



## *Congress Restores Small Business Contracting Parity*

The small business contracting parity debate is finally over.

On September 27, 2010, President Obama [signed legislation](#) that re-establishes equality among each of the small business subcategories that competes for government contracts.

The 2010 Small Business Jobs Act, which also provides tax cuts for undersized firms and creates programs to support private sector

lending, makes a technical revision to the 1953 Small Business Act by replacing the word “shall” in the Historically Underutilized Business Zone (HUBZone) statute with the word “may.”

The old language in the Small Business Act stated that a procurement officer shall award contracts based on limited competition to HUBZone small businesses. But, the statutes creating the service-disabled veteran-owned small business program and the Small Business Administration’s 8(a) Business Development Program used the word “may” when referring to set-aside contracts.

The Government Accountability Office and the U.S. Court of Federal Claims determined the difference unambiguously established a preference for HUBZone firms.

The Small Business Administration lobbied lawmakers for months to support legislation that would place contractors in the 8(a) and service-disabled veteran-owned small business programs — and the pending women-owned small businesses program — on equal footing with HUBZone companies. HUBZone companies are located in economically depressed neighborhoods.

“This clarification will help federal agencies meet each of the government’s small business contracting goals,” said SBA spokeswoman Hayley Matz.

The agency now will work with the Federal Acquisition Regulatory Council to “put in place, as expeditiously as possible, provisions implementing parity among all of SBA’s contracting and business development programs,” Matz said.

But, some small businesses are worried the new legislation could spell the end of the HUBZone program.

“This is going to seal the fate of the HUBZone program,” said Jim Slagle, executive vice president for sales



"Our lives begin to end the day we become silent  
about things that matter."

- Martin Luther King Jr.

**Senator Landrieu Calls on Agencies to Enforce Parity  
Provisions in Small Business Jobs Act**  
*Contracting programs now on level playing field.*

WASHINGTON – United States Senate Committee on Small Business and Entrepreneurship Chair Mary Landrieu, D-LA, on Oct. 13 sent a letter to all Federal agencies calling on them to begin implementing the contracting parity provisions included in the Small Business Jobs Act that President Obama signed into law last month. These provisions put the small business government contracting programs – Historically Underutilized Business Zone (HUBZone), 8(a), Women-Owned small business (WOSB) and Service Disabled Veteran-owned small businesses (SDVOSB)– on an equal playing field when competing for government work.

“Existing statute allows contracting officers’ discretion when choosing to award a federal contract to a small business participating in these programs,” Senator Landrieu said in the letter. “However, misinterpretation of Congressional intent by the courts as well as recent decisions by the Government Accountability Office (GAO) have forced contracting officers to give priority to small businesses participating in the HUBZone program when awarding Federal contracts. These decisions have had a negative and detrimental effect on the ability of small businesses participating in other contracting programs to effectively compete for and win federal contracts.

“To ensure that all small businesses—regardless of the particular category they are participating in—receive a fair shot at winning federal contracts, it is important that Federal agencies closely follow and enforce SBA’s parity policy and regulations.”

Senators Landrieu and Richard Durbin, D-Ill., introduced S. 3190, the *Small Business Programs Parity Act of 2010* in March of 2010 after a court decision stated that small businesses that belong to the HUBZone program had preference over firms participating in other small business contracting programs. The Act was included in the Small Business Jobs Creation Act in July of 2010.~~

Read Senator Landrieu’s letter:

<http://tinyurl.com/24ulvn6>



## Interagency Task Force Progress

### *(Legislation passed in 2007)*

WASHINGTON, D.C. – U.S. Senator Olympia J. Snowe, Ranking Member of the Senate Committee on Small Business, applauded the first meeting of the Interagency Task Force on Veterans Small Business Development, an initiative she introduced in 2007 as part of the *Veterans Small Business Opportunity Act of 2007* (S. 904), which was included in the Military Reservist and Veteran Small Business Reauthorization and Opportunity Act, which was signed into law on February 14<sup>th</sup>, 2008 (P.L. 110-186).



“Our nation is forever indebted to our veterans and when they return home we should do everything we can to provide the most beneficial services and resources possible,” said Senator Snowe. “During these trying economic times, assistance to our veteran entrepreneurs, who in 2007 owned 2.4 million businesses that generated \$1.2 trillion, is particularly beneficial to both our veterans and to our economy at large.”

In 2007, Senator Snowe expressed her frustration with the Federal government’s failure to satisfy its three percent contracting goal for service-disabled veteran-owned small businesses; share information internally to facilitate achievement of this goal; and coordinate efforts to make service members and veterans aware of the Federal resources available to them. To rectify these programmatic shortcomings, Senator Snowe introduced the Veterans Small Business Opportunity Act which— among other things – provided for the creation of a Task Force whose objectives would be to improve access to capital; ensure the achievement of the Federal contracting goals; increase the integrity of certifications as a veteran-owned, or ser-

***“I am pleased that after three years of fighting to form this Task Force, it can now begin making headway on initiatives to benefit our nation’s veteran and service-disabled entrepreneurs...”***

vice-disabled veteran-owned small businesses; reduce paperwork and administrative burdens; and increase and improve training and counseling services.

“I am pleased that after three years of fighting to form this Task Force, it can now begin making headway on initiatives to benefit our nation’s veteran and service member entrepreneurs,” Senator Snowe added. “I have high expectations that members of this Task Force, including a number of veterans, will achieve the lofty goals before them.”~~

## So We Have Parity...What Now?

By Hardy Stone

Now that parity among set-asides for government contracts has been achieved, what comes next? The Small Business Act of 2010 (SBAAct 2010) finally put set-aside contract groups on a level playing field—but this was done by bringing the HUBZone down a notch, not lifting SDVOSB up in the federal government contract award selection process. This is not a victory so much for the 8(a) and SDVOSB programs, it's a big, big loss for HUBZone businesses.

“Gee, the law told us CO’s that we ‘shall’ give priority to HUBZones. The big boss (OMB’s former Director Peter Orzag) told us the opposite last year. Now what do we do?” SBAAct 2010 ended that confusion.



But in the end, what did it do for us and the other two set-aside programs? One may think it draws more attention to the set-asides. I think it takes what little pressure there is off agencies to meet the 3% goal.

Only the VA met the goal in 2008, and they did it big time. More than nine percent of contract dollars went to SDVOSB. The Department of Defense? A pathetic .8 percent. Government-wide, the figures are dismal, failing to attain even half the 3% goal.

Accountability? ‘Tis but a pipe dream, as ironic as it is. ‘Support Our Troops’ is the battle cry heard too often from politicians, federal agencies and businesses that should subcontract to SDVOSB. They contend that veteran businesses are great groups to do business with. Once out of the spotlight, though, they fall short of coming through with the business opportunities. They don’t walk the talk. “Patriotism is the last vestige of a scoundrel,’ it’s said. Well, well, well.

Parity has been achieved! Hoorah! Big deal...it doesn’t move us forward...

Let’s meet the mandated goals and really celebrate! Instead of bringing the HUBZones down a notch, lift the other programs up! For all three groups, make the wording ‘shall award’, and we’ll see some progress. As it is, this is a hollow victory for 8(a) and SDVOSB because it maintains the status quo...it still doesn’t give the mandated legislation teeth...it only pulls the teeth out of another deserving set-aside group.

Mission Critical Solutions, who protested a contract award based on their HUBZone status, set the table for this controversy. On March 2, the Federal Court of Appeals ruled that indeed, the HUBZone language does give them priority over the two other set-asides.

Then the parity conversation started. SBAAct 2010 put an end to HUBZone priority.

Mission Critical could not have seen this coming, but I’ll bet they’d retract the protest in a heartbeat if they could turn back the hands of time. As it has turned out, filing the protest set them back several hundred business miles. They inadvertently shot themselves in the foot.

What do we do now? Wait for the government to levy punitive damages on agencies that don’t meet the contracting goals? Make agency heads accountable on performance reviews for the contracting goals of the agency? Or do CO’s do nothing?

**We should be developing partnerships between SDVOSB, 8(a) and HUBZone businesses. Form a Political Action Committee, then a pressure group...~**

## Parity, from pg. 1

at Mission Critical Solutions, a Tampa, Fla. HUBZone firm that first challenged the parity statute in court. "They are not going to prioritize HUBZone firms. I don't know that we will survive this."

The federal government has not met its goal of awarding 3 percent of all contract dollars to HUBZone small businesses, while it generally exceeds its 5 percent goal for small disadvantaged businesses -- a category that includes the 8(a) program.

The parity controversy was sparked in May 2009 when Mission Critical Solutions, which had lost out on an Army IT contract to an 8(a) minority-owned small business, filed a protest with GAO. The company argued, and GAO agreed, that HUBZone firms were legally at the top of the small business pecking order and the government should have given Mission Critical Solutions the first crack at the contract.

The ruling sparked a fury of activity, with the [Office of Management and Budget](#) and [Justice Department](#) issuing [rare contradictory memos](#) instructing agencies to disregard GAO's nonbinding decision because it could "significantly limit the discretion" of contracting officers.

In a separate case, the Court of Federal Claims, a body whose rulings are binding, later [decided](#) in favor of Mission Critical Solutions. Justice has appealed that decision, although it is unclear how the new legislation will affect that case.

GAO since has ruled in favor of two HUBZone firms that filed similar contract protests. And in August the Court of Federal Claims issued its [second ruling](#) on the matter, arguing the [Air Force](#) first should have considered DGR Associates Inc., a HUBZone firm, before awarding a contract at Eielson Air Force Base in Alaska to an 8(a) small business.~~



## SDVOSB Certification Backlog Status

In October, the VA's Center for Veterans Enterprise responded to our request for information on the status of certification:

- 1) Applications received to date: 13,739
- 2) Approved applications: finalized: 9,313, of 5,909; approved 5,909
- 3) Remaining backlog: 4,426 applications in process, 86% are beyond the regulatory time line for completing decisions. These applications are under examination.
- 4) Estimated wait time between receipt of an application and approval/disapproval:  
Six months.

Legislation: <http://tinyurl.com/2akpm6o>

Certification website: <http://www.vetbiz.gov/vip/verify.htm>

## Short Takes

—SBA Deputy Administrator Confirmed by Senate:

<http://tinyurl.com/2ag6ydd>

U.S. Small Business Administration



Your Small Business Resource

—Small Business Size — Many think ‘small business’  
—less than 500 employees — is *NOT* a SMALL business:

<http://tinyurl.com/24awy3s>

—Summary of Veteran Business Verification Legislation:

<http://tinyurl.com/28knjf6>

—American Legion Veteran Named to White House Task Force on Small Business:



## State Activity:

### Pennsylvania

<http://tinyurl.com/2b7uto6>

<http://tinyurl.com/35kma3f>



### Massachusetts

<http://tinyurl.com/2evytwx>

### Wisconsin

<http://commerce.wi.gov/BD/BD-MBD-DVB.html>

### Texas

<http://tinyurl.com/36w9zav>



## Other Voices

VLM receives emails and comments from members of the SDVOSB community that provide perspective and a sense of political urgency to the status of our interest group. Comments, criticism and suggestions are encouraged.

Email: [bluepoint1@comcast.net](mailto:bluepoint1@comcast.net)

Identifying information from these forums is redacted.



“There is some activity in Congress to change the small business sole source language so that SDV's will finally have equal footing with 8a's for sole source opportunity. What does our community think about this?” —

“It's about time. I have been in business for six years and have not had one opportunity set aside for a SDVOSB in the NAICS code 115310. I even had a contracting officer who wanted to set aside some work for us, but was turned away at the regional level. There is so much mis-information out there in the Forest Service and BLM and when I have tried to educate contracting reps, they are easily offended and not willing to work on behalf of SDVOSB. If the language is not changed, the behavior will not change either. CORs are not motivated to help get work to SDVOSBs unless they absolutely have to, and even then it is like pulling teeth.” —

“I have attended numerous "training" sessions sponsored by the SBA in an attempt to make the case that we SDVOBs need some support. About the best they can do for us is make sure we check the right box in our CCR profile. I have not found a true advocate for SDVOBs in Oregon yet.”—

“If you have not made money with SDVOSB, then the GSA is not going to help, and \$10k is cheap if someone else is doing most of the work for you. I received a schedule in 2001 and it cost me \$80k. Most of the agencies that I have worked with have moved away from GSA and are working with uber contracts. If you are not big enough to get into that prime contractor position... a GSA schedule will not help. It has been my experience that 90% of the GSA contracts already have an incumbent or they have a contractor in mind. Go down to the office you want to do business with and schmooze! When an RFQ hits e-Buy, they are only looking for a couple of bids to come in higher so they can justify their incumbent. I even had one contract that I was \$20/hr cheaper than the incumbent, so the COTR added a modification with language in it that only the incumbent could meet, and yes that RFQ was a GSA bid.”—



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VA Certification Information Courtesy:

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