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IMPROVEMENTS IN GOVERNMENT SMALL BUSINESS PROCUREMENT PRACTICES

Adopted Pursuant to the Recommendations

OF THE

SELECT COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

JUNE 1970

Printed for the use of the Select Committee on Small Business of the House of Representatives

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LETTER OF TRANSMITTAL

SELECT COMMITTEE ON SMALL BUSINESS,
HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
Washington, D.C., June 10, 1970.

To the Members of the Subcommittee on Government Procurement of the House Small Business Committee:

Transmitted herewith is a report describing procurement actions helpful to small business that have been taken by Federal departments and agencies pursuant to prior recommendations of our Subcommittee as set forth in House Report No. 1975, 90th Congress.

Sincerely yours,

JAMES C. CORMAN,
Chairman, Subcommittee on Government Procurement.

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Chapter I. Introduction

At the close of the 90th Congress the House Small Business Committee adopted a report (H. Rept. 1975, 90th Cong.) which sets forth various recommendations designed to improve the opportunity of small business to obtain contracts and subcontracts for Government work.

These recommendations and the information upon which they are based were brought to the attention of the heads of the various Federal agencies having cognizance of the matters therein contained. Subsequently, responses were received from the agencies showing that many of the committee's recommendations had been implemented.

This report consists of excerpts taken from the committee's recommendations, the agencies' responses, and a brief account of remedial actions taken pursuant to such recommendations.

The areas in which the committee succeeded in bringing about improvements and actions beneficial to small business in Government procurement include:

(a) Strengthening the small business set-aside program (chapters II through VI).

(b) Elimination of discriminatory practices in determining responsibility of prospective small business contractors (chapters VII through IX).

(c) Adoption of methods and procedures to encourage small business participation in Government procurement, such a eliminating paper profusion and liberalizing progress payments (chapters X and XI).

(d) Initiation of an interagency study designed to increase research and development prime contract awards to small business (chapter XII).

(e) Establishment of a Government-industry study designed to strengthen the position of small business in subcontracting, particularly in the light of cutbacks in defense spending (chapter XIII).

Chapter II. Construction Set-Asides

THE RECOMMENDATIONS

That the Armed Services Procurement Regulation Committee immediately eliminate the provision in the ASPR which prohibits the set-aside of proposed construction procurements of $500,000 or more.

That the Administrator of Small Business Administration immediately retract SBA's June 10, 1965, directive to its area administrators which limits construction set-asides to $500,000.

THE FINDINGS

Previously, there existed a class set-aside for all construction procurements under $500,000. The criteria of sufficient small business competition and reasonable price were applied to all procurements over $500,000. In June 1965, officials of the armed services, prompted by SBA approval, imposed a $500,000 ceiling on small business set-asides for construction and alteration work. This change prohibited DOD contracting officers from setting aside procurements over $500,000 even if the criteria were met. Since adoption of the ASPR provision, the small business share of DOD construction awards dropped from 59 percent in fiscal year 1965 to 55 percent in fiscal year 1968. The percentage of set-asides to total awards declined from 38 percent in fiscal 1965 to 22 percent in fiscal year 1968.

Neither General Services Administration nor National Aeronautics and Space Administration, large buyers of construction services, have adopted such limitation. They hold that any procurement, regardless of the amount, should be set aside if it meets the established criteria. Officials of the Departments of the Navy and Air Force testified that they believe that all procurements, regardless of amount, should be set aside if the criteria are met. DOD should eliminate the unwarranted ceiling on construction set-asides. SBA, in view of the restoration of the joint set-aside program, should revoke its previous approval of such ceiling.

RESPONSE BY DEPARTMENT OF DEFENSE

DOD's letter of January 29, 1969, reads in pertinent part as follows:

> The Armed Services Procurement Regulation has been revised to eliminate the prohibition to setting aside proposed construction procurements of $500,000 and above. Defense Procurement Circular No. 65 dated December 20, 1968, implemented the revision to all procurement officials in the Department of Defense. The revision was effective upon receipt of the circular.

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The provision in DPC No. 65 referred to above follows:

> To reflect the action taken by the Small Business Administration to permit construction set-asides exceeding $500,000, paragraph 1–706.5(a)(3) is revised to read as follows:
>
> (3) Every proposed procurement of $500,000 or more for construction shall be considered on an individual procurement basis under (1) above.

RESPONSE BY SMALL BUSINESS ADMINISTRATION

Excerpt from November 18, 1968, letter of SBA's Associate Administrator for Procurement and Management Assistance follows:

> Pursuant to the recommendations set forth in House Report 1975, I am today asking Mr. Thomas D. Morris, Assistant Secretary of Defense, to modify the Armed Services Procurement Regulation (ASPR) in order that we can begin to make construction set-asides over the $500,000 limit as we did prior to June 10, 1965.
>
> I trust that this action will result in a reversal in the downward trend of construction awards to small firms.

Supplemental report by SBA's Associate Administrator, Procurement and Management Assistance, on February 3, 1969, follows:

> In accordance with Recommendation 5, the enclosed memorandum (tab A) was sent to all Small Business Administration area administrators, retracting the directive limiting set-asides of proposed construction procurements to $500,000. This action was taken after the ASPR Committee removed this stipulation as suggested by this agency.

(Tab A referred to follows:)

JANUARY 16, 1969.

CONSTRUCTION SET-ASIDES ABOVE $500,000

All Area Administrators:

The report of the House Select Committee on Small Business, dated October 21, 1968, recommended that the Armed Services Procurement Regulation (ASPR) be modified to eliminate the provision which prohibits small business set-asides on proposed construction procurements of $500,000 or more. The report further recommended that the Small Business Administration retract its directive which limits construction set-asides to $500,000.

On November 18, 1968, I informed Assistant Secretary of Defense Morris and the select committee that the SBA directive would be rescinded, effective when permitted by Defense Department regulations. The ASPR Committee on December 5, 1968, approved a new wording for ASPR 1–706.5(a) (3): "(3) Every proposed procurement of $500,000 or more shall be considered on an individual basis under (1) above." I have been informed that a Defense Procurement Circular to this effect will be issued this week.

Additionally, elements of the Defense Department, as shown by the enclosed NAVFAC notice, are already acting to implement the change. The Naval Facilities Engineering Command has instructed its personnel "to initiate, where appropriate, consideration of small business set-asides in construction procurements in excess of $500,000."

In view of the above the SBA directive limiting construction set-asides to $500,000 is rescinded. The class set-aside provision will continue on proposed construction procurements of $500,000 or less, and those in excess of that figure should be considered individually as they were prior to June 10, 1965. All procurements not unilaterally set aside should be considered for joint action.

I wish to request your particular attention to the exploitation of this regained position; specifically, I would appreciate immediate action to contact representatives of the Naval Facilities Engineering Command within your area, volunteering SBA cooperation and assistance. A list of the NAVPAC small business specialists is enclosed. For Navy activities use of NAVMAT Form 430/1 (see enclosure) in lieu of SBA Form 70 is authorized. A print out of construction firms will be made available to the field as soon as it can be processed.

IRVING MANESS,
Associate Administrator,
Procurement and Management Assistance.

ACTION TAKEN BY DEPARTMENT OF THE NAVY, NAVAL FACILITIES ENGINEERING COMMAND

DEPARTMENT OF THE NAVY,
NAVAL FACILITIES ENGINEERING COMMAND,
Washington, D.C., December 23, 1968.

NAVFAC NOTICE 4330.

From: Commander, Naval Facilities Engineering Command.
To: Distribution List.

Subj: Set-Asides in Construction Procurement.

1. *Purpose.* This Notice is to notify Engineering Field Divisions of the removal of the $500,000 limitation on construction set-asides.

2. *Background.* The Report of the Select Committee on Small Business, House of Representatives, dated 21 October 1968, recommended the Small Business Administration (SBA) retract its directive limiting construction set-asides to $500,000. The report further recommended that the Armed Services Procurement Regulation be modified to eliminate the provision which prohibits small business set-asides on proposed construction contracts $500,000 or more. Pursuant to these recommendations SBA has rescinded its directive limiting construction set-asides to $500 000 to become effective when permitted by DOD regulations. Accordingly on 5 December 1968 the Armed

Services Procurement Regulation Committee approved the deletion of the present wording of ASPR 1–706.5(a)(3) and insertion of the following clause in lieu thereof:

"(3) Every proposed procurement of $500,000 or more shall be considered on an individual basis under (1) above."

3. *Discussion.* The standard for determining total set-asides in ASPR Section 1–706.5(a)(1) must be followed. That section states, "* * * the entire amount of an individual procurement or a class of procurements, including but not limited to contracts for maintenance, repair, and *construction shall be set aside for exclusive small business participation if the Contracting Officer determines that there is reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices.*" This standard, together with other appropriate policies stated in ASPR series 1–700 and 1–800, must be utilized in determining whether a proposed procurement shall be set aside exclusively for small business bidding.

4. *Action.* In view of the pending change in ASPR, it is requested that concerned personnel be promptly informed of the above revision and to initiate, where appropriate, consideration of small business set-asides in construction procurements in excess of $500,000. In order to demonstrate that these requirements will be satisfied, prior to solicitation of bids, an affirmative determination establishing justification for unilateral set-aside action shall be placed in the contract file for each procurement in excess of $500,000. NAVMAT Form 4380/1 (Rev. 8–68) shall be utilized to identify procurements which the Contracting Officer determines are not suitable for set-aside.

5. *Cancellation.* This Notice is cancelled when its contents have been incorporated into a forthcoming Defense Procurement Circular; for record purposes, 31 March 1969.

W. M. Enger,
Acting Commander, Naval Facilities Engineering Command.

ACTION TAKEN BY GENERAL SERVICES ADMINISTRATION

General Services Administration,
Washington, D.C., March 14, 1969.

To: Heads of Federal Agencies.
Subject: Small business set-aside for proposed construction procurements.

* * * * *

3. *Background.* The report of Subcommittee No. 2 to the Select Committee on Small Business, House of Representatives, House Report No. 1975 of October 21, 1968, recommends a change in the policy of the Small Business Administration which limits small business set-asides for construction procurements to those actions involving amounts under

$500,000. In furtherance of this recommendation, and to foster increased participation of small business in construction procurements generally, the Small Business Administration has announced new policies in this regard which are set forth in paragraph 4, below.

4. *Policies.*

a. A total set-aside preference for the participation of small business should be initiated in every action to procure construction services between $2,500 and $500,000 in amount, subject only to a finding by the contracting agency that such preference would not serve the best interests of the Government.

b. Small business set-aside preferences should be considered for construction procurements in excess of $500,000 on a case-by-case basis, favoring the preferential participation of small business whenever appropriate.

5. *Recommended action.* Agencies should review their pertinent procurement policies and procedures and rescind any regulations or directives contrary to the policies set forth in paragraph 4, above. Any agency issuances deemed necessary with respect to small business set-asides for construction procurements should be consistent with these policies.

HARRY R. VAN CLEVE,
General Counsel.

Chapter III. Joint Set-Asides

THE RECOMMENDATION

That Small Business Administration furnish to the subcommittee a timely progress report for the 9-month period ending September 30, 1968, and quarterly thereafter, covering all aspects of SBA's participation in the small business set-aside program pursuant to section 15 of the Small Business Act.

THE FINDINGS

The set-aside is the most effective method which can be utilized by the procurement agencies to comply with the congressional mandate that a fair proportion of their purchases and contracts be "placed" with small business enterprises.

A major setback in the set-aside program occurred in July 1965 when SBA administratively abandoned its assigned responsibilities under the section 15 joint set-aside program, withdrew its representatives from the military and civilian procurement centers, transferred all responsibilities under the act, including that of appeal, to the procurement agencies, and adopted an ineffective and unproductive postaward surveillance program.

Subsequent to the full committee's recommendation and action in the matter, SBA and the procurement agencies agreed to restore the joint set-aside program and to once again establish SBA personnel in the various military and civilian procurement centers. There is testimony regarding plans made and preliminary steps taken to implement the "new" set-aside program. We are deeply concerned as to the manner in which the program is being administered and expect the congressional mandate in every respect to be fully effected.

THE RESPONSE

Portions of SBA's progress reports covering the calendar year of 1968, and quarterly periods thereafter, follow:

January–December 1968

As finally developed, the program called for placement of SBA personnel at various purchasing installations as procurement center representatives (PCR's). These PCR's carry the principal responsibility for fulfilling the SBA obligation to—

- Review for joint set-aside those procurements not unilaterally set-aside by the procuring agency, and initiate such joint set-asides as appropriate;
- Appeal to the head of the purchasing agency any cases where SBA and agency representatives do not agree on a set-aside;

• Continue surveillance reviews of purchasing activities; and

• Perform additional functions, such as locating additional small business sources.

SBA assigned the 14 individuals previously conducting the surveillance program to duties as PCR's. By the close of fiscal year 1968 an additional four PCR's had been hired, trained, and assigned by the agency. Immediately after July 1, 1968, 13 employees were added to PCR rolls, making a total of 31 assigned.

During the ensuing months the strict personnel limitations faced by the agency prevented further expansion toward the planned total of 45 PCR's. Then, in early December, permission was obtained to proceed to add 10 PCR's. Additional locations were immediately selected, and the necessary personnel procedures were begun to establish and fill the 10 jobs.

In summary, it may be said that the period from January 1 to December 31, 1968, has been a part of a learning and buildup phase which will continue until the initially budgeted 45 PCR's are on board, trained, and established in appropriate installations. Although it is presently anticipated that small business figures will cease to decline between the second and third quarter of fiscal year 1969, it is not expected that significant statistical results of the program will be visible before fiscal year 1970.

January–March 1969

Two situations have been of principal importance in the set-aside program during the past quarter: the increase of the procurement center representative field staff; and the conduct of surveillances at various procuring installations of the Department of Defense.

It must be remembered, of course, that the estimate of a 1-year period to achieve productivity, cited in the previous report, is applicable to the personnel presently being hired. Therefore, it is not anticipated that they will have significant impact on the program prior to the close of fiscal year 1970.

An important function of the PCR program is the continuation of the surveillances of procuring installations. The surveillance is directed toward determining the policy and attitudes toward small business at the installation, evaluating the implementation of policy, and recommending changes which could improve the performance of the program. It is a constructive criticism of the small business program at an installation, performed by the appropriate PCR and another SBA representative assigned by the Central Office. In some cases a PCR is assigned to the installation; often there is no SBA representative attached to the organization on full-time basis. During the last quarter six installations were reviewed.

One indication of the activity of the PCR's is the frequency

with which SBA appeals decisions on set-asides. During the first half of fiscal year 1969 there have been 256 actions appealed to the head of the buying agency. Of these, 195 were sustained and set-asides were made. Of the 61 that were rejected, five formal appeals have been made to the Secretarial level and to date none have been denied.

Finally, as a result of delayed data returns, adjustments have been made to figures provided in the previous report. The figures previously cited were conservative. Also, this report places the material from Defense Department reports and from SBA on the same time frame; all data is based on reports for the first half of fiscal year 1969, which is the most recent quarterly information available. This statistical material is presented in appendix D.

(Appendix D follows:)

APPENDIX D

	1st quarter fiscal year 1969	1st half fiscal year 1969
Number of items or services placed under class set-asides	2,193	6,401
Number of small business sources furnished	654	1,510
Breakouts	(1)	1,991
Savings resulting from SBA initiated actions	$967,194	$7,210,235
Small business share of dollars awarded by DoD (percent) [2]	15.6	15.6
Small business set-asides in relation to total dollars committed by DoD (percent) [2]	3.2	3.3
Small business set-asides in relation to small business share of awards by DoD (percent)	23.1	23.3

[1] Not available.
[2] From "Military Prime Contracts Awards and Subcontract Payments or Commitments."

April–June 1969

The most significant fact about the closing quarter of fiscal year 1969 was the completion of the recruitment of 10 procurement center representatives (PCR's). The addition of these 10 individuals makes a total of 43 PCR's assigned to over 200 purchasing installations of the procurement agencies of the Federal Government. The various assignments of the 43PCR's are reflected by appendix A, a listing of the stations covered by PCR's.[1] The completion of these recruitment actions brings the Small Business Administration (SBA) back to approximately the level of deployment prior to the termination of SBA participation in set-asides in June 1965.

As a measure of the activity of the PCR's already functioning, statistical data derived from SBA reports and procuring agency information is attached as appendix B. Additionally, the records of the last quarter show that 14 surveillances (or audits) were performed; over double the number for the previous three quarters.

(Appendix B follows:)

[1] The listing referred to may be found in the committee files.

Appendix B

	Fiscal year 1969 [1]		
	1st quarter	1st half	1st 3 quarters
Number of items or services placed under class set-asides	2,193	6,401	6,517
Number of small business sources furnished	654	1,510	2,889
Breakouts	(2)	1,991	2,290
Savings resulting from SBA initiated actions	$967,194	[3] $4,550,000	$7,132,385
Small business share of dollars awarded by DOD (percent) [4]	15.6	15.6	16.5
Small business set-asides in relation to total dollars committed by DOD (percent) [4]	3.2	3.3	3.9
Small business set-asides in relation to small business share of awards by DOD (percent)	23.1	23.3	23.7

[1] Figures are cumulative.
[2] Not available.
[3] Corrected from previous quarterly report.
[4] From "Military prime contracts and subcontract payments or commitments."

July–September 1969

This quarter was opened by a general conference of the Small Business Administration's (SBA) procurement center representatives (PCR's). The 10 PCR's who were newly employed, met in Washington for 2 days at the first of the month for general orientation and training in the overall programs of the agency and their specific responsibility in the procurement assistance program. The other PCR's then joined the new personnel for a closing 2-day workshop on PCR functions and duties.

Evaluation of the performance of the PCR's may be based on figures presently available for fiscal year 1969. This data, derived from SBA reports and procuring agency information, is attached as appendix A.

(Appendix A follows:)

Appendix A

	Fiscal year 1969 (cumulative)			
	1st quarter	2d quarter	3d quarter	4th quarter
Number of items or services placed under class set-asides	2,193	6,401	6,517	8,936
Number of small business sources furnished	654	1,510	2,889	4,215
Breakouts		1,991	2,290	2,687
Savings resulting from SBA initiated actions	$967,194	$4,550,000	$7,132,385	$10,280,142
Small business share of dollar awarded by DoD (percent)	15.6	15.6	16.5	17.8
Small business set-asides in relation to total dollars awarded by DoD (percent)	3.2	3.3	3.9	4.2
Small business set-asides in relation to small business share of awards by DoD (percent)	23.1	23.3	23.7	25.8

The quarterly figures are presented on a cumulative basis; therefore, the figures for the fourth quarter reflect the total for the fiscal year. It should be noted that earlier estimates of a $10 million savings to the Government were slightly exceeded at $10,280,000. These savings are those which resulted from SBA-initiated actions such as breakouts for spare-part procurement; or a lower price to the Government as compared to the most recent previous procurement of the item, if the new supplier is an SBA referred source.

More significant are the percentage figures which indicate a steady increase from the beginning of the year in the small

business share, and in set-asides, as related both to total procurement and to the small business share.

Another important effort of the PCR program is the surveillance of purchasing installations by SBA representatives. During the last quarter, SBA has planned and scheduled 11 such surveillances to be performed during the second quarter of this fiscal year. Five of the surveillances were begun during the first quarter but are not scheduled for completion before the first of October. The past reaction to such surveillances has been extremely encouraging to SBA. The previous reports have given an objective and expert view of individual installation small business programs. Both at the departmental level and in the purchasing installations, the findings and recommendations of these reports have been given serious consideration and corrective action on program flaws has been undertaken. It is anticipated that future surveillances will meet the same cooperative spirit and quick response as has been offered in prior cases.

In summary, this quarter has seen the introduction of the 10 new PCR's to the purchasing arena, the completion of their training, and the accumulation of statistics for the previous fiscal year which give some encouragement to the small business community. SBA has also emphasized the surveillance program and increased its individual and personal contacts with personnel of the purchasing agencies, whose cooperation and interest is essential for the success of the small business program.

October–December 1969

The set-aside program was not marked by particularly unusual events during this quarter, but the efforts of the Small Business Administration (SBA) appear to have borne some fruit in comparison to a similar previous period. The figures for these quarterly reports are always for the quarter previously completed due to reporting and computation times. Appendix A shows the results of the increased number of procurement center representatives (PCR's) assigned to purchasing activities and of their growing experience and specialized knowledge of their assigned posts and particular installation product line orientations. All figures show an increase in the first quarter of fiscal year 1970 over the first quarter of fiscal year 1969.

(Appendix A follows:)

APPENDIX A

	1st quarter fiscal year 1969	1st quarter 1970
Number of items or services placed under class set-asides	2,193	9,467
Number of small business sources furnished	654	1,201
Breakouts	[1] 700	701
Savings resulting from SBA initiated actions	$967,194	$1,228,010
Small business share of dollar awarded by DoD (percent)	15.6	16.4
Small business set-asides in relation to total dollars awarded by DoD (percent)	3.2	3.8
Small Business set-asides in relation to small business share of awards by DoD (percent)	23.1	26.1

[1] Approximate.

It was during the second quarter, however, that 11 surveillance reviews of purchasing installations were completed, some having been started during the first quarter. These surveillances are a complete analysis of the small business program at selected installations, conducted by an SBA representative from another area and assisted by the PCR assigned to the installation. Surveillance results have been forwarded to the appropriate services and agencies under review.

Another important factor in reviewing the small business program was the opportunity for five diverse PCR's to testify about their work before the Subcommittee on Government Procurement. SBA was proud of the contribution which these men offered and is confident that their testimony will be of use to the committee. These appearances before the subcommittee considerably enhanced the prestige of the PCR's in the installations they service. It is noted that more consideration is being given to set-aside appeals by contracting officers and heads of procuring activities since the witnesses appeared. SBA's formal appeals have doubled over a year ago and the findings for SBA are now at their highest level, about 60 percent.

While the above was progressing, however, the essential heart of the program—the procurement center representatives—was functioning to good effect, as shown by appendix A, despite increasing time devoted to assisting 8(a) or minority enterprise programs by providing products and sources. An interim audit of procurement spending will lead to optimizing PCR assignments, in an attempt to counterbalance defense cutbacks.

Chapter IV. Set-asides in Dredging Industry

THE RECOMMENDATION

That the Department of Defense establish an ad hoc committee under its direction and supervision to consist of a representative of the Office of the Secretary of Defense, one from the Army Corps of Engineers, one from the Small Business Administration, and two or more from industry representatives, to study the need for change in the Armed Services Procurement Regulation and in procurement policy, practices, and procedures regarding the award of dredging construction contracts set aside for small business so that the purpose of the set-aside program will not be defeated.

THE FINDINGS

Small business in the dredging industry has complained to the subcommittee that certain large dredging companies were wrongfully obtaining the benefits of the small business set-aside program through collusive arrangements with small firms which, having obtained prime set-aside awards, subcontract substantially all of the work to the large firms. The subcommittee recommended administrative action by DOD and SBA to curb such practices. Subsequently, DOD has agreed to include in their regulations the minimum percentage of work a small dredger must perform with his own equipment or that leased from another small business to qualify for a set-aside award, and, that said percentage be determined by SBA. A study is being conducted by SBA to determine the appropriate percentage to be applied.

ACTION TAKEN

A summary of joint action taken by DOD and SBA was provided by an SBA representative in testimony before the Subcommittee on Government Procurement of the House Small Business Committee on June 11, 1968, as follows:

> Reference is made to the committee's recommendation that an interagency-industry study be made of dredging construction set-asides consisting of DOD and SBA representatives. Small firms in the dredging construction field had protested against alleged unfair collusive bidding practices of some large companies. By collusive bidding, such companies obtain prime awards of set-aside contracts in the names of small dredging firms and perform substantially all of the work as subcontractors.
>
> Such an ad hoc committee has been established. As a result discussions between the Administrator of SBA and the Assistant Secretary of Defense (Installations and Logistics), the

> DOD has agreed to amend its procurement regulation to require bidders under a dredging procurement set aside for small business to perform a certain percentage of the work with their own dredging equipment or owned by a small business concern. SBA has agreed to advise the DOD as to what this percentage should be. Because of the fact that there is very little information available with reference to dredging contractors, SBA and DOD have agreed that in order to obtain necessary data it would be necessary to go to industry and obtain such information on an individual firm basis.

On June 25, 1969, DOD revised the dredging set-aside provisions of the Armed Services Procurement Regulation as shown in the following excerpt from Defense Procurement Circular No. 71:

> Pending publication in the Armed Services Procurement Regulation, the following changes are published for information and guidance of all Government procurement personnel concerned.
>
> The following revision to the small business size standard for dredging incorporates a requirement for a designated percent of the work to be performed by the contractor with his own equipment or that obtained from another small business firm.
>
> 1-701.1 (a) (2) *a* sentence added
>
> Also, in order to be eligible for a small business set-aside award on dredging contracts, the firms must perform the dredging of at least 40 percent of the yardage advertised in the plans and specifications with dredging equipment owned by the bidder or obtained from another small business dredging concern.

Committee's September 16, 1969, request to SBA for further information follows, in part:

> According to the last report provided by your agency in February 1969, questionnaires were being distributed to determine the feasibility of establishing a percent of the dredging work a bidder must perform to participate in a set aside. It appears that the Armed Services Procurement Regulation was subsequently amended to require 40-percent performance of the work with equipment owned by the bidder or obtained from another small business dredging concern.
>
> It will be appreciated if you would provide complete information, including results of your agency's feasibility study and comments regarding the ASPR regulation.

SBA response of October 23, 1969, follows:

> This is in reply to your letter of September 16, 1969, requesting us to provide information on the results of this agency's study of the dredging construction industry and the amendment to the Armed Services Procurement Regulation requiring 40-percent performance of the dredging with equipment owned by the bidder or obtained from another small business dredging concern.

The information obtained as a result of our survey of the dredging industry was not adequate for the purpose of determining that the 40-percent figure adopted was the precise figure that would be better than any other figure, nor indication that this figure was not appropriate.

In the circumstances, it was determined to accept the recommendation of the members of the Southeastern Dredging Association. If experience should demonstrate that a revision of the 40-percent figure were justified and appropriate, we will endeavor to have the Armed Services Procurement Regulation amended accordingly.

Chapter V. Reprocurement Following a Set-Aside Dissolution

THE RECOMMENDATION

That the Armed Services Procurement Regulation Committee and the Interagency Procurement Policy Committee consider appropriate amendments to the ASPR and the FPR which would give increased time for readvertising a small business set-aside that has been dissolved.

THE DOD RESPONSE

The Department of Defense response of May 7, 1969, in pertinent part follows:

> The Armed Services procurement regulation has contained a provision which requires the contracting officer to question any delivery requirement which appears unrealistic and inimical to free competition and where necessary, initiate appropriate action to adjust the schedule accordingly. This delivery schedule review provision is located in other than the small business section of the Armed Services procurement regulation.
>
> In order to emphasize to contracting officials the importance of this review with respect to the capabilities of small business concerns, we have amended the small business section of the Armed Services procurement regulation to include the appropriate coverage relating to procurements initiated because of the dissolution of a small business set-aside.
>
> We believe that this amendment provides for additional considerations to small business concerns and supports the objectives of the small business program as viewed by both Defense and your subcommittee.

ASPR REVISION

DOD caused section 1–706.7 of the ASPR to be amended by adding the new matter shown in brackets as follows:

> *1–706.7 Automatic Dissolution of Set-Asides.* If the entire set-aside portion is not procured by the method set forth in 1–706.5 as to total set-asides, or in 1–706.6 as to partial set-asides, the determination referred to in 1–706.1 is automatically dissolved as to the unawarded portion of the set-aside, and such unawarded portion may be procured by advertising or negotiation as appropriate in accordance with existing regulations (see 3–201.2(b)(ii) and 3–210.3 as to negotiation. [Since a considerable time may have elapsed since the initiation of the requirement, contracting officers, prior to issuing a new soliciation, shall review the required

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delivery schedule (see 1–305.2) to insure that it is realistic in the light of all relevant factors including the capabilities of small business concerns.]

GSA RESPONSE

General Services Administration response of June 5, 1969, in pertinent part follows:

FPR and ASPR procedures are substantially the same * * *. They emphasize the need to allow sufficient bidding time to facilitate competition on reasonable and equal terms and to obtain the best price possible. The regulations enumerate the factors to be considered in establishing bidding time and provide, as a general rule, that bidding time shall not be less than 15 calendar days when procuring standard commercial articles and services and not less than 30 calendar days when procuring other than standard articles and services. In short, the regulations require the allowance of sufficient bidding time after consideration of all relevant circumstances (see FPR 1–2.202–1 and ASPR 2–202.1).

We believe that the existing regulations in this regard are reasonable and yet flexible enough to accommodate varying circumstances which prevail after a dissolution of a small business set-aside. In some cases, lapse of time from the initial establishment of the requirement to the dissolution of the set-aside might create an urgent need for the supplies or services which did not exist before. On the other hand, because of such lapse of time or the nature of the response to the solicitation, the procuring agency might deem that a need no longer exists. The reason for the dissolution of the set-aside might also be a factor to be considered in determining the appropriate bidding time for the reprocurement. It seems to us, therefore, prefereable to allow the circumstances surrounding the reprocurement to dictate the bidding time to be allowed rather than to attempt to establish an arbitrary period of time for all cases.

Nevertheless, in the interest of obtaining full competition and making optimum utilization of small business capabilities after the dissolution of a small business set-aside, we propose to amend FPR 1–1.706–7, Automatic Dissulotion of Set-Asides, by the addition of a statement which will require contracting officers, prior to issuing an invitation for bids or a request for proposals following the dissolution of a small business set-aside, to review the required delivery schedule for the supplies or services to be resolicited in order to ensure that the delivery schedule is realistic in the light of all relevant factors, including the capabilities of small business concerns.

FPR REVISION

The Administrator of General services issued Amendment No. 66 effective January 15, 1970, setting forth the following information:

Background. House Report No. 1975, 90th Congress, 2d session, entitled "The Position of small Business in Govern-

ment Procurement," recommended, among other things, that the FPR be amended by providing procedures (a) to allow increased time for readvertising a small business set-aside which has been dissolved (Recommendation No. 6) * * *. After appropriate coordination with Federal agencies, policies and procedures were developed as prescribed by this amendment to implement the purposes of the recommendations and to improve related procedures in keeping with such purposes.

Explanation of changes. Section 1–1.706–7 is revised to require the contracting officer, when readvertising a small business set-aside which has been dissolved, to review the delivery schedule to insure that it is realistic in the light of small business capabilities as well as other relevant factors.

* * *

* * * * * * *

The revised section follows:

§ 1–1.706–7 Automatic dissolution of set-asides.

If the entire set-aside portion is not procured by the method set forth in § 1–1.706–5, as to total set-asides, or § 1–1.706–6, as to partial set-asides, the determination referred to in § 1–1.706–1 is automatically dissolved as to the unawarded portion of the set-aside, and such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with applicable regulations. However, prior to issuing an invitation to bid or a request for proposals following the dissolution of a small business set-aside, the contracting officer shall review the required delivery schedule for the supplies or services to be resolicited to insure that the delivery schedule is realistic in the light of all relevant factors, including the capabilities of small business concerns.

Chapter VI. Set-Aside Goals

THE RECOMMENDATION

That the Secretary of Defense and the Administrator of General Services promptly initiate the use of small business set-aside goals to stimulate a more aggressive use of set-asides by their procurement personnel.

THE FINDINGS

The heads of Government procurement agencies can, if they will, greatly increase the set-aside share through the simple technique previously suggested by the subcommittee: the establishment of a set-aside goal. They could determine a set-aside goal for each procurement activity, installation, and command which would require energetic application by all. Thus, a proper fulfillment of the fair-proportion mandate may be achieved.

In this connection, the subcommittee commends SBA for recently encouraging the establishment of small business set-aside goals by some civilian agencies.

Why should DOD, however, oppose the subcommittee's suggestions that they establish meaningful set-aside goals? We see no reason why DOD should be unwilling to test the effectiveness of such program, even on a 2-year experimental basis. This would be more significant and would involve no more effort, expense, or man-hours than the management of the present overall goal program.

Under the current program, DOD establishes an interim small business objective in June of each year for the following fiscal year, based upon information obtained from each procurement installation, command, and activity. A goal is established for each of 26 claimant programs in each military department and the Defense Supply Agency. From this the overall DOD goal is determined.

Six months later, actual experience statistics are tabulated; and, after another complex exercise, a final goal is set.

Without a small business set-aside objective, DOD is not goal *setting* but goal *guessing*. If a major portion of the overall effort is not within the control of DOD to help or hinder, an overall aim is meaningless.

DOD RESPONSE

DOD advised that it was unable to adopt the above recommendation.

GSA RESPONSE

GSA adopted the recommendation in part by establishing a set-aside goal for the public buildings services. The GSA report of such action follows:

> On January 8, 1969, all regional administrators and public buildings service regional directors were informed of the rec-

ommendation, and small business set-aside goals were established for design and construction divisions in each region as follows:

Region	Percent of goal	Region	Percent of goal
1	25	6	80
2	60	7	85
3	80	8	35
4	50	9	70
5	50	10	90

The variation in percentages between regions is accounted for by the fact that major repair and improvement and new construction projects may be beyond the capabilities of small business firms. However, contracts over $500,000 may be set aside where adequate competition can be anticipated. The goals are expressed as a percentage of total procurement dollars for fiscal year 1969.

Goals for buildings management divisions, expressed in terms of set-aside procurement dollars for fiscal year 1969, were established as follows:

Region	Goal	Region	Goal
1	$80, 200	6	$207, 400
2	1, 492, 000	7	555, 400
3	911, 900	8	538, 000
4	525, 600	9	562, 000
5	481, 400	10	377, 100

No goals were assigned to Space Management Divisions, since their procurement activities are not generally susceptible to the considerations involved in general procurement actions. Each procurement activity was urged to make small business set-asides on contracting actions qualifying therefor, to the maximum extent feasible; and the goals were stated as minimum levels for achievement rather than maximum levels to be accomplished.

Insufficient time has elapsed for conclusions to be drawn as to the effectiveness of establishing the goals described above. Statistics are being accumulated, and will provide a basis for evaluation at a later date, if desired.

The establishment of small business goals for the Federal Supply Service has not been deemed feasible. The Federal Supply Service deals with many industries, and separate goals would have to be established for each general commodity area in order to be meaningful. This would require careful examination and the setting of myriad goals for separate procurement elements. The situation here differs from that of the Public Buildings Service, in that the latter deals essentially with one industry, the construction industry, with a large number of small businesses in being, permitting the establishment of homogenous goals.

As reflected in your report, GSA's set-aside performance has been one of high achievement. This has been accomplished by continuous reminders to procurement personnel of the importance of the program. The report expresses concern regarding a lack of interest in the set-aside program,

especially at the contracting-office level, resulting in a diminishing number of set-asides. This is a condition which does not exist in the General Services Administration, as is indicated by the comparison of performance with other agencies as shown in the report, and the improvement in fiscal year 1968 over fiscal year 1967. It is believed that the aim of your subcommittee may best be achieved in this agency by the continuation of our present methods in the Federal Supply Service and the establishment of the goals described above in the Public Buildings Service.

Chapter VII. "Marginal" Suppliers

THE RECOMMENDATION

That the Armed Services Procurement Regulation Committee eliminate the term "marginal" as presently used in the ASPR in connection with the responsibility of prospective contractors.

THE FINDINGS

Another nebulous criterion which could be arbitrarily applied by procurement agencies was found in a directive issued February 1, 1964, by the Secretary of Defense to all procurement agency heads, which emphasized the dangers in awarding contracts to concerns of "marginal" capabilities. The term "marginal" supplier now appears in the policy statement of the ASPR section with respect to the responsibility of prospective contractors.

Neither in the directive nor in the ASPR, however, is there found any definition of the term "marginal" or any uniform standard for its appropriate use.

While the caution may be well intentioned, vagueness may breed unfairness. Definitions offered by military department witnesses varied. If this term is to be applied by thousands of contracting officers in the field according to their own individual definitions, it could lead only to confusion, increased protests, and unnecessary appeals. Navy and Air Force representatives agreed that the term "marginal" was unnecessary, had no place in the ASPR, and should be removed.

THE RESPONSE

The DOD response to this recommendation follows:

> We are pleased to report that action on Recommendation No. 10 has been concluded. The Armed Services Procurement Regulation (ASPR) has been revised to eliminate the term "marginal" previously used in ASPR in connection with the responsibility of prospective contractors. This deletion action was implemented to all procurement officials by Defense Procurement Circular No. 65 dated December 20, 1968.

ASPR REVISION

ASPR 1–902 of Part 9 entitled "Responsible Prospective Contractors" is amended to delete the word "marginal."

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Chapter VIII. Urgency Exception in Certificate of Competency Program

THE RECOMMENDATION

That the Armed Services Procurement Regulation Committee and the Interagency Procurement Policy Committee review in depth the use of the urgency exception and other methods by contracting officers to circumvent the requirement for a Certificate of Competency referral to Small Business Administration and that they consider appropriate amendments to the ASPR and the FPR to prevent such practices.

THE FINDINGS

Too often, contracting officers unjustifiably refuse to award a contract to the small business low bidder because of alleged irresponsibility due to "lack of capacity or credit to perform the contract." Under such circumstances, the aggrieved small business low bidder has the right to appeal to the Small Business Administration for a Certificate of Competency (COC). If SBA, after an independent survey, reverses the contracting officer's determination, the certificate issued by SBA is binding on the contracting officer as to the contract in question. The COC program is a good one. It has saved the Government millions of dollars by enabling the awards to be made to a low bidder instead of a higher one.

The assurance of a right to appeal to SBA from an unwarranted refusal to award the contract undoubtedly encourages small business to bid. In many instances, however, either the appeal is either not taken or it is withdrawn before completion. The reasons for this vary, but are often attributable to fear of resulting disfavor, reprisal, or costly delays.

In all too many instances, the right to appeal is rendered meaningless through questionable procedures followed by contracting officers in the use of an *urgency* exception to circumvent the requirement for a COC referral. In a statement to the subcommittee the Comptroller General of the United States described cases in which contracting officers delayed their determinations of nonresponsibility for several weeks or months, and, in one case, backdated the certificate of urgency, thus depriving the small business of its right of appeal.

DOD RESPONSE

DOD's response of May 7, 1969, states in pertinent part, as follows:

> More recently the Armed Services Procurement Regulation Committee approved on April 25, 1969, an additional revision with regard to not referring a case to the Small Business Administration for certificate of competency consideration because of urgency. This revision requires the

Chief of the Purchasing Office to approve the contracting officer's certificate of urgency which indicates the specific reasons why an award must be made without the delay incident to referral to the Small Business Administration.

ASPR REVISION

ASPR 1–705.4(c)(iv) was revised to include the provision set forth in the bracketed portion of the section as follows:

(iv) A referral need not be made to the SBA if the contracting officer certifies in writing, [and his certificate is approved by the chief of the purchasing office], that the award must be made without delay, includes such certificate and supporting documentation in the contract file, and promptly furnishes a copy to the SBA. Contracting officers shall, immediately upon receipt of sufficient information, make a determination concerning the responsibility of the low responsive prospective small business contractor. If a contracting officer makes a determination of nonresponsibility, and if only capacity or credit considerations are involved, he shall promptly refer to SBA for Certificate of Competency consideration unless he executes a documented certificate of urgency indicating the specific reasons why an award must be made without the delay incident to referral to SBA. Referral of a case to SBA or execution of a certificate of urgency shall not be deferred pending investigation and determination of the responsibility of other offerors.

THE GSA RESPONSE

GSA response of June 5, 1969, in pertinent part follows:

Procedures regarding the Certificate of Competency program are set forth in FPR 1–1.708. These procedures were developed in coordination with the Small Business Administration, the ASPR Committee, and all other civilian procurement agencies. While we have had no firsthand experience with cases in which the COC program has been improperly circumvented by contracting officers, we have been advised by the General Accounting Office and the Small Business Administration, in commenting to us on Recommendation 8, that for some time their offices had been aware of the possible circumvention of the program by certain contracting officers under the guise of the "urgency" exception in certain situations which were questionable with respect to their true urgency status. Accordingly, we propose to amend the FPR in the following particulars in order to provide stronger safeguards against the misuse of the "urgency" exception, giving due regard, however, to the continuing need of the contracting officer to be able to utilize the "urgency" exception under appropriate circumstances.

In the first instance, FPR 1–1. 708–2(a)(1) will be amended to read substantially as follows:

"This procedure is not mandatory if the contracting officer certifies in writing, and such certificate is approved by higher authority within his agency, that the award must be made without delay, includes such certificate and supporting documentation in the contract file, and promptly furnishes a copy to SBA. Referral of a case to SBA or execution of a certificate of urgency shall not be deferred pending investigation and determination of the responsibility of other offerors."

FPR REVISION

The Administrator of General Services issued amendment No. 66 to Federal procurement regulations effective January 15, 1970, setting forth the following information:

Background. House Report No. 1975, 90th Congress, second session, entitled "The position of Small Business in Government Procurement," recommended, among other things, that the FPR be amended by providing procedures * * * (*b*) to prevent the circumvention of the requirement for a certificate of competency referral to the Small Business Administration through the use of the urgency exception to such requirement (recommendation No. 8). After appropriate coordination with Federal agencies, policies and procedures were developed as prescribed by this amendment to implement the purposes of the recommendations and to improve related procedures in keeping with such purposes.

Explanation of changes.

* * * * * * *

Section 1–1.708–2(a)(1) is revised to require the contracting officer to obtain the approval of higher authority within his agency prior to invoking the urgency exception to the procedure for referral to SBA of a finding that a small business concern submitting an otherwise acceptable bid is not responsible as to capacity or credit.

The relevant portion of section 1–1.708–2 entitled "Applicability and procedure," showing the new matter in black brackets, follows:

§ 1–1.708–2 Applicability and procedure.

(a) If a small business concern has submitted an otherwise acceptable bid or proposal but has been found by the contracting officer not to be responsible as to capacity or credit, and if the bid or proposal is to be rejected for this reason alone, SBA shall be notified of the circumstances so as to permit it to issue a certificate of competency. If a partial set-aside is involved and the bid of a small business concern on the unreserved portion is to be rejected for lack of capacity or credit and the same small business concern is entitled to consideration on the reserved portion of the set-aside if a certificate of competency is issued by SBA, the entire quantity of the procurement (reserved and unreserved) for which that small business concern may be entitled, if competent, shall be

referred to SBA and the referral papers so noted, in which event SBA may certify the small business concern for the maximum in quantity for which it is eligible under the procurement. The award shall be withheld pending either SBA issuance of a certificate of competency or the expiration of 15 working days after SBA is so notified, whichever is earlier subject to the following:

[(1) This procedure is not mandatory if the contracting officer certifies in writing, and such certificate is approved by higher authority within his agency, that the award must be made without delay, includes such certificate and supporting documentation in the contract file, and promptly furnishes a copy to SBA. Referral of a case to SBA or execution of a certificate of urgency shall not be deferred pending investigation and determination of the responsibility of other offerors.]

(2) This procedure does not apply to proposed awards of less than $2,500.

(3) This procedure is optional, within the discretion of the contracting officer, as to proposed awards of more than $2,500, but less than $10,000.

(4) This procedure does not apply where the contracting officer has found a small business concern not to be responsible for a reason other than lack of capacity or credit.

Chapter IX. Tenacity and Perseverance

THE RECOMMENDATION

That legislation similar to H.R. 18041, introduced jointly on June 20, 1968, by all members of the subcommittee, be promptly considered by the appropriate legislative committee to amend section 8(b)(7) of the Small Business Act to prevent administrative restriction of the small business low bidder's right to appeal and SBA's authority to review, affirm, or reverse contracting officer determinations of alleged irresponsibility.

THE FINDINGS

It is disturbing to the subcommittee that a contracting officer may determine that a small business low bidder, even though he has the capacity and credit to perform the contract, lacks the degree of "*tenacity and perseverance*" or "*integrity*" necessary, in his own judgment, to perform the contract. A spot check disclosed more than 200 such cases in fiscal year 1967 in the military departments and DSA. The report, however, does not disclose how many refusals to award contracts to the small business low bidders were based on alleged "lack of tenacity and perseverance" and how many on alleged "lack of integrity."

In such cases, DOD officials contend that the contracting officer need not refer his determination to SBA for review.

SBA testimony on this subject disclosed instances in which SBA notified the contracting officer that his determination to withhold the award based upon alleged lack of *capacity and credit* was to be reversed, whereupon the contracting officer promptly refused the award on the ground of alleged lack of *tenacity and perseverance*.

We had believed that the COC program served to encourage small business to compete against large business with knowledge and assurance that an erroneous or discriminatory refusal to award the contract to the small business low bidder for any such reasons could be reviewed and reversed by the Small Business Administration. The members of the subcommittee are understandably concerned with the discouraging effects that such practices by contracting officers have upon the small business community.

A small business firm, whether a newly found source or a veteran supplier, invited to bid in an open unrestricted procurement, realizes the risks of expense and time in preparing a proper bid. Even if he knows he can offer a lower price to the Government than his large business competitor, and even if he knows that he is *ready, willing, and able* to perform the contract for which he is invited to bid, he must now consider additional risks that have been built into the procurement process in the event that he should be the low bidder. His chance

of obtaining the award will depend, in part, upon the attitude and action of the contracting officer. His low bid may be arbitrarily refused; and the review and reversal of the contracting officer's decision by SBA prevented. This condition is hardly conducive to a decision to compete and is undoubtedly a factor accounting for the increased failure rate of invited small business to bid.

The beneficial purpose of the COC program is frustrated by such narrow or strained interpretations of the statute. The small business right of appeal and the scope of the independent investigation by SBA should include the issue whether the small business low bidder is *ready and willing*, as well as the issue whether he is *able*, to perform the contract in question.

ACTION TAKEN

Legislation (H.R. 12188) was introduced on June 17, 1969, by Chairman Evins, jointly with all members of the Subcommittee on Government Procurement and the ranking minority member of the full committee. A copy of H.R. 12188 follows:

A BILL To amend the Small Business Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b)(7)) is amended to read:

"(7) to certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property, with respect to all elements of responsibility, including competency, capacity, credit, integrity, perseverance and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract. In any case in which a small business concern or group of such concerns has been certified by or under the authority of the Administration to be a responsible Government contractor as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and, except in the case of a concern or group of concerns which is disbarred, ineligible, or suspended under applicable law or regulation, are authorized to award such Government contract to such concern or group of concerns without the imposition of any other requirements."

An identical bill (S. 2408) was introduced by Senator Sparkman. S. 2408 was considered, together with other proposed amendments to the Small Business Act in hearings held on July 8–11, 1969, by the Subcommittee on Small Business of the Senate Committee on Banking and Currency.

The chairman of the Government Procurement Subcommittee of the House Small Business Committee presented the views of the subcommittee members in support of the bill by letter of July 23, 1969, which was made a part of the record of the proceedings. The letter follows:

SELECT COMMITTEE ON SMALL BUSINESS,
HOUSE OF REPRESENTATIVES,
Washington, July 23, 1969.

Hon. THOMAS J. MCINTYRE,
Chairman, Subcommittee on Small Business, Committee on Banking and Currency, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I appreciate the opportunity to submit the following information in support of S. 2408, pending before your subcommittee, which would strengthen the certificate of competency program of the Small Business Administration by amending section 8(b)(7) of the Small Business Act.

An identical bill, H.R. 12188, was introduced on June 17, 1969, in the House of Representatives by all members of the Subcommittee on Government Procurement of the House Small Business Committee, including the chairman and ranking minority member of the full committee.

This legislation is in line with the committee's recommendation based upon investigations and hearings conducted by our Procurement Subcommittee in the 90th Congress. Copies of our hearing record and reports containing information in the matter are herewith submitted and, for your convenience, I have noted the pages on which the pertinent material appears.

It is clear that contracting officers are not infallible in their judgments regarding the responsibility of prospective contractors. On this point the Assistant Secretary of the Navy for Installations and Logistics acknowledged that errors are made by contracting officers in such determinations and concluded, "This is normal. We all make mistakes."

Such errors, unless detected and corrected, are costly to the Government. Under the certificate of competency program, the Small Business Administration in fiscal year 1967 reversed more than half of the 434 contracting officer determinations based upon alleged lack of capacity and credit and saved the Government $3 million by enabling awards to be made to the low bidders. At this rate, the Government would have saved an additional $1½ million if SBA had reviewed the 216 determinations of irresponsibility based upon alleged lack of tenacity and perseverance or integrity in the same period.

In addition, such errors in judgment, regardless of their basis, unfairly deprive small business firms of contracts to which they are entitled and tend to discourage and eliminate small business competition and participation in Government procurement. The loophole in section 8(b)(7) needs to be closed so that all judgments of irresponsibility affecting small business low bidders may be reviewed for error and reversed by the Small Business Administration.

I believe that the contracting officer's present immunity from effective review and reversal by the Small Business Administration is neither necessary nor conducive to

efficiency, propriety, and economy in Government procurement and should be eliminated.

Accordingly, it is hoped that your subcommittee will report favorably in the matter.

Sincerely yours,

JAMES C. CORMAN,
Chairman, Procurement Subcommittee.

DOD representatives testified in opposition to the bill. SBA's Administrator testified that SBA was taking no position either for or against the legislation. He stated:

> We are now making efforts to ascertain the number of instances in which awards have been denied small business concerns because of the unfavorable findings relative to elements of responsibility other than capacity or credit. Until we have completed this study, we would prefer to offer no recommendation on S. 2408.

A staff member of the House Small Business Committee invited the attention of SBA officials to 1968 testimony before the House Small Business Committee by DOD and SBA witnesses and the committee's report thereon (H. Rept. 1975, 90th Cong.). The testimony and report included information regarding the number of instances in which awards have been denied small business concerns due to alleged lack of tenacity and perseverence and integrity. Subsequently, on July 18, 1969, the SBA Administrator supplemented his testimony before the Senate subcommittee, by letter, as follows:

SMALL BUSINESS ADMINISTRATION,
Washington, D.C., July 18, 1969.

Hon. THOMAS J. MCINTYRE,
Chairman, Subcommittee on Small Business, Committee on Banking and Currency, U.S. Senate, Washington, D.C.

DEAR SENATOR MCINTYRE: The purpose of this letter is to supplement the testimony I gave before your subcommittee on July 8, regarding a bill (S. 2408) which would extend the certificate of competency (COC) procedure, prescribed by section 8(b)(7) of the Small Business Act, to cover all elements of responsibility.

In that testimony, you will recall, I stated that we were making efforts to ascertain the number of instances in which contract awards have been denied small business concerns because of unfavorable findings relating to factors of responsibility other than capacity and credit, such as tenacity and perseverance. We have now received the statistics involving such instances and we enthusiastically support the objectives of the bill. However, discussions since held with the Department of Defense, and the General Services Administration, have led to a development of high significance to the problems attending this legislation. These Departments have provided assurance that every unfavorable finding made by a contracting officer relating to the integrity, tenacity or

perseverance of a small business concern will hereafter be referred to SBA for review before action is taken on the finding. If we at SBA disagree with the finding, we will be given an opportunity to appeal the case to the superiors of the contracting officer. We believe the objectives of S. 2408 may be accomplished through this administrative procedure.

If the objectives of S. 2408 cannot be accomplished through this procedure, there will then be available for congressional consideration complete files for evaluating the need for future legislation.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

HILARY SANDOVAL, JR.,
Administrator.

S. 2408 was not reported out by the Senate committee. H.R. 12188 was referred to and is pending before the House Committee on Banking and Currency.

In hearings conducted by the Government Procurement Subcommittee of the House Small Business Committee on November 18, 1969, DOD representatives assured the committee in response to questioning that the understanding between DOD and SBA regarding tenacity and perseverence and integrity cases, referred to in the SBA Administrator's July 18, 1969, supplemental statement to the Senate committee, would be incorporated in an ASPR amendment.

ASPR REVISION

On December 10, 1969, DOD issued Defense Procurement Circular No. 75, which includes a notice of the following ASPR revision:

> Pending publication in a subsequent ASPR revision, the following changes to section I, part 7, are effective immediately:
>
> 1. *Small Business Specialist.* Paragraph 1–704.3(b) is expanded to require the small business specialist to aid, counsel and assist a small business firm whose bid has been rejected for nonresponsiveness or nonresponsibility.
>
> 2. *Certificate of Competency.* Paragraph 1–705.4(c) is revised to include a procedure which permits the SBA to appeal to the head of the procuring activity or his designee a determination by the contracting officer that a small business firm is nonresponsible on the ground of tenacity, perseverance or integrity.

1–704.3(b)(xiii) new item

> (xiii) When a small business firm's bid has been rejected for nonresponsiveness or nonresponsibility, the small business specialist, upon request, shall aid, counsel and assist that small business firm is understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards.

1–705.4(c)(v), (vi) revised

[(v) A referral need not be made to the SBA if a contracting officer determines a small business concern nonresponsible pursuant to 1–903.1(v) and such determination is approved by the head of the procuring activity or his designee.

[(vi) A determination by a contracting officer that a small business concern is not responsible pursuant to 1–903.1 (iii) and (iv), must be supported by substantial evidence documented in the contract files. These factors of responsibility are not covered by the certificate of competency procedure, but are for determination by the contracting officer, and approval by the head of the procuring activity or his designee. Concurrent with the contracting officer's submission of such determination of nonresponsibility to the head of the procuring activity or his designee for approval, the contracting officer shall transmit a copy of the documentation supporting the determination that a small business concern is not responsible for reasons other than deficiencies in capacity or credit to the assigned SBA representative or to the nearest SBA regional office and to the appropriate departmental small business adviser identified in 1–704.2. The documentation, transmitted to the SBA shall include: two copies of the solicitation, and one copy of the preaward survey findings, pertinent technical and financial information, the abstract of bids, if available, and other pertinent information which supported the contracting officer's determination of nonresponsibility for reasons other than capacity and credit. The SBA office receiving the documentation shall, within 5 working days, notify the contracting officer in writing of the SBA's intent to appeal to the head of the procuring activity or his designee with information and recommendations which would materially bear on any approval action being considered by the head of the procuring activity or his designee. Within 10 days of the SBA's written notification to the contracting officer, the SBA shall present to the head of the procuring activity or his designee the appeal in writing. Such appeal shall contain the basis for the SBA position, and include statements from the small business concern as to tenacity, integrity and perseverance and how deficiencies noted in the contracting officer's determination have been or will be eliminated. After consideration of the appeal, the decision by the head of the procuring activity or his designee shall be final. If the contracting officer does not receive notification within 5 working days specified above that the SBA intends to appeal, it shall be deemed that the SBA does not intend to file such an appeal. The procedures of 1–705.4(c)(iv) apply if the award must be made without delay.]

The above stated changes (new matter shown in brackets) were incorporated in ASPR, part 7, entitled "Small Business Concerns" on February 27, 1970.

The Administrator of General Services issued Amendment No. 66 to Federal Procurment Regulations effective January 15, 1970, setting forth the following information:

Explanation of Changes:

Section 1–1.708–2(a)(5) is revised to require the contracting officer to obtain the approval of higher authority within his agency for a determination that a small business concern submitting an otherwise acceptable bid is not responsible for reasons other than capacity or credit.

Section 1–1.708–2(a)(6) is revised to require that the contracting officer obtain the views of SBA in cases of doubt as to whether the unsatisfactory record of performance of a small business concern submitting an otherwise acceptable bid can reasonably be attributed solely to lack of capacity or credit. In cases which cannot be resolved under this procedure, the views of the contracting officer and SBA shall be submitted to higher authority in the procuring agency for final decision.

The relevant portions of section 1–1.708–2 entitled "Applicability and Procedure" (showing the new matter in brackets), follows:

[(a)(5) A determination by a contracting officer that a small business concern is not responsible for reasons other than deficiencies in capacity or credit (e.g., lack of integrity, business ethics, or persistent failure to apply necessary tenacity or perseverance to do an acceptable job) must be supported by substantial evidence documented in the contract file and must be approved in each instance by higher authority within the agency.

[(a)(6) Whenever the contracting officer has any doubt as to whether the unsatisfactory record of performance can reasonably be attributed solely to lack of capacity or credit, he shall first discuss the matter with the nearest appropriate SBA representative. If the SBA representative is of the opinion that the unsatisfactory record of performance is attributable solely to lack of capacity or credit and the contracting officer disagrees, the contracting officer shall then forward the matter to higher authority within his agency for resolution with a clear indication of his views and the contrary SBA position. The decision of such higher authority shall be final.]

Chapter X. Paper Profusion

THE RECOMMENDATION

That the Secretary of Defense establish a special task group to conduct an internal, comprehensive study of methods to eliminate the prolific paper profusion problem and to streamline and simplify the bidding and contract administration process.

THE FINDINGS

The prolific paper profusion problem is a major cause of small business discouragement and failure to participate in Government procurement. Prime contractors recognize that preparation of any bid involves substantial time and expense. Thus, every effort is made to minimize paper requirements, particularly for their small business subcontractors. Also industrial directives, specifications, and other miscellaneous written materials are designed for the convenience of their suppliers.

We are pleased that DOD has initiated a study in this area with the aim if streamlining and simplifying the bidding process. The study should include contract administration procedures. Consideration should also be given to the codification and simplification of voluminous and confusing procurement provisions, regulations, memorandums, references, and cross references.

THE RESPONSE

The DOD response of July 18, 1969, in pertinent part, follows:

> In response to the recommendation, the Armed Services Procurement Regulation Small Business Subcommittee studied the elements of this recommendation as they pertain to ongoing programs. This study included a review of the policies and procedures applicable to the elimination of the prolific paper profusion problem and the results of prior efforts to accomplish the same objective.
>
> The Department of Defense has had in effect for many years a continuing program to improve contractor-Government relations by simplifying the bidding and contract administration process. Illustrations of some of the significant major efforts in this area follow:
>
> In 1966, after almost 3½ years of testing and interagency coordination, the Department of Defense substituted four forms for 11 forms previously used by the Government to solicit proposals from industry. This also marked the first time that solicitation forms were developed that could be used to place procurements by either formal advertisement or negotiation.

Of particular interest to the small business community was the development by DOD in late 1968 of a simplified form for negotiated procurements between $2,500 and $10,000, which will serve as a solicitation, offer, award, receiving and inspection report, and public voucher. This should not only reduce the number of documents required to process a procurement, but also expedite payments to industry.

The Department of Defense has "field tested" and is currently considering the adoption of a procedure which would achieve substantial uniformity in the preparation of solicitations and contracts. This procedure would provide for a uniform contract format for written solicitations, amendments to solicitations, awards under solicitations, contracts, and contract modifications, consisting of a standard table of contents broken down by parts and sections and a standard location of all provisions under applicable section headings. This should make our procurement process more understandable to the business community and facilitate procurement and contract administration.

Other techniques to simplify the procurement process for Government, as well as private industry, include the use of automated purchases, blanket purchase agreements, and basic ordering agreements. Wherever possible, we try to exempt procurements below $100,000 (which are generally within the small business potential) from any detailed requirements which are applicable to procurements of higher dollar volume; for example, the requirement to submit cost and pricing data and the requirement for certain audit functions.

In recognition of the importance of facilitating contract administration, a Contract Administration Panel of the ASPR Committee was established on December 27, 1963, to improve ard develop uniform contract administration procedures. Among the important achievements of this Panel was the development of standard procedures for requesting and conducting a preaward survey to determine the capabilities of a prospective contractor to meet the quality, quantity, and time requirements of a procurement.

We share your concern over the need to simplify the bidding and contract administration process and plan to continue our efforts to effect improvements in this area.

The committee's request for additional information follows:

SELECT COMMITTEE ON SMALL BUSINESS,
HOUSE OF REPRESENTATIVES,
Washington, D.C., August 7, 1969.

Hon. MELVIN R. LAIRD,
Secretary of Defense,
Department of Defense,
Washington, D. C.

DEAR MR. SECRETARY: This will acknowledge receipt of the report by your Deputy Assistant Secretary for Procure-

ment regarding our committee recommendation No. 17 (H. Rept. 1975, 90th Cong.).

This report evidently relates to the portion of the recommended study which proposes that methods be adopted to eliminate paper profusion and simplify the bidding and contract administration process.

It will be appreciated if you would provide six copies of the simplified form developed for negotiated procurements between $2,500 and $10,000 and if you would keep us currently advised regarding the field testing of the uniform solicitations and contracts referred to in the report.

Sincerely yours,

JAMES C. CORMAN,
Chairman, Procurement Subcommittee.

The additional information requested follows:

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,
INSTALLATIONS AND LOGISTICS,
Washington, D.C., August 19, 1969.

Hon. JAMES C. CORMAN,
Chairman, Subcommittee on Government Procurement and Economic Concentration, Select Committee on Small Business, House of Represenatives, Washington, D.C.

DEAR Mr. CHAIRMAN: This is in reply to your letter of August 7, 1969, concerning committee recommendation No. 17(c) (H. Rept. 1975, 90th Cong.).

In our July 18, 1969 letter (additional copies attached) we reported on the simplified form which had been developed for use in negotiated procurements between $2,500 and $10,000. The form was originally designed to maximize simplification in the procurement process and was to apply to all procurements where negotiation was authorized and the proposed expenditure was between $2,500 and $10,000. At that time pertinent sections of the form had processed through various reviews and approvals including the Comptroller General. Subsequent to our report, the Armed Services Procurement Regulations Committee, maintaining a continuing concern over proliferating paperwork, undertook an additional review of the new form to determine whether the DD1155 series form with certain minor modifications or additions could not accommodate the purposes of the new form. The DD 1155 series has been in use for several years as a part of the small purchases procedures. With the inclusion of certain clauses, the DD 1155 forms were also selectively authorized for use in high priority procurements which were negotiated between $2,500 and $10,000.

Should the ASPR Committee determine that the DD 1155 series can be adapted for use in all negotiated procurements between $2,500 and $10,000, then this form will be used in lieu of the proposed new forms, and appropriate required approvals will be obtained. It should be pointed out that the

approval process may delay prompt implementation. In the interim, six copies of the DD 1155 series used for priority procurements negotiated between $2,500 and $10,000 are attached.

With regard to the procedure to achieve uniformity throughout the Department of Defense in the preparation of solicitations and contracts, we are happy to advise you that the procedures have been approved by the Armed Services Procurement Regulation Committee and will be published in Revision No. 5 to the regulation. The effective date for mandatory use of the new procedures will be July 1, 1970; however, Department of Defense purchasing offices will be encouraged to use the procedures as soon as practicable. We believe this revision will have a beneficial impact on the small business community.

The Department of Defense appreciates your interest in small business procurement activities.

Sincerely,

(S) JAMES A. LAUDERMILK,
Colonel, USAF,
For J. M. MALLOY,
Deputy Assistant Secretary
of Defense (Procurement).

ASPR REVISION

ASPR Revision No. 5 referred to setting forth various additions, deletions and other changes in the Armed Services Procurement Regulation, may be found in the committee file.

The introductory notes regarding the substantive changes in revision No. 5 follow:

This revision No. 5 to the Armed Services Procurement Regulation contain provisions for use of a uniform contract format (UCF), together with a table of contents, for purchase documents. Changes in the sequence of provisions in section II—Part 2 on Solicitation of Bids; section III—Part 5 on Solicitation of Request for Proposals and Requests for Quotations; and section XVI—Part 1 on Forms for Advertised and Negotiated Supply and Service Contracts have been made which will provide a uniform solicitation and contract format for use throughout DOD. Additionally, new forms, DD Form 1706 (1 Jun 69)—*Information to Quoters*—and DD Form 1707 (1 Jun 69)—*Information to Offerors*—are prescribed.

All solicitations and contracts except those enumerated in (i) through (v) below must conform to the UCF. Those solicitations and contracts enumerated in (vi) through (viii) must contain all applicable items as required by the appropriate checklist; but, such items need not be set forth in any UCF sequence.

(i) small purchases and other simplified purchase agreements;

(ii) basic agreements;

(iii) pre-invitation notices;
(iv) the first step of two-step formal advertising;
(v) construction and architect-engineer contracts;
(vi) ship construction including shipbuilding, conversion, and repair;
(vii) procurements for which special contract forms inconsistent herewith are prescribed by this Regulation, *e.g.*, those prescribed by part 5 of section XVI; and
(viii) procurements of subsistence.

The UCF is designed to assure that:

(i) the related items of the procurement "package" appear together. For instance, Section B, Contract Forms and Representations, Certifications, and Other Statements of Offeror, contains all items which the prospective contractor must "fill in" before submitting his bid, offer, or quotation—in other words, those items requiring affirmative action on his part (other than stating his price and the deliveries he is offering); Section C, Instructions, Conditions, and Notices to Offerors, informs the prospective contractor of solicitation conditions other than those contained on the solicitation form itself or in Section B; Section D, Evaluation and Award Factors, groups all the evaluation factors to be considered in the award of the particular contract;
(ii) industry responses to solicitations will be facilitated;
(iii) increased efficiency and effectiveness will be obtained in Department of Defense and industry contract administration functions, since all contracts covered by the UCF will have the same arrangement;
(iv) in negotiated contracts where Standard Forms are not used for the solicitation, the required representations and certifications will be obtained from the prospective contractor before the contract is executed;
(v) purchase documents will be complete.

Extensive tests of the UCF concept have been conducted at some 15 major DOD purchasing offices. Questionnaires were sent out with the Uniform Format documents to obtain the comments of Defense contractors and Department of Defense contract administration and disbursing offices. Over 98% of the 2,100 questionnaires returned approved the Uniform Format as reasonable, practical, and beneficial.

Inquiries concerning the application of the Uniform Contract Format should be directed to:

(i) Army—Director of Procurement Policy & Review, Office of the Assistant Secretary of the Army (Installations and Logistics), Pentagon, Washington, D.C. 20301
(ii) Navy—Commander, Naval Supply Systems Command (SUP 93F), Washington, D.C. 20390
(iii) Air Force—Directorate of Procurement Policy (AFSPPL), Headquarters, USAF, Pentagon, Washington, D.C. 20301

(iv) Defense Supply Agency—Director of Procurement & Production, Attention: DSAH–PPR, Cameron Station, Alexandria, Virginia 22314

The UCF and DD Forms 1706 and 1707 are mandatory for use in solicitations issued and negotiated bilateral contracts entered into on and after 1 July 1970; however, DOD purchasing offices are authorized and encouraged to use them as soon as practicable. (Removed pages shall be retained in a separate binder until 1 July 1970.)

The remainder of the changes are minor, editorial, or technical in nature.

Chapter XI. Progress Payments

THE RECOMMENDATION

That the Secretary of Defense establish a special task group to conduct an internal comprehensive study of additional methods to encourage small business competition in DOD procurements.

The study should consider the establishment of a liberalized small business progress payment program which would reduce the leadtime presently required and increase the percentage of costs allowed under contracts performed by small business.

THE FINDINGS

Progress payments are necessary and useful to supplement working funds available to small business defense contractors. Although differences in standards for payments to large and small firms are applied by DOD, the minimal variance is insufficient to provide a meaningful competitive advantage to small business.

THE RESPONSE

The DOD response of July 17, 1969, in pertinent part, reads as follows:

> The Department of Defense is pleased to advise that, in response to your recommendation, the DOD Contract Finance Committee undertook an indepth review of the impact and details of the recommendation and have agreed to reduce the 6-month leadtime for customary progress payments to 4 months. This reduction will apply to small business concerns only.
>
> Other changes which have been made in the progress payment program and which function to liberalize payments to small business concerns include a provision in the Armed Services Procurement Regulation, effective in contracts made on or after March 1, 1968, to increase the uniform standard rate to 85 percent of incurred costs for small business concerns; and the removal from our regulation of a former requirement for a single progress payment rate incident to formal advertising, applicable equally to small firms and others. With regard to this latter change in our regulation, it is now required that invitations for bids which contemplate progress payments provide 85 percent payments for small business concerns and 80 percent for firms which are not small business concerns.
>
> We believe that these changes have been consistent with the subcommittee's intent and serve to assist the small business community, for which we share your concern. We

are happy to provide you with the above information and appreciate your interest in the Defense small business program.

ASPR REVISION

ASPR section E–504.1 was amended December 31, 1969, with new matter in brackets, as follows:

E–504.1 *Progress Payment Provision in Invitation for Bids.* When progress payments are contemplated, the invitations for bids shall include a notice of availability of progress payments as described in E–504.4. The percentage of total costs to be mentioned in these invitations for bids is 85 percent for small business concerns and 80 percent for firms which are not small business concerns.

Provision for progress payments shall be made in invitations for bids whenever the contracting officer considers (1) that the period between the beginning of work and the required first production delivery will exceed [four months for small business concerns and six months for firms which are not small business concerns,] or (2) that progress payments will be useful or necessary by reason of circumstances that will involve substantial accumulation of predelivery costs that may have a material impact on a contractor's working funds (including but not limited to substantial small business set-asides expected to involve a relatively large predelivery accumulation of materials, purchased parts, or components).

Chapter XII. Research and Development

THE RECOMMENDATION

That the Small Business Administration immediately establish an interagency research and development committee, under its management and guidance, consisting of representatives of all R. & D. procuring agencies, to develop programs and techniques to aggressively implement the statutory provision regarding prime R. & D. contract awards to small business.

RATIONALE FOR THE RECOMMENDATION

The Congress has expressly declared that research and development are major factors in the growth and progress of industry and the national economy. The Congress has mandated that assistance be given to small business concerns to enable them "to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy."

Section 9(b) of the Small Business Act states:

> It shall be the duty of the Administration (SBA), and it is hereby empowered—
>
> (1) to assist small-business concerns to obtain Government contracts for research and development;
>
> (2) to assist small-business concerns to obtain the benefits of research and development performed under Government contracts or at Government expense; and
>
> (3) to provide technical assistance to small-business concerns to accomplish the purpose of this section.

Section 9(c) of the act directs all Government agencies to cooperate with SBA in order to carry out this mandate.

The record, however, discloses poor performance by procurement agencies in awarding R. & D. contracts to small business concerns in spite of their increasing requirements, expenditures and appropriation requests for research and development.

The National Aeronautics and Space Administration's testimony before the subcommittee included a dramatic presentation of the space agency's technology utilization program, demonstrating how small business manufacturers in various fields may benefit from applications of new ideas and techniques found in NASA's procurements of aerospace research and development. SBA's witness testified that SBA has recently established a special division to explore with the procuring agencies the distribution of Government-funded technology to small business.

The subcommittee commends NASA and SBA for initiating these

potentially valuable programs. Such forward looking programs would assist small business "to obtain the benefits of research and development" as the Congress intended.

More, however, needs to be done to stop and reverse the steady decline of military and civilian agency research and development awards to small business.

ACTION TAKEN

SBA report dated May 1, 1969, follows:

Small Business Participation in Research and Development Prime Contracting

A REPORT OF THE INTERAGENCY COMMITTEE ON SMALL BUSINESS IN RESEARCH AND DEVELOPMENT

Convened Pursuant to Recommendation No. 21, Report of Subcommittee No. 2, House Select Committee on Small Business, October 21, 1968 (H.R. 1975)

May 1, 1969

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Introduction

This report is in response to Recommendation No. 21 of the report of Subcommittee No. 2 of the House Select Committee on Small Business, October 21, 1968 (H.R. 1975) "that the Small Business Administration immediately establish an interagency research and development committee, under its management and guidance, consisting of representatives of all R. & D. procuring agencies, to develop programs and techniques to aggressively implement the statutory provisions regarding prime R. & D. contract awards to small business, and that SBA furnish to the subcommittee a report thereon by May 1, 1969."

Pursuant to the recommendation, invitations were sent by SBA to the several Federal procuring agencies representing major R. & D. expenditures, requesting that representatives be appointed to the committee. The first meeting of the committee was held on January 22, 1969, under the chairmanship of Mr. Clyde Bothmer, Deputy Associate Administrator, Office of Procurement and Management Assistance, Small Business Administration.

Overall committee considerations to date have been handled in four general meetings at which the committee agreed upon an agenda and a method of procedure, then proceeded to consider member agency positions on each agenda item. In addition to reviewing current agency policies, procedures, and efforts devoted to involving small firms in agency R. & D. procurements, the committee sponsored interviews with appropriate small businessmen (conducted by SBA field personnel) for the purpose of obtaining a sample of small firm experience and attitudes. Three additional meetings of a special subcommittee focused on the problem of determining more specifically the position of small firms in obtaining Government R. & D. work. The results of these activities are contained in Sections I through VI of this report which include committee recommendations and implementing actions to date.

Section I

PROPOSED STUDY OF THE POSITION OF SMALL R. & D. FIRMS IN GOVERNMENT CONTRACTING

In order to determine preliminarily some of the industry factors and conditions that influence the small business share in R. & D. prime contracts, a short-range survey was made of 160 small R. & D. firms located in the New England area. Although this was necessarily a very cursory examination, it indicated significant potential technical capability for Government R. & D. contracts, including samples of competence in mathematical analysis, computing science, biochemical evaluations and the design of communications systems and equipment. It did not, however, reveal other than surface causes and influences pertaining to small businesses' rather low share of Government R. & D. awards (for example, an apparent shifting of technical capabilities and the current wave of acquisitions and mergers, the latter particularly noticeable in the New England area where 55 capable small R. & D. firms were acquired by large businesses in the past year.) Also, even the limited findings from the New England survey would not necessarily be representative of situations in other geographical areas.

Accordingly, the committee established a special subcommittee to collect and analyze in detail historical and current data pertaining to R. & D. industry factors and Government

prime R. & D. procurement patterns in an effort to determine (1) why the percentage of prime contract awards to small R. & D. firms has declined during the past few years, and (2) whether there are measures which the Federal Government might reasonably take to reverse the current downward trend and improve the level of prime contract awards to small R. & D. firms.

Hoping to provide substantial further insight into the existing and potential position of small firms in the Government's R. & D. contracting in time for inclusion in this report, the subcommittee held several meetings to review existing available data, including data resources of the various procurement agencies and statistical reports and other data on R. & D. capability prepared by the National Science Foundation, the Census Bureau, and the Small Business Administration.

However, none of the existing data sources provided sufficient information to provide a satisfactory base from which to start the study. The principal information deficiency is in the area of how much small firm technical capability is currently available (depth and breadth) and what are their capacities and postures in relation to Government R. & D. requirements.

When the objective is to establish a good concept of (1) the actual relationship of supply (capabilities and capacities of the small business R. & D. community) to demand (the Government's major R. & D. requirements) and (2) the potentials for getting more small business concerns into the Government's R. & D. procurement market, and reasonable actions which might be feasible to accomplish it, a reliable and comprehensive data base is essential.

Accordingly, the study is being continued by the Small Business Administration in long range and in depth, for completion and submission of a report of results to the House Select Committee on Small Business. The necessary data will be collected, organized and analyzed by the SBA.

Section II

Adaptation for the Federal Procurement Regulations of ASPR Policies on Small Business Participation in R. & D. Procurement

The committee examined and discussed applicable agency procurement regulations, primarily ASPR and the FPR, to review completeness and consistency of the policies and procedures relating to small business particitpation in R. & D. procurement.

The ASPR section on "Procurement of Research and Development" refers specifically to small business in Paragraphs 4–103 and 4–106. The FPR coverage of small business activity (Supbart 1–1.7) applies to procurement in

general and does not specifically refer to R. & D. type procurements.

Certain ASPR references to small business activity in R. & D. are quoted as follows:

4–103. Publicizing Procurement Actions and Expanding Sources

(a). The Departments shall continually search for and develop information on sources (including small business concerns) competent to perform research and development. Advance publicity, including use of the Commerce Business Daily (see 1–1003–4) to the fullest extent practicable, shall be given for this purpose. The search should include (i) a review of relevant data or brochures furnished by sources seeking research and development work (ii) a cooperative effort by technical personnel, small business specialists, and contracting officers to obtain information and recommendations with respect to potential sources and to consider the desirability of seeking other sources by publication of proposed procurements, in addition to the synopsis requirement.

(b). In addition to (a) above, and where the procurement mission warrants it, Research and Development Bidders Mailing Lists will be established by purchasing activities in accordance with ASPR Supplement No. 4, "Procedures for Submission of Applications to be placed on Research and Development Bidders Mailing Lists."

4–106.1 Selection of Sources

(a) General. Through its research and development programs, the Department of Defense must seek the most advanced scientific knowledge attainable and the best possible equipment, weapons, and weapon systems that can be devised and produced. This means two things. First, it means seeking the best scientific and technological sources consistent with the demands of the proposed procurement for he best mix of cost, performances and schedules. Second, it means unremitting efforts to increase the number of qualified sources, and to encourage participation by small business concerns, as well as others, in Defense research and development. See also 1–903.

(b) Small Business Sources:

(1) Contracting officers, technical personnel, and small business specialists shall cooperatively seek and develop information on the technical competence of small business concerns for research and development contracts. Small business specialists shall regularly bring to the attention of contracting officers and technical personnel descriptive data, brochures, and other information as to small business concerns that are apparently

competent to perform research and development work in fields in which the purchasing activity is interested.

(2) In order to cooperate with the Small Business Administration in carrying out its responsibility of assisting small business concerns to obtain contracts for research and development, contracting officers, technical personnel and small business specialists shall, upon request, provide to authorized SBA representatives information necessary to understand the Government's needs concerning research and development programs under consideration for specific future procurement actions. Normally, this information shall be provided to SBA representatives assigned to a purchasing activity, as early as practicable, and shall cover the Government's requirements for each proposed research and development procurement exceeding $10,000. To the maximum extent feasible, SBA shall be afforded a minimum of 15 working days to provide pertinent information concerning qualified potential small business sources developed through its investigation of the capabilities of specific firms in the particular field of research and development covered by such procurements. Full evaluation shall be given to any such information in selecting qualified sources. Exception to the policy of providing SBA a minimum of 15 working days' interval to recommend additional qualified small research and development sources for a proposed procurement will be permitted only in those cases where the head of the purchasing activity or his designated representative advises the SBA representative that such action would result in unjustifiable delay.

Although several agencies' procurement regulations contain language approaching that of the ASPR sections concerned with small business in R. & D. procurement, there are no uniform regulations covering small business participation in R. & D. procurement for civilian agencies subject to the FPR. The committee concluded and recommended to SBA that it might be helpful in furthering the small business program if appropriate ASPR policy statements could be adapted for incorporation in the FPR. The Small Business Administration has initiated a request to the Director, FPR Staff, for implementation of this recommendation through the Interagency Procurement Policy Committee sponsored by GSA.

Section III

PREPROCUREMENT PLANNING INFORMATION ON R. & D.

The committee examined applicable regulations and submissions by committee members concerning the types of advance R. & D. procurement planning information published or otherwise made available. The purpose of the

examination was to determine whether the small business R. & D. community is afforded opportunities to become informed concerning R. & D. areas in which the Government is or will be procuring. From a review of the various agencies' policies, procedures, regulations, and programs it was determined that there is a variety of published materials available to the small business community. For example, NASA publishes a brochure "Selling to NASA" which briefly outlines the NASA organization and its procurement procedures. The brochure contains chapters on small business opportunities, solicited and unsolicited R. & D., the publication of research results through the NASA technological utilization program, and a directory of the various NASA procurement offices and persons for initial inquiry or contact. The Atomic Energy Commission and components of the Department of Defense publish similar literature. All of the major procuring agencies publish scientific and technical forecasts related to their programs. These media combine to provide considerable information on R. & D. contract opportunities.

The information media reviewed included, among other things, the requirements contained in the Armed Services procurement regulations and the Federal procurement regulations with regard to publicizing proposed procurement actions; the various agencies' programs for participation in Business Opportunity/Federal Procurement Conferences, and the various agencies' participation in R. & D. symposia which highlight R. & D. opportunity for small business concerns; and other published information; that is, booklets and brochures, some of which describe program procurement areas and contain names and locations of offices to contact

The regulations appeared adequate in that they require advance notices of the Government's interest in a specific research and development field to be published in the Commerce Business Daily in order that potential sources may learn of research and development programs and submit information for evaluation of their research and development capabilities. The regulations additionally require that each specific procurement of R. & D. projects be publicized unless an advance notice of the Government's requirements in the particular field published in the Commerce Business Daily, has been sufficiently specific to permit potential sources to request solicitations for the prospective procurement. Problems concerning whether the R. & D. community is afforded ample opportunity to be adequately informed on R. & D. procurements are related to compliance and execution.

Section IV

INTERCHANGE OF R. & D. FACILITY INFORMATION

In an effort to find ways and means of expanding agency listings of available R. & D. sources in the small business

category, the procurement agency representatives on the committee submitted and discussed their methods and procedures for exchanging small business R. & D. facilities information on an intra-agency and interagency basis. It was found that there are good to excellent procedures on the intra-agency level, but that they lack form or prosecution with any regularity, on an interagency basis.

It was also found that lack of a uniform or mutually understood method used by the agencies for developing facility inventory data on R. & D. firms, makes an exchange of such data somewhat difficult. Accordingly, as a first step, the committee agreed that the procedure and format of the DD–1630 Registration Form prescribed in Supplement No. IV of ASPR has possibilities for adaptation for common use. It would provide a standard application format for use by all firms interested in performing R. & D. work for the agencies, and should make it possible to conform all registrations—including descriptions of technical categories—to a more common language. The committee asked SBA to request that this be explored and pursued through the mechanism of the Interagency Procurement Policy Committee, chaired by the General Services Administration.

It was also the concensus of the committee members that the R. & D. facilities data collected could best be exchanged through a clearinghouse system, and the conclusion was that the SBA could best serve as such a clearinghouse operating through its major field offices with which agencies are already accustomed to working Accordingly, the SBA will have each of its area offices develop and keep up to date a directory of small R. & D. firms in its area To assist SBA in this development, procuring agency purchasing offices will submit to the appropriate SBA area offices their listings of small R. & D. firms for inclusion in the appropriate directory. Each area directory will be distributed to all R. & D. purchasing offices within the SBA geographical boundaries for the purpose of building source-files for solicitation of proposals. In addition, "other SBA Area" directories will be exchanged between SBA offices and will be available to procuring agencies, as appropriate.

The Committee believes that a broad pattern of interchange of R. & D. facility information can be established by this approach. The availability of small R. & D. capability information on a nation-wide basis should result in additional opportunities for small firms to participate in Government R. & D. procurements.

The SBA has already initiated the development of directories by its field offices. A model directory of small business firms in the New England area (see appendix C) is to be used as a guide.[1]

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[1] The directory referred to may be found in the files of the House Small Business Committee.

Section V

EMPHASIZING THE ROLE OF THE TECHNICAL MAN IN FURTHERING SMALL BUSINESS PARTICIPATION IN GOVERNMENT R. & D. PROCUREMENT

Committee considerations of possibilities for improving small firms' participation in Government R. & D. procurement included a dominant feeling of need to find ways and means of enlisting the assistance of the technical community in the procuring agencies. There seemed to be an almost general consensus that even though the contracting officer and his immediate team—including his small business advisor—are involved in each step of all procurement processes beginning with the planning phase, their influence may be somewhat lessened in comparison when the purchase is in the R. & D. category.

The selection of the contractor in the R. & D. situation is significantly influenced by the technical initiator or the project director whose criteria are necessarily and naturally based on technical capability to perform, and a search for excellence. Associated with this search for excellence is an understandable disposition on the part of the technical community to rely on known and established sources for getting the work done. In this setting, reaching out to deal with small firms of unproven capability is not the primary concern of the scientist or technical director, nor is it expected that it should be.

However, the reports of SBA assistance personnel and the feedback of the sample interviews with small R. & D. firms would indicate an atmosphere of less than desirable rapport between the technical community and the small business firm. While this may be attributable to some extent to less than total effort on the part of many of the small firms themselves, the committee felt that there are undoubtedly some steps which agencies might take in-house to improve the situation.

First and foremost is the importance of top management support and its expressions of concern and interest in the furthering of small business participation in Government R. & D. procurements Any stimulus and education which can be provided in program reviews, public statements concerning opportunities for small business firms in the R. & D. area, and publicity of R. & D. successes by small firms would all be very helpful.

Appropriate emphasis in employee training programs is another means. For example, at least one member agency has programs for training of employees involved with procurement which are currently stressing the importance to good purchasing of maximum communications between technical staffs (engineer and scientist requisitioners) and the staffs directly associated with actual procurement.

That agency stated, "As the technical requirements of our programs grow more demanding, we have found a corresponding increase in the need to assure that the relationship between the technical staff and the procurement staff is such that maximum communication between the two groups becomes a natural and productive part of the entire procurement process. Consequently, the role of the technical man in procurement is being emphasized more and more in our training programs and we believe that, in the long range, the payoff from this kind of emphasis will be significant in terms of improved contracting, including opportunities for earlier exchanges concerning small business sources and other considerations involved."

Other suitable methods of furthering the interests of small business should be devised or revitalized as appropriate. Such methods should ordinarily include regular program and onsite reviews of procurement practices and procedures to assure compatibility with established policy, appropriate emphasis in preprocurement planning conferences and in agencywide procurement meetings and when practical, the use objectives, posters and other visual aids to remind all staffs involved in the procurement process of their responsibilities to assure that a fair proportion of the Government's R. & D. is procured from small business concerns.

Although the committee gave consideration to the matter of R. & D. set-asides for small business, it hesitated to recommend this as an area for significant emphasis by procurement agencies in advance of completion of the study described in section II which, it is hoped, will provide a good base for analyzing the extent to which set-asides for small business in specific R. & D. areas may or may not be possible or feasible. In the meantime, members have agreed that special efforts should be made continually to search for small firms of proven capability, who can participate in agency R. & D. procurements.

This should involve the best efforts of agency procurement staffs (including small business specialists), technical staffs, and SBA assistance personnel, functioning as a team.

Section VI

SUMMARY OF INTERVIEWS WITH REPRESENTATIVE SMALL R. & D. FIRMS

As noted in the introduction of the report, the committee asked the SBA to obtain a sample of the experiences and attitudes of small R. & D. firms involved or desiring to be involved in Government work. Accordingly, SBA field office representatives throughout the country interviewed 108 representative R. & D. firms. Interviews followed the format of appendix B, and were limited to firms who are presently or have been involved with Government R. & D. procurement.

Results indicated various degrees of difficulty in obtaining entre' to and performing Government R. & D. work, including a feeling among some firms that there is a somewhat reluctant attitude among technical people in R. & D. buying agencies toward small business.

The following are typical observations, comments, and recommendations made by small firms as interpreted by SBA field personnel:

A. Observations

1. Comments on the effectiveness of the Commerce Business Daily varied from completely ineffective to useful. Companies generally felt that the CBD announcements are useful as indicators of where to concentrate future marketing activities.

2. It was the general opinion that feedback information on unacceptable or nonresponsive proposals is inadequate. In some instances there is no feedback at all.

3. There seemed to be a feeling that the general decline in Government R. & D. procurement opportunities attracts the very large firms to investigate opportunities of less than $100,000, which would not be pursued by these firms in times when more lucrative R. & D. opportunities are available.

4. Some firms felt that R. & D. subcontract work was more desirable than prime contracts since contract management was usually less difficult.

5. Some small firms stated that they had excess capacity which could be employed by Government agencies for their R. & D. programs. They felt that this excess capacity was the result of opportunities made available to big business because of the latters' established competence and marketing capacity. Small firms were in favor of set-asides to increase procurement opportunities.

B. Comments Involving Recommendations

1. There were objections related to the handling of letters of interest in projects advertised under "Research and Development Sources Sought" in the CBD. The CBD generally states that replies to such letters are not required and apparently firms are not informed by the agency when a request for proposals will not be sent to them. Present practices regarding letters of interest should be reviewed by procurement agencies with consideration given to informing firms if an RFP is not to be sent to them.

2. Several small firms complained that the submission of proposals is costly and time consuming. The feasibility of simplifying as much as possible the submission of proposals should be studied by procuring agencies.

3. Some firms complained about delays in final payments following completion of contractual requirements. Delays in specific cases have reached beyond one year. The committee recommends procurement agencies take the necessary action to improve the processing of final payment.

The committee will submit the results of these interviews to each participating agency through its member so that the problem areas disclosed may be given appropriate attention.

The interview reports do not raise any new problems or questions, but result in a committee position that agency procurement procedures and practices should be constantly reviewed to improve the procurement environment of the small business community.

Appendix A

Committee Participants

Clyde Bothmer, chairman, SBA.
James Buckley, alternate, GSA.
Anthony Carretta, principal, NASA.
John Chirichiello, alternate, NSF.
Jack Eiden, alternate, USAF.
George Forensky, alternate, SBA.
Charles Gasque, principal, GSA.
Joseph General, principal, USAF.
Marjori Harrington, alternate, AEC.
Richard Hellman, principal, SBA.
Thomas Hogan, principal, NSF.
James Hyslop, principal, DOT.
David Oswalt, alternate, USAF.
Lewis J. Owen, principal, DOC.
Kelly McCracken, principal, HEW.
P. H. Pierce, alternate, SBA.
Morris Questal, principal, USN.
Jacob Roey, principal, NASA.
Joseph Sansone, principal, DOD.
K. C. Skeirik, principal, SBA.
H. Dixon Smith, alternate, SBA.
P. N. Whittaker, alternate, NASA.
A. H. Williams, vice chairman, SBA.

Appendix B

interview format

A. What can be done to minimize the cost of research proposals?

B. To assist in the improvement of your firm's operating situation and to improve your ability to respond to Government RFP's, what types of feedback information resulting from evaluations of your proposals would you like to have?

C. What can be done to improve the acceptance and treatment of unsolicited proposals?

D. Realizing that "Branching Effect" occurs in Government R. & D. work (note: a contractor or researcher involved in one effort begins to "see" additional research or study elements that need to be explored and, therefore, has a "headstart" for future business) what suggestions can

you offer to improve the ability of the Government to provide adequate advance notice of planned procurements?

E. In considerable numbers of research projects, the security cycle is in operation. In order to be processed for a clearance, a firm must have been selected for a solicitation. A firm not having security clearance would be unable to discover sufficient information in order to be in a position to be able to submit a research proposal. Any suggestions as to how to attack this security problem?

F. As a small R&D firm desiring to submit proposals and interfacing with many agencies, do you feel that additional exchange of information between Government agencies on their methods, rules, and techniques of contractor evaluation is needed?

G. What suggestions would you care to make with respect to set-asides for R&D projects?

H. What additional impediments exist with respect to competing for Governmet R&D procurements? What suggestions do you have for alleviating these impediments?

I. What kind of efforts do you make to let Government agencies know you are available for R&D procurement?

J. Is your firm currently obtaining all the Government work, on which it has capacity and capability, it has sought to perform? If not, what seems to be the principal deterrent or deterrents to obtaining awards for the Government work you have been seeking?

K. Generally, what percentage of the R&D work you perform for Government projects is on a subcontract rather than prime contract basis? If the percentage is higher on subcontracts than primes, is it because it is more advantageous to your firm to go after that kind of business? What are the advantages and what are any disadvantages?

Committee acknowledged receipt of the foregoing report from SBA as follows:

SELECT COMMITTEE ON SMALL BUSINESS,
HOUSE OF REPRESENTATIVES,
Washington, D.C., May 16, 1969.

Hon. HILARY SANDOVAL, Jr.,
Administrator, Small Business Administration,
Washington, D.C.

DEAR MR. ADMINISTRATOR: This will acknowledge your recent letter and the report of the Interagency Committee on Research and Development submitted in response to our Committee's recommendation No. 21 (H. Rept. 1975, 90th Cong.).

It will be appreciated if you would keep our Committee advised regarding further actions taken by your agency and the participating agencies aimed at increasing research and development contract awards to small business.

Your cooperation in the matter is appreciated.

Sincerely yours,

JOE L. EVINS, *Chairman.*

The subcommittee's request for continued study by the Interagency R. & D. Committee follows:

SELECT COMMITTEE ON SMALL BUSINESS,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 6, 1969.

Hon. HILARY SANDOVAL, Jr.
Administrator, Small Business Administration,
Washington, D.C.

DEAR MR. ADMINISTRATOR: This is in further reference to recommendation No. 21 of the House Small Business Committee (H. Rept. 1975, 90th Cong.), which calls for an Interagency Research and Development Committee study to develop methods to implement Congressional policy regarding prime research and development contract awards to small business.

The report which you recently submitted in the matter was referred by Chairman Joe L. Evins to our Subcommittee on Government Procurement. We understand that, in accordance with this report, the extensive study design which was outlined to us by Dr. Richard Hellman of your Office of Planning, Research and Analysis is being carried forward. For this purpose, it is assumed that the Interagency Committee will continue to operate as specified in recommendation No. 21 until the completion of the study and your final report thereon.

In view of the prime importance of such study, we wish to commend your Agency for the attention being given to the matter and we would like to be currently informed as to the progress being made.

Your cooperation is appreciated.

Sincerely yours,

JAMES C. CORMAN,
Chairman, Procurement Subcommittee.

SBA's progress report of July 11, 1969 follows:

SMALL BUSINESS ADMINISTRATION
OFFICE OF THE ADMINISTRATOR,
Washington, D.C. July 11, 1969.

Hon. JAMES C. CORMAN,
Chairman, Subcommittee on Procurement, Select Committee on Small Business, House of Representatives, Washington, D.C.

DEAR MR. CORMAN: I very much appreciate the commendation, in your letter of June 6, for the study we have undertaken into small business' share of federally funded research and development, as recommended by your Committee. A definitive examination of this vital area is long overdue.

Last week, we awarded small but important contracts to the top seven researchers into the field of R. & D. Each of

these professors will survey R. & D. firms and contracts in his region. The regions are:

Boston
New York
Philadelphia
Washington
Chicago
Texas
Los Angeles.

We shall keep you informed of progress.

Sincerely,

HILARY SANDOVAL, Jr., *Administrator.*

The following further progress report was provided by SBA to the Committee on December 4, 1969, in the hearings conducted by the Subcommittee on Government Procurement:

STATUS REPORT OF R. & D. STUDY

Phase 1 was the formulation of an initial study design and its acceptance by the Interagency Committee of which Hellman is chairman. This was accomplished in May.

Phase 2 was the further development of the study design and testing it in the field, to obtain a finalized study design and simultaneously the acquisition of field experience. This was undertaken through seven contracts of $2,500 each to the outstanding experts in each selected area, as follows:

MIT for Boston.
Stevens Institute for New York.
Wharton School for Philadelphia.
George Washington University for Washington, D.C.
Northwestern University for Chicago.
University of Texas at Austin for the Space complex.
A Rand Corp. professional, as an indiviudal, for Los Angeles.

This work is underway and will be delivered to SBA not later than January 31, 1970. A parallel study is being carried out by Hellman with Federal agencies through the Interagency Committee members and with R. & D. companies.

Phase 3 will be the development and execution of the final study design, and writing of a report of findings and recommendations.

FPR REVISION

On March 2, 1970, the Administrator of General Services issued Federal Procurement Regulations Amendment 73, effective May 29, 1970, reading as follows:

Background.—The Interagency Committee on Small Business in Research and Development, established by the

Small Business Administration (SBA) as a result of Recommendation No. 21 of House Report No. 1975, 90th Congress, has recommended, among other things, certain regulatory additions to the FPR to foster and encourage small business participation in research and development (R&D) contracting. The committee specifically recommended that the Armed Services Procurement Regulation material on this subject (see ASPR 4–103 and 4–106.1) be adapted for inclusion in the FPR. Accordingly, this amendment contains parallel policies and procedures for Government-wide coverage which have been favorably considered after review by the Interagency Procurement Policy Committee.

Explanation of changes.—Section 1–1.712 is added to provide a caption for subsequent material designed to encourage and expand the participation of small business in R&D procurement. Specifically, §§ 1–1.712–1, 1–1.712–2, and 1–1.712–3 are added to establish new policies and procedures as follows:

(*a*) Section 1–1.712–1 prescribes methods for publicizing R&D procurement actions to attract small business participation in such actions;

(*b*) Section 1–1.712–2 provides guidance for agencies in expanding small business R&D sources; and

(*c*) Section 1–1.712–3 sets forth policies and procedures for the selection of small business R&D sources. Procedures in this regard include notification to SBA of proposed R&D procurements and the solicitation of sources furnished by that agency.

Section 1–1.712, entitled "Small business participation in research and development procurement actions", effective May 29, 1970, follows:

§ 1–1.712 Small business participation in research and development procurement actions.

§ 1–1.712–1 Publicizing research and development procurement actions to attract small business.

To the fullest extent practicable, agencies shall publicize proposed research and development procurement contracts through use of the Commerce Business Daily (see § 1–1.1003) sufficiently in advance to allow participation of appropriate small business concerns in such procurements. Agencies shall also consider use of other suitable methods of publicizing research and development requirements to attract small business participation in addition to the use of the Commerce Business Daily.

§ 1–1.712–2 Expansion of small business sources for research and development procurement.

Agencies shall continually search for and develop information as to small business concerns which are competent to perform research and development. The search shall include (a) a review of relevant data or brochures furnished by small business sources seeking research and development work and

(b) a cooperative effort by technical personnel, small business specialists, and contracting officers to obtain information and recommendations with respect to such potential sources.

§ 1–1.712–3 Selection of small business sources for research and development procurement.

(a) *Policy.* Agencies shall exercise all reasonable efforts to increase the number of qualified small business sources to perform research and development contracts and shall encourage the participation of small business sources, as well as other sources, in such procurement actions.

(b) *Procedures*—(1) *Development and use of information on small business sources.* Contracting officers, technical personnel, and small business specialists shall cooperatively seek and develop information on the technical competence of small business concerns for research and development contracts. Small business specialists shall regularly bring to the attention of contracting officers and technical personnel descriptive data, brochures, and other information as to small business concerns that are apparently competent to perform research and development work in fields in which the purchasing activity is interested.

(2) *Cooperation with SBA in source selection.* To cooperate with the Small Business Administration (SBA) in carrying out its responsibility of assisting small business concerns to obtain contracts for research and development, contracting officers, technical personnel, and small business specialists shall provide to authorized SBA representatives information necessary to understand the agency's needs concerning research and development programs under consideration for specific future procurement actions. Normally, this information shall be provided to SBA representatives assigned to a purchasing activity, as early as practicable, and shall cover the agency's requirements for each proposed research and development procurement involving the solicitation of proposals exceeding $10,000. To the maximum extent feasible, SBA shall be afforded a minimum of 15 workdays to provide pertinent information concerning qualified potential small business sources developed through its investigation of the capabilities of specific firms in the particular field of research and development covered by such procurements. The 15 workdays afforded SBA to recommend suggested sources may run concurrently with the usual publication notice in the Commerce Business Daily (see §1–1.1003–3(a)). Full evaluation shall be given to any such information in selecting qualified sources. Sources recommended by SBA for a specific procurement shall be solicited. Exception to the policy of providing SBA a minimum of 15 workdays interval to recommend additional qualified small research and development sources for a proposed procurement will be permitted only in those instances where the head of the purchasing activity, or his designee, advises the SBA representative that such action would result in unjustifiable delay.

Chapter XIII. Small Business in Subcontracting

THE RECOMMENDATION

That the Administrator of the Small Business Administration promptly establish an ad hoc Government-industry committee, to be chaired by SBA, and to consist of the small business advisers to the Office of the Secretary of Defense, Departments of the Army, Navy, and Air Force, Defense Contract Administration Services, National Aeronautics and Space Administration, and Atomic Energy Commission, and major prime contractors, small business firms, and their associations, to study methods and procedures to preserve and strengthen the position of small business in the subcontracting field under existing and changing conditions of Government procurement, and that the ad hoc committee consider, among other pertinent matters, the following:

(a) Set-asides of subcontracts for exclusive small business competition.

(b) Application of the statutory requirement that extensive use of small subcontractors by a prospective prime contractor shall be considered a favorable factor in the evaluation of bids, or in selecting a prime contractor for a negotiated contract.

(c) Reporting of military contract receipts of large contractors from prime and subcontract work, and additional information regarding the small business subcontracting programs of large contractors to more readily evaluate their performance.

(d) Reporting by major Government prime contractors of their small business subcontracting performance in commercial projects.

(e) Handling of termination or other claims against prime contractors and administrative methods to assist and protect small business subcontractors in instances involving subcontractor or prime contractor disputes with Government agencies.

RATIONALE FOR THE RECOMMENDATION

The conclusion of the committee, stated in the October 21, 1968, report (H. Rept. 1975, 90th Cong.) follows:

> In the event of changes, shifts, or cutbacks in military spending, there is a tendency for prime contractors to pull back subcontract work, increase in-house capabilities and performance, and change their "make or buy" policies with a resulting curtailment in small business subcontracting opportunities. Small business is the most vulnerable segment of the economy affected by such changes in the pattern of defense spending and should not be required to bear an unfair share of the burden. It is, therefore, advisable that steps be taken now to protect small business subcontractors.

ACTION TAKEN

The ad hoc Government-industry committee was established as recommended, and their report was presented to the committee on May 1, 1969. It contains various findings and proposals regarding the position of small business in the subcontracting field and includes minority views expressed by the representative of the Smaller Business Association of New England, Inc. on the Government-industry committee.

In view of the importance of the matters discussed in the ad hoc committee's report, the House Small Business Committee published a committee print of such report on May 7, 1969, for distribution to Members of the Congress and other interested parties. The committee print is entitled "The Position of Small Business in Subcontracting." A limited supply is available at the office of the House Select Committee on Small Business.

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