



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

Frequently Asked Questions (FAQs) on SUCCESS Bill

www.cmscorp.com/success/

The SUCCESS Bill was introduced into the Senate by three Senators: Young (R-IN), Hickenlooper (D-CO), & Kelly (D-AZ); and into the House by Representatives Barr (R-KY-06), Crow (D-CO-06) & Luetkemeyer (R-MO-03). This PILOT program permits certain concerns that grow to exceed NAICS Codes 236220 (commercial and institutional building construction) or 541330 (engineering services) to qualify as small for contracts above a certain dollar threshold during a one-time, seven-year transitional period. To participate, these firms need to certify that they have met applicable activity targets and complied with restrictions on participating as Proteges in the SBA Mentor-Protégé programs. This program will support small businesses as they transition to other-than-small, helping to bridge the industrial base gap.

Question One: Why was it necessary to develop and introduce the SUCCESS Bill?

Answer: Federal contractors growing from small to other-than-small face ineligibility for set-aside contracts, additional compliance obligations, and head-to-head competition against billion-dollar companies. This occurs in an environment with increasingly fewer opportunities due to agencies' consolidation of contracting vehicles. These circumstances pose a perverse incentive for advanced small businesses (SBs) to reject growth. Consequently, a very small fraction of SB federal contractors that outgrow their size standard successfully transition to other-than-small: Just 2.5 percent of SBs awarded set-aside contracts in FY 2008 grew to become mid-sized by FY 2017, according to a 2019 GAO report. (<https://www.gao.gov/assets/gao-19-523.pdf>.) This problem, referred to as the "contracting cliff," means there are very few mid-sized competitors serving the Federal Government, which, when combined with fewer new entrants to the small business program, has contributed to the shrinking of the Department of Defense industrial base.

Question Two: Was there any criteria used in the development of the SUCCESS Bill?

Answer: Yes. It was important to keep the following in mind: The program must have strict criteria that is measurable, transparent, and reportable. It must incentivize SBs who are at the top tier of their size standard to continue to grow and expand and be able to sustain this growth into the other-than-small business category (large). Finally, this legislation does not change federal agency procurement practices.

Question Three: What does the shrinking of the DoD Industrial Base really mean?

Answer: The Department of Defense Office of the Under Secretary of Defense for Acquisition & Sustainment published a White Paper, State of Competition within the Defense Industrial Base (Feb. 2022), available at <https://media.defense.gov/2022/Feb/15/2002939087/-1/-1/1/STATE-OF-COMPETITION-WITHIN-THE-DEFENSE-INDUSTRIAL-BASE.PDF>.

The White Paper discussed the impact of a lack of competition coupled with a reduced number of firms eligible or firms who are no longer interested in competing in the federal marketplace is of national security concern. We have a federal industrial base that has shrunk 38% in the past 10 years.

Question Four: What will the SUCCESS Legislation do?

Answer: The SUCCESS Bill provides a transition period for transitioning SBs in NAICS Codes 236220-Commercial and Institutional Building Construction and 541330-Engineering Services in order to allow them a 7-year period transition into "other than small" size status. These advanced SBs are at the very top tier of their respective size standards and currently compete directly with federal emerging small and very small businesses (since they remain small). The transitioning program incentivizes these top tier firms to continue to grow and exit the SB space over time. In turn, the remaining SBs will find more opportunities. Advanced SBs in the pilot program can now be effective mentors to emerging small and small businesses instead of their competitors.

The SB retains existing contracts and will compete for SB set aside contracts that meet certain criteria. For NAICS Code 236220 the program participant cannot pursue contracts that have a construction value of \$5M or less. For NAICS Code 541330 the participant cannot pursue contracts with a value of \$1M or less. This ensures that a SB in the pilot program leaves the main SB sandbox making room for the emerging, very small and small companies to succeed. This does not change the qualifications required to compete. In addition, activity targets and metrics will be established by the SBA that require the businesses in the pilot program to meet certain restrictions during the 7-year period. What this means is that a participant must diversify its revenues with other-than-small work in years 3-7. If not met, the participant will be kicked out of the program. Why start in year 3 and not earlier? Growth and expansion does not occur overnight and in order to compete, a participant still needs to build the past performance, qualifications and capacity required to compete under unrestricted procurements.

Participants can retain existing SBA mentor-protégé relationships as Protégés during the first two years but many not be a Protégé after Year 2 of the program. A participant cannot exceed 5-year average revenues in excess of 5x its NAICS's SBA size standard to be eligible to remain in the program.

Question Five: Can you give an example of how this program would work?

Answer: Yes. It is a 7-year pilot program that allows a transitioning participant to retain its small business size status and certifications for 7 years after outgrowing the SB size standard for its NAICS and having met applicable activity targets and complied with restrictions for the following two NAICS Codes, 236220 Commercial and Institutional Building Construction (\$45.5 M) and 541330 Engineering Services (\$25.5M). The 7-year clock starts whether the business chooses to enter the pilot program or not. What this means is that Company ZZZ exceeded its size standard for construction 31 December 2022. It doesn't choose to enter the pilot program until 31 December 2023 but still must report when they exceeded its size standard. So, from an accountability standpoint, Company ZZZ has 6 years of eligibility in the 7-year pilot program (skips Year 1). The incentive is to enter the pilot program as soon as eligible to take advantage of the full 7 years. This is a one-time opportunity. If you change your mind after starting whether for one day or 4 years you can never enter the program again under any NAICS Code.

Question Six: Why these two NAICS Codes. There certainly are other NAICS codes that face the same issues?

Answer: There are two reasons why. First, the majority of Engineering and Construction procurements under these sectors are made in two NAICS Codes. 95% of Federal spend in sector 54 is in NAICS 541330 and 81% for the sector 23 non-civil works construction spend is in NAICS 236220. Secondly, the SUCCESS Act is a Pilot program and the goal here is to provide a sample with significance to the infrastructure federal spend. The SUCCESS Act gives the Small Business Administration (SBA) the leeway to add more NAICS Codes as long as there is data justifying consideration.

Question Seven: There are medium-sized companies saying that this act would increase competition for them. If the Department of Defense has already stated that lack of competition and a shrinking industrial base is a national security concern, why is increased competition viewed as a problem by some medium-sized companies?

Answer: The increased federal competition is the intent of this program. This supports the national security concern with the shrinking federal industrial base.

Question Eight: Is the SUCCESS Act endorsed by Federal Agencies?

Answer: No. Federal Agencies and their personnel are not permitted to endorse or otherwise favor legislative actions. What is important is to have a clear understanding of what the problem and resulting symptoms are so that actions such as the SUCCESS Act address the issues and challenges described by Federal Agencies and Industry. That is why Industry and Government Engagement is so important at all levels in order to ensure the best possible outcome.

Question Nine: Will the SUCCESS Act have a negative impact on other small business programs like the 8(a) SB Development Program?

Answer: No. As stated before, the SUCCESS Bill was developed with the intent to not cause any change to existing procurement and SB programs.

Question Ten: I am a small business who wants to enter the Federal Marketplace. How will the SUCCESS Act help or hinder my effort?

Answer: Congratulations on joining the federal market industrial base! You will find there are many ways to learn and grow your business by participating in various conferences and workshops geared toward teaching and preparing you for this big step. You can also benefit from developing relationships with firms who are already executing federal work. Competing for and winning federal contracts is difficult under any circumstance. As mentioned previously an additional challenge is the top tier small business who stay small because of the high percentage of default when moving to the unrestricted or other-than-small space. The SUCCESS legislation allows advanced SBs to plan for and sustain their effort to grow large over a 7-year period. The firms who participate in the pilot program will only be able to pursue SB set-aside projects over \$5M for construction and over \$1M for engineering. This will result in increased opportunities for those entering the market to obtain contracts below those thresholds since participating "advanced-smalls will no longer be eligible for contracts below those magnitudes. Additionally, as these participants transition to other-than-small, you will no longer be competing with firms who have overwhelming SB qualifications and past performance. This does not mean that there will not be small but highly qualified firms competing for SB set-asides. It also does not take away from the need for you to consider leveraging teaming and joint venture relationships, growing your past performance and employing highly qualified personnel that will place you in an advantageous competitive position as a prime.

Question Eleven: There are firms who became large after being small and are currently thriving. They believe that if they "did it, others can do it." Are they wrong?

Answer: Congratulations should go to any businesses who are thriving and were able to transition from small to other-than-small. They deserve the recognition and respect for doing so. It is still a very small percentage (2.5%) who succeed at that level. As a result, the industrial base is shrinking overall. The SUCCESS Act is a solution but does not guarantee success. It will take hard work with a consistent strategy in place to successfully transition.