



Elimination of Federal Small Business Program Recommended to DOD by Section 809 Panel

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The Section 809 Panel just released the final Volume III Report, in which it makes a market-killing recommendation to eliminate most current small business set-asides for Department of Defense (DOD) acquisitions and replace with a five percent price preference option. This is a game-changing recommendation that could eliminate the \$61 billion small business market in the DOD, if adopted by Congress and enacted into law.

The report states that the current small business set-asides actually hurt small business because once the small businesses are successful, they may grow out of the size-standard and then need to compete for full and open competition contracts where companies of all sizes can bid on contracts. It mentions that small businesses will "...make extraordinary efforts to remain small..." in order to stay within the perceived protected set-aside bidding environment where only small businesses may compete.

According to official government reports at FPDS.gov, in the last full fiscal year 2017, DOD awarded \$61,372,431,842 in prime contracts to small businesses in 1,416,194 contract "actions" actually exceeding its self-assigned 22% goal by reaching 22.53%. The 809 Panel recommendations would essentially eliminate this DOD voluntary goal.

The 809 Panel was created by Congress in the FY 2016 National Defense Authorization Act (NDAA) and charged with "identifying ways to streamline and improve the defense acquisition system..."

Members of the Section 809 panel include current and former military service members, civilian DoD acquisition professionals, and industry representatives such as a current corporate vice president of contracts and pricing at Boeing Company, a senior vice president of acquisition support at CACI International, and a former executive vice president and chief operating officer of ABM Facility Solutions Group, all multi-million dollar government contracting companies.

The U.S. federal government has supported small business competition with policy stated in the Small Business Act 15 U.S.C. 631 where it begins with “The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation.”

The Act continues to say that in federal contracting specifically, “. . .to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government . . .be placed with small-business enterprises, . . . and to maintain and strengthen the overall economy of the Nation.”

The 809 Panel argues that small businesses will continue to win contracts because of the 5% price preference. This means that the contracting officer will agree to pay up to 5% more for services or products than a price quoted by a large business. As an example, if a large business was selling something to the government for \$100, a 5% preference means that a small business could charge \$105, and the contracting officer may choose the \$105 purchase.

This assumption is doubted by Steven Koprince, an attorney specializing in federal procurement contract law. He reflects on the HUBZone program which employs a 10% price preference program, stating that “. . .in the context of a best value procurement, I can’t recall a single instance in my career in which the HUBZone price preference determined the outcome. . .”

Of the 98 recommendations the 809 Panel made to change the overall structure and operations of defense acquisition both strategically and tactically, this specific recommendation does not support the Small Business Act in theory or action and instead has the ability to harm the thousands of small businesses and tens of thousands small business employees serving our government and military operations throughout the nation.

All three Section 809 Panel Reports are available here: <https://section809panel.org/>

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