

Small Business Set-Asides

The United States restricts certain contracts to small and minority-owned United States businesses, notwithstanding various trade agreements. Canadian firms are not eligible for these prime contracts, and are also at a disadvantage when seeking subcontracts. The definition of "small" varies by industry, but may involve up to 1500 employees in a manufacturing firm, or annual revenue of up to \$18 million for a services firm. United States law requires that:

- 20 per cent of prime contract awards be made to U.S. small business;
- all contracts worth less than \$25 000 are limited to small business;
- all contracts above \$25 000 be set aside if the contracting officer can reasonably expect two or more bids from small business; and
- if only one bid from a small business is received, the small business be given a 12 per cent price advantage in evaluation.

In addition to these explicit set-asides, the U.S. government provides loan guarantees and business assistance for small and minority-owned businesses, and acts as prime contractor to government for those who take part in its 8(a) program. It also actively encourages subcontract awards to small business, and rewards prime contractors who exceed their small business subcontracting goals. Subcontract awards to Canadian firms, regardless of size, would not help a prime contractor to meet such goals.

The effect of set-asides is far-reaching. In 1991, a total of \$189.6 billion was awarded in contracts worth more than \$25 000. Of those large contracts, \$6.9 billion was set-aside for small business, \$3.8 billion was awarded through the 8(a) program and \$21.1 billion was awarded in contracts worth less than \$25 000. In total, \$31.8 billion in contracts was completely inaccessible to Canadian firms.

Merchant Marine Act (The Jones Act)

The Jones Act of 1920 requires that cargo transported by water between points in the United States be carried on United States-built and registered vessels that are owned and primarily crewed by U.S. nationals. Although principally designed for commercial shipping and shipbuilding, the Jones Act (coupled with the defence-related prohibitions of the Byrnes/Tollefson Amendment), effectively prevents Canada from participating in the coastal and foreign shipping trade of the United States, from investing in the U.S. shipbuilding industry, and from supplying shipbuilding components and related services to the U.S. market.