

# 2014 NDAA Allows Prime Contractors to Count Lower Tier Small Businesses

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The 2014 National Defense Authorization Act (NDAA), signed into law in December, offers advantages to small business contractors as well as prime contractors, by allowing primes to count all dollars funneled to small businesses. To date, primes could only tally first tier small business subcontractors for their small business subcontracting goals.

The **Making Every Small Business Count Act of 2013**, first introduced by Rep. Sam Graves (R-MO) in June, became an amendment to the NDAA. Unlike prime contractors, federal agencies are currently able to count all spending with small businesses toward their small business utilization goals regardless of the tier the company holds on a contract. The new rule is meant to incentivize prime contractors to further expand their use of small business contractors. Once the new rule takes effect, primes will be allowed to count 2<sup>nd</sup> tier subcontractors (subcontractors' subs) toward their small business subcontracting goals. "The change will encourage prime contractors to fully consider the merits of small business bids," stated Graves in June when he first introduced the legislation.

Provisions of the amendment include the following:

- The amendment increases availability of lower tier subcontracts to small businesses by counting every subcontracted dollar toward the negotiated small business contracting goal.
- Agencies negotiate small business subcontracting goals with prime contractors, and prime contractors pass down the requirements to use small businesses to their own large subcontractors. The dollars reported are then applied to the government's goal for subcontracted dollars to small businesses.
- By basing the goal on all tiers, the amendment allows for higher small business utilization goals in contracts.

Surprisingly, the American Small Business Coalition (ASBC) does not stand behind this legislation. On the surface, the legislation appears to provide added advantages to small businesses in the federal contracting arena. However, Guy Timberlake ASBC CEO, asserts in his **blog post**, "Don't we have enough challenges with entities that are not legit small businesses being awarded work directly (or indirectly) by federal agencies? Now we create an unmonitored means for organizations to boost their numbers." Timberlake's belief is that large business affiliates and subsidiaries stand to gain the greatest benefit from this change, rather than true independently-owned small businesses.

It will be some time before the true impact of this legislation will be felt. The rules and regulations will be developed and then enacted within 12-18 months. The new criteria will only apply to contracts entered into in the following fiscal year after the rules are enacted.

Although primes will not be able to count 2<sup>nd</sup> tier subcontractors toward small business goals in the near future, the new criteria should be on their radar as well as that of small business contractors. Small companies wishing to enter the federal contracting space may be afforded easier access in years to come.