



## "Solving the Unnecessary Contracting Cliff for Enterprises to Scale Successfully Bill" or the "SUCCESS Bill"

Responses to Questions Regarding SUCCESS Bill  
[www.cmscorp.com/success/](http://www.cmscorp.com/success/)

The SUCCESS Act provides a creative solution to a fundamental problem in the current small business program, that contractors desiring to grow from small to other-than-small either must stop growing or enter the open market to compete against much larger companies.<sup>1</sup> Faced with this contracting cliff, or what the Department of Defense calls "the valley of death,"<sup>2</sup> there is a perverse incentive to refrain from outgrowing one's small business size standard. This has created a limited pool of mid-sized businesses in the federal marketplace.

The SUCCESS Act would break this perverse incentive and support participants in their transition out of small business status through limited and conditional expanded access to business opportunities. The pilot program would help participants build the track record needed to compete with dominant larger contractors. At the same time, promoting these participants' graduation from small to other-than-small would help free up small business opportunities for smaller businesses and new entrants. The result is expansion of the industrial base of both mid-sized and small companies, and greater choice and competition for the government buyer.

The following includes responses to potential concerns and questions.

### **Potential Concern 1: The pilot program will unfairly disadvantage the smallest of small businesses and will result in startups and very small businesses having less access to small business dollars.**

**Response:** The SUCCESS Act was crafted with particular consideration to potential impacts on very small businesses. It includes the following protections for the very small:

- (1) Activity targets, to be established by the SBA, requiring participants to demonstrate year-over-year growth in their non-set-aside business;
- (2) A cap on average annual receipts, after which a participant must exit the program;
- (3) Restricting participants from being a protégé under the SBA's mentor-protégé program;
- (4) Minimum dollar thresholds, under which participants are ineligible to compete against small businesses. These thresholds bar participants from 80+% of small business set-aside contracts, preserving access for smaller businesses.

Above the minimum dollar thresholds, some small businesses might obtain fewer set-aside contracts due to increased competition from transitioning small businesses. However, this impact is expected to be offset by an increased number of procurements being set aside for small businesses due to inclusion of transitioning small businesses in the "rule of two," under which acquisitions must be set aside for small business participation when there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns and award will be made at fair market prices. FAR 19.502-2(b).

---

<sup>1</sup> H.R. Rep. No. 115-939, at 3 (2018)

**Potential Concern 2: The pilot program will unfairly disadvantage mid-size businesses that have previously made the transition.**

**Response:** Data shows that a very small fraction of small business federal contractors that outgrow their size standard successfully transition to other-than-small: according to a 2019 GAO report, just 2.5 percent of small businesses awarded set-aside contracts in FY 2008 grew to become mid-sized by FY 2017.<sup>3</sup> The status quo is not working – the industrial base is shrinking.

Increased competition in the “large” business segment and better value for the government are central aims of the pilot program. And while it is possible that some contracts that would otherwise be awarded to large businesses may be set aside for small businesses if the pilot program is enacted, this, too, is a benefit, not a drawback. Any remaining consequences perceived to be adverse to mid-size businesses are mitigated by the fact that (1) mid-size businesses within seven years of first exceeding their size standard and under the receipts cap are still eligible to be pilot program participants, and (2) the pilot program is limited to two NAICS codes and the number of participants in the initial phase of the program is unlikely to be significant.

**Potential Concern 3: Transitioning small businesses that hold Indefinite Delivery, Indefinite Quantity (IDIQ) contracts, Governmentwide Acquisition Contracts (GWAC), and Best-In-Class (BIC) contract vehicles, will have an unfair advantage in the marketplace and hold contracts for a long period of time, to the detriment of mid-size businesses.**

**Response:** There is no evidence that the government’s use of IDIQs favors a particular category of contractor, whether large or small, and each contractor is required to compete for these contracts and task orders thereunder. Additionally, many long-term IDIQs require size recertification at either the contract or order level, which can act as an additional limit on participants’ continued eligibility for small business contracts, particularly when this requirement is coupled with the annual receipts cap. Furthermore, a vast majority of these contracts are awarded based on relevant federal experience, capability and favorable past performance in the marketplace. Since new and emerging firms typically lack these elements, they will likely need to enter the market through pursuit of one-off contract actions with a lower threshold of technical capability.

**Potential Concern 4: The Pilot Program will require a new bureaucracy within the SBA that can provide adequate oversight and transparency.**

**Response:** The pilot legislation is structured to avoid creation of any “mid-sized” business administration within the SBA, and it should not require appropriations. Instead, oversight and transparency are implemented through the following measures:

- Certification and reporting requirements from participants that carry significant penalties in the event of fraud, waste or abuse.
- “Sunshine” provisions to make a registry of participants publicly available.
- Congressional oversight and data reporting from GAO.

**Potential Concern 5: Why is the program limited to just 2 NAICS codes, and why the Construction and Engineering NAICS codes?**

**Response:** The SUCCESS Act creates a pilot program, not a government-wide permanent program. Once the premise for creating the program is proven in these NAICS codes, which are critical to the government’s present priorities on infrastructure, it could be expanded to others. Contract data shows clear support for the proposed dollar thresholds for these NAICS codes. Each industry has its own unique composition, program factors and data sources, therefore limiting the program to a pilot will allow the SBA to establish and revise parameters based on actual data from experience.

---

<sup>3</sup> <https://www.gao.gov/assets/gao-19-523.pdf>.

**Potential Concern 6: Why is participation permitted for 7 years, and not a shorter timeframe?**

**Response:** Adequate time is needed to assess the success of firms who have transitioned any resultant impacts of the pilot program on the industrial base. From the time that a participant elects to enter the program, contract opportunities must arise, competitions must be completed (including bid protest timelines), contracts awarded and performed. Seven year is enough time for firms to diversify their non-small contracts portfolio over time.

**Potential Concern 7: How does the Brooks Act's requirement for selection of Engineering Services firms based on qualifications relate to the SUCCESS Act's use of dollar thresholds for participant eligibility?**

**Response:** To facilitate determination of whether participants are eligible for a certain A-E small business opportunity, procuring agencies could disclose the estimated price range for A-E projects, as they currently must for construction projects under the Federal Acquisition Regulation. Additional opportunities for transitioning small businesses to gain project experience will increase their ability to compete for contracts covered by the Brooks Act.

Further, the Pilot program would allow existing small firms to bid on and obtain more project experience on larger projects and expand the number of staff with specialized engineering expertise necessary to compete with the largest engineering firms. This would promote the purpose of the Pilot Program – allow firms to transition from small to the other-than small status and obtain more qualifications.

**Potential Concern 8: Given that the Small Business Runway Extension Act recently increased the measurement period for calculating size standards for small business eligibility, why is the SUCCESS Act necessary? Don't mentor-protégé programs reach the same result?**

**Response:** Various mentor-protégé programs have been in existence since 1998, and the Runway Extension Act has now been in effect for several years. Though beneficial, these measures standing alone have failed to solve the problem of the contracting cliff or the shrinking industrial base. There remains a need for a solution to avoid adverse effects of reduced competition, which has “serious consequences for national security,” including risk to availability of key supplies and equipment, diminished incentives for innovation and performance, and supply chain vulnerabilities.<sup>4</sup>

---

<sup>4</sup> See DoD Report on State of Competition within the Defense Industrial Base at 5-6, <https://media.defense.gov/2022/Feb/15/2002939087/-1/-1/1/STATE-OF-COMPETITION-WITHIN-THE-DEFENSE-INDUSTRIAL-BASE.PDF>.