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CONTRACT MANAGEMENT

Small Businesses Continue to Win Construction Contracts



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Abbreviations

DOD	Department of Defense
FASA	Federal Acquisition Streamlining Act of 1994
GAO	General Accounting Office
SBA	Small Business Administration



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United States General Accounting Office
Washington, DC 20548

June 29, 2001

The Honorable Carl Levin
Chairman
The Honorable John W. Warner
Ranking Minority Member
Committee on Armed Services
United States Senate

The Honorable Bob Stump
Chairman
The Honorable Ike Skelton
Ranking Minority Member
Committee on Armed Services
House of Representatives

The Congress appropriates billions of dollars annually to fund the construction of buildings and other facilities to support military training and operations. Historically, small businesses have carried out a significant portion of this work. The Congress and small business advocates, however, had become concerned that agencies were combining requirements into larger contracts that small businesses could not win. Contracts that combine requirements to such an extent that they present a barrier to small businesses' ability to compete are considered to be "bundled contracts."

The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001¹ directed us to report on the contract bundling of military construction requirements. As agreed with your offices, our specific objectives were to determine whether (1) overall data on construction contract awards to small businesses indicated that their ability to compete for contracts had been impaired and (2) selected Department of Defense (DOD) contracting offices had combined construction requirements in ways that hampered small businesses' ability to compete.

¹P.L. 106-398, Oct. 30, 2000.

To address these questions, we analyzed data from DOD's prime contract database² for fiscal years 1997 through 2000. We also identified the Army and Navy contracting offices with the highest dollar value of awards for general repair and construction work during fiscal year 1999. At these two locations—the Army Corps of Engineers' Mobile District, Mobile, Alabama, and the Naval Facilities Engineering Command's Southern Division, Charleston, South Carolina—we reviewed all contracts valued at \$5 million or more awarded during fiscal year 2000 for construction in the United States. Our results cannot be generalized to the universe of military construction contracts.

Results in Brief

Overall data on military construction contract awards to small businesses revealed that small businesses are generally continuing to win work and that their ability to compete is not being impaired. Specifically, the share of awards going to small businesses increased from 25 percent in 1997 to 32 percent in 2000.

Because the overall data available did not identify bundled contracts, we reviewed selected large contracts to assess whether agencies were consolidating requirements. Of the 26 contracts we reviewed, 5 were large contracts that, according to officials, consolidated requirements to the point of limiting small businesses' participation. In each of these cases, however, DOD took steps to determine whether the construction work being performed could accommodate smaller contractors, and Small Business Administration officials reviewed and approved DOD's plans. Small businesses were able to compete for the remaining contracts and, in some cases, won work worth millions of dollars.

Background

The law and regulations that govern federal procurement are designed to foster competition and to promote desirable social objectives, among other goals. The Congress has long encouraged agencies to ensure that

²DOD's prime contract database accumulates data that contracting officers report on form DD 350, "Individual Contract Action Report." Generally, contracting officers must complete this form for contract actions that obligate \$25,000 or more. The form includes data on the contracts' value, the items purchased, the kind of contract awarded, the solicitation procedures used, and whether the contractor was a small business.

small businesses³ have an opportunity to participate in federal procurements and has authorized agencies to reserve certain requirements for award to small businesses. For example, in 1988 the Congress established an annual governmentwide goal of awarding not less than 20 percent of prime contract dollars to small businesses⁴ and in 1997 increased this goal to 23 percent.⁵

When all the laws and regulations to achieve the procurement system's objectives were considered, some came to believe that the result was a complex and unwieldy system that left little room for agencies to exercise sound business judgment in satisfying their needs. Two pieces of reform legislation—the Federal Acquisition Streamlining Act of 1994 (FASA)⁶ and the Clinger-Cohen Act of 1996⁷—were passed to address these problems as well as other government acquisition and investment-related concerns. Each act included provisions designed to streamline the procurement system, increase its responsiveness, and make it more efficient.

As agencies began to implement acquisition reform initiatives, representatives of small businesses began to express concerns that the initiatives would have an adverse effect on small businesses. Agencies combined existing contracts into fewer, larger contracts—referred to as "bundled contracts"—to streamline procurement and reduce contract administration costs. Questions were raised about the extent to which contract requirements were being bundled and the effect that such bundling had on small businesses' ability to participate in federal procurement. In light of these concerns, the Congress amended the Small Business Act to create a legislative definition of contract bundling.⁸ As amended, the act defines contract bundling as the consolidation of two or

³Under the Small Business Act, a company is considered to be a small business when it is independently owned and operated and not dominant in its field of operations. Also, the Small Business Administration is responsible for further defining a small business and does this through its Small Business Size Standards Regulations, found at 13 C.F.R. part 121. In general, the definition of a small business varies by industry.

⁴Business Opportunity Development Reform Act of 1988 (P.L. 100-656, Nov. 15, 1988).

⁵Small Business Reauthorization Act of 1997 (P.L. 105-135, Dec. 2, 1997).

⁶P.L. 103-355, Oct. 13, 1994.

⁷The Clinger-Cohen Act was enacted as Divisions D and E of the National Defense Authorization Act for Fiscal Year 1996. (P.L. 104-106, Feb. 10, 1996).

⁸Small Business Reauthorization Act of 1997 (P.L. 105-135, Dec. 2, 1997).

more procurement requirements for goods or services previously provided or performed under separate, smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business concern because of

- the diversity, size, or specialized nature of the elements of the performance specified;
- the aggregate dollar value of the anticipated work;
- the geographic dispersion of performance sites; or
- any combination of these three criteria.

The statute also defines a "separate, smaller contract" as a contract that has been performed by one or more small businesses or was suitable for award to one or more small businesses.

The Small Business Act, as amended, states that, to the maximum extent practicable, agencies shall avoid unnecessary and unjustified bundling of contract requirements that precludes small businesses' participation in procurements as prime contractors. For those contracts considered to be bundled, the Small Business Act establishes criteria for determining whether contract bundling was necessary and justified, and requires agencies that intend to bundle requirements to document that these criteria have been met.

Small Businesses Continue to Win Construction Work

Our analysis of overall data on construction contract awards indicates that small businesses are continuing to win work and that their ability to compete is not being impaired. Since 1997, construction contract awards to small businesses have increased steadily in the face of a decline in overall construction awards. As table 1 shows, awards to small businesses increased from about \$1.6 billion to about \$1.9 billion from fiscal year 1997 through fiscal year 2000 (in constant fiscal year 1999 dollars) while overall awards declined from about \$6.6 billion to about \$5.9 billion. Consequently, the share of awards going to small businesses increased from about 25 to about 32 percent.

Table 1: Construction Contract Obligations, Fiscal Years 1997-2000

Year	Construction contract obligations (Constant fiscal year 1999 dollars in millions)		Percentage of obligations going to small businesses
	Overall	Small businesses	
1997	\$6,572	\$1,618	24.6
1998	5,897	1,658	28.1
1999	6,163	1,762	28.6
2000	5,922	1,902	32.1

Source: GAO's analysis of DOD's prime contract database information.

Our analysis also showed that this trend occurred despite an increase in awards to foreign firms and domestic firms performing abroad. The proportion of total DOD construction awards going to such firms increased from 10 percent in fiscal year 1997 to 14 percent in fiscal year 2000. Contracting officials pointed out that small business construction firms generally confine their operations to a specific region or geographic area, sometimes pursuing work only in the metropolitan area where the firm is headquartered. According to the officials, small business construction firms would typically not have the resources to perform work abroad and would be very unlikely to win contracts for such projects.

Because the overall data do not identify bundled contracts, we were not able to measure the extent of contract bundling directly. Accordingly, we reviewed selected contracts to assess whether agencies were consolidating requirements.

Some Contracts Consolidated Requirements and Limited Small Businesses' Participation

Of the 26 contracts we reviewed, 5 were large contracts that consolidated requirements to the point of limiting small businesses' participation. These particular contracts combined the components of a multiple-facility project under a single contract. Officials analyzed these projects to assess whether the work could accommodate smaller contractors but concluded that only by having a single contractor build the entire project could the work be performed efficiently.

For example, the Navy requested proposals for the construction of a complex of eight facilities at the Stennis Space Center in Mississippi to house a Special Operations Forces unit. The Navy estimated the cost of the complex at \$24.2 million. A large business received the contract, and

the Navy official responsible for monitoring small business contracting indicated that small businesses would have had difficulty undertaking a project of this size. The contracting officer told us that because these facilities were clustered on a compact site and were served by common cooling and mechanical systems, a single contract was awarded for constructing the entire complex. Space at the construction site would not have accommodated multiple contractors. Contracting officials told us that when contracting to construct a multiple-facility project, they have historically considered whether components of the project can be acquired through separate, smaller contracts suitable for award to small businesses. However, if an analysis of site and project characteristics indicated that a single contractor would be necessary in order for the work to be performed efficiently, a single contract would be awarded.

In cases like these, Small Business Administration (SBA) representatives normally review planned construction contracts and—when it appears unlikely that small businesses will be able to compete for a contract—may recommend alternative contracting approaches that will increase opportunities for small businesses. At the two locations we visited, contracting officers had submitted each of the contracts we reviewed to the appropriate SBA representatives and received approval to proceed with their planned contracting approach.

Another six of the contracts we reviewed involved ordering construction projects under task-order contracts. In these cases, small businesses were able to participate. Task-order contracts define the broad outlines of the government's needs and permit the government to place orders to acquire specific work over a fixed period within stated dollar limits. Under FASA, agencies may award task-order contracts as part of initiatives to streamline federal procurement. To encourage competition, the Congress established a preference for awarding task-order contracts to multiple contractors rather than to a single one and for providing each of the contractors an opportunity to be considered for specific orders. To preserve the simplicity and flexibility of administering task-order contracts, the Congress provided contracting officers broad discretion to define the procedures used to evaluate offers and select contractors when placing orders. According to contracting officials, placing orders under task-order contracts allows them to acquire construction work more quickly and with less administrative effort than awarding individual contracts.

Small businesses won some task-order contracts at the locations we visited. For example, the Army awarded six task-order contracts that

provided for ordering construction and incidental design services over a 4-year period, including options. While the Army expected that individual projects would be valued in the \$100,000 to \$500,000 range, the Army could order up to \$5 million in work annually or \$20 million over the 4-year period. The contracts called for contractors to submit competitive proposals on orders and for the Army to select the most advantageous proposal. The Army awarded two of the six task-order contracts through competitions limited to small disadvantaged businesses participating in the 8(a) program. In the competition for orders under the contracts, these two small disadvantaged businesses won \$4 million, or about 28 percent, of the work acquired under the six contracts through November 2000.

Another nine of the contracts we reviewed combined the requirements for design and construction work on a single facility under a single contract. In these cases, again, small businesses were able to participate. Agencies have traditionally awarded separate contracts for design and construction work. As part of the Clinger-Cohen Act's initiatives to streamline federal procurement, however, the Congress authorized agencies to award single contracts covering both design and construction work, referred to as "design-build contracts." Under the statute, agencies use a two-phase approach to selecting a design-build contractor, initially inviting contractors to submit information on their qualifications and technical approach to the work. Agencies use this information to identify the most highly qualified contractors and invite these firms to submit more-detailed information, such as design concepts and cost or price data. On the basis of their experience to date, officials indicated that using design-build contracts has enabled them to reduce project completion times and costs.

Small businesses competed successfully for design-build contracts at the locations we visited. For example, the Navy requested proposals for the design and construction of a wharf and an associated administrative, shop, and storage building estimated to cost about \$8.4 million. Initially, 12 firms submitted information on their capabilities and past performance. After evaluating this information, the Navy concluded that two small businesses and one large business were best qualified to undertake the project and invited these firms to submit a design proposal and price for the work. Navy evaluators considered the design solutions submitted by the two small businesses to be superior to that submitted by the large business. Since one of the small businesses also proposed the lowest price, this firm was awarded a contract for the work. Contracting officials pointed out that, to compete successfully for design-build contracts, construction firms must team up with design firms. Of these nine design-build

contracts, small businesses won two and were considered among the most highly qualified contractors in the competition for two others.

Lastly, of the remaining six contracts, five were separate contracts covering the construction of single facilities for which complete designs had been previously prepared. Small businesses won three of these five contracts. Finally, the last of the six contracts covered the design and construction of two closely related facilities. This final project was modest in scope, having an estimated cost of \$5.7 million and—although this contract was not awarded to a small business—two small businesses were considered among the most highly qualified contractors competing for the contract.

Agency Comments

DOD and SBA reviewed a draft of this report. DOD's Director of Small and Disadvantaged Business Utilization told us that DOD had no comments on the draft. SBA's written comments are contained in appendix I.

SBA indicated that the report's analysis is useful in improving an understanding of contract bundling and contract consolidation. SBA noted that the report does not discuss the Small Business Competitiveness Demonstration Program and its applicability to construction contracts. An evaluation of this program was beyond the scope of this review. SBA suggested that we include an appendix detailing the cases reviewed. Accordingly, we have incorporated a list of the contracts reviewed in our discussion of the scope and methodology of the review.

Scope and Methodology

To identify trends in DOD's contracting for construction and use of small business contractors, we analyzed data from DOD's prime contract database for fiscal years 1997 through 2000. Using this database, we determined trends in total obligations on contracts for construction work by converting obligations into constant fiscal year 1999 dollars and using gross domestic product deflator indexes in the President's Budget submission applicable to military outlays. In addition, we determined the shares of total obligations going to various classifications of business entities. We did not independently verify the accuracy of the information in DOD's database.

To assess the extent to which DOD's contracting officers had combined construction requirements, we reviewed the laws and implementing regulations defining contract bundling and reviewed large contracts for construction awarded at selected contracting offices. Using DOD's prime

contract database, we ranked DOD's contracting offices in terms of total dollars awarded for general repair and construction work in fiscal year 1999. (Data for fiscal year 2000 were not available at the time we were planning our work.) After ranking DOD's contracting offices, we reviewed contracts at the highest-ranked Army and Navy contracting offices: the Army Corps of Engineers' Mobile District, Mobile, Alabama, and the Naval Facilities Engineering Command's Southern Division, Charleston, South Carolina. At these two locations, we reviewed all contracts valued at \$5 million or more awarded during fiscal year 2000 for construction in the United States. We did not review contracts at an Air Force contracting office because the Army and Navy provide the Air Force with contracting support and the 28 highest-ranked offices were either Army or Navy contracting offices. Table 2 lists the 26 contracts—valued at \$347 million—selected for review.

Table 2: Selected Contracts Reviewed

Army Corps of Engineers	Naval Facilities Engineering Command
DACW01-00-D-0010	N62467-96-C-1093
DACW01-00-D-0011	N62467-98-C-0935
DACW01-00-D-0012	N62467-98-C-1049
DACW01-00-D-0013	N62467-99-C-0882
DACW01-00-D-0014	N62467-99-C-0893
DACW01-00-D-0015	N62467-99-C-0983
DACA01-00-C-0002	N62467-99-C-1000
DACA01-00-C-0012	N62467-99-C-1021
DACA01-00-C-0017	N62467-99-C-1032
DACA01-00-C-0018	N62467-99-C-1055
DACA01-00-C-0021	N62467-00-C-0255
DACA01-00-C-0022	
DACA01-00-C-0024	
DACA01-00-C-0026	
DACA01-00-C-0034	

For these contracts, we reviewed contract documentation to determine whether requirements had been combined, the reasons cited for combining requirements, and the extent of small businesses' participation in competition for the contracts. We also discussed these issues with contracting officials, the contracting offices' small business utilization monitors, and SBA representatives responsible for overseeing the selected contracting offices. Our results cannot be generalized to the universe of construction contract awards.

We conducted our review from November 2000 through May 2001 in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Secretary of Defense and the Acting Administrator of the Small Business Administration. We will make copies available to others on request.

If you have any questions regarding this report, please contact me on (202) 512-4841 or Ralph Dawn on (202) 512-4544. Other key contributors to this report were Monty Peters, Ralph Roffo, and John Van Schaik.



David E. Cooper
Director
Acquisition and Sourcing Management Issues

Appendix I: Comments From the Small Business Administration



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

JUN 20 2001

Mr. Ralph Dawn
Assistant Director
Acquisition and Sourcing Management Issues
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Dawn:

Thank you for forwarding copies of the U.S. General Accounting Office's (GAO) draft report entitled Small Businesses Continue to Win Construction Contracts (GAO-01-746) for review by the U.S. Small Business Administration (SBA). We appreciate the opportunity to review the report and provide comments prior to GAO submitting the final report to the Chairmen and Ranking Members of the House and Senate Armed Services Committees.

In general, the report provides a good discussion of some of the issues associated with construction contracting and small business participation. The report, however, does not discuss the Small Business Competitiveness Demonstration Program and its applicability to construction contracts. The North American Industrial Classification System (NAICS) construction codes under general contracting, heavy construction and special trades contractors cannot be set aside for small business unless the agency fails to meet the mandated 40 percent for awards to small business during a 12-month period using unrestricted competition. This factor is important to any discussion of small business participation in construction contracts. Another suggestion is the inclusion of an appendix of cases reviewed.

I am pleased to learn that SBA Procurement Center Representatives (PCRs) were involved in reviewing all 26 contracts discussed in the report. SBA believes that the PCR function plays an important role in ensuring that small businesses receive a fair share of Federal contracts and takes this responsibility very seriously.

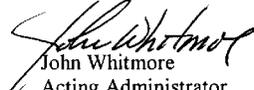
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Mr. Ralph Dawn

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We thank you and your staff for their cooperation. The analysis in the report is useful in improving the understanding of contract bundling and contract consolidation. We look forward to receiving the final report.

Sincerely,


John Whitmore
Acting Administrator

Related GAO Products

Small Business: Trends in Federal Procurement in the 1990s ([GAO-01-119](#), Jan. 18, 2001).

Federal Procurement: Trends and Challenges in Contracting With Women-Owned Small Businesses ([GAO-01-346](#), Feb. 16, 2001).

Small Businesses: Limited Information Available on Contract Bundling's Extent and Effects ([GAO/GGD-00-82](#), Mar. 31, 2000).

Defense Contracting: Sufficient, Reliable Information on DOD's Mentor-Protege Program Is Unavailable ([GAO/NSIAD-98-92](#), Mar. 30, 1998).

Base Operations: DOD's Use of Single Contracts for Multiple Support Services ([GAO/NSIAD-98-82](#), Feb. 27, 1998).

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