

# Subcontract Management From A to Z:

## Session 3: Small Business Programs

**March 19, 2024**

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# Introduction

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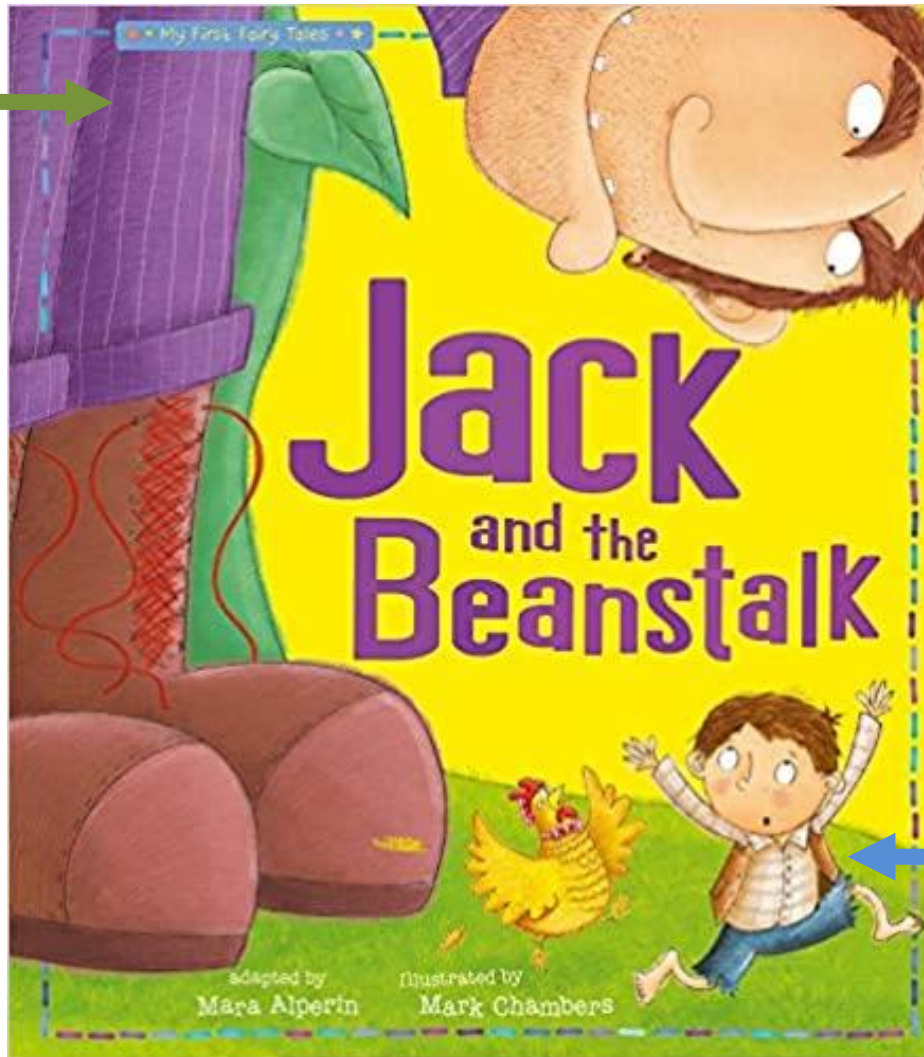
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# Overview of the Series

- January 16: Federal Subcontracting 101 (An Overview)
- February 20: Joint Ventures and Teaming Agreements
- March 19: Small Business Programs
- April 16: Small Business Subcontracting
- May 21: Contractor Purchasing Systems
- June 18: Selecting Subcontracts
- September 17: Subcontract Negotiations and Flowdowns
- October 15: Subcontract Pricing
- November 19: Subcontract Management and Administration

# The Story of Jack and the Beanstalk

Other Than  
Small



Small  
(Disadvantaged)



# Today's Agenda

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## 1. SBA Size Standards

- Affiliation

## 2. Small Business Set-Asides

## 3. Small Business/Socioeconomic Programs

- SDVOSB
- WOSB
- SDB + 8(a)
- HUBZone
- Tribally-Owned Concern
- ANC
- NHO
- CDC

## 4. Other Small Business Programs

- DBE
- SBIR/STTR
- Mentor-Protégé

# 1. SBA SIZE STANDARDS

# SBA Size Standards

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- “Small business concern”:
  - **For profit** company
  - With a **place of business** located in the United States
  - Operating primarily within the United States or making a **significant contribution to the U.S. economy** through paying taxes or use of American products, materials, or labor
  - Qualifies as “small” under applicable **size standard**



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# SBA Size Standards (cont'd)

- 13 C.F.R. § 121.201
- Each solicitation is assigned a North American Industry Classification System (NAICS) code which gives the applicable size standard for that procurement
- Size standards vary by industry and are based on the:
  - **# of employees**, or
    - Headcount for company + affiliates (averaged over 24 months)
  - **\$\$\$ annual receipts**
    - Total for company + affiliates (averaged over 5 years)
- Standards are re-reviewed every 5 years



# SBA Size Standards (cont'd)

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
<b>Sector 54 - Professional, Scientific and Technical Services</b>			
<b>Subsector 541 - Professional, Scientific and Technical Services</b>			
541110	Offices of Lawyers	\$15.5	
541191	Title Abstract and Settlement Offices	\$19.5	
541199	All Other Legal Services	\$20.5	
541211	Offices of Certified Public Accountants	\$26.5	
541213	Tax Preparation Services	\$25.0	
541214	Payroll Services	\$39.0	
541219	Other Accounting Services		

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
<b>Sectors 31-33—Manufacturing</b>			
<b>Subsector 311—Food Manufacturing</b>			
311111	Dog and Cat Food Manufacturing		1,250
311119	Other Animal Food Manufacturing		650
311211	Flour Milling		1,050
311212	Rice Milling		750
311213	Malt Manufacturing		500
311221	Wet Corn Milling and Starch Manufacturing		1,300
311224	Soybean and Other Oilseed Processing		1,250

# SBA Size Standards – Timing

- Size is usually determined at the time the company **submits its initial offer including price**
- Subcontractors must be small on the date they certify as small for the subcontract
- Company is generally **“small” for the life of the contract**, unless there is a required recertification



# SBA Size Standards – Affiliation



- “Affiliation”
  - When an entity/individual **controls** or has the **power to control** another entity they are “affiliated”
  - Control may be **affirmative** or **negative** (*i.e.*, ability to block actions)
  - Power to control does not have to be exercised, it need only exist
- Close relationships or shared control with a small business results in “affiliation” (13 C.F.R. § 121.103)
  - **Aggregated** employee #'s/\$\$\$ revenue for size purposes
  - **Totality of the circumstances** assessment
    - Some relationships create a presumption of affiliation
    - Others create a non-rebuttable basis/de facto control



# SBA Size Standards – Affiliation (cont'd)

## Rebuttable Presumption of Affiliation

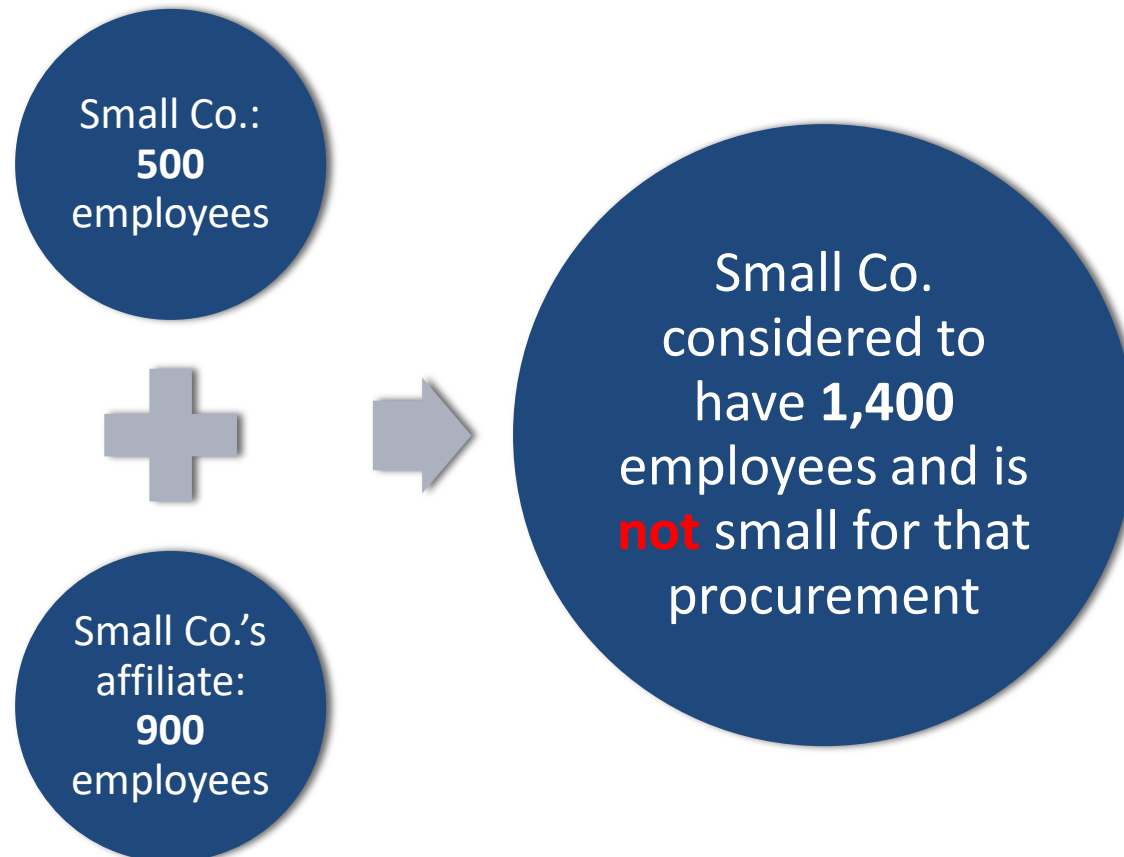
- **Identity of interest:** family members are presumed to be affiliated
  - Married couple founds accounting firm; daughter opens office supply store using her own \$\$\$ and a bank loan. Parents purchase office supplies representing 10% of the daughter's revenues. No other business interactions or indicia of affiliation. *Presumed affiliation = rebutted.*
- **Economic dependence** (>70% of receipts from another entity over past 3 years)
  - ABC was founded last year. It has 2 contracts: \$75,000 from DEF and \$25,000 from XYZ. *Presumed affiliation = rebutted* because only secured 2 contracts in short amount of time in business.

## De Facto Control

- Ownership, control, or the power to control **50% or more of the voting stock**
- Ownership and control (or power to control) a **block of voting stock that is large compared to all other outstanding blocks of stock** (even though less than 50%)
  - ABC owns 40% of the voting stock of XYZ, and the next largest shareholder is 2% = affiliation between ABC and XYZ.
  - ABC owns 46.67% and DEF owns 33.33% of XYZ; ABC also owns QRS = ABC, QRS, and XYZ are all affiliated.

# SBA Size Standards – Affiliation (cont'd)

- Hypothetical:
  - NAICS 562910, Environmental Remediation Services
  - Size standard = 1,000 employees



# SBA Size Standards – Affiliation (cont'd)

## Relationships That May Create Affiliation Under the Totality of the Circumstances

- |  |   |
|--|---|
| x Power to control (direct or indirect)                            | x Identical business/economic interests                       |
| x Common ownership   | x Stock options, convertible securities, agreements to merge  |
| x Common management  | x Contractual relationships                                   |
| x Common investments   | x Previous relationships/ties                                 |
| x Family members own/control businesses                            | x Joint venture: 2+ years, ostensible subcontractors          |
| x Economic dependence (>70% receipts over past 3 years)            | x Minority investor has power to prevent quorum/block actions |
| x New company founded by former/current leaders of another company | x Commingling resources (staff, facilities, etc.)             |

## 2. SMALL BUSINESS SET-ASIDES



# Small Business Set-Aside Program

- Certain federal contracts are reserved for small businesses (*i.e.*, large businesses are excluded)

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, AND 30				1. REGULATION NUMBER 50102-RFC300AM	PAGE 1 OF 37
2. CONTRACT NO.	3. AWARD EFFECTIVE DATE	4. ORDER NUMBER	5. SOLICITATION NUMBER N817123Q0036	6. SOLICITATION ISSUE DATE 03-Feb-2023	
7. FOR SOLICITATION INFORMATION CALL: A NAME DANIELA POLLANO		8. TELEPHONE NUMBER (IN COUNTRY) 30-081-565-4495		9. OFFER DUE DATE/LOCAL TIME 03:00 PM 03 Feb 2023	
10. ISSUED BY CODE NAVSUP FLC BIGNONELLA NAPLES OFFICE SHORE PSC 817 BOX 50		11. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input checked="" type="checkbox"/> SET ASIDE: <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) <input type="checkbox"/> ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM		100 % FOR:	

10. THIS ACQUISITION IS  UNRESTRICTED OR  SET ASIDE: 100 % FOR:

SMALL BUSINESS  WOMEN-OWNED SMALL BUSINESS (WOSB)  
ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM

HUBZONE SMALL BUSINESS  EDWOSB NAICS: 611430

SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS  8(A) SIZE STANDARD: \$13,000,000

<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.210-1, 52.210-4, FAR 52.210-5, 52.210-6 ARE ATTACHED. ADDENDA <input checked="" type="checkbox"/> ARE ATTACHED <input type="checkbox"/> ARE NOT ATTACHED		<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.210-4, FAR 52.210-5, FAR 52.210-6 IS ATTACHED. ADDENDA <input type="checkbox"/> ARE ATTACHED <input type="checkbox"/> ARE NOT ATTACHED	
<input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED.		<input type="checkbox"/> 29. AWARD OF CONTRACT. REF. OFFER DATED: _____ YOUR OFFER ON SOLICITATION (BLOCK 5) INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS.	
30a. SIGNATURE OF OFFEROR/CONTRACTOR		30b. SIGNED (TITLE OF CONTRACTING OFFICER)	
30c. NAME AND TITLE OF SIGNER (TYPE OR PRINT)	30d. DATE SIGNED	30e. NAME OF CONTRACTING OFFICER (TYPE OR PRINT)	30f. DATE SIGNED

AUTHORIZED FOR LOCAL REPRODUCTION (PREVIOUS EDITION IS NOT USABLE) STANDARD FORM 1449 (REV. 2021) Prescribed by GSA - FAR (48 CFR) 53.212

## Small Business Set-Aside Program (cont'd)

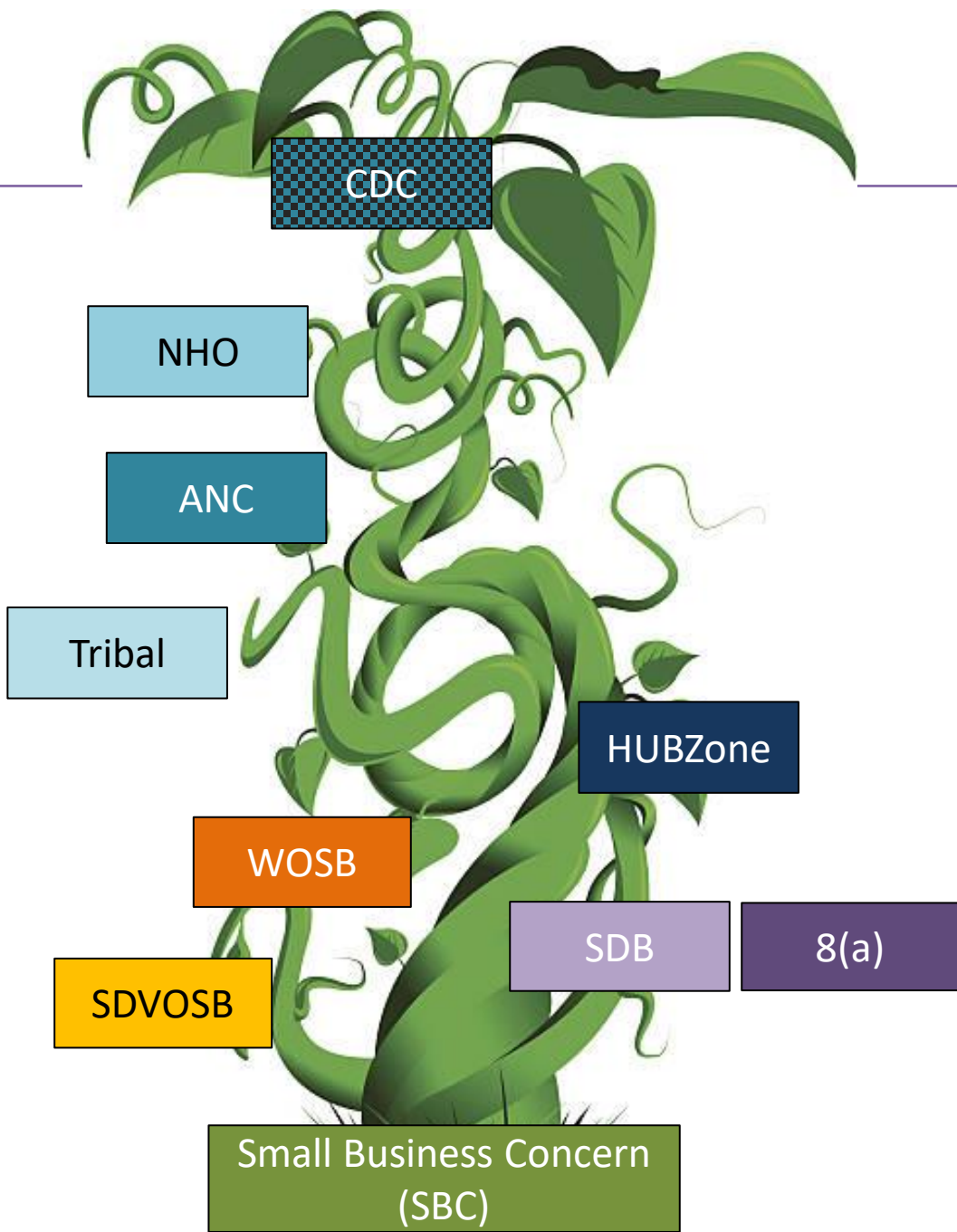
- Mandatory vs. discretionary set-asides
  - Some procurements **must** be set aside under applicable regulations
  - Other set-asides are at the contracting officer's **discretion** – it depends on the value and quantity of the goods and services sought
- “Rule of Two”
  - Must set aside in certain circumstances if there are two or more small businesses that could do the work at fair market prices



# Small Business Set-Aside Program (cont'd)

Contract Value	Small Business Set-Aside Requirements
\$10,000 to \$250,000	Mandatory small business set-aside
>\$250,000	Set aside if the “Rule of Two” is met; must consider socioeconomic programs first before small businesses generally
GSA Schedule Orders and BPAs (regardless of value)	Set aside at the CO’s discretion if there are at least 3 small businesses capable of performing
Non-GSA Multiple Award Contract Orders (\$10,000 to \$250,000)	Set aside at the CO’s discretion if the Rule of Two is met
Non-GSA Multiple Award Contract Orders (>\$250,000)	Set aside at the CO’s discretion if the Rule of Two is met; must consider socioeconomic programs first before small businesses generally

# 3. SMALL BUSINESS/SOCIOECONOMIC PROGRAMS



# Socioeconomic Programs: SDVOSB/VOSB

- Service-Disabled Veteran-Owned Small Business (SDVOSB)
  - Small business concern (per applicable size standard)
  - At least 51% **owned** and **controlled** by one or more service-disabled veterans
    - Must have a service-connected disability
  - **Certified** by SBA (New!)
- Goal: 3% vs. 4.6% (FY2022) 🙌
- Veteran-Owned Small Business (VOSB) Program = VA contracts **only**



# Socioeconomic Programs: WOSB/EDWOSB

- Women-Owned Small Business (WOSB) Program:
  - Small business concern (per applicable size standard)
  - At least 51% **owned** and **controlled** by women who are **U.S. citizens**
  - **Certified** by SBA or a third party
    - Self-certification available for non-set-asides
- Goal: 5% vs. 4.6% (FY2022) 🤔
- Variations on the theme:
  - Economically-disadvantaged woman-owned small business (EDWOSB) (52.219-29)
  - Woman-owned [large] business (52.204-5)



# Socioeconomic Programs: SDB + 8(a)

- Small Disadvantaged Business (SDB):
  - Small business concern (per applicable size standard)
  - At least 51% **owned** and **controlled** by **economically** and **socially disadvantaged** U.S. citizen(s)
    - ✓ Personal net worth  $\leq$  \$850,000
    - ✓ Average adjusted gross income for 3 years  $\leq$  \$350,000
    - ✓  $\leq$  \$6 million in assets
  - SDBs may **self-certify**
  - Goal: 5% vs. 11.4% (FY2022) 🍌
- 8(a) Program additional requirements:
  - Qualified individual demonstrates good character
  - Business demonstrates the potential for success
  - Disadvantaged person has not previously participated in 8(a) program
  - Admitted as program participant/**certified** by SBA
    - Per *Ultima Servs. Corp. v. U.S. Dep't. of Agric.*, Case No. 2:20-CV-00041-DCLC-CRW, 2023 WL 463348 (E.D. Tenn. July 19, 2023), disadvantage is **not** automatically presumed...





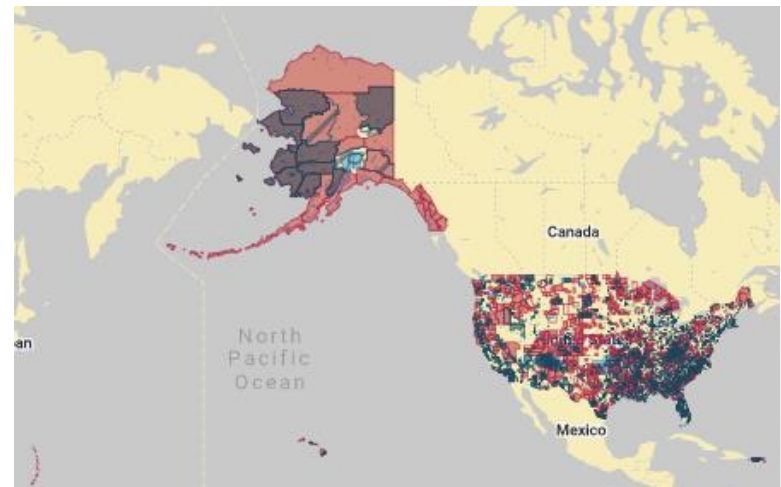


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**HUBZONE  
CERTIFIED**

# Socioeconomic Programs: HUBZone

- Historically Underutilized Business Zone (HUBZone):
  - Small business concern (per applicable size standard)
  - At least 51% **owned and controlled** by U.S. citizens, Alaska Native Corporation, Community Development Corporation, small agricultural cooperative, Native Hawaiian Organization, or Indian Tribe
  - **Principal office** located in a designated HUBZone
  - At least **35% of employees** reside in a HUBZone
  - Concern and owners are not actively excluded from doing business with the government
  - **Certified** by SBA
- Goal: 3% vs. 2.7% (FY2022) 🤔



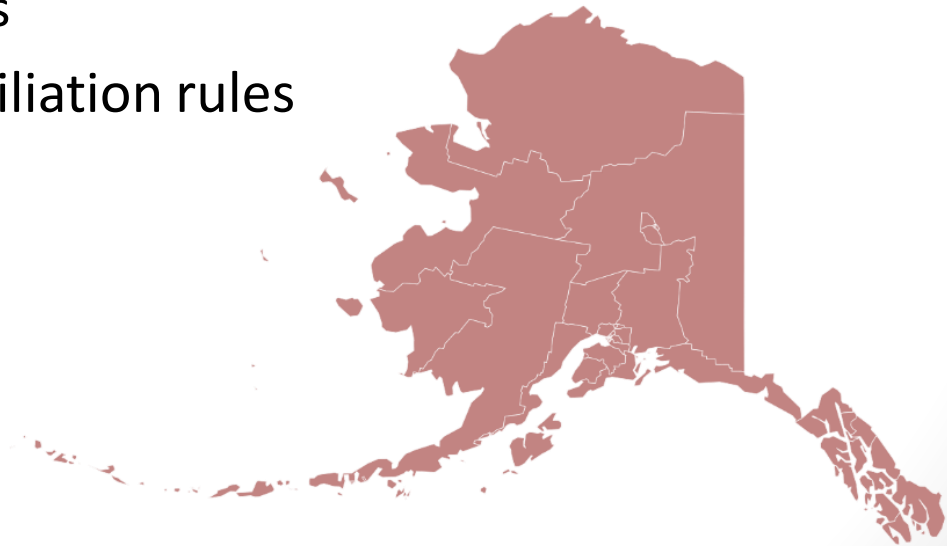
# Socioeconomic Programs: Tribally-Owned Concern

- Tribally-Owned Concern:
  - Small business concern (per applicable size standard)
  - At least 51% **owned** and **controlled** by an Indian Tribe
  - **Exempt** from certain affiliation rules



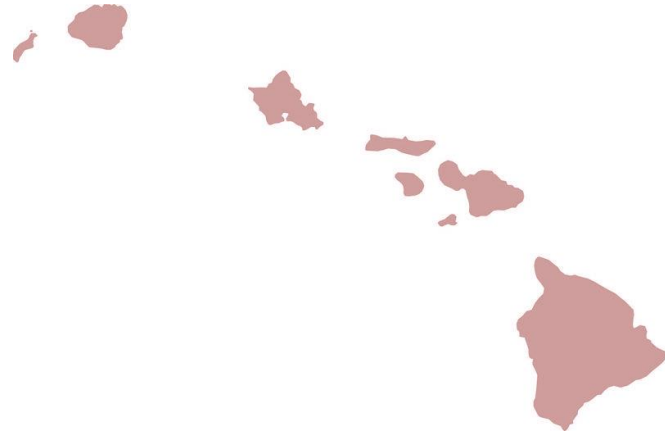
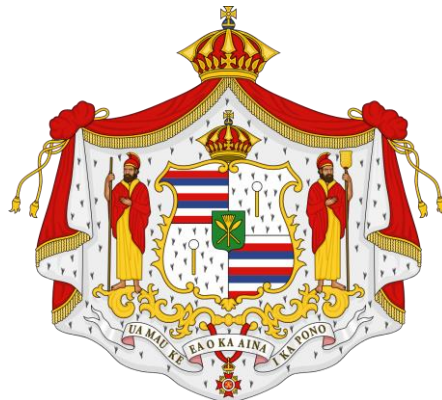
# Socioeconomic Programs: ANC

- Alaska Native Corporation (ANC):
  - Small business concern (per applicable size standard)
  - Alaska Natives and descendants (or another ANC) must **unconditionally own** 51% of:
    - The total equity of the ANC; **and**
    - The total voting powers to elect ANC directors through common stock holdings
  - **Exempt** from certain affiliation rules



# Socioeconomic Programs: NHO

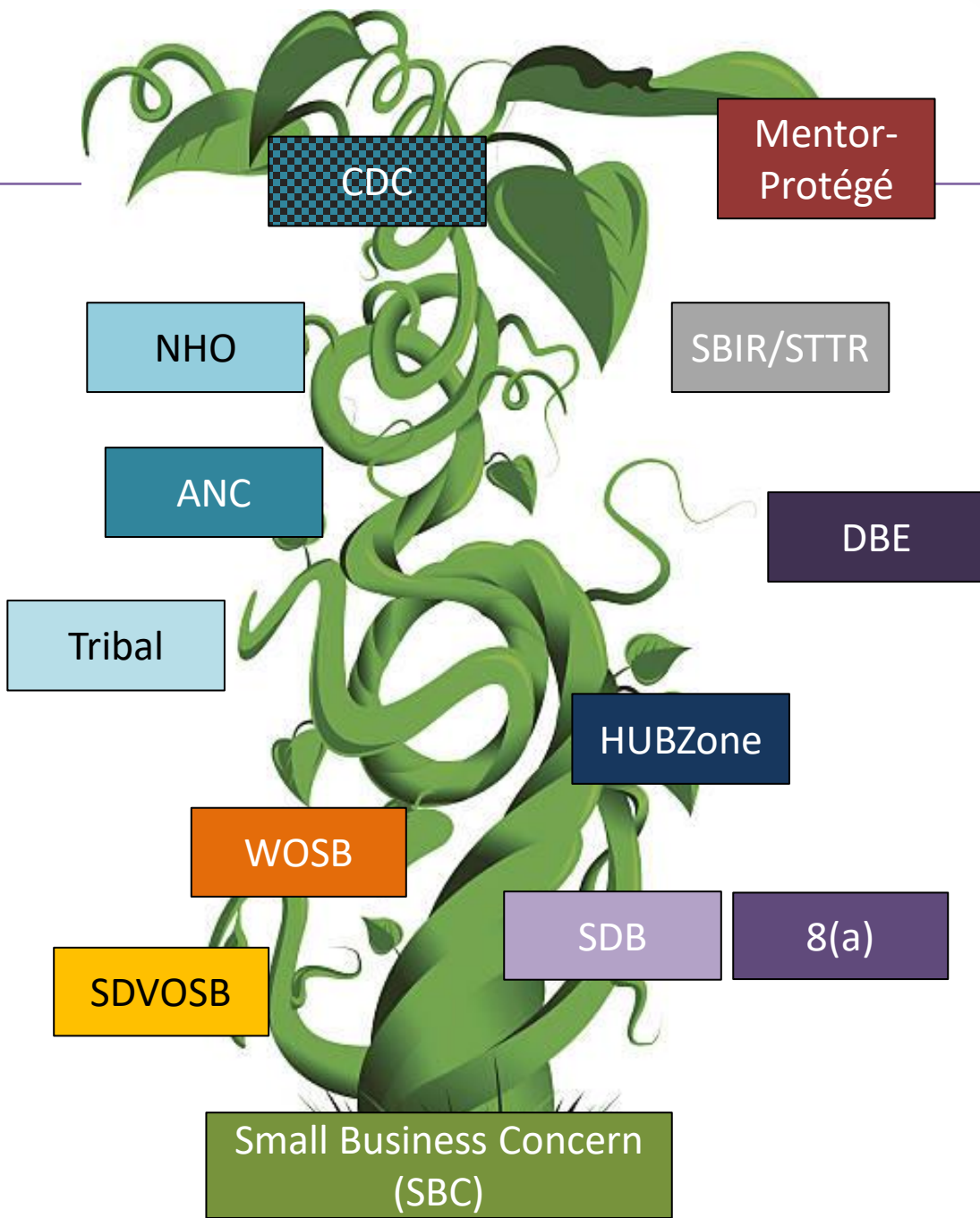
- Native Hawaiian Organization (NHO):
  - Small business concern (per applicable size standard)
  - Community service organization serving Native Hawaiians in Hawaii
  - Nonprofit organization chartered by Hawaii
  - **Controlled** by native Hawaiians
  - Business activities principally benefit Native Hawaiians
  - **Exempt** from certain affiliation rules



# Socioeconomic Programs: CDC

- Community Development Corporation (CDC):
  - Small business concern (per applicable size standard)
    - Does **not** require a for-profit enterprise
  - At least 51% owned by CDCs – nonprofit organization responsible to residents of the areas it serves which has received financial assistance under 42 USC § 9805 *et seq.*
  - **Exempt** from certain affiliation rules

## 4. OTHER SMALL BUSINESS PROGRAMS





# Disadvantaged Business Enterprise (DBE)

- U.S. Department of Transportation program that funds state and local government, public transit, and airport agency construction projects
  - Recipients of these funds must maintain a DBE program
- Disadvantaged Business Enterprise:
  - Small business concern (per applicable SBA size standard **and** average annual gross receipts over last 3 years of \$30.72 million or less for non-airport concession contracts)
  - At least 51% **owned and controlled** by economically and socially disadvantaged individuals
    - Personal net worth is \$1.32 million or less
  - DBE-certified by relevant state, generally through the state Unified Certification Program (UCP)
- State and local transportation agencies are responsible for:
  - Certifying eligible DBE firms
  - Establishing goals for DBE participation, including subcontracting



# Small Business Innovation Research & Small Business Technology Transfer Programs

- Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs are designed to increase commercialization of innovation derived from **federal research and development funding** while meeting federal research and development needs
- Encourages participation by women and socially or economically disadvantaged persons
- 5,000+ new awards every year

## SBIR

3.2% of extramural research budget for agencies with a budget greater than \$100M/year

~\$3.2 billion/year

## STTR

0.45% of the extramural research budget for agencies with a budget greater than \$1B/year

~\$450 million/year

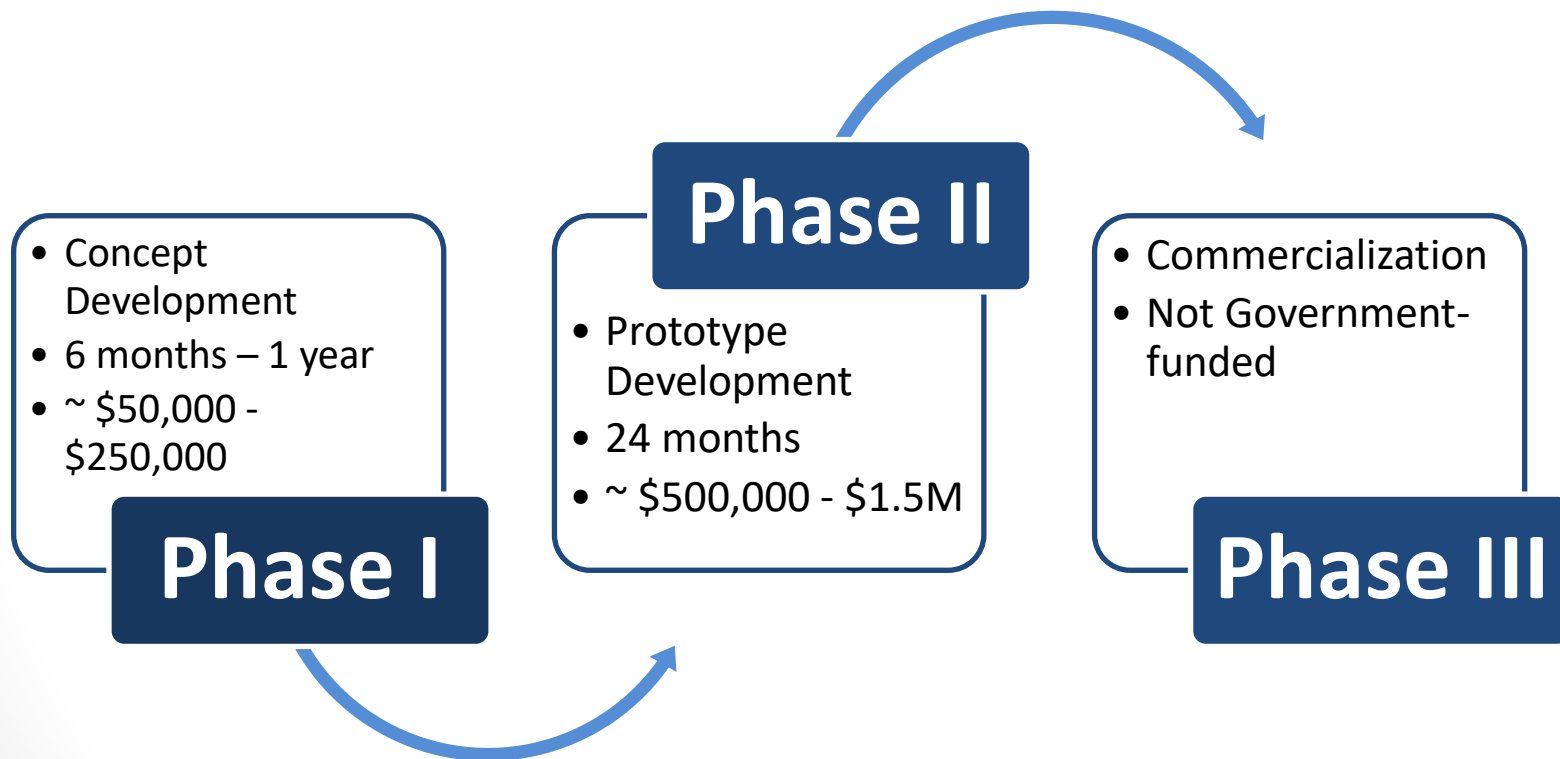
# Small Business Innovation Research & Small Business Technology Transfer Programs (cont'd)

- Eligible small businesses:
  - For profit company
  - **Directly owned** by U.S. citizens
  - Operating in the U.S.
  - **Fewer than 500 employees**
- Work must be done in the U.S.
- Performing R&D work (not commercializing technology that already exists)



# Small Business Innovation Research & Small Business Technology Transfer Programs (cont'd)

## Three-Phase Process



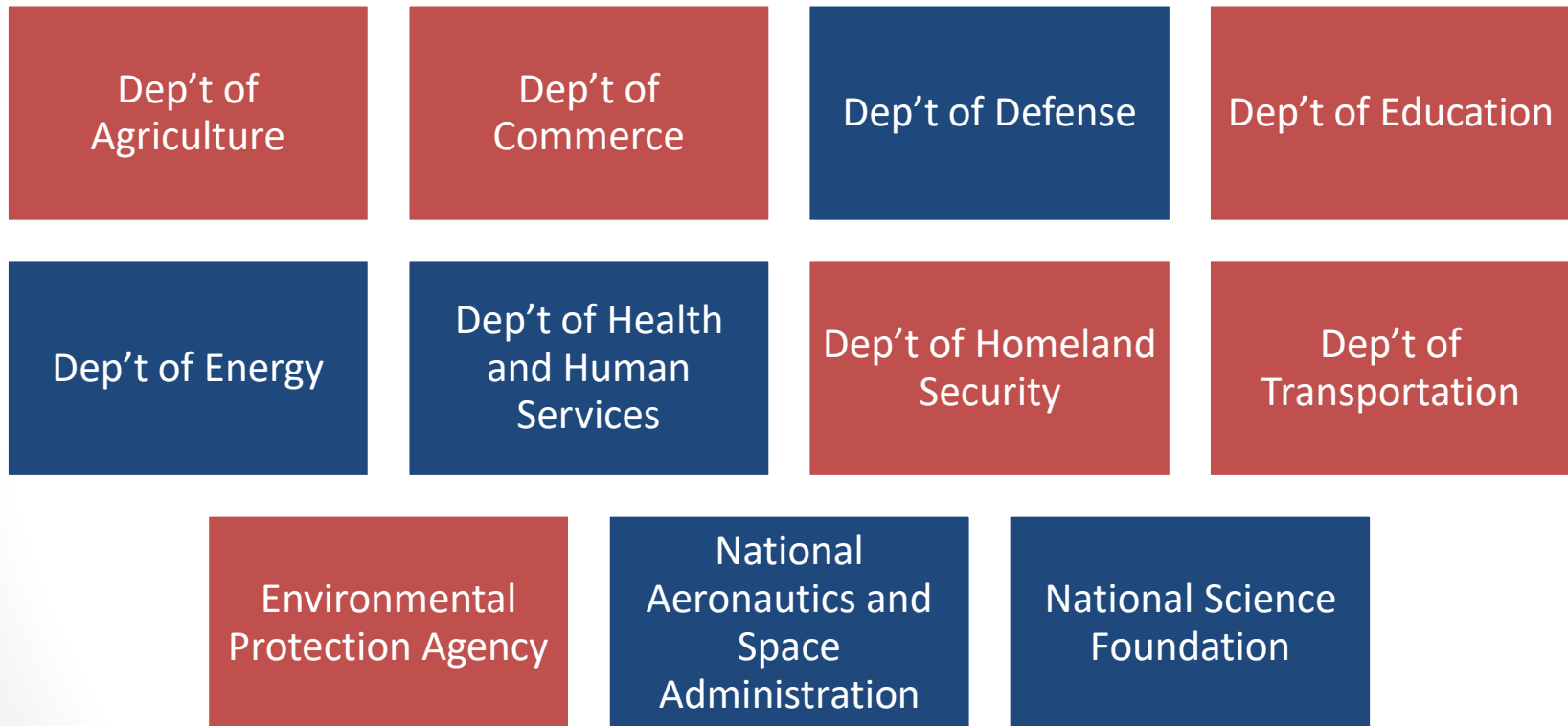
# Small Business Innovation Research & Small Business Technology Transfer Programs (cont'd)

## Comparison of SBIR and STTR

	SBIR	STTR
<b>Partnering</b>	Permitted	Required: must have non-profit research institution partner
<b>Principal Investigator</b>	PI's primary employment (>50%) must be with small business	PI may be employed by small business or research institution (solicitation may have more specific requirements)
<b>Workshare</b>	May subcontract 33% (Phase I); 50% (Phase II)	Small business must perform at least 40%; Research institution must perform at least 30%
<b># of Agencies</b>	11	5

# Small Business Innovation Research & Small Business Technology Transfer Programs (cont'd)

## SBIR (all) & STTR (blue) Participating Agencies



# Mentor-Protégé Program



## Protégé

- Small business concern
- For-profit company or agricultural cooperative

## Mentor

- For-profit company or agricultural cooperative
- Able to assist protégé
- Good character
- Not debarred/suspended
- Able to impart value to protégé via practical experience, business knowledge, and government contracts experience

# Mentor-Protégé Program (cont'd)



SBA must determine mentor's assistance will **promote real developmental gains** for the protégé (can't just be a way to access set-asides)



Mentor and protégé find each other, SBA does not pair companies



Mentor-Protégé max duration: **6 years**



Protégé may have 2 mentors at the same time if they do not conflict/compete



Protégé may only have two mentors over life of the business



Annual evaluations where SBA assesses relationship to ensure protégé is benefiting

# Mentor-Protégé Program (cont'd)

The small business protégé must perform:

1. Work that is **more than administrative or ministerial** (gaining substantive experience); and
2. At least **40%** of the JV's work
  - Cannot subcontract this 40%, even to a similarly situated entity



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## Mentor-Protégé Program (cont'd)

- In addition to 40% workshare requirement, small business JVs between mentor and protégé must comply with the Limitations on Subcontracting (52.219-14)

<b>Services</b>	50% of amount paid by government to JV or subcontracted to similarly-situated entity
<b>Supplies</b>	50% of amount paid by government, excluding materials, to JV or subcontracted to similarly-situated entity
<b>Services + Supplies</b>	50% of <b>dominant portion</b> , either services or supply, per applicable NAICS code, to JV or subcontracted to similarly-situated entity

# Mentor-Protégé Program (cont'd)



- Must draft **written Mentor-Protégé Agreement** (MPA) carefully to cover all planned aspects of relationship; entanglements outside the MPA may still create affiliation
- A mentor and protégé **cannot already be affiliated** when they apply to the mentor-protégé program
- If mentor and protégé form a **joint venture** (as we discussed in Session 2), Small business must:
  - Be the managing venturer in any joint venture formed under a MPA,
  - Own at least 51% of a separate legal entity JV, and receive commensurate profits (or more than commensurate profits)
- Parties must **certify** they have entered into a proper JV and will perform in accordance with the agreement before starting performance
- Regulations list specific requirements that must be in JV agreement (and **approved by SBA**)



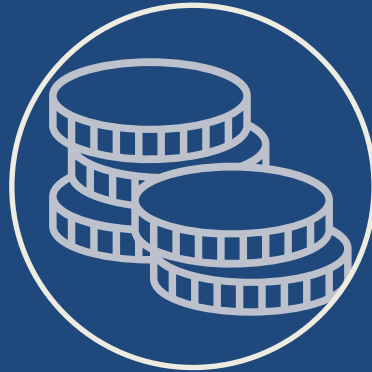
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# Mentor-Protégé Program (cont'd)



## Past performance

- Small business mentor/protégé JV: agency considers JV's experience and/or protégé's and mentor's experience
- Leverages mentor's experience



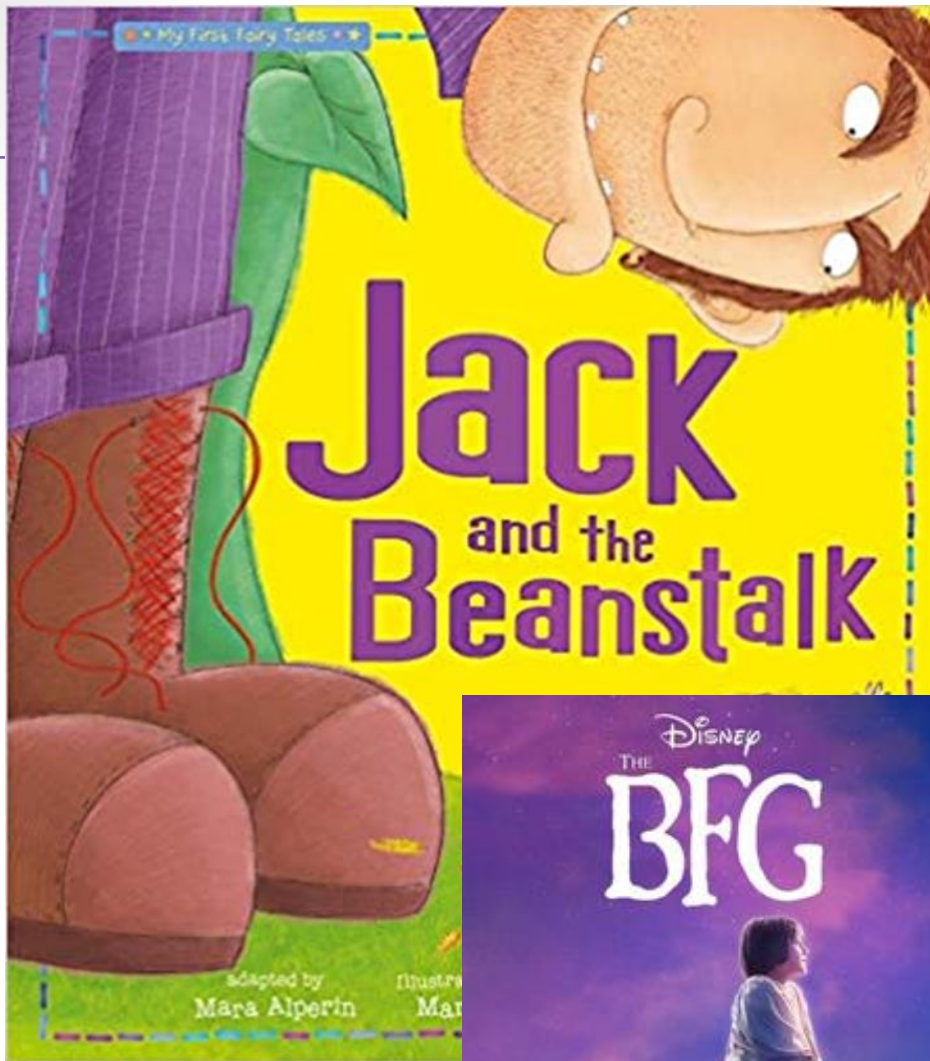
## Shared costs and resources



## Access to mentor's market share and reputation



# CONCLUSION

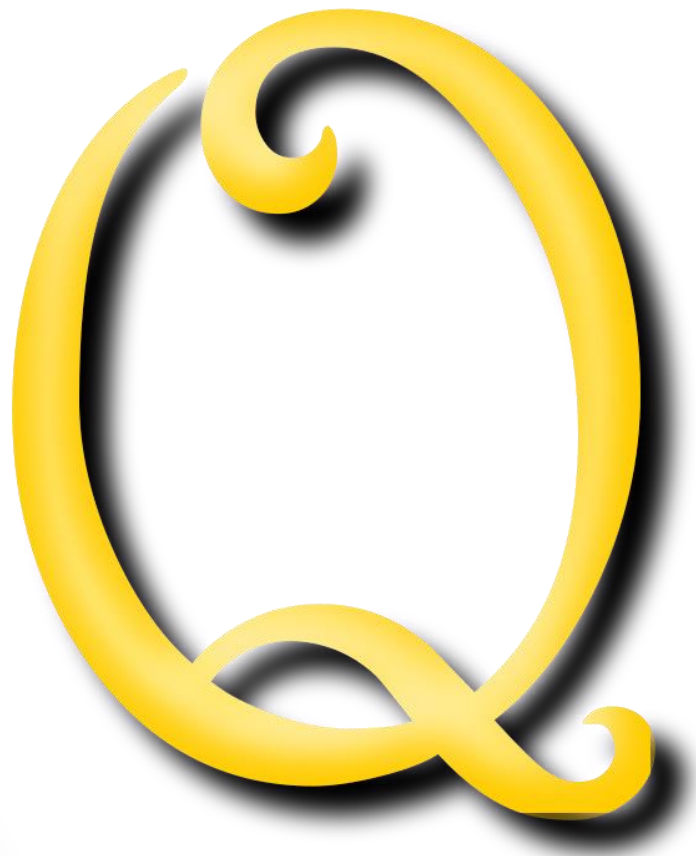


VS.



# Key Risk Areas with Small Business Programs

Risk Area	Best Practice
<b>Affiliation</b>	<ul style="list-style-type: none"><li>• Be careful when drafting agreements</li><li>• Regular check-ups to assess the nature of the relationship</li></ul>
<b>Certification</b>	<ul style="list-style-type: none"><li>• False certifications can yield FCA liability</li><li>• Review size certifications annually with SAM updates</li></ul>
<b>Set-Asides</b>	<ul style="list-style-type: none"><li>• Carefully review contract terms before beginning performance</li><li>• Update government customer promptly if there is any change in status</li></ul>
<b>Workshare</b>	<ul style="list-style-type: none"><li>• Set clear expectations at the beginning of the contract</li><li>• Monitor workshare through the course of the contract</li></ul>
<b>Subcontracting Plan/Goals</b>	<ul style="list-style-type: none"><li>• Work with your customer to set reasonable, market-based goals</li><li>• Ensure that subcontract management is working toward the Subcontracting Plan</li></ul>



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# Next Session on April 16, 2024

- Session 4: Small Business Subcontracting



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