday was a very eventful day for many of us, but yeah, happy birthday, Chairman.

The Federal Government is spending almost half a trillion dollars annually on the purchase of goods and services needed for its daily operations. As such, the U.S. Government remains a consistent and reliable client, yet the Federal marketplace is a hard space to break into. Recognizing the need for a diverse market, Congress included goals for small business participation in Federal procurement, and created a variety of contracting programs to help small firms compete in the marketplace.

The SBA Office of Government Contracting and Business Development plays a vital role in this process. The GCBD Office works with agencies to help them meet the small business goals. It also implements and oversees programs used by many small firms to start contracting with the government, and they have been somewhat successful in these tasks. In Fiscal Year 2014, the government surpassed the small business goals, awarding \$91 billion, or almost 25 percent of the dollars to small businesses. These awards allow the government to receive quality goods and services at competitive prices and strengthen its industrial base. However, as the Chairman noted, there is always room for improvement, and this office is no exception. The government as a whole and some agencies have failed to meet all of the small business participation prime and subcontracting goals. These failures deprive small business of billions in contracting dollars.

Additionally, the Committee has seen a continued use of bundling and consolidation through the years. Contract values have risen so high that only a limited amount of businesses are able to bid, resulting in fewer large firms receiving contracts. It appears this trend has impacted the participants in the SBA contracting programs as the number of firms in these programs has also declined.

The ability of small businesses to compete in the Federal marketplace has been adversely affected by the lack of staff in the GCBD office as it continues to be understaffed. There are currently only 50 procurement center representatives and 30 commercial market representatives overseeing millions of contracting actions. Small

businesses cannot be adequately advocated for with such few numbers promoting their use and ensuring that agencies are following the small business set-aside procedures.

Lastly, SBA has been slow to implement changes made by this Committee to SBA's contracting programs. These changes have been aimed at increasing participation by small businesses and removing barriers these firms face in competing for contracts. This inaction has caused confusion among firms and contracting personnel. Therefore, I am particularly interested in what the GCBD office is doing to make sure these changes are made quickly so that small businesses can start taking advantage of these changes.

Mr. Chairman, we are seeing small businesses leave the marketplace at high rates. As such, this hearing is critical to determine what can be improved upon at the SBA to ensure that these firms have equal access to contract opportunities. I look forward to hearing from Mr. Shoraka about how SBA plans to address some of these issues and determine how this Committee can work with the SBA to see what can be done to ensure that small businesses have access to the Federal marketplace.

Thank you, Mr. Chairman, and I yield back.

Chairman HANNA. Thank you.

I will not bother to explain the timing. You have been here many times.

Our first witness today is Mr. John Shoraka, the Associate Administrator for the Government Contracts and Business Development. He has been in this role since December of 2011, and of course, has testified before this Committee before.

Welcome back, and you may begin.

STATEMENT OF JOHN SHORAKA, ASSOCIATE ADMINISTRATOR, OFFICE OF GOVERNMENT CONTRACTS AND BUSINESS DEVELOPMENT, SMALL BUSINESS ADMINISTRATION

Mr. SHORAKA. Thank you, Chairman Hanna, Ranking Member Takai, and members of the Subcommittee. Thank you for having me and giving me the opportunity to testify here today.

Small businesses are agile, innovative, and affordable partners for the Federal Government. Through small business contracting, the Federal Government acts as a catalyst for small business growth and innovation while supporting economic security for the nation. Over the past 7 years, the administration, Congress, SBA, and Federal agencies have been focused on increasing small business contracting opportunities across the Federal Government. This increased focus has resulted in over \$550 billion in Federal contracting dollars being awarded to small businesses from Fiscal Year 2009 to 2014. Of that, \$91.7 billion was awarded in Fiscal Year 2014, which represents an incredible impact to the American economy, that drives innovation, growth, job creation, and supports over 550,000 jobs across the nation.

In Fiscal Year 2013 and 2014, the Federal Government exceeded the 23 percent goal, representing 2 consecutive years of this achievement for the first time since 2005. Current year-to-date performance for Fiscal Year 2015 demonstrates that the Federal Government should again exceed the 23 percent goal, along with three of the four socioeconomic categories. If achieved, this would be the

first time since the program's inception that the women-owned small business goal of 5 percent has been met. It would also be the 21st consecutive time the small disadvantaged business goal has exceeded, and the fourth consecutive year for achieving the small disadvantaged service-disabled veteran-owned small business goal. These achievements are the result of the dedicated and focused efforts of the Small Business Administration and Federal agencies to support small businesses as they play a critical role in building and sustaining the nation's industrial base and strengthening our economy.

Over the last few years, the SBA's Office of Government Contracting and Business Development has begun a variety of streamlining efforts to enhance and improve customer service, create efficiencies, and reduce administrative burden on small businesses. These efforts include significant improvements in processing of HUBZone, 8(a), and Mentor-Protege applications, and finalization of the HUBZone, 8(a), and WOSB standard operating procedures. In addition, GCBD initiated efforts to invest in IT solutions, which will provide efficiencies for our interactions with our small business customers. Furthermore, as we continue to support small business contracting opportunities, Administrator Contreras-Sweet authorized the hiring of 10 additional PCRs (procurement center representatives) for oversight of Federal buying activities.

Of great importance, SBA implemented over 25 provisions found in the Small Business Jobs Act of 2010 and subsequent National Defense Authorization Act and is making great progress on the remaining statutes. Provisions implemented include the WOSB Industry Study; the WOSB Sole Source Rule; accountability of senior executives; total and partial set-asides and reserves under multiple award contracts; revisions to the reporting structure of the Offices of Small and Disadvantaged Business Utilization; including of overseas contracting in the Fiscal Year 2016 goaling base; and increased training and certification for our staff. We are also making significant progress on implementing the Mentor-Protege Program to offer an expanded program to all small businesses and have issued an Advanced Notice of Proposed Rulemaking for the certification of women-owned small business firms.

While we continue to support and improve contract opportunities for small businesses, there are always opportunities to build upon our strengths and improve in certain areas. We acknowledge the recommendations from the General Accountability Office and Inspector General that remain open and need to be closed with urgency. Closure of open recommendations is one of my highest priorities, and we are actively working with the IG and the GAO to come to meaningful resolutions that will benefit small businesses through improved SBA policies and programs. We initiated and scheduled regular face-to-face meetings with GAO and IG leaders, resulting in the closure of nine GAO and three IG recommendations within the past 12 months. The recently closed recommendations include improving monitoring of and procedures used in assessing the continuing eligibility of 8(a) firms and assessing resource allocation of PCRs and commercial market representatives to successfully carry out our duties. We take the remaining open

GAO and IG recommendations seriously and are committed to resolve all of them.

In closing, I would like to recognize the commitment to small business from Congress; in particular, from the House Small Business Committee. I would also like to acknowledge the commitment from the administration, our Federal agencies which have recognized the value of small business, and remain committed to providing meaningful contracting opportunities. Led by Administrator Contreras-Sweet, we will continue to fight for small business, to improve participation for firms to compete for and successfully win contracting opportunities. Thank you.

Chairman HANNA. Thank you.

Are you saying there is nothing wrong and that you are on schedule and that you agree with everything that was alleged to be wrong or incomplete? You still have final rules from 2013, 2014, and 2015. So why are we here? I know why we are here, but what I hear you saying is that you are on schedule. Do you agree with GAO?

Mr. SHORAKA. Sure.

Chairman HANNA. So do you agree with them completely?

Mr. SHORAKA. I think on their recommendations, we have agreed to implement them. I do want to point out that a lot of those recommendations that are still outstanding are from before the time that I was with the SBA.

Chairman HANNA. But would not that mean that would be the first thing you did when you got there, not the last thing?

Mr. SHORAKA. I think we want to make sure that we prioritize in a way that achieves our objectives. In other words, we prioritize in a way where we expand participation of small businesses in the procurement world, and we achieve our goals. I think indicated by our progress against the goals, we have been pretty successful. And as I said, that is not to say that there is not additional recommendations necessary to be implemented, and we certainly, as I mentioned in the last 12 months, have been successful in sitting down face-to-face with the IG and GAO, and we are certainly committed, as our administrator said, to work through the remaining IG and GAO recommendations.

Chairman HANNA. So to read between the lines, are you saying that the timing and the order of the recommendations, just because some are older, some are newer, that you have prioritized them in a way that makes them logical and concurrent?

Mr. SHORAKA. I think that is fair to say. I think it is fair to say that as we look at these couple of things. One is you mentioned the rulemaking process and reaction to the statutes, and I want to clearly acknowledge that working with this Committee and working with the Hill, there is a lot of statutes and provisions in statutes that has helped level the playing field for small businesses to participate in Federal contracting, and we have worked diligently to implement a lot of those provisions.

Chairman HANNA. Can you explain why you are buying people out and then hiring new people at the same time to do the same job?

Mr. SHORAKA. Yes. So obviously, as you know, the agency went through a VERA/VSIP program. I am not the head of our HR and

I certainly do not want to comment on that topic, which is something that our human resources office is responsible for, but what I will say is the mention that you make with respect to PCRs, we have done a significant analysis of where PCRs should be located based on buying activity small business opportunities and based on some of the folks that have retired have reramped up in areas that were not previously covered. So as you mentioned previously, obviously we have thousands of buying activities to cover with limited resources. It is important for us to analyze buying activities and the small business opportunity that resides at the different types of buying activities and readjust our coverage to make sure that we are hitting the most opportune centers.

Chairman HANNA. So what you are really saying is that the people who retired were not relevant to the workload geographically?

Mr. SHORAKA. No. I think what I am saying is that it gave us an opportunity to identify places where we might make a significantly bigger impact.

Chairman HANNA. And presumably you bought people out rather than ask them to move?

Mr. SHORAKA. No. Again, I would not tie the VERA/ VSIP directly to the reassignment of PCRs. The VERA/VSIP decision is a decision that was made by HR and the agency. What I am saying is that in staffing back up with respect to PCRs, we have had the opportunity to actually analyze where the greatest buying activities are.

Chairman HANNA. I can appreciate that, but did their job descriptions not allow you to move them around?

Mr. SHORAKA. Certainly.

Chairman HANNA. So again, the same question, why are we laying them off?

Mr. SHORAKA. Right. I would have to get back to you, but again—

Chairman HANNA. Can you do that for this Committee? I mean, it is a legitimate question, especially when you are going to go out and hire 10 more people, which you said—

Mr. SHORAKA. Sure. Happy to do that.

Chairman HANNA. Thank you very much.

Mr. Takai?

Mr. TAKAI. Thank you, Mr. Chair.

Last year I introduced legislation that was included in the Fiscal Year 2016 NDAA, which allowed the Native Hawaiian organizations to qualify for the HUBZone program. Understand, this is my second year, but I understand this has been many years in the making. Can you give me a timeline as to when SBA will be able to release the corresponding regulations for this particular change?

Mr. SHORAKA. Sure. I have been here now for 4 years, but I come from the private sector, and coming to this side of the fence, it is awakening a little bit with respect to the rulemaking process. Not only do we have to draft the rule internally and get it cleared through our building and through our general counsel's office, but then it has to get interagency clearance throughout all Federal agencies, right? Because our rules oftentimes have an impact upon our sister agencies. Interagency review period on a proposed rule

oftentimes is 90 days. Then we get it back and we make adjustments, but then I think it is important, and I think you would all agree, that we have a public comment period. Because when we make rules, we want to make sure that our constituents understand the impact with how it is going to impact their business. And not only that, we want to make sure that we gather their comments and incorporate that in. So that is another 90 days. So that is two 3-month periods, so that is a total of 6 months right off the back, and that is not even the rulemaking process. Drafting, right? Once we have incorporated the comments from the public, we will go out for a final 90 day period for our interagency, our sister agencies to comment. That is a total of 9 months, not including any drafting of rules in that respect.

I will add that with respect to provisions where the intent of Congress is very clear, as an example, the women-owned small business sole sourcing provision or removal of the caps in the Women-Owned Small Business program, we were able to work with our sister agencies with OMB, to issue an interim final rule to go out relatively quickly in a matter of 6 months. What we are doing right now with respect to the NHO provisions and the HUBZone provisions is trying to determine if we can move in an interim final rule process or do we need to go through the entire rulemaking process.

Mr. TAKAI. Okay. So notwithstanding the 9 months that you mentioned, and this amendment also included disaster zones and BRACs, so there are three components, I am assuming you are going to move them altogether?

Mr. SHORAKA. Yes.

Mr. TAKAI. How much time is it going to take for your office to get up to the 90 days? I am sorry, the 9 months?

Mr. SHORAKA. We work closely with our Office of General Counsel. As was mentioned earlier, we have a number of provisions that we are working to finalize, including the mentor-protégé rule, limitations on subcontracting, et cetera. I think we can work, you know, I do not want to commit to a timeframe, but I think relatively speaking, 3 months, 4 months to draft something that could go out for interagency comment is reasonable.

Mr. TAKAI. Okay. Great. Thank you.

Over the past few years we have seen the average dollar value of small business contracts go up and fewer small firms participating in the marketplace. This is especially true with some of the SBA programs in which we have seen the number of participants actually decline. Why do you think this trend is occurring, and what actions is the SBA taking to reverse it?

Mr. SHORAKA. Thank you. Thank you for that question. I think that is a really important question in the sense that the Federal Government, as we all know, has to buy smarter. We need to figure out how to reduce budgets and buy smarter. Sometimes, what that has looked like, is consolidation of requirements into larger requirements and more complex requirements. What happens then is you have a more complex and larger requirement that sometimes a small business cannot pursue. We have been working closely with the Office of Federal Procurement Policy and GSA to make sure that when that happens, when a requirement comes out that is

consolidated or more complex, two things. One is we received authority from Congress to allow for better teaming for small businesses. In other words, opportunities for small businesses to team up and jointly go after these larger and more complex projects. That is one that we are working on and hope to have finalized shortly. The other is if we are setting up vehicles that are multi-year and very broad, are we casting a broad enough net to bring in small businesses to participate? And do we have on and off ramps? In other words, if a limited number of small businesses are participating and we are hitting our small business goal, that is a good thing, right? But we want more small businesses to participate. So do we have on and off ramps to allow new small businesses to come on to do the work while the ones that have grown can graduate from that particular vehicle? So there are certain things that we are trying to implement in this environment to ensure that small businesses play a fair share in the marketplace.

Mr. TAKAI. Thank you.

Thank you, Chairman.

Chairman HANNA. Mr. Hardy?

Mr. HARDY. Thank you, Mr. Chairman.

You know, as I sit here, I truly believe that the SBA is doing some great work, but there are some major deficiencies that I have concerns about. The GAO highlighted some specific things that were to happen. I would just like to read a few of these highlighted spots. It says, "Provide clear and complete guidance to PCRs and CMRs." That was a 2011 report. Also 2011, "Require monthly GCAR data are verified." The 2013 report, "While SBA agreed that the recommendation had not been complied with at the time of the management report prompting GAO to again recommend that the SBA file the required reports." Then we go back here to the 2011 report again. It talks about, "There was little or no tracking of the prodigy firms to see if the programs produced lasting benefits."

Now, as a former small business owner myself, I just want to explain this is really frustrating to me how this could happen because it is not like we are short of manpower or like there is not an obligation. I know it is a different type of business, but it is still a business the way things operate. I had a construction business, I had a concrete and aggregate business, I had a golf course, and I had a restaurant. None of them hardly fit in most cases together. But through that process—I will just give you an example, my construction firm. Within less than 3 years, I knew exactly, to the penny almost, what it was going to cost me to lay a piece of pipe in the ground, what size pipe, the depth. Every foot that I put in, I knew what the cost was going to be. Just using that as an example. I knew the difference between soil types, what it was costing me. I knew which different teams were better at putting certain things in the ground, and so we tracked that. That is what the private sector does. In the restaurant business, you know, when you are losing on something, you track it and find out why certain things are not moving. You have to be flexible and move and you have to respond. In the concrete and aggregate business, we have to make sure that materials that we spend we do not lose money on. And it is tracked. The private sector does that in-house with their foreman, with whatever, people that are already hired to

make that happen. This is the frustration in me. Why is this not happening at the SBA level in whatever tracking is getting done?

Mr. SHORAKA. Thank you, Congressman.

I think that it is happening in a lot of instances. Again, I do not want to discount the fact that we have, through our staff, through the very people that work in these offices, have been able to, for the first time in a long time, met the goals with respect to the statutory requirements. I will say that with respect to the GAO recommendations, there are a lot of the recommendations where we have actually submitted material to the GAO and are waiting for a response with respect to the acceptability of have we met the requirements of that recommendation.

Mr. HARDY. I just want to follow up. This Mentor-Protege Program, as we know, 64 percent of this nation was employed by small businesses, and now it is beyond decline. It is collapsing. I think your program, this Mentor-Protege Program, it is very important that we track that to find out which businesses are succeeding and why, and how can we help, or where are we getting in the way. I want to make sure that those small businesses are successful, and I think that is what your job is, to make sure that we get those reports so we can do our job here.

So my frustration is, and only being here a year I cannot really be too angry, but it cannot go on longer. We have got to make sure what we can do to help those small businesses succeed, find out why they are failing, so we can move in a different direction to help those situations, and I think we will see an economy grow again and move again. That is why the SBA is so important to me.

Mr. SHORAKA. Thank you. Just one last comment on that. We also feel, with the authority given with respect to expanding the Mentor-Protege Program, not just in the 8(a) program but to all small businesses, is an excellent vehicle for helping small businesses grow and become acclimated with the Federal procurement process. We are looking to implement that program over the summer.

Mr. HARDY. Well, you know, in my area there are still the small businesses and the chambers and folks that still meet with me and have frustration. We have about \$260 million worth of military projects that go on out in our area with Nellis and Creech out there. Very little of that goes to the small businesses. It ends up being so convoluted and being involved that it is very challenging for them to get some of those projects. We need to maybe look at different avenues, how we can team these small businesses together to make them maybe a big business that have the opportunity to have some of the same successes. So just an idea. Thank you for your time.

Chairman HANNA. Ms. Clarke?

Ms. CLARKE. Thank you very much, Mr. Chairman, and to our ranking member. And, of course, to Mr. Shoraka, thank you so much for coming and briefing us, bringing us up to speed with where you are with respect to all the recommendations that have been before you and your agency.

I wanted to just comment that through your testimony, you indicated that you have closed nine GAO recommendations and three Inspector General recommendations in the last 12 months. That is

great. That is really good. I commend that effort that you have put into addressing the list of recommendations. What would you say are your next most pressing recommendations that you are working on closing, and how much time do you expect that those recommendations would take? And then finally, can you just update us a bit more on the progress that you have made in expanding and implementing the Mentor-Protege Program?

Mr. SHORAKA. Sure.

Ms. CLARKE. Thank you.

Mr. SHORAKA. Thank you, Congresswoman.

I think one of the areas where we are looking to finalize some of the recommendations, and they touch on multiple recommendations, both from the GAO and the IG, is the finalization of our SOPs, our standard operating procedures, around the 8(a) program, around the HUBZone program, and around the Women-Owned Small Business program. I think that is important for our sister agencies, our contracting community to understand how the programs work. It is important for our field, and it is important for our own staff. So we are looking to finalize those SOPs within the next 6 months.

With respect to the Mentor-Protege Program, we had the roll out last year for public comment. We received significant public comments on the Mentor-Protege Program and wanted to make sure that we incorporated industry's concerns in finalizing a program. We think it is important to make sure that we get it right. We think it is going to be a very useful program. We have heard from industry about how soon can we get involved in this Mentor-Protege Program, and we think it is going to be very useful, but we wanted to make sure we got it correct. The rule should be out in the final interagency review process by the end of this month. That will take 3 months in the interagency review process, so sometime over the summer the rule should be published as a final rule.

But we did not stop there. We have had a parallel working group for institutionalizing the programs. So we did not say, let us wait until the rule is finalized and then we will figure out how to institutionalize this program; we have actually had a working group engaged from our field staff, engagement from our general counsel's office, because it affects everybody, right? To make sure that as we roll this out, as we institutionalized it, we could dedicate the necessary resources and that we had the processes, the workflow processes, the approval processes, and I think something that was mentioned before, the tracking processes. As we roll this out, do we have a way to track what is the impact with respect to the program? And not only the mentor-protege relationship with the benefits flowing from the mentor to the protege, but also the joint ventures that happen under that Mentor-Protege Program. Is the protege getting their fair share of that contract? We want to make sure the systems are there to be able to track that. But we hope, and are planning, to have the program itself up and running in a limited fashion by the end of the summer as well.

Ms. CLARKE. Are you looking at particular, I guess, sort of regions in which you think that you can get it up and running quicker and that you could sort of do a test trial, if you will? Have

you thought about that? What conditions would be the best to really be able to drill down on the effectiveness of it?

Mr. SHORAKA. The proposed rule when it went out, it actually asked some questions around how do we create a—I do not want to say pilot, but a limited roll out? And there were questions about maybe focusing on areas where our goals had not been met, like the women-owned small business or the HUBZone. But the predominant feedback that we got is that there is a lot of industry waiting for this to happen, and they felt it unfair if we focused on one area rather than the other. We are going to roll it out in some fashion at the end of the summer, and we will see what the impact is to our resources to determine how do we become gatekeepers to not overwhelm the staff that we have.

Chairman HANNA. Thank you.

Mr. Kelly?

Mr. KELLY. Thank you, Mr. Chairman, and thank you, Ranking Member Takai. I thank the witness for being here.

Over 3 years ago, as part of the 2013 National Defense Authorization Act, Congress changed the process by which SBA is to set size standards. On January 26, 2016, your office published a final rule establishing size standards for industries with employee-based size standards not part of manufacturing, wholesale trade, or retail trade. In that rule, your office stated that it was going to continue limiting the number of size standards to anchor standards even though the 2013 National Defense Authorization Act said SBA may not limit the number of size standards. While I maintain that this latest rulemaking violated the Small Business Act, I was particularly surprised to read in the rule that, I quote, “As part of the preparation for the next round of size standards review as required by the”—and this is mine, 2010 Jobs Act, “SBA is currently reviewing and updating its current size standards methodology white paper to incorporate the provisions of the 2013 National Defense Authorization Act to the extent possible.” This suggests that SBA believes it is acceptable to pick and choose provisions of the NDAA so as not to upset its white paper. Is your position, or is it the position of the Small Business Administration that you think that a white paper trumps a statute passed by Congress?

Mr. SHORAKA. No.

Mr. KELLY. Well, please explain why this is contrary to that then.

Mr. SHORAKA. Sure. The Small Business Jobs Act of 2010 required the Small Business Administration to do a comprehensive study on all of its size standards every 5 years. In moving forward with that review—and it had not been done for decades—in moving forward with that review, we went through a public comment period with respect to our white paper. So we drafted a methodology that we thought was responsive to the Small Business Jobs Act of 2010, and we put it out for public comment because, obviously, it is going to affect our constituents. It is going to affect our small businesses. We wanted to make sure it reflected their input as well. That methodology, that white paper, was used for the full cycle of the reviews based on the 2010 Small Business Jobs Act. We thought it was not necessarily appropriate to change the rules of the game in the middle of the game. What we wanted to do was

make sure that we did the entire 5-year review process, and in fact, with these last three rules, we did come in exactly on target with respect to doing a comprehensive review in 5 years. And the rule actually said, the Small Business Jobs Act of 2010, said once you are done you are going to have to keep doing it over and over again every 5 years. That is why we are going out with a white paper, incorporating the provisions of NDAA 13, and going to public comment to make sure we are getting it correct in the next full comprehensive revisions.

Mr. KELLY. I would just, as a lawyer by trade, I would tell you that law changes all the time, and as a former district attorney, I could not rely on a 2010 law when a 2013 law superseded it. So you have to agree with the most current law, whether you want to or not. The most current, even if they conflict, you go with the most current that the ruling body has.

My next question is in your testimony you talk about the percentage of small business eligible dollars that went to small businesses. From the staff, I understand that about 19 percent of all Federal contract dollars are excluded from these goals, but the SBA does not consider these small business eligible. However, I understand that the 2013 National Defense Authorization Act required that SBA revise and publish its goaling guidelines by June of 2013 and that the new guidelines required to eliminate most of these exclusions. Why has the SBA not done this yet?

Mr. SHORAKA. We did revise the goaling base in 2014. We did an analysis. After the National Defense Authorization Act of 2013, we actually had our Office of General Counsel conduct an analysis of what is excluded and what is not excluded, and do we have any justification for excluding anything. Based on that analysis, there were revisions to the goaling base in 2014, and then the one major change, which would have a significant impact on agencies, particularly with agencies doing work overseas, was overseas contracts, contracts performed overseas. That change in inclusion of the overseas goaling base will be effective in 2016, but we wanted to make sure we engaged our sister agencies because of the impact it is going to have on the procurement workforce, and we spent the better part of the latter half of 2014 and 2015 working with the procurement workforce to make sure we got it right.

Mr. KELLY. I thank you for your testimony. Mr. Chairman, I yield back.

Chairman HANNA. I will ask another question if no one minds. We will be called for votes very soon.

One of the issues with all of this is the time it takes to get things done, right? You know that. That is part of why you are here today. This Committee wants to help. We are all in the same place here in terms of our desire to help small businesses. But what are you doing? The time it takes for small business rules to get through the FAR Council, and you mentioned that you expect some final rules to be issued soon on 2013, and we know that once these rules are written, it can take more years, maybe even 2 or 3 more years. So that is partially a statement but partially I want to ask you how can this Committee help you change that? Because that is really a lot of why we have these hearings is complaints over performance implying that you are not doing your job. You think you are. We

are saying, "Okay, but." My question to you is, are there things we can do to help you get this done assuming everyone is in earnest in terms of their desire to finish what they start?

Mr. SHORAKA. I think you mentioned the FAR Council. I think the FAR Council has competing priorities, right? So they are responsible for Federal acquisition, not only just small business acquisition and the Federal acquisition rulemaking process. If there is a clearer or cleaner way with the administrator working with the FAR Council might be something that would be helpful.

Chairman HANNA. Are you prepared to write something and tell us what that would look like?

Mr. SHORAKA. Certainly. I would be happy to consider that and come back with some recommendations.

The other point that, you know, obviously, we have touched on today, there are always competing priorities within the agency with respect to what is most important? What can have the most significant impact for our small business constituents? We feel they are our customers, as I am sure you do. So what do we focus on? And quite frankly, some of the times it can be a resource question because we have limited resources, so we are going to focus on the things that we feel are going to have the biggest impact with respect to small business participation in the Federal marketplace.

Chairman HANNA. So you can get back to us and let us know?

Mr. SHORAKA. Sure.

Chairman HANNA. I realize you have to speak to, perhaps, Ms. Sweet.

Mr. SHORAKA. Of course.

Chairman HANNA. Is there anyone else who would like to ask additional questions?

Mr. Takai? Go ahead. Votes have not been called yet, so if you are here, we would just as soon keep going.

Mr. TAKAI. Thank you, Mr. Chairman.

The 8(a) program is the main vehicle in which minority-owned businesses enter the Federal marketplace. However, there have been a number of cases that have challenged the constitutionality of the 8(a) contracting program, and some such as the Roth case have been successful. What steps is the SBA taking to protect this important program from constitutional challenges?

Mr. SHORAKA. Thank you. Our Office of General Counsel is very much involved with the Department of Justice, as well as Commerce. We worked closely with Commerce. We worked very closely with some very well-known and nationally-recognized statisticians to defend the program with respect to how the program works to serve an underserved community and what the disparity is with respect to the underserved community actually participating in the Federal marketplace. We are absolutely committed in making sure that this program benefits the underserved community. We are absolutely committed in defending the program, and we have worked very closely with Commerce, as well as the Department of Justice to make sure that the program is protected. I will add that when we did the Women-owned Small Business Study with respect to industries where women-owned small businesses are underrepresented, we used the same methodology that proved to be very successful in the Rothe case, to make sure that our

study in underrepresentation in the Women-Owned Small Business program was similar to how the 8(a) program was defended.

Mr. TAKAI. Okay. And a follow-up. Is the SBA currently collecting on circumstances in which non-8(a) businesses have claimed that they have been discriminated against?

Mr. SHORAKA. I could not answer that off the top of my head, but I am happy to get back. Not that I am aware of, but happy to get back on that.

Mr. TAKAI. Okay. Thank you.

In October 2014, a report on the Women-Owned Small Business program, the GAO has previously recommended that the SBA should establish and implement comprehensive procedures to monitor and assess performance of third-party certifiers in the women's procurement program. What is the progress that you have made in implementing this recommendation?

Mr. SHORAKA. Thank you. We actually conducted—we do reviews of women-owned small business firms in the WOSB repository, and this past year we implemented the reviews of the third-party certifiers. And as I mentioned earlier, we are in the process of finalizing our standard operating procedures around the Women-Owned Small Business program, and those standard operating procedures will have incorporated in them the review of the third-party certifiers. So we have conducted one review already this past year, and moving forward we intend to conduct them on a regular basis.

Mr. TAKAI. Okay, thank you. And then one last question, Mr. Chairman.

You had mentioned including overseas contracts in the near future as part of its baseline use to rate small business goaling at each agency. I am just curious to find out what outreach has been made to other agencies to alert them of this change and what steps they can do to increase the small business participation in this effort.

Mr. SHORAKA. Yes, thank you. That is one of the reasons when we talk about the National Defense Authorization Act of 2013 and the effective date with respect to increasing overseas contracts in 2016. One of the things that we have done over the last couple of years is engage the agencies most affected by this. And as you can imagine, Department of Defense is one of them, State is one of them, and USAID, U.S. Agency for International Development is the other. We have been working very closely with their Office of Small and Disadvantaged Business Utilization, with their chief acquisition officers, to make sure that they understand this impact. As we establish their goals for 2016, their goals reflected the impact. State, for example, when we include overseas performance, they have a significant reduction in performance when it comes to small business procurement. So, of course, we want to give them a stretch goal, but we do not want to give them a goal that is not reasonable. We have worked with them very closely in establishing a goal. Same with Department of Defense and USAID.

Mr. TAKAI. Okay, thank you. Thank you, Mr. Chairman.

Chairman HANNA. Mr. Hardy?

Mr. HARDY. Thank you, Mr. Chairman.

Last year, the GAO recommended that the SBA take better steps to better ensure that firms are notified of the changes in HUBZone 1 designations that may affect their participation in the program. However, the mapping tools on the SBA website appear to be out-of-date and hard to use. I guess I would like to know what the SBA is doing to improve those for the next round of redesignation.

Mr. SHORAKA. As part of our overall government contracting IT solutions, the mapping solution is one of the areas we will be focused on. But in the interim, we have implemented a lower tech way of informing all our firms with respect to redesignation. So on an ongoing basis, we send out emails to our firms to make sure that they are aware of any redesignations, and even though you mentioned that the maps could potentially be out-of-date from time to time, we also have spreadsheets of all the zip codes that include the designation areas. But this will be part of the IT solution package for government contracting and business development that we are speaking of.

Mr. HARDY. Thank you. What is the status of the one track system SBA purchased several years ago to track participants in the 8(a) and the HUBZone 1 program, and why did the IG and the GAO object to the procurement of what SBA is doing to ensure that there is no solid monitoring system for these firms?

Mr. SHORAKA. So with respect to the systems that exist, there are legacy systems that exist that monitor both the 8(a) program and the HUBZone program. The one track system, which went through the development process of identifying requirements, both in the 8(a) and the HUBZone program, was a system that did not necessarily meet all of the requirements as had been identified. What happened with those requirements is that that is what has been rolled up into the new IT for SBA, or we call SBA-1 for government contracting. So those requirements that were identified through that process are being implemented through the SBA-1 initiative. What I would say is that, you know, I cannot speak obviously to our acquisition team at the SBA and some of the findings from the OIG with respect to the acquisition process, but what I would say is that as we move forward with this project, the IT improvement or SBA-1, we have engaged the White House's Digital Services team to make sure that we do a solid roadmap, and we have engaged a small business firm to implement it in what they call "agile development." I am not an IT person, but I have been briefed on what that means, but it means that we get a deliverable or something to test every 2 to 3 weeks, and we have seen that working already around the Women-Owned Small Business program. So we are encouraged with the progress so far, and that is a system that will be rolled out to the 8(a) and the HUBZone programs as well.

Mr. HARDY. Thank you. I would just like to make a statement. You know, I truly believe some of the economic values that have happened in the recent year or so has come from the SBA and some of its improvements that it has done. I believe this program is vital to small businesses, which is vital to our economy, so I believe that you guys are a vital asset that needs to continue to evolve and become more efficient, more effective, which will again help in some avenues with the growth of our economy. So please

continue to try to be innovative and help us help you whatever we can. So that is a statement I truly believe or I would not say it.

Mr. SHORAKA. Thank you, sir.

Chairman HANNA. Thank you.

Of course, we are aware that 2016, the National Defense Authorization Act has a whole new package of things for you to deal with, right?

Mr. SHORAKA. Absolutely.

Chairman HANNA. We have not finished 2013. We are piling on again. What we would like to do is not see it take 3, then 2 or 3 more years, 6 or 7 years to implement this. Anything we can do to help you to that end. I learned that your HR person—I was going to ask you to go back and you why they were buying people out and hiring people when they can move them around. I learned that whoever that person was works for the Department of Homeland Security now. And I would ask you to get back to us with any recommendations.

Mr. SHORAKA. Absolutely.

Chairman HANNA. Like Mr. Hardy said clearly, we are here to help.

Mr. SHORAKA. Thank you.

Chairman HANNA. If there are on further questions for our witness, I would like to thank you for your time and testimony. As I have said before, given the hundreds of billions of dollars in Federal contracts that are at stake each year, ensuring small businesses have the opportunity to compete for Federal, prime, and subcontracting is very important. This will not happen without properly structured staffing of the GCBD. I am glad that H.R. 4341, which this Committee has successfully marked up in this past month, I would ask that the GAO do a deeper dive, take a look at this, get back to us, and let us know how we can help organizationally and going forward because as Mr. Hardy said, it is critical, and I run into people every day in my private life that take advantage of the services the SBA provides.

I would ask unanimous consent that every member has 5 legislative days to submit statements and supporting material or the record. Without objection, this hearing is closed. Thank you.

[Whereupon, at 3:56 p.m., the subcommittee was adjourned.]

APPENDIX



U.S. Small Business Administration

TESTIMONY of

A. JOHN SHORAKA

Associate Administrator
Office of Government Contracting and Business Development
U.S. Small Business Administration

House Small Business Committee

Subcommittee on Contracting and the Workforce

Wednesday, February 3 2016

To Chairman Hanna, Ranking Member Takai, and members of the Subcommittee, [to Chairman Chabot, Ranking Member Velazquez, and member of the full committee present] thank you for the opportunity to testify.

Small businesses are agile, innovative, and affordable partners for the federal government. Through small business contracting, the federal government acts as a catalyst for small business growth and innovation, while supporting the economic security of the nation. Over the past seven (7) years, the Administration, Congress, SBA, and federal agencies have been focused on increasing small business contracting opportunities across the federal government. This increased focus has resulted in over \$550.7 billion in federal contracting dollars being awarded to small businesses from Fiscal Year (FY) 2009–2014, with \$91.7 billion of small business eligible contracting dollars being awarded in FY 2014. The \$91.7 billion in small business contracts represents an incredible impact to the American economy that drives innovation, growth, job creation, and support for over 550,000 jobs across the Nation.

In FY 2013 and 2014, the federal government exceeded the 23 percent small business prime contracting procurement goal, representing two (2) consecutive years of this achievement for the first time since FY 2005. Current year-to-date performance for FY 2015, demonstrates that the federal government should again exceed the 23 percent goal, along with three (3) of the four (4) socio-economic goals—Women Owned Small Business (WOSB), Service Disabled Veteran Owned Small Business (SDVOSB), and Small Disadvantaged Business (SDB). If achieved, this would be the first time since the program's inception that the WOSB goal of 5 percent has been met. It would also mark the 21st consecutive time the SDB contracting goal is exceeded and the 4th consecutive year of achieving the SDVOSB contracting goal. The past and expected achievements for FY 2015 are the result of the dedicated and focused efforts by the SBA and federal agencies to support small businesses, as they play a critical role in building and sustaining the nation's industrial base and strengthening the economy.

Over the last few years, the SBA Office of Government Contracting and Business Development (GCBBD) has begun a variety of programmatic streamlining and process improvements efforts to enhance and improve customer service, create efficiencies, and reduce the administrative burdens on small business firms. These ongoing efforts include, but are not limited to, significant improvements in processing both HUBZone and 8(a) Program applications, reduced timelines for 8(a) Mentor Protégé agreements, and finalization of the HUBZone, 8(a), and WOSB programs' Standard Operating Procedures, which are nearing final agency approval. In addition, GCBBD initiated efforts to invest in technological solutions, which will provide efficiencies for our interactions with small businesses. Furthermore, as we continue to support of small businesses contracting opportunities, Administrator Contreras-Sweet authorized the hiring of 10 additional Procurement Center Representatives (PCRs), to support oversight of federal buying center activities to ensure compliance with small business regulations.

Of great importance, SBA has implemented over twenty-five provisions from the Small Business Jobs Act of 2010 and the National Defense Authorization Acts (NDAAs) of 2013, 2014 and 2015, and is making great progress on all other remaining statutes. Provisions implemented to date include completion of the WOSB Industry study, finalization of the WOSB sole source rule, accountability of senior executives, total and partial set-asides and reserves under multiple award contracts, revisions to the reporting structure of Office of Small Disadvantaged Business Utilization (OSDBU), inclusion of overseas contracting in the FY16 goaling base, and increased training and certification for staff. Also, we have been making significant progress on implementing the Mentor Protégé Program (MPP) to offer an expanded program to all small businesses, and issued an advanced notice of proposed rulemaking for certification of WOSB firms.

While we continue to work to support and improve contracting opportunities for small businesses, there are always opportunities to build upon our strengths and improve in certain areas. We acknowledged the recommendations from the Government Accountability Office (GAO) and Inspector General (IG) that remain open and need to be closed with urgency. Closure of open recommendations is one of my highest priorities and we are actively working with the IG and GAO to come to meaningful resolutions that will benefit small businesses through improved SBA policies and practices. We have initiated and scheduled regular face-to-face meetings with GAO and IG leaders resulting in closure of nine (9) GAO recommendations and three (3) IG Recommendations within the last 12 months. The recently closed recommendations include improving monitoring of and procedures used in assessing the continuing eligibility of 8(a) firms and assessing resources allocated for PCR and Commercial Center Representatives (CMRs) to successfully carry out their duties. We take the remaining open GAO and IG recommendations seriously and are committed to resolving them.

Additionally, we are highly committed to implementing any remaining statutes and programmatic improvements to reduce unnecessary burdens placed on small businesses in SBA's processes and procedures. We are working intensely to incorporate the remaining statutes from past NDAAAs into approved policies and regulations intended to allow an even playing field for small businesses. We expect many of the remaining statutes to be finalized in 2016, including the WOSB certification rule, teaming and joint venture rules, and the final MPP rule, along with a functioning MPP program. Further, we will review program processes, including the 8(a) annual review, and the HUBZone and WOSB Programs.

In closing, I would like to recognize the commitment to small businesses from the Congress, in particular, the House Small Business Committee. I also acknowledge the commitment from the Administration and federal agencies, which have recognized the value of small businesses, and remained committed to providing meaningful contracting opportunities. Led by Administrator Contreras-Sweet, we will continue to fight for small businesses to improve

participation for firms to compete and successfully win federal contracting opportunities.

