



Committee on Homeland Security
Report Prepared by the Majority Staff:

Small, Minority, and Disadvantaged Business in the Department of Homeland Security – Selected Aspects, FY 2007



U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON HOMELAND SECURITY
REP. BENNIE G. THOMPSON, CHAIRMAN

Executive Summary

The Department of Homeland Security (DHS) in collaboration with the U.S. Small Business Administration (SBA) has several programs to increase the participation of small, minority, and disadvantaged business in its procurements. This report examines procurement actions in these programs for FY 2007 in the context of total DHS procurement spending.

DHS Procurement – FY 2007

- In FY 2007, more than one-third of the Department's \$34.8 billion budget was spent in the private sector, a total of \$12.2 billion.
- Six of the eight DHS procurement authorities did most of this business.
- 40 percent of total procurement dollars were obligated in the fourth quarter of FY 2007, increasing the chance of waste, fraud and abuse.
- About two-thirds of DHS procurement dollars went to big firms.

DHS Small, Minority, and Disadvantaged Business Procurement – FY 2007

- There are five categories for small, minority, and disadvantaged businesses. The total dollar value of awards to businesses in each of these categories varied across DHS components, as did the average value of individual procurement actions.
- Department-wide, the top 10 firms in each of the small business categories received a majority of the dollars in that category.
- Alaska Native Corporations (ANC) received at least 28.3 percent of the dollars spent on contracts with 8(a) firms.
- DHS has met each of its federal contracting goals for small, minority, and disadvantaged businesses, but crediting a single procurement action to more than one contracting goal may create a misperception of the participation of small, minority and disadvantaged businesses.

Recommendations

Recommendation 1: The Secretary of Homeland Security should remedy weaknesses in small, minority, and disadvantaged business contracting.

Recommendation 2: The Secretary should end the concentration of procurement actions in the fourth quarter of the fiscal year.

Recommendation 3: The Secretary should determine how Alaska Native Corporations may limit the opportunities of other 8(a) firms.

Recommendation 4: The Government Accountability Office should be asked to determine the impact of double-counting on the attainment of DHS small, minority, and disadvantaged business goals.



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Introduction

There are a number of programs intended to increase the participation of small, minority, and disadvantaged businesses in the federal government contracting process. Most of these government-wide programs have been active for decades. This report provides information on the results of Department of Homeland Security (DHS) participation in these programs during Fiscal Year 2007. The data used in compiling this report was provided by DHS. .

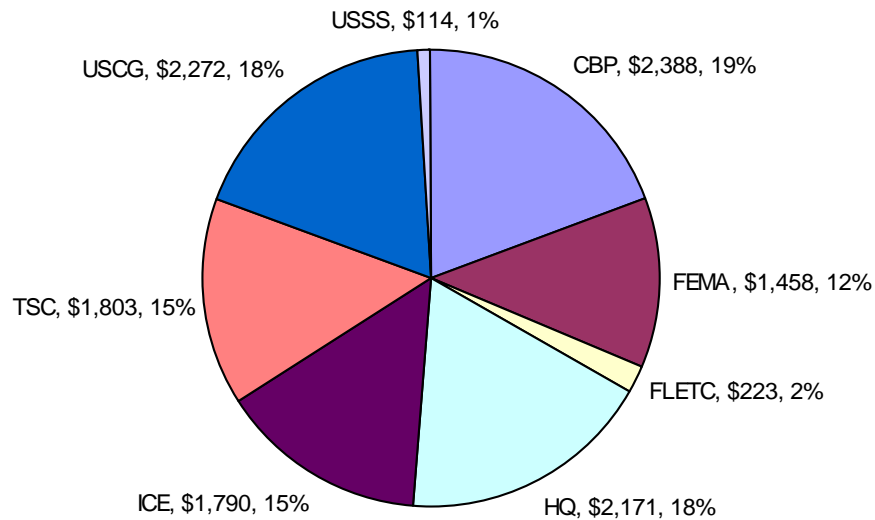
Overall DHS Procurement – FY 2007

In FY 2007, the Department spent approximately \$12.2 billion, or 35 percent of its total \$34.8 billion budget on goods and services purchased from private sector vendors.¹ Measured in dollars, the Department spent more than one-third of its budget on transactions with the private sector.

¹ The total regular and emergency Department of Homeland Security appropriations for FY 2007 were \$34.8 billion. [See DHS website, http://www.dhs.gov/xnews/releases/pr_1159998463126.shtm, accessed March 3, 2008.]



**Figure 1. Total Obligated Procurement, DHS
Procurement Authorities, FY 2007 (\$ mil)
[DHS FY 2007 Total, \$12,218 mil]**

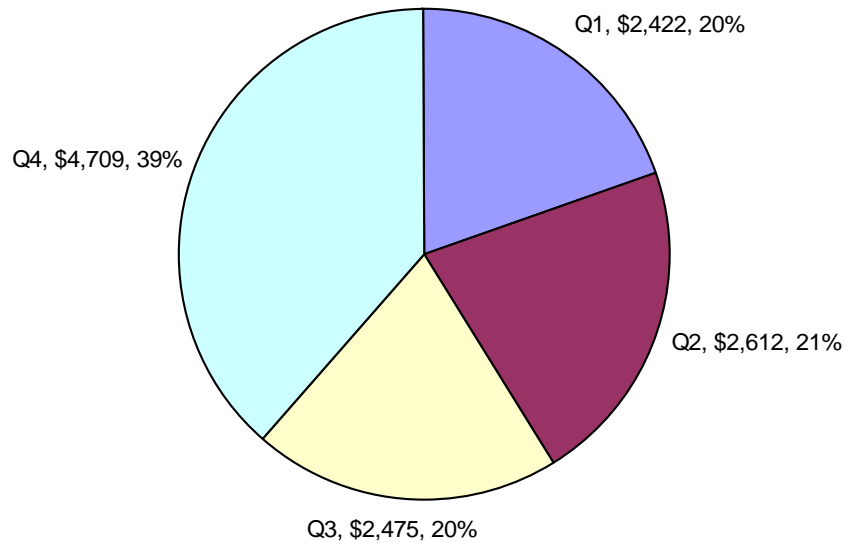


Source: Department of Homeland Security data.

There are eight procurement authorities in the Department of Homeland Security. Some process transactions for more than one of the component organizations that comprise the Department. Most procurement dollars were spent by six of these eight authorities in FY 2007, each accounting for 12 to 19 percent of the total, including Customs and Border Protection, the Federal Emergency Management Agency, the Headquarters Office of Procurement Operations, Immigration and Customs Enforcement, the Transportation Security Administration, and the U.S. Coast Guard. Much smaller amounts – in the range of 1 or 2 percent of the DHS total – were spent by the two remaining DHS procurement authorities, the Federal Law Enforcement Training Center and the U.S. Secret Service (**Figure1**).



Figure 2. Total Obligated Procurement, by Quarter, FY 2007 (\$ mil)



Source: Department of Homeland Security data.

About 40 percent of the Department's total procurements were obligated in the 4th quarter of the fiscal year (**Figure 2**), with the remaining 60 percent split about equally among the first three quarters. The spending rate during the fourth quarter was double that of each of the other quarters. In addition to mere happenstance, the increased volume of processing in procurement requests could serve as an indicator of other phenomena, including increased pressure to complete projects or make purchases that have undergone long-term planning but have not been executed or a rush to execute projects that have not been adequately planned before the commencement of a new funding cycle. Under either scenario, a drastically increased volume of transactions decreases the likelihood of adequate internal review and audit oversight of the nature, purpose, cost, and utility of the item to be purchased or the service to be procured. In an atmosphere of decreased internal review and audit oversight, the potential for fraud, waste, and abuse increases exponentially.



U.S. Small Business Categories

In programs administered by the U.S. Small Business Administration (SBA), federal law establishes a goal of at least 23 percent of the total value of all prime federal contracts be awarded to small, minority and disadvantaged businesses each fiscal year.² This goal includes targets for several small, minority, and disadvantaged business categories. Firms may be certified to participate in procurement in any category for which they meet the criteria. Moreover, a firm may be certified in several categories simultaneously. As a result of this simultaneous credentialing, the same procurement may be counted in several categories at once. In this way, an agency may count one procurement in partial satisfaction of several of its small business goals at once.³ This simultaneous counting renders the picture of small, minority, and disadvantaged business participation in federal procurement hazy and can create a perception of robust participation by small, minority, and disadvantaged businesses that may be misleading.

The Categories

There are six major small, minority, and disadvantaged business procurement categories in most agencies. Of these procurement categories, five operate under federal procurement goals for prime contracts, while three also operate under federal procurement goals applicable to the respective businesses when they serve as subcontractors. The sixth category, the Section 8(a) Business Development category, has no specific statutory goal.⁴ (See **Table 1** for a summary of the goals.)

² 15 U.S.C. 644(g)(1).

³ Email exchange with C. Edward Rowe, III, Associate Administrator, Congressional and Legislative Affairs, U.S. Small Business Administration, March 10 and 12, 2008.

⁴ There is no specific statutory requirement for the establishment of goals for awards under section 8(a) of the Small Business Act, but agencies are required to mutually establish acceptable goals for awards to 8(a) certified firms. [See Executive Office of the President, Office of Management and Budget, Office of Federal Procurement Policy, OFFICE OF FEDERAL PROCUREMENT POLICY LETTER 99-1 ON SMALL BUSINESS PROCUREMENT GOALS, October 8, 1999, found on the OMB website, <http://www.whitehouse.gov/omb/fedreg/ofpp99-1.html> , accessed March 11, 2008.]

Generally, a firm qualified for the section 8(a) Business Development Program has met the following eligibility requirements and been certified as an 8(a) firm: (a) majority ownership by a person or persons who are racially and economically disadvantaged, with social disadvantage demonstrated by membership in specific racial, ethnic, or other socially disadvantaged groups and economic disadvantage demonstrated by a net worth of \$250,000 or less, excluding the value of a personal residence or value of the firm; (b) meeting certain specific size standards; (c) at least two years old; (d) demonstrates sound management experience; and (e) provides products that meet government needs. [See U.S. Small Business Administration website, <http://training.sba.gov:8000/assessment>, accessed February 29, 2008.]



Table 1. Small, Minority, and Disadvantaged Business Contracting Goals, for Most Federal Agencies, for Any Fiscal Year

SBA Procurement Category	Goal	Comment
Goals for Federal Prime Contracts		
Small business in general	23%	Includes all the goals for the specific business categories below
Small disadvantaged business	5%	
Section 8(a) business	-----	No specific statutory goal
Women-owned small business	5%	
HUBZone small business	3%	
Service-disabled veteran-owned small business	3%	
Goals for Federal Subcontracts		
Small disadvantaged business	at least 5%	At least 5% of the value of all subcontract awards on federal contracts
Women-owned small business	at least 5%	At least 5% of the value of all subcontract awards on federal contracts
Service-disabled veteran-owned small business	at least 3%	At least 3% of the value of all subcontract awards on federal contracts

Source: 15 U.S.C. 644(g)(1); P.L. 106-50, Section 502(a)(2), the Veterans Entrepreneurship and Small Business Development Act of 1999.

8(a) and Small Disadvantaged Business

The SBA administers two particular business assistance programs for small disadvantaged businesses (SDBs), the 8(a) Business Development Program and the Small Disadvantaged Business Certification Program. While the 8(a) Program offers a broad scope of assistance to socially and economically disadvantaged firms, SDB certification merely conveys limited benefits in federal procurements to businesses that meet this classification. Federal law establishes an annual government-wide goal of awarding at least 5 percent of the total value of all federal prime contracts and subcontracts to SDB certified firms. SDB certified firms are those owned and controlled by socially and economically disadvantaged individuals.⁵ 8(a) firms automatically qualify for SDB certification.⁶ As

⁵ 15 U.S.C. 644(g)(1).

⁶ Website of the U.S. Small Business Administration, <http://www.sba.gov/aboutsba/sbaprograms/sdb/index.html>, accessed February 29, 2008. 8(a) certification results in access certain counseling, training, and other business development programs for the firms so certified, while SDB certification only affords these firms a favored position in selected procurements.



noted earlier, this 5 percent goal is included in the overall goal of 23 percent for all small business.

Alaska Native Corporations' 8(a) Program.⁷ In 1971, Congress passed the Alaska Native Claims Settlement Act (ANCSA) in an effort to settle land claims of Alaska Natives and to promote their economic development. ANCSA created a number of Alaska Native Corporations (ANCs), and distributed over 44 million acres of land and \$1 billion in settlement of land claims. At the end of 2005, there were 13 profit-making regional ANCs and 182 villages, urban, and group ANCs. An ANC may be organized as a for profit or not for profit entity. . In 1986, subsequent legislation permitted firms owned by Alaska Native Corporations to participate in the Section 8(a) Business Development Program of the Small Business Administration. ANCs were granted flexibilities that were not available to other 8(a) companies. Unlike other 8(a) companies. Using those additional flexibilitites, ANCs are allowed to

- Own any number of firms, in contrast to an ordinary 8(a) firm that may own only one firm in its entirety and no more than 20 percent of another 8(a) firm.
- Establish affiliated companies that are not considered in the size determination that is a component the 8(a) certification process. For non-ANC 8(a) companies all profit-making and non-profit affiliates must be in the certification process. .
- Receive contracts regardless of dollar value. Awards to non-ANC 8(a) companies are limited to manufacturing contracts with a dollar value of up to \$5 million and non-manufacturing contracts that have a dollar value of up to \$3 million.
- Obtain automatic designation as a socially and economically disadvantaged business without undergoing the certification process applicable to non-ANC 8(a) firms.
- Employ a Chief Executive Officer who is not a member of any socially or economically disadvantaged group. Non-ANC 8(a) firms must be headed by a CEO who is a member of a socially or economically disadvantaged group.
- Meet the Small Business Administration standard of being operational for at least two years by showing the potential for success. Non-ANC 8(a) firms can meet the operational for two years standard *only* by being operational for at least two years.

⁷ Government Accountability Office, CONTRACT MANAGEMENT – INCREASED USE OF ALASKA NATIVE CORPORATIONS' SPECIAL 8(A) PROVISIONS CALLS FOR TAILORED OVERSIGHT, GAO-06-399, April 2006, pp. 1-3.



HUB Zone

“The HUBZone (Historically Underutilized Business Zone) Empowerment Contracting Program is intended to stimulate economic development and creates jobs in urban and rural communities by providing federal contracting preferences to small businesses located in those communities. To obtain a HUBZone certification, a business must employ staff who live in a HUBZone and maintain a ‘principal office’ in a designated zone. [A principal office can be different from a company headquarters....] The program resulted from provisions contained in the Small Business Reauthorization Act of 1997.”⁸ Federal law establishes a government-wide goal of awarding at least 3 percent of the total value of all federal prime contracts to qualified HUBZone small business firms each fiscal year.⁹

Service-Disabled Veteran-Owned Small Business

The U.S. Small Business Administration assists veterans in finding procurement opportunities with federal, state, and local agencies. Formally, firms wishing to receive the benefits available to service-disabled veteran-owned small businesses must be certified according to procedures generated by the Professional Certification Advisory Board, a body created by Public Law 106-50. But in fact, most veteran-owned firms are self-declared.¹⁰ This statute also establishes a 3 percent federal procurement goal for such firms.¹¹

Women-Owned Small Business

The Office of Women’s Business Ownership (OWBO) of the Small Business Administration “...promotes the growth of women-owned businesses through programs that address business training and technical assistance, and provide access to credit and capital, federal contracts, and international trade opportunities.¹² Currently, there is no required formal certification process that confers eligibility for women-owned businesses to do business with the Federal Government. The SBA

⁸ Website of the U.S. Small Business Administration, <http://www.sba.gov/hubzone/>, accessed February 29, 2008. The Small Business Reauthorization Act of 1997 is Public Law 105-35.

⁹ 15 U.S.C. 644(g)(1).

¹⁰ See Section 33(j) of Public Law 106-50 and Office of Advocacy, Small Business Administration, Evaluating Veteran Business Owner Data, Report No. 244, December 2004, found at <http://www.sba.gov/advo/research/rs244tot.pdf>, accessed April 30, 2008, beginning unnumbered pages.

¹¹ Website of the U.S. Small Business Administration, http://www.sba.gov/localresources/district/wv/WV_VETS.html, accessed February 29, 2008; and Public Law 106-50, the Veterans Entrepreneurship and Small Business Development Act of 1999.

¹² Website of the U.S. Small Business Administration, <http://www.sba.gov/aboutsba/sbaprograms/onlinewbc/aboutus/index.html>, accessed February 29, 2008.



encourages such firms to self-certify their status.¹³ Federal law establishes an annual government-wide goal of at least 5 percent of the total value of all federal prime contracts and subcontracts to be awarded to firms owned and controlled by women.¹⁴

Government-Wide vs. Agency Goals

Although government-wide goals exist, the statutes provide that each federal agency must also establish agency goals representing “the maximum practicable opportunity” for firms in each of the categories. The Small Business Administration is responsible for annually negotiating these goals with all participating agencies; assuring that the agencies meet or exceed their goals, and compiling a government-wide agency-by-agency report for the President based on SBA findings¹⁵

While the Administrator of the Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget is authorized to “...insure that the cumulative annual prime contract goals for all agencies meet or exceed the annual government-wide prime contract goal established by the President...”,¹⁶ enforcement mechanisms available to OFPP to enforce compliance or penalize noncompliant agencies are unclear.

¹³ SBA website, http://www.sba.gov/aboutsba/sbaprograms/goals/SBGR_2006_GOALING_OVERVIEW.html, accessed April 30, 2008.

¹⁴ 15 U.S.C. 644(g)(1).

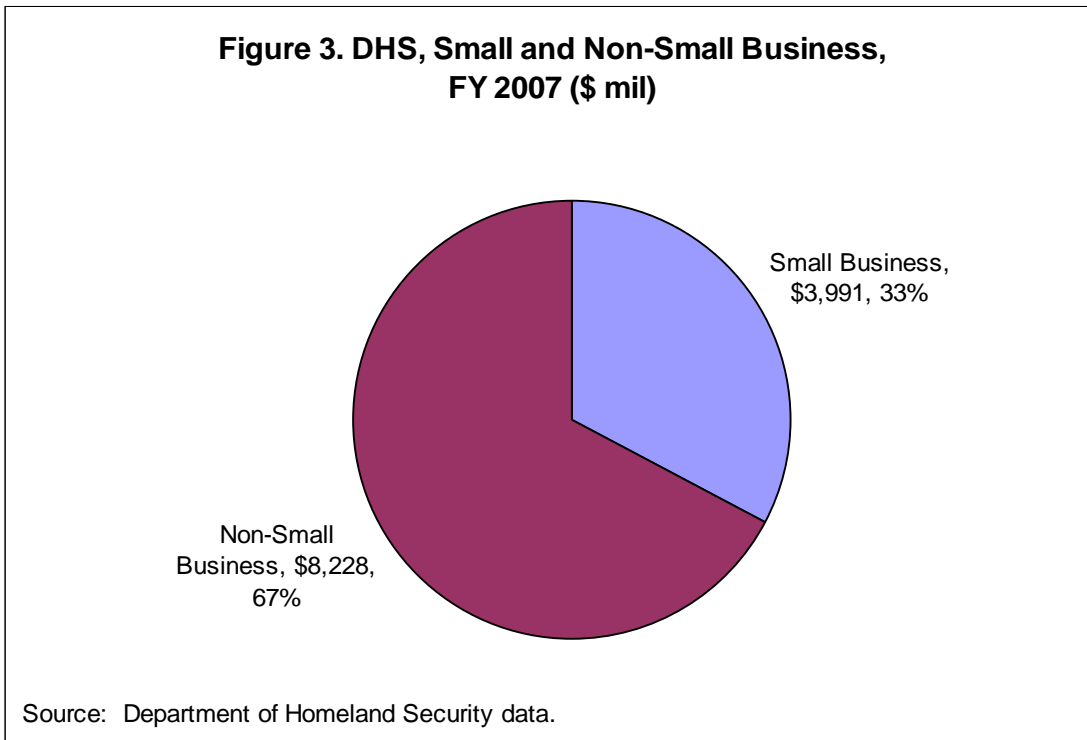
¹⁵ OFPP POLICY LETTER 99-1 ON SMALL BUSINESS PROCUREMENT GOALS, Office of Management and Budget website, <http://www.whitehouse.gov/omb/fedreg/ofpp99-1.html>, accessed April 30, 2008.

¹⁶ 15 U.S.C. 644(g)(1).



DHS Small, Minority, and Disadvantaged Procurement – FY 2007

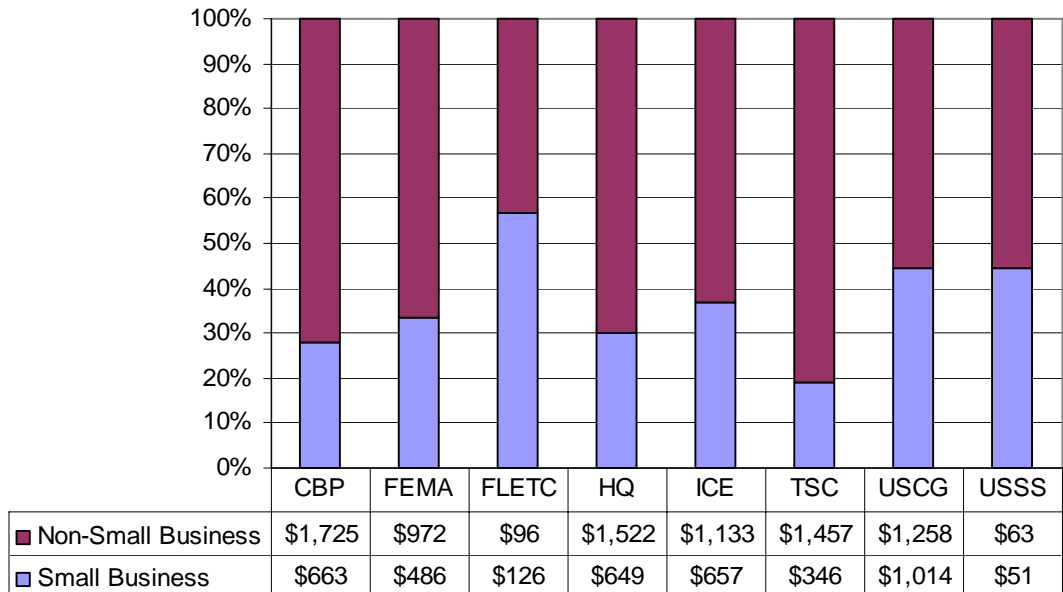
Here are the FY 2007 results of DHS operations in these small business categories:



The ratio of non-small business procurement dollars to small business procurement dollars is approximately two to one (**Figure 3**).



Figure 4. DHS, Small and Non-Small Business, FY 2007, by Component, Percentage (\$ mil)



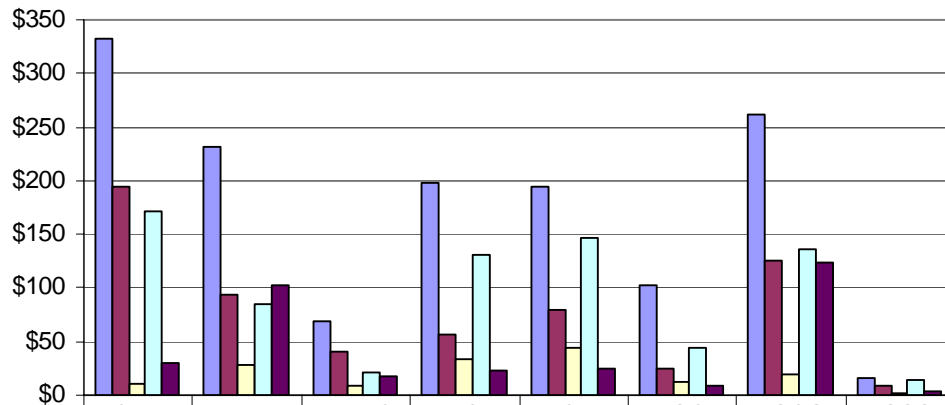
Source: Department of Homeland Security data.

The ratio of non-small to small business spending varies across the component organizations of the Department, with a small business high of nearly 60 percent in the Federal Law Enforcement Training Center and a low of less than 20 percent in the Transportation Security Administration (TSA) (**Figure 4**). The low TSA performance is likely the result of its legislated exemption from the Federal Acquisition Regulation and its resulting exemption from the federal contracting goals. In May 2008, TSA will no longer be exempt from goaling requirements.¹⁷

¹⁷ TSC was first exempted from the FEDERAL ACQUISITION REGULATION (FAR) in the Aviation Transportation Security Act, signed November 19, 2001. However, the Consolidated Appropriations Act of 2008 brings TSA into compliance with FAR and federal goaling requirements.



Figure 5. DHS, Special Small Business Programs, FY 2007 (\$ mil)



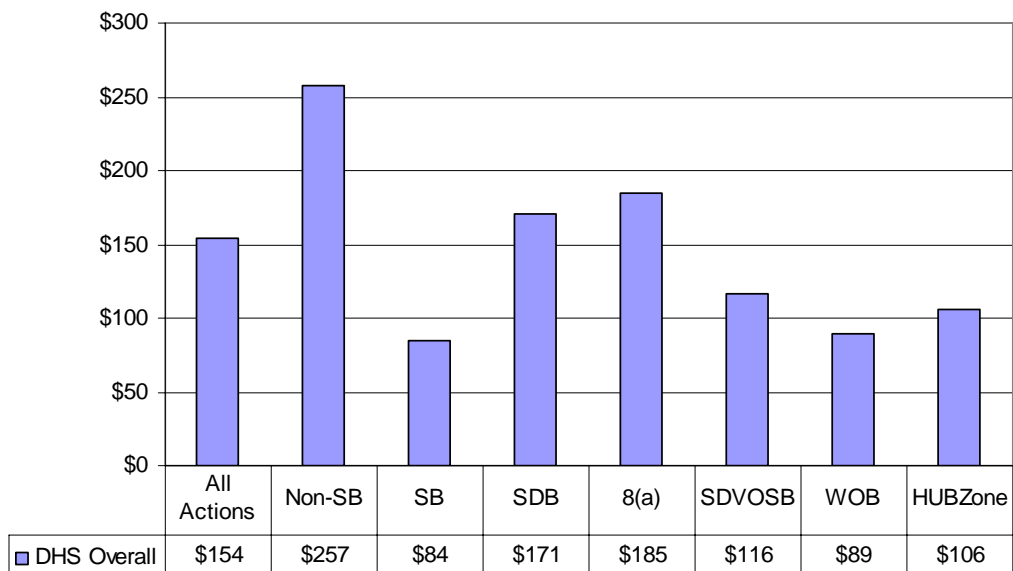
■ SDB	\$332	\$231	\$70	\$198	\$194	\$103	\$262	\$16
■ 8(a)	\$194	\$93	\$41	\$56	\$79	\$25	\$126	\$9
■ SDVOSB	\$10	\$28	\$8	\$33	\$45	\$13	\$19	\$1
■ WOSB	\$171	\$85	\$22	\$132	\$147	\$45	\$137	\$14
■ HUBZone SB	\$30	\$102	\$17	\$22	\$25	\$9	\$124	\$3

Source: Department of Homeland Security data.

The actual amount in each program varies across the component organizations, as well, with a high of \$332 million in the Small Disadvantaged Business Program in Customs and Border Protection and a low of about \$1 million in the U.S. Secret Service-Disabled Veteran-Owned Program (**Figure 5**).

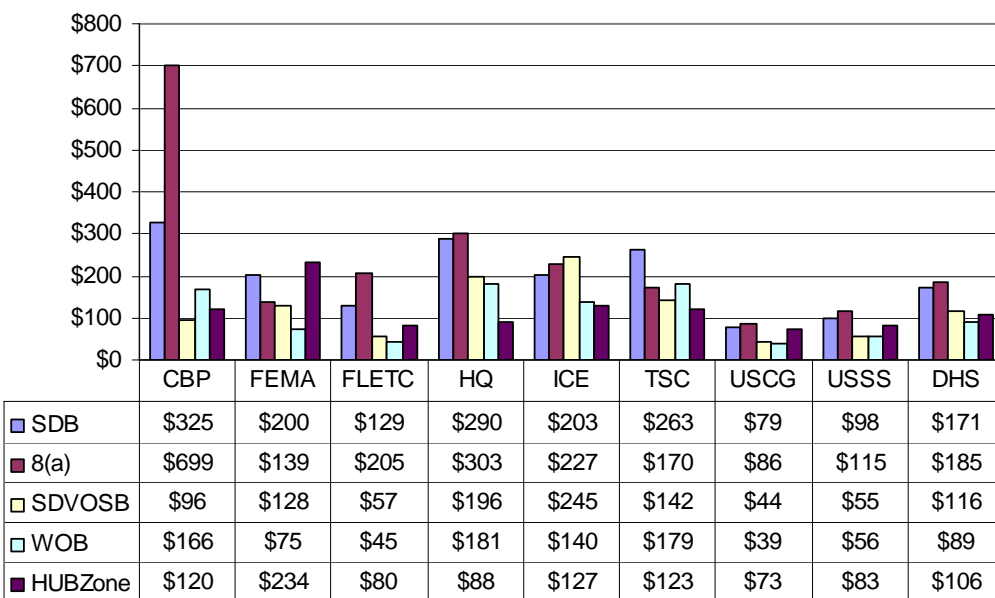


Figure 6. Average Overall DHS Contract Actions, by Program, FY 2007 (\$ thou)



Source: Department of Homeland Security data.

Figure 7. Average SDB, 8(a), SDVOSB, WOB, HUBZone, by DHS Component, FY 2007 (\$ thou)



Source: Department of Homeland Security data.

The average procurement action size also varies across the programs (**Figure 6**) and between the DHS component organizations (**Figure 7**).

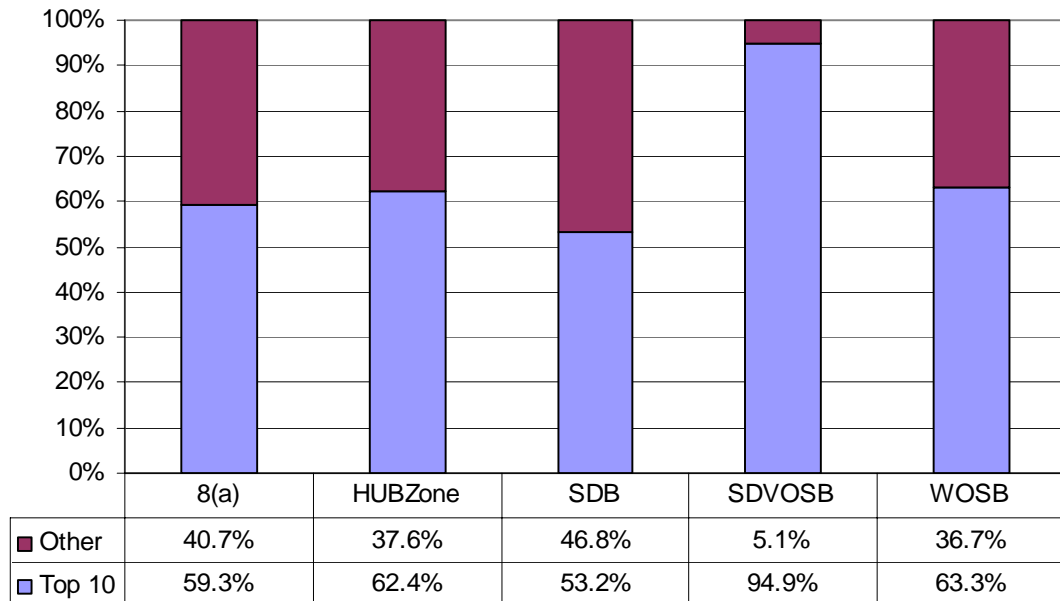


Large Proportion in Top 10 Contractors

A majority of the procurement awards are concentrated in the top 10 firms in each category (**Figure 8**). Within their respective category, these firms have the highest total dollar volume in procurement actions during FY 2007. In particular:

- In the Small and Disadvantaged Business category, in FY 2007, 53.2 percent of the procurement dollars were awarded to the top 10 contractors.
- In the 8(a) category, in FY 2007, 59.3 percent went to the top 10.
- In the Service-Disabled Veteran-Owned category, in FY 2007, 94.9 percent went to the top 10 contractors.
- In the Woman Owned Small Business category, in FY 2007, 63.3 percent went to the top 10 contractors.
- In the HUBZone category, in FY 2007, 62.4 percent went to the top 10 contractors.

Figure 8. DHS Top 10 Firms in Procurement \$ in DHS Small, Minority, and Disadvantaged Business Programs, Percentage of Total Procurements, FY 2007



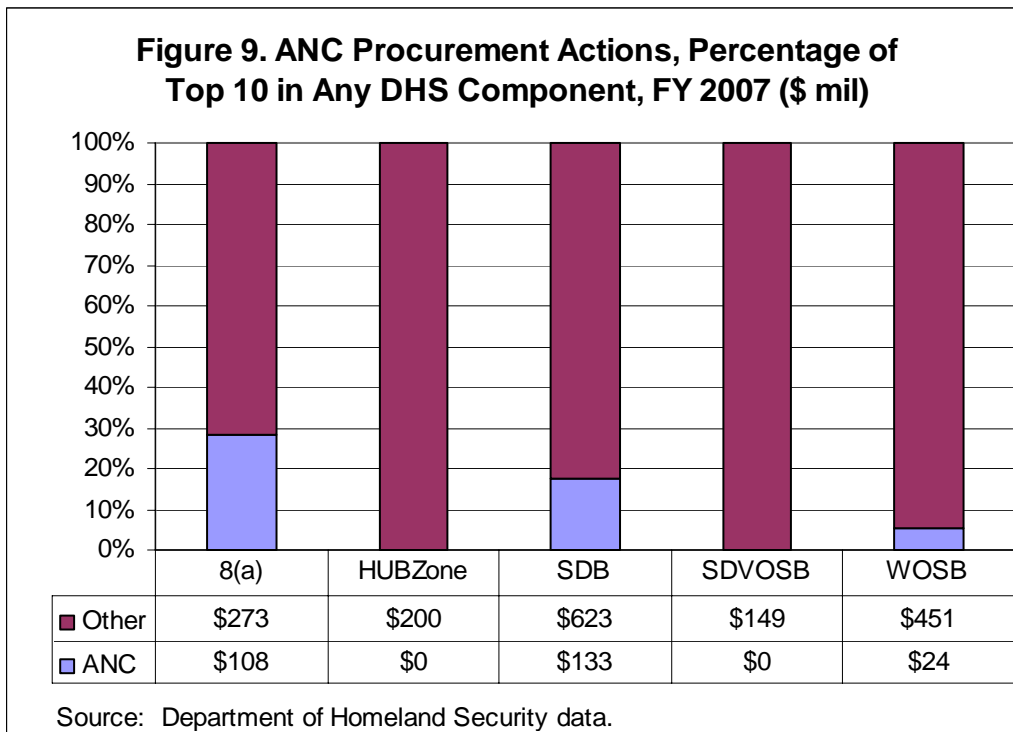
Source: Department of Homeland Security data.



Special Position of the Alaska Native Corporations

The Alaska Native Corporations (ANCs) have a prominent position in the small, minority, and disadvantaged business procurements conducted by federal agencies, including the Department of Homeland Security. The Government Accountability Office report found that government-wide, ANC 8(a) contracts increased from \$265 million in FY 2000 to \$1.1 billion in 2004.¹⁸ GAO also found that SBA officials expressed concerns about whether the legal status of ANCs' may have been inconsistent with the overall business development objectives of Section 8(a) of the Small Business Act.

In the Department of Homeland Security, ANCs are well represented. Data recently supplied to the House Committee on Homeland Security by the Department indicate that ANCs occupy a significant position in the 8(a) Program, with more than \$108 million in DHS contracts in FY 2007, and accounting for 28.3 percent of the total amount awarded to 8(a) contractors during that fiscal year. Remarkably, over 60 percent of these total earnings were garnered from 10 procurement actions that were performed by only one company, totaling about \$65 million. (See **Figure 9**.)



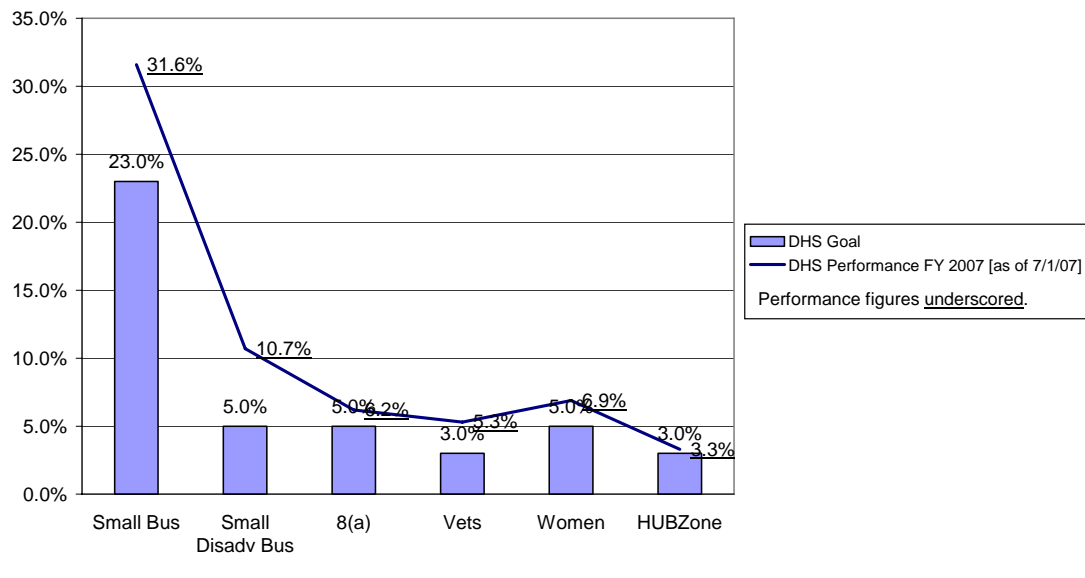
¹⁸ Government Accountability Office, ALASKA NATIVE CORPORATIONS – INCREASED USE OF SPECIAL 8(A) PROVISIONS CALLS FOR TAILORED OVERSIGHT, GAO-07-1251T, September 19, 2007, p. 5.



DHS and Small Business Administration Goals

The Department has reportedly met each of its small business goals in the past several fiscal years (**Figure 10**). However, as noted earlier, this may be misleading. It should be noted that the manner in which business concerns are counted and an agency is credited with achieving its goals is not on a one-for-one basis. Each business concern that obtains a contract with the government may be counted several times in several different categories, depending on the characteristics of the concern. For instance, a procurement action with a woman-owned business that is located in a HUBZone may be counted twice. This multiple counting not only makes it more likely that an agency will do business with a firm that meets multiple criteria because multiple counting allows an agency to reach its goals in the several small business categories more quickly, but this method of multiple counting may serve to obfuscate an accurate accounting of the number of small, minority, and disadvantaged businesses that are actually doing business with the government, creating an artificially robust picture of the federal procurement participation by these businesses.

Figure 10. DHS Small, Minority, and Disadvantaged Business Goals & Performance, FY 2007 through July 1, 2007



Conclusion and Recommendations

In FY 2007, more than one-third of the Department's \$34.8 billion budget was spent in the private sector, a total of \$12.2 billion. Of the one-third of the Department's overall budget that is spent in the private sector, one-third of these funds is spent with small business. While the Department has met its small, minority, and disadvantaged business goals for every fiscal year, serious concerns remain about the distribution of these funds within the small, minority, and disadvantaged business community. This review has shown that the top 10 contractors in each category account for the lion's share of contract awards. Surely, such a concentration of awards among a relatively few firms is not in accord with the spirit of the Small Business Act's objective of facilitating federal contracting opportunities as a means to develop a robust small, minority, and disadvantaged business community.

Recommendations

Recommendation 1: The Secretary of Homeland Security should remedy weaknesses in small, minority, and disadvantaged business contracting.

Recommendation 2: The Secretary should end the concentration of procurement actions in the fourth quarter of the fiscal year.

Recommendation 3: The Secretary should determine how Alaska Native Corporations may limit the opportunities of other 8(a) firms.

Recommendation 4: The Government Accountability Office should be asked to determine the impact of double-counting on the attainment of DHS small, minority, and disadvantaged business goals.



