

The Washington Post

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How one small word change could mean many more contracting dollars for small businesses

By [J.D. Harrison](#), Published: May 22 | Updated: Sunday, May 25, 9:48 PM

Sometimes it's the nuance in a phrase that matters most. For small government contractors, that appears to be the case in the federal procurement rulebook.

The Federal Acquisition Regulation, a long list of [contracting rules](#) established by the heads of several agencies, requires all large companies bidding on prime contracts to specify what percentage of the money awarded would flow through to small-business subcontractors.

The rule is meant to ensure that small firms "have the maximum practicable opportunity to participate in performing contracts," according to the compendium, and to help the government meet [its annual goal](#) of awarding 35.9 percent of all subcontracting dollars to small companies. Collectively, federal agencies have missed that mark each of the past five years.

Bob Justis says that one odd word on Page 1,343 in the rulebook isn't helping.

"Out of all your planned subcontracting dollars, you're required to set aside some percentage of that for small businesses," said Justis, head of Justis Consulting, a contracting proposal development firm based in Washington. "However, it's required to be stated as a percentage of your total subcontract dollars — not as a percentage of the total contract dollars."

It's a subtle but important distinction, Justis said, because a large prime contractor can, based on that rule, pledge to commit 40 percent of its subcontracting dollars to [small businesses](#). If the company then handles all the work itself, resulting in a subcontracting spend of zero, it still met its small-business subcontracting goal.

After all, 40 percent of nothing is nothing.

More often, Justis said, the wording leads to confusion between agencies and their prime contractors. Contracting officers expect to see, for example, a \$10 million contract with a 40 percent small-business subcontracting goal to deliver \$4 million to small companies. However, the total often comes in much lower, because the prime contractor is shooting for a goal based on a different formula.

"It makes a very big difference as to how much money ultimately goes to small businesses," Justis said.

The push to tweak the language comes as policymakers and federal agencies are looking for ways to reserve more government work for small companies.

The House last week passed a defense spending bill that included several changes to long-standing small-business contracting rules. Most notably, the proposal would lift the government's annual small-business contracting target from 23 percent to 25 percent and its total subcontracting goal from 35.9 to 40 percent.

The legislation would also streamline some of the bidding requirements for small firms, with the intent of saving them time and money, and take new steps to prevent federal departments from bundling contracts into projects that are too large for competition by small businesses.

House Small Business Committee Chairman Sam Graves (R-Mo.), a co-author of some of the proposals, called them "common-sense reforms that will provide opportunities for small companies trying to break into the federal marketplace."

Meanwhile, several federal departments have started tweaking their procurement policies to require prime contractors to state their small-business subcontracting plans as a percentage of total [contract dollars, leading some to worry that departments could produce more confusion by adopting different standards](#).

Justis and several others in the federal contracting community have started urging officials to instead revise the common rulebook. That would require action by the Defense Department, the General Services Administration and NASA, which are charged with updating the rules.

"If there are amendments that make sense, that's something we will explore," GSA Deputy Administrator Denise Turner Roths said.

Sandra Broadnax, director of small-business programs for the National Geospatial-Intelligence Agency (part of the Defense Department), said that revising the rules to tie small-business subcontracting plans to the total amount of the contract makes sense.

"I agree that needs to be changed and be consistent with the small-business participation plan," Broadnax said. She noted that the Defense Department recently assembled a subcontracting working group to look at potential changes to the procurement procedures — and that's one of the revisions the group will consider.

"I've noted it, and we will work it," she said.

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