



September 23, 2016

BY ELECTRONIC MAIL

The Honorable David Vitter – Chairman
The Honorable Jeanne Shaheen – Ranking Member
Committee on Small Business and Entrepreneurship
United States Senate
428A Russell Senate Office Building
Washington, DC 20510

Re: Defense Authorization Act of 2017, S. 2943

Dear Chairman Vitter and Ranking Member Shaheen:

Small business stakeholders have expressed to us their concerns about the potentially negative impact of various sections of S. 2943, the National Defense Authorization Act for Fiscal Year 2017.¹ The Office of Advocacy (Advocacy) shares the concerns of these stakeholders and offers the following comments on three small business provisions in S. 2943. These sections of the bill would appear to be inconsistent with the historic commitment of Congress to foster a strong and viable small business community.

Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

Small businesses have been at the forefront in helping to protect this nation and providing support to our troops since World War II.² Advocacy is concerned that several provisions of the

¹ The National Defense Authorization Act of 2017, S.2943.

² The Vital Majority: Small Business in the American Economy, ed. Deane Carson, p 9. 1973.



legislation would inhibit small businesses' ability to procure government contracts. The sections of most concern to small business are as follows:

1. **Section 818: The Comprehensive Subcontracting Plan.** The justification for moving this plan from a pilot program to permanency is based on a 2015 Government Accountability Office (GAO) Report that highlighted administrative cost savings, notwithstanding the fact that the Department of Defense (DOD) did not agree with the findings and thus did not concur with the recommendation of GAO to make the program permanent.³ Advocacy would recommend the removal of this provision until the time that small businesses are provided an opportunity to examine the positive and negative impacts of such sweeping legislative change on the small business subcontracting program.
2. **Section 838: Counting First and Second Tier Subcontracts as Prime Contract Goals/Awards.** This provision has several elements that are potentially harmful to small businesses. First, the government will be able to count such subcontracts as prime contracts and thus be better able to meet the Congressional Annual Goal of awarding 23 percent of contract dollars to small businesses. However, small businesses will not be able to get the full faith and credit of a federal contract nor will they be able to utilize the array of protections that a prime contract provides to the contractor. Second, these small businesses would not acquire privity of contract with the federal government even though they would be statistically counted as a prime contractor so small businesses would lose any advantage that even superior performance would bring. Third, current rules do not allow for small businesses to use the prime contract vehicle as an element for their past contract performance reporting. Fourth, there appears to be no factual basis to justify the use of first and second tier subcontracting goals to meet the prime contracting goals. A legislative solution would be to allow the counting of first and second tier subcontracts but provide these small businesses with privity of contract and to allow them to use these contracts as part of their past performance evaluations. Advocacy would recommend that this provision be removed from the bill.
3. **Section 884: Prohibits the Inclusion of Small Business Goals for Purchases Outside of the U. S.** The Office of Federal Procurement Policy has instructed the Small Business Administration and other executive agencies to begin reporting overseas prime contracts awarded to small business. This section would prohibit DOD from counting such awards and thus the potential exists to weaken the resolve for DOD's acquisition workforce to seek small businesses in the performance of overseas contracts. This provision has the potential of excluding many small businesses from providing better services at a competitive price at a time in which the Administration is promoting greater export

³ GAO-16-27, Small Business, Action Needed to Determine Whether DOD's Comprehensive Subcontracting Plan Test Program Should Be Made Permanent, p. 21, November 2015.



opportunities for small business. Section 884 should be removed from the final 2017 Authorization.

Conclusion

In conclusion, Advocacy shares the concerns of our small business stakeholders, who believe that the above-mentioned provisions in S.2943 would appear to be inconsistent with the historic commitment of Congress to foster a strong and viable small business community and if enacted may further erode the capacity of small businesses to be significant contributors to this nation's industrial defense base.

If you have any questions or require additional information please contact me or my Congressional Affairs/ Public Relations Manager, Eleanor Patout at (202) 205-6941 or eleanor.patout@sba.gov.

Sincerely,

Darryl L. DePriest
Chief Counsel for Advocacy

Cc: Representative Steve Chabot, Chairman House Small Business Committee
Representative Nydia Velazquez, Ranking Member, House Small Business Committee

