

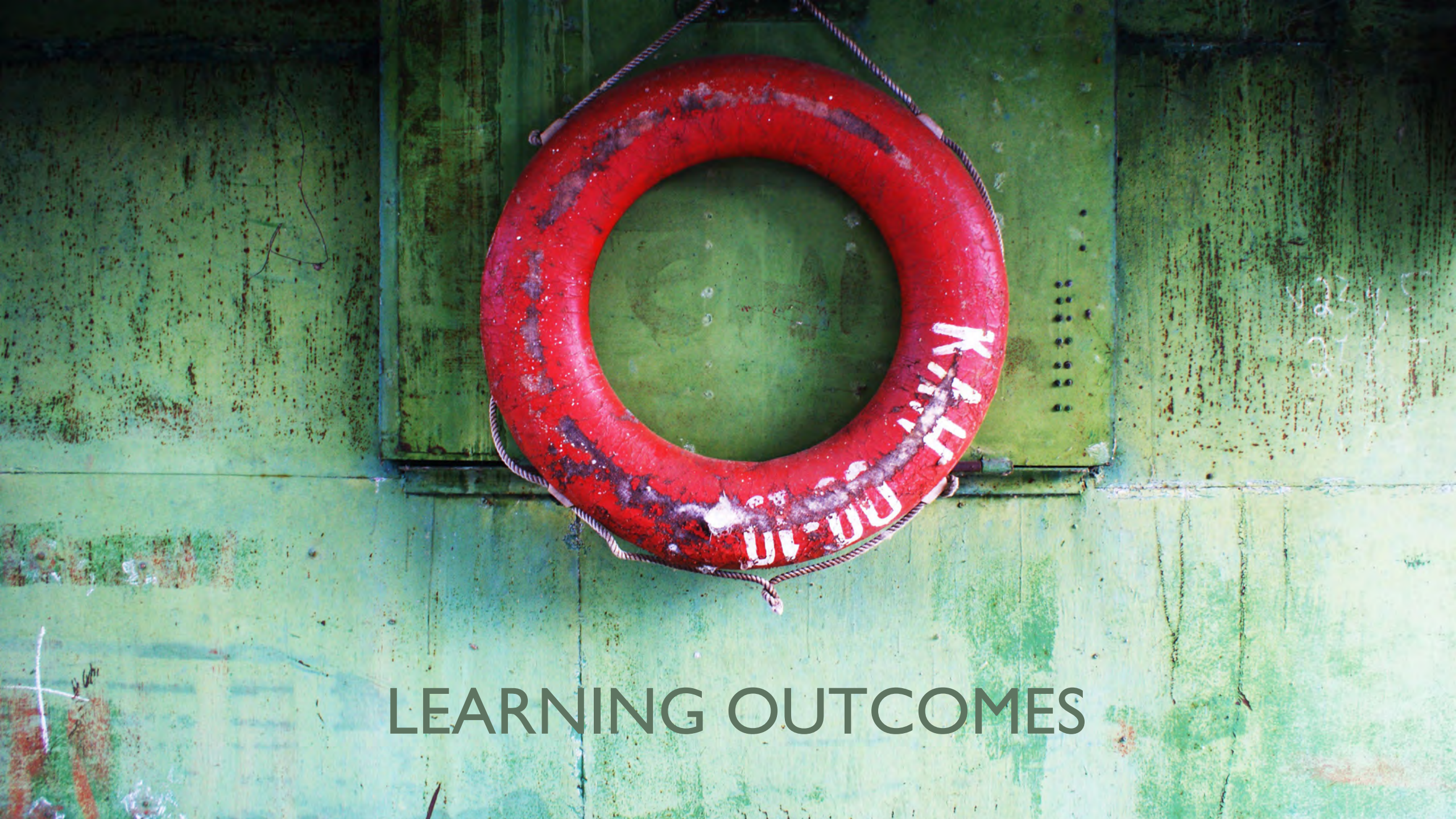


DISASTER
RECOVERY
SERVICES



Federal Funds S.O.S: Socioeconomic Contracting, Oversight, and Suspension and Debarment

*FAPPO Fall Workshop
November 17, 2023*



LEARNING OUTCOMES

At the conclusion of this session, participants will be able to:



- Apply the six affirmative steps for socioeconomic contracting to federal grant purchasing activities
- Identify common audit findings related to socioeconomic contracting under the Uniform Guidance (UG)
- Devise a system for adequately documenting the six affirmative steps taken to promote socioeconomic contracting with federal grant funding
- Ensure required contractor oversight for contracts funded with federal dollars
- Define the difference between suspension and debarment
- Differentiate between the various exclusion types



FOUNDATIONS OF SOCIOECONOMIC CONTRACTING

Origins of the Small Business Administration



- During WWII and again after Korean War, thousands of small business concerns were threatened by war-induced shortages of materials
- Small business concerns unable to obtain defense contracts or federal financial assistance
- “Preserve free competitive enterprise”
- Insure that small businesses received a “fair proportion” of federal contracts and subcontracts
- 1953 – Small Business Act signed into law by President Eisenhower, which authorized the Small Business Administration



U.S. Small Business
Administration

Current Environment



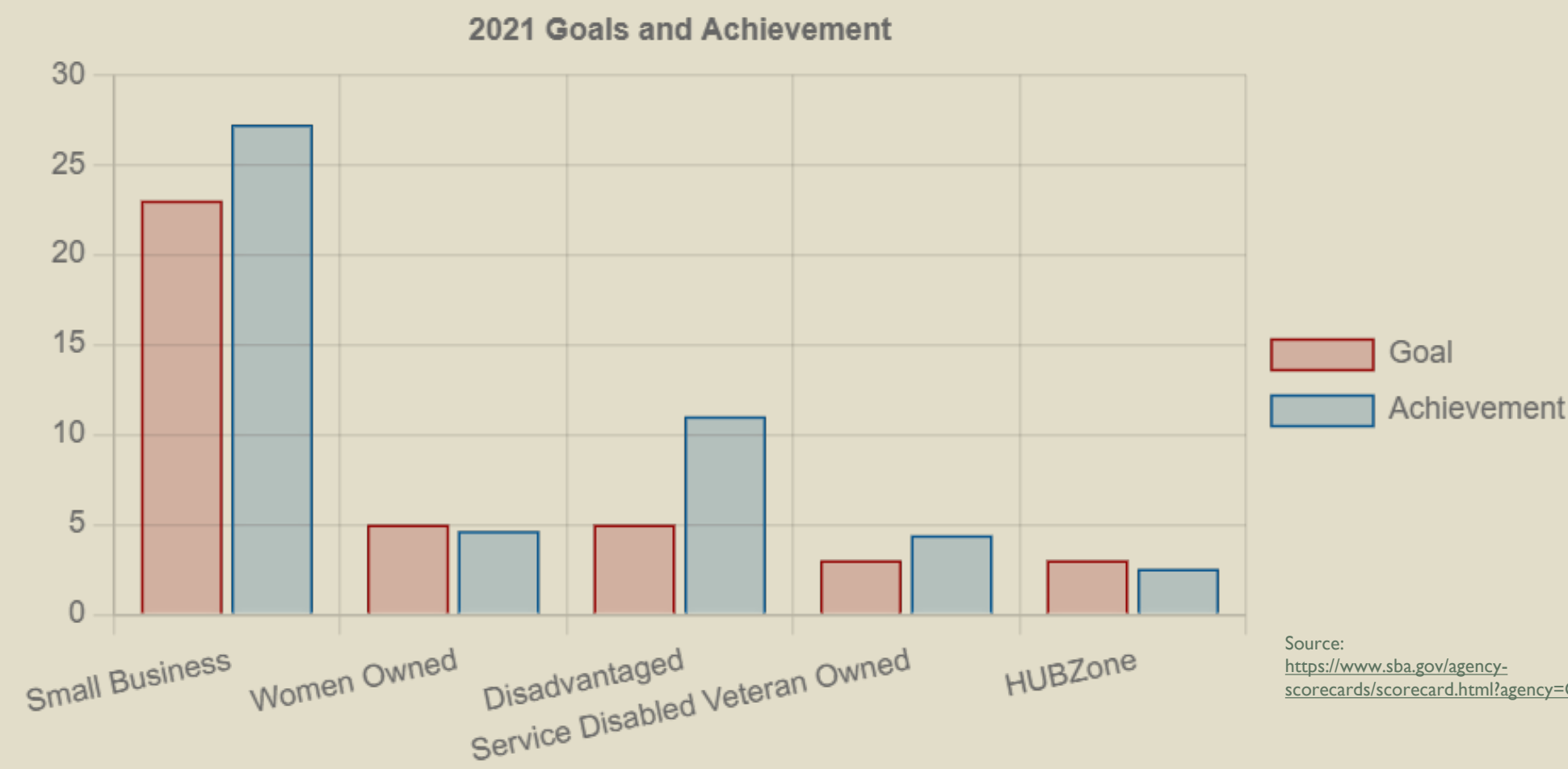
- 2011- 2020 – The number of small/diverse businesses was level – very little change in the total number of S/M/WBE firms
- 2021 – The total number of S/M/WBE firms grew by 25%
- More S/M/WBE firms that are eligible for federal contracts
- Can current supply chain issues be solved by the use of S/M/WBE businesses?



Small Business Administration Statistics 2021



Prime Contracting Awards – Federal

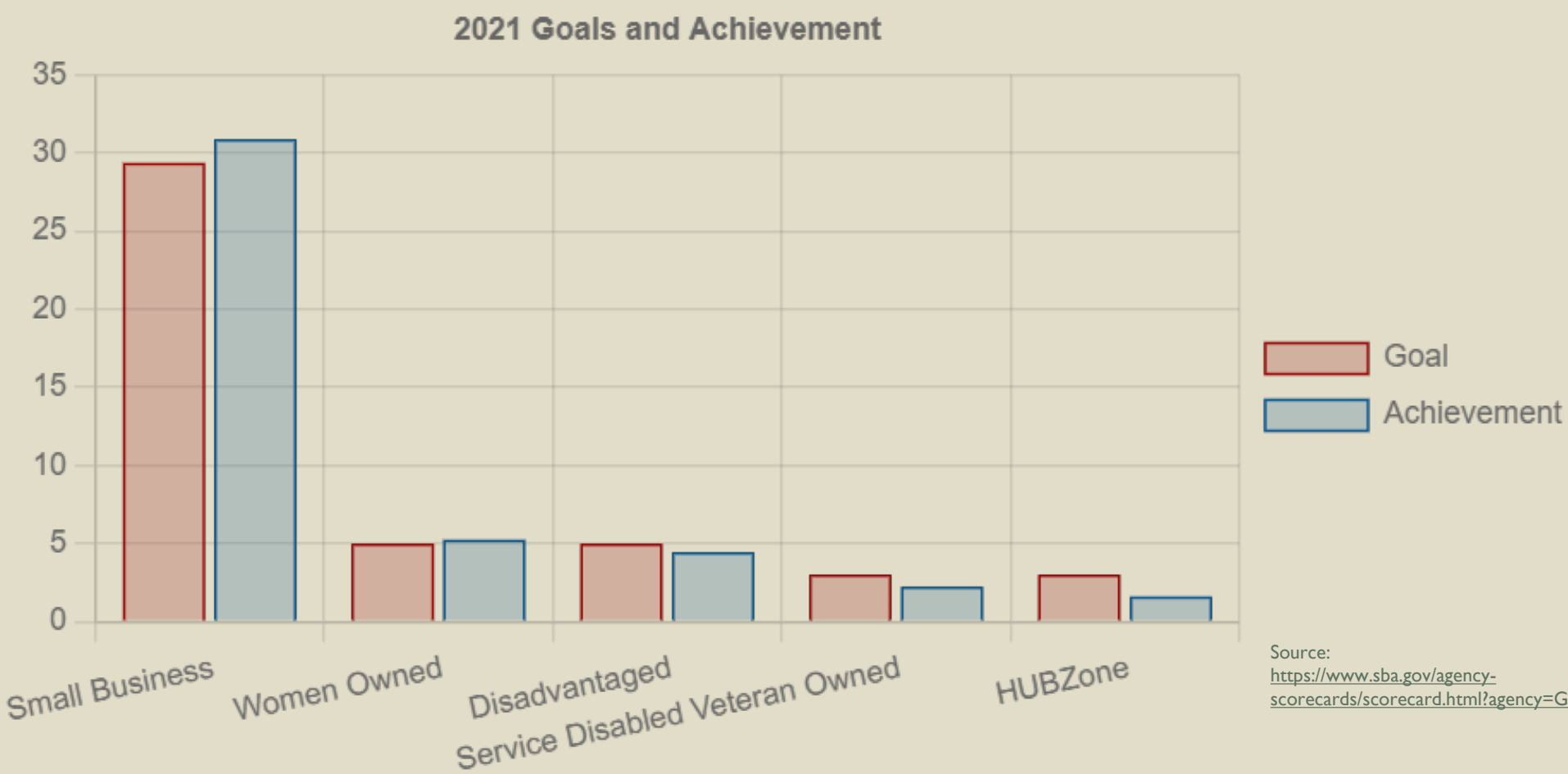


Source:
<https://www.sba.gov/agency-scorecards/scorecard.html?agency=GW&year=2021>

Small Business Administration Statistics 2021



Sub-Contracting Awards – Federal



Source:
<https://www.sba.gov/agency-scorecards/scorecard.html?agency=GW&year=2021>

New Initiatives to Increase S/M/WBE Participation



THE WHITE HOUSE



JULY 26, 2022

FACT SHEET: Biden-Harris Administration Advances Equity And Economic Opportunity Through Federal Procurement And State And Local Infrastructure Contracting

- Bipartisan Infrastructure Law/Investment Infrastructure and Jobs Act
- Launch of technical resources assistance and engagement program to reach S/M/WBE businesses
- Dedicated Minority Business Development Administration (MBDA) Business Centers to help S/M/WBE businesses become “contract ready”

- Goal: By December 2025, work to increase the number, size, and percentage of HUBs (including S/M/WBE) growing to prime contractors, participating in joint ventures, or as equity participants.
- EIP brings to life the Justice 40 Initiative





What does all this mean for local governments utilizing federal grant funding?

Federal awarding agencies will enhance scrutiny of the socioeconomic contracting efforts of recipients and sub-recipients of federal grants.

- AND -

There will be a greater number of S/M/WBE firms available to support local government projects that are funded by federal grants.

What do S/M/WBE firms experience when competing for these federal grant-funded projects?



“hard to navigate complex procurement processes”

“preferences for established and experienced businesses shut us out”

“more costly and time intensive to submit a proposal”



SOCIOECONOMIC CONTRACTING REQUIREMENTS UNDER FEDERAL GRANTS

Federal Grant Definitions Used in the Absence of Local Government/ State Definitions

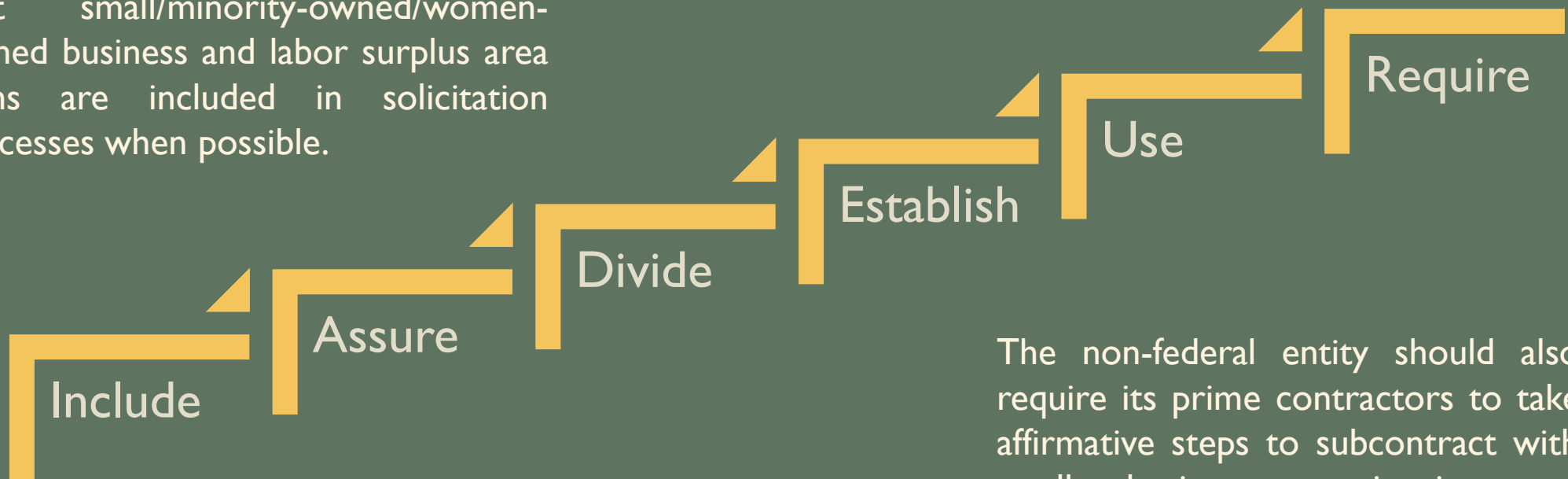


Type of Firm	Definition
Small Business	A business that is independently owned and operated and is qualified as a small business under the Small Business Administration criteria and size standards at <u>13 C.F.R. Part 121</u> . (Generally defined as a business that has fewer than 500 employees.)
Minority Business	A business that is (a) at least 51% owned by one or more minority group members, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more minority group members; and (b) whose management and daily operations are controlled by one of more minority group members. <u>13 C.F.R. § 124.103, 13 C.F.R § 124.102, and 13 C.F.R. § 124.105</u>
Women's Business Enterprise	A business enterprise that is (a) at least 51% owned by one or more women, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more women; and (b) whose management and daily operations are controlled by one or more women. <u>13 C.F.R. Part 127</u>
Labor Surplus Area	A locality, defined by the Department of Labor's Employment and Training Administration that has a civilian average annual unemployment rate during the previous two calendar years of 20% or more above the average annual civil unemployment rate for all states during that same period. <u>20 C.F.R. §§ 654.4 – 654.5</u>
Labor Surplus Area Firm	A firm that, together with its first-tier subcontractors will perform substantially in LSAs as identified by the Department of Labor in accordance with <u>20 C.F.R. § 654</u> . Performance is substantially in LSAs if the costs incurred under the contract account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50% of the contract price.

Take Affirmative Steps – Socioeconomic Contracting



Non-federal entities must take all necessary affirmative steps to assure that small/minority-owned/women-owned business and labor surplus area firms are included in solicitation processes when possible.



The non-federal entity should also require its prime contractors to take affirmative steps to subcontract with small businesses, minority and women-owned firms, and labor surplus area firms.

Documenting the Six Affirmative Steps



- I. Provide a list of the known small/minority/women's businesses (S/M/WBE) for which the solicitation was provided.

Email Status:		
Invitation Type:	Automatic	
Aftermath Disaster Recovery Inc. (Aftermath Disaster Recovery Inc.)		
Address:	1826 Honeysuckle Lane Prosper, TX 75078 (972) 567-1489	Response Status: No Response Invitation Date: 2/24/2023 Invitation Emails: RFPs@aftermathdisaster.com
Classifications:	WBE (Primary)	
Participation Type:	Active Supplier	
Email Status:		
Invitation Type:	Automatic	
AG CM, Inc. (AGCM, Inc.)		
Address:	3200 Wilcrest Dr Suite 100 Houston, TX 77042 (713) 316-4506	Response Status: No Response Invitation Date: 2/24/2023 Invitation Emails: sthompson@agcm.com
Classifications:	SBE (Primary)	
Participation Type:	Active Supplier	
Email Status:		
Invitation Type:	Automatic	
Aggreko		
Address:	3732 Magnolia Pearland, TX 77584 (800) 244-7356	Response Status: No Response Invitation Date: 2/24/2023 Invitation Emails:
Participation Type:	Active Supplier	
Email Status:		
Invitation Type:	Automatic	
AGH2O Holdings, LLC (AGH2O Holdings, LLC)		
Address:	3817 Bent Brook Drive Round Rock Round Rock, TX 78664 (512) 484-7611	Response Status: No Response Invitation Date: 2/24/2023 Invitation Emails: jlesko@austin.rr.com
Participation Type:	Active Supplier	
Email Status:		
Invitation Type:	Automatic	

Documenting the Six Affirmative Steps



2. Provide copies of posting of the solicitation opportunity via websites or publications that support S/M/WBE firms, if any. If not, explain how the agency feels it met the requirement to ensure these types of firms were encouraged to participate in the solicitation process.

Publicación de anuncios clasificados

CLASIFICADOS

LEGAL NOTICE

ESTIMADOS GRATIS EN ESTUARIOS

SERVICIO DE ELECTRICIDAD EN HOUSTON TX

LEGAL NOTICE

DENTISTA FAMILIAR, ATENDEMOS EMERGENCIAS EL MISMO DIA, EXAMEN Y CONSULTA GRATIS.

EXTRA VIATE EL CONTROL REMOVIDE TU AUTO

EXCELENTE OPORTUNIDAD PARA INVERSIÓN Y NEGOCIO

¡EL MISMO DIA!

¡NECESITA MUSICA PARA SU EVENTO?

COMPRA EN CARROS AL MEJOR PRECIO DEL MERCADO

EL EMPLEO QUE NECESITAS ESTA AQUI

¡EL MISMO DIA!

¡NECESITA MUSICA PARA SU EVENTO?

COMPRA EN CARROS AL MEJOR PRECIO DEL MERCADO

EL EMPLEO QUE NECESITAS ESTA AQUI



WBENC

Documenting the Six Affirmative Steps



3. Document steps to determine if it was economically feasible to divide the scope of work into smaller tasks or quantities to permit maximum participation by S/M/WBE firms. Document the rationale as to whether it was/was not economically feasible.

Examples:

- Our solicitation allowed for proposers to bid on all or portions of the scope of work.
(Provide the excerpt from your solicitation document that demonstrates this.)
- In examining the goals of our project, it was not economically feasible to divide the scope of work. (List the reasons why this was not feasible.)
- In review of our scope of work, there is nothing prohibitive to a S/M/WBE firm in providing the full scope of services.

Documenting the Six Affirmative Steps



4. Delivery schedules

“The following delivery schedule has been established to encourage participation by S/M/WBE firms:”
or

“It is not anticipated that the current delivery schedules put socioeconomic firms at a disadvantage because:”

Sample flexible delivery schedule clauses:

During the term of this Agreement, and for OEM Sales only, if Buyer requests and Supplier agrees, such agreement not to be unreasonably withheld, Supplier will implement certain forms of "Flexible Delivery Arrangements", including, but not limited to, consignment, demand pull, and pull replenishment, for designated Product or Licensed Material.

Scope items A-E shall be assigned work via a task order by COUNTY which shall subsequently be referred to as the “Contract Task Order” (hereinafter “CTO”). A CTO for each project task shall be developed with COUNTY Project Management staff.

Documenting the Six Affirmative Steps



5. Provide PDF of SBA Dynamic Small Business Search Tool results via NAICS codes related to the goods or services solicited; Provide a list from the search of suppliers that were notified via email or other means; Provide copies of notifications sent (email or other means). Use other search tools such as CalProcure S/M/WBE Certifications Search to generate a list of S/M/WBE businesses to target outreach.

The screenshot shows the SBA Dynamic Small Business Search (DSBS) tool interface. The URL is dsbs.sba.gov/search/dsp_dsbs.cfm. The page has a blue header with the SBA logo and navigation links: Mobile View, Print, Exit, Help, DSBS, Quick Market Search, and TM OnLine. The main content area is titled "Welcome to the Dynamic Small Business Search". It contains three sections for selecting certification criteria:

- Government Certifications:**
 - 8(a) Certified or 8(a) Joint Venture:**
 - ☒ Required (Active Certifications only)
 - ☐ Required (Active Certifications and Previously Certified)
 - ☐ Required (Previously Certified only)
 - ☐ Not Required
 - HUBZone Certification:**
 - ☒ Required (Active Certifications only)
 - ☐ Required (Active Certifications and Previously Certified)
 - ☐ Required (Previously Certified only)
 - ☐ Not Required
- Women Owned Small Business:**
 - ☒ Required (Active Certifications only)
 - ☐ Required (Active Certifications and Previously Certified)
 - ☐ Required (Previously Certified only)
 - ☐ Not Required
- Economically Disadvantaged Women Owned Small Business:**
 - ☒ Required (Active Certifications only)
 - ☐ Required (Active Certifications and Previously Certified)
 - ☐ Required (Previously Certified only)
 - ☐ Not Required

At the bottom, there is a section for "Ownership and Self-Certifications" with a checkbox for "Any Minority Owned:". The footer includes a timestamp "Last modified: 06/23/2023 12:00:00 AM" and a footer bar with links to FirstGov, E-Gov, Regulations.gov, White House, Privacy & Security, Information Quality, FOIA, No Fear Act, and ADA. It also displays "SBA Processing: 0.006 seconds Version: SBSS 8.1.1" and "Session timeout in 28 minutes".

The screenshot shows the CalProcure S/M/WBE Certifications Search interface. The URL is caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx. The page has a yellow header with a maintenance notice: "The Cal eProcure application will not be available on Sunday July 16th 2023 6:00 AM to 12:00 PM for scheduled maintenance. We apologize for any inconvenience, thank you for your patience." The main content area features a banner image of the California State Capitol building with the text "The State of California Certifications". Below the banner is a "Search Criteria" form with the following fields:

- Business Name (text input)
- Certification ID (text input)
- Certification Type (checkboxes):
 - ☐ Micro Business (MB)
 - ☐ Small Business (SB)
 - ☐ Small Business for the Purpose of Public Works (SB-PW)
 - ☐ Disabled Veteran Business Enterprise (DVBE)
- UNSPSC Classifications (text input)
- NAICS Classifications (only used by manufacturers) (text input)
- Contractor's License Classifications (text input)
- Service Area (County) (text input)
- Keywords (text input)

The footer includes a timestamp "Last modified: 06/23/2023 12:00:00 AM" and a footer bar with links to FirstGov, E-Gov, Regulations.gov, White House, Privacy & Security, Information Quality, FOIA, No Fear Act, and ADA. It also displays "SBA Processing: 0.006 seconds Version: SBSS 8.1.1" and "Session timeout in 28 minutes".

Documenting the Six Affirmative Steps



6. Highlight the notification within the solicitation requiring prime contractors to take affirmative steps when utilizing subcontractors for the agency's federal grant-funded project. Require the prime contractor to provide the agency documentation supporting the first five affirmative steps.

RFP #23/027MF

4.7. **Minority and Women's Business Enterprise (MWBE), Historically Under-utilized Business (HUB) and Small Business Enterprise (SBE) Participation**

The County encourages the use of HUB, MWBE, and SBE both as prime and subcontractors. It will be the responsibility of the prime contractor to pre-qualify any subcontractors offered as HUB, MWBE and SBE participants. The Vendor shall also indicate on their submitted proposals whether or not they are a HUB, MWBE, or SBE vendor and with whom they are certified, e.g., State, City, Federal, and attach a copy of the certificate(s) under "Response Attachments" section of the eBid system.

When federal funds are expended by the County Vendor is required to take all affirmative steps set forth in 2 CFR 200.321 to solicit and reach out to small, minority and women owned firms for any subcontracting opportunities, including:

- a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Documentation Recommendation



Create a form that walks end-users through the Six Affirmative Steps.

Attach all supporting documentation to the form (via PDF).

Federal Grant Socioeconomic Affirmative Steps Worksheet

Pursuant to 2 C.F.R. § 200.321, applicants for federal grant assistance are required to take certain affirmative steps to ensure small and minority businesses, women's business enterprises, and labor surplus area firms are used, when possible, in federally-funded projects. This worksheet is designed to assist the non-federal entity in demonstrating it has met the requirements of 2 C.F.R. § 200.321 (socioeconomic contracting). Please complete the steps described below and keep records of your efforts in the procurement file for each solicitation. Note that items highlighted in yellow should be verified for accuracy and updated, if necessary.

Title / ID# of Solicitation: _____

Description of Procured Goods/Services:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists.

Provide a copy of the solicitation to known small, minority, and women's firms and to agencies which will make it available to state-wide to certified minority owned businesses.

The solicitation was provided to the following known small, minority, and women's business enterprises:

2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.

These firms have been solicited through the means described in paragraph 1. Other relevant information demonstrating compliance with this step:

3. Dividing requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.

It ☐ is / ☐ is not economically feasible to divide the scope of this requirement, because:

Page 1 of 2

Federal Grant Socioeconomic Affirmative Steps Worksheet

4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.

The following delivery schedule has been established to encourage participation by small and minority businesses, and women's business enterprises:

OR

It is not anticipated that the current delivery schedules put socioeconomic firms at a disadvantage, because:

5. Using the services and assistance, as appropriate, of such organizations as the Small Business and Minority Business Development Agency of the Department of Commerce.

An SBA Dynamic Small Business Search (https://web.sba.gov/pro-net/search/dsp_dsbs.cfm) was performed under the following NAICS codes:

• Use appropriate code. Codes available at: <https://www.naics.com/business-lists/counts-by-naics-code/7#countsByNAICS>

[Print and attach results of search. It may necessary to limit search results by keyword or geography to obtain a useful list. In doing so, beware of imposing a geographic preference, which is prohibited by Federal procurement standards.]

From this list, potential contractors were e-mailed the solicitation. (List them below or attach a list.)

6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

☐ This requirement is included in the solicitation and will be made a part of the resulting contract.

Page 2 of 2



OVERSIGHT OF CONTRACTORS



2 CFR 200.318

Non-federal entities **must** maintain oversight to ensure contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

- 1 Ensuring contractors comply with contract terms and conditions
- 2 Invoices are correct and the correct format according to the federal grant requirements
- 3 Ensuring all services, materials, and equipment used are required to carry out the scope of work
- 4 Documentation examples: Agendas/ meeting notes from contractor meetings, 3-way match in accounts payable, periodic invoice audits

Managing Contractor Risks



- Identify the following risks:
 - Process risks
 - Unwanted events
 - Contract risks
 - Risk of non-compliance with laws and regulations
- Develop and execute a plan to mitigate identified contractor risks.
 - Internal staff
 - Third-party oversight





SUSPENSION AND DEBARKMENT

Exclusions – Suspension and Debarment



Federal Definitions

Suspension: An action taken by the federal Suspension and Debarment Official (SDO) that excludes a party from participating in a covered transaction for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. Examples: indictments, adequate evidence involving crimes, fraud, poor performance, nonperformance, or false statements.

Debarment: An action taken by the federal SDO to exclude parties from participating in a covered transaction for a specified period, typically three years. Examples: convictions, civil judgments



Exclusions – Suspension and Debarment



Covered Transactions and Tiers

Covered Transaction: Includes the following contracts for goods or services:

- The contract is awarded by a recipient or subrecipient in the amount expected to equal or exceed \$25,000
- The contract requires the approval of the federal awarding agency, regardless of amount
- The contract is for federally required audit services
- A subcontract for \$25,000 or more

Tiers (Appendix to 2 C.F.R. Part 180)

- Primary Tier Nonprocurement Transactions
- Lower Tier Nonprocurement Transactions
- First Tier Procurement Contracts \geq \$25,000
- First Tier Procurement Contracts Subject to Agency Consent
- Lower Tier Subcontracts Subject to Agency Consent
- Agency Optional Lower Tier Coverage Designated Subcontracts \geq \$25,000



Recommended Steps to Comply with Suspension and Debarment Requirements



Take these steps:	
✓	Include appropriate federal contract clause (2 C.F.R. § 200, Appendix II) for all federal grant-funded purchases ≥ \$25,000)
✓	Conduct and document a federal suspension and debarment check at SAM.gov for any level purchase to be funded by a federal disaster grant (ensures compliance with requirement to only award contracts to responsible suppliers/contractors)
✓	If using a cooperative contract for federal grant purchases, entities should conduct their own suspension and debarment check, even if the cooperative conducted one upon original contract award

SAM Exclusions Types



Exclusion Type	Cause of Exclusion
Ineligible (Proceedings Pending)	Preliminary ineligible based upon adequate evidence of conduct indicating a lack of business honesty or integrity, or a lack of business integrity, or regulation, statute, executive order or other legal authority, pending completion of an investigation and/or legal proceedings.
Ineligible (Proceedings Completed)	Determined ineligible upon completion of administrative proceedings establishing by preponderance of the evidence of a cause of a serious and compelling nature that it affects present responsibility; or determined ineligible based on other regulation, statute, executive order or legal authority.
Prohibition/Restriction	May be subject to sanctions pursuant to the conditions imposed by the U.S. Department of the Treasury: Office of Foreign Assets Control (OFAC), or subject to a sanction, restriction or partial denial pursuant to the conditions imposed by the U.S. Department of State or federal agency of the U.S. Government.
Voluntary Exclusion	Accepted an agreement to be excluded under the terms of a settlement between the person and one or more agencies.

Resources



[Small Business Association 2021 Procurement Scorecard](#)

[SBA Dynamic Small Business Search Tool](#)

[Fact Sheet: Biden-Harris Administration Advances Equity and Economic Opportunity Through Federal Procurement and State and Local Infrastructure Contracting](#)

[Fact Sheet: Equity In Infrastructure Project](#)

[Justice40 Initiative](#)

[GSA Searching Exclusions on SAM.gov \(video\)](#)

Questions?



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