

~~14470~~

116389

UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY  
EXPECTED AT 8:30 a.m. DST  
TUESDAY, SEPTEMBER 22, 1981

STATEMENT OF  
HENRY ESCHWEGE, DIRECTOR  
COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION

BEFORE THE

SUBCOMMITTEE ON SBA AND SBIC AUTHORITY,  
MINORITY ENTERPRISE AND GENERAL SMALL BUSINESS PROBLEMS

COMMITTEE ON SMALL BUSINESS

HOUSE OF REPRESENTATIVES

ON



116389

SBA'S PROGRESS IN IMPLEMENTING THE  
PUBLIC LAW 95-507 SURETY BOND WAIVER PROVISION  
AND THE 8(a) PILOT PROGRAM

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

WE ARE HERE TODAY AT YOUR REQUEST TO DISCUSS THE RESULTS OF  
OUR REVIEWS OF SBA'S IMPLEMENTATION OF THE SURETY BOND WAIVER  
PROVISION AND THE 8(a) PILOT PROGRAM. H.R. 4500 WOULD EXTEND THE  
EXPIRATION DATE FOR BOTH OF THESE PROGRAMS.

PUBLIC LAW 95-507 REQUIRES US TO EVALUATE SEVERAL  
SBA PROGRAMS AND REPORT TO THE CONGRESS. THE REVIEWS WE ARE  
TESTIFYING ON TODAY WERE MADE IN PARTIAL FULFILLMENT OF OUR  
RESPONSIBILITY UNDER THE ACT. APPENDIX I ATTACHED TO MY STATE-  
MENT LISTS AND SUMMARIZES OTHER REPORTS WE HAVE ISSUED PURSUANT  
TO THE PUBLIC LAW.

018608

THE SURETY BOND WAIVER PROVISION  
HAS NOT BEEN IMPLEMENTED

WE STATED IN AN AUGUST 20, 1980, STATUS REPORT (CED-80-130) THAT SBA HAD PUBLISHED PROPOSED RULES AND REGULATIONS FOR SURETY BOND WAIVERS ON APRIL 4, 1980, AND THAT, AT THE TIME OF OUR REPORT, NOT A SINGLE SMALL BUSINESS HAD BEEN GRANTED A WAIVER. THE 17-MONTH PUBLISHING DELAY WAS DUE PARTLY TO CONFUSION WITHIN SBA ABOUT WHO WAS RESPONSIBLE FOR ADMINISTERING THE PROVISION AND THE LACK OF PRIORITY GIVEN TO BOND WAIVERS AS COMPARED TO OTHER PUBLIC LAW 95-507 PROVISIONS.

AS NOTED IN OUR REPORT WHICH HAS JUST BEEN RELEASED (CED-81-151), FINAL REGULATIONS FOR SURETY BOND WAIVERS WERE PUBLISHED IN THE FEDERAL REGISTER ON DECEMBER 17, 1980. HOWEVER, AS OF SEPTEMBER 8, 1981, SBA STILL HAD NOT ISSUED TO ITS FIELD OFFICES DETAILED STANDARD OPERATING PROCEDURES FOR IDENTIFYING AND PROCESSING BOND WAIVERS. THIS DELAY WAS DUE TO INTERNAL PROBLEMS IN CLEARING THE PROCEDURES. AS A RESULT, NO SURETY BOND WAIVERS HAVE BEEN GRANTED TO DATE.

THE SURETY BOND WAIVER PROVISION CALLED FOR A 2-YEAR PILOT EFFORT TO HELP CERTAIN SMALL BUSINESSES OBTAIN CONTRACTS UNDER SBA'S 8(a) BUSINESS DEVELOPMENT PROGRAM. IF A QUALIFIED SMALL BUSINESS CANNOT OBTAIN THE NECESSARY BONDING THROUGH A SURETY COMPANY OR SBA'S SURETY BOND GUARANTEE PROGRAM, THEN SBA HAS AUTHORITY UNDER PUBLIC LAW 95-507 TO WAIVE ANY AMOUNT OF ANY BOND OTHERWISE REQUIRED ON ANY GOVERNMENT CONTRACT UNDER THE 8(a) PROGRAM. AS OF SEPTEMBER 30, 1980, SBA HAD PROVIDED CONTRACTS TOTALING \$5.5 BILLION TO 8(a) FIRMS. OF THE 4,598 FIRMS

THAT HAVE PARTICIPATED IN THE 8(a) PROGRAM, 1,705 (37 PERCENT) WERE CONSTRUCTION FIRMS.

SURETY BONDING IS OFTEN A PREREQUISITE, PARTICULARLY IN CONSTRUCTION WORK, FOR OBTAINING BOTH GOVERNMENT AND PRIVATE CONTRACTS. THE MILLER ACT, FOR EXAMPLE, REQUIRES SURETY BONDS ON ALL FEDERAL CONSTRUCTION CONTRACTS OF \$25,000 OR MORE.

SBA's 8(a) PROGRAM PROCEDURES STATE THAT THE PROCURING AGENCY (FEDERAL AGENCY PROVIDING THE CONTRACT TO SBA) "SHALL BE REQUESTED NOT TO REQUIRE BONDS IN NON-CONSTRUCTION CONTRACTS EXCEPT WHERE SUCH REQUIREMENT IS ABSOLUTELY ESSENTIAL TO PROTECT THE INTERESTS OF THE GOVERNMENT." THEREFORE, AS A PRACTICAL MATTER, BOND WAIVERS ARE LIMITED TO 8(a) CONSTRUCTION CONTRACTS.

IN ADDITION TO VARIOUS STATUTORY REQUIREMENTS, SBA'S PROPOSED OPERATING PROCEDURES LIMIT TO \$100,000 THE AMOUNT OF A CONTRACT ON WHICH A SURETY BOND MAY BE WAIVED.

SBA'S 10 ASSISTANT DISTRICT DIRECTORS, A BUSINESS DEVELOPMENT SPECIALIST, AND 4 REGIONAL OR DISTRICT SURETY BOND REPRESENTATIVES WITH WHOM WE SPOKE RAISED SEVERAL QUESTIONS CONCERNING THE SURETY BOND WAIVER ELIGIBILITY REQUIREMENTS AND SUGGESTED SEVERAL REASONS WHY THE PROVISION, AS CURRENTLY STRUCTURED, MAY NOT BE POSSIBLE TO IMPLEMENT IN THEIR AREAS. THESE CONCERNS INCLUDED (1) ADMITTING FIRMS INTO THE 8(a) PROGRAM THAT MAY BE WORSE OFF FINANCIALLY THAN FIRMS ALREADY IN THE PROGRAM--FIRMS SBA HAD DETERMINED WERE CAPABLE OF OBTAINING BONDING, BUT STILL CANNOT OBTAIN CONTRACTS TO HELP THEM DEVELOP INTO VIABLE SMALL BUSINESSES, (2) THE SBA-IMPOSED \$100,000 LIMIT ON THE SIZE OF A CONTRACT FOR WHICH BONDING MAY BE WAIVED, (3) THE LEGAL REQUIREMENT THAT TO BE ELIGIBLE, A FIRM

CANNOT HAVE BEEN IN THE 8(a) PROGRAM MORE THAN 1 YEAR, AND (4) THE PRACTICE AT SOME SBA DISTRICT OFFICES OF NOT ADMITTING FIRMS INTO THE 8(a) PROGRAM IF THEY DO NOT HAVE THE ABILITY TO OBTAIN NEEDED BONDING.

TO BE ELIGIBLE FOR A SURETY BOND WAIVER, A FIRM MUST BE AN 8(a) FIRM AND MUST HAVE BEEN REFUSED BONDING UNDER SBA'S SURETY BOND GUARANTEE PROGRAM. BASED ON SBA STATISTICS FOR THE PERIOD OCTOBER 1978, WHEN THE LAW WAS PASSED, THROUGH JUNE 1981, 6,085 APPLICATIONS WERE RECEIVED FOR BONDING UNDER THE GUARANTEE PROGRAM FROM FIRMS IDENTIFIED AS 8(a) FIRMS. ONLY ABOUT 2 PERCENT OR 144 OF THE 8(a) APPLICANTS WERE REFUSED BONDING UNDER THE PROGRAM. ALSO, ABOUT 3 PERCENT OR 183 OF THE APPLICANTS WITHDREW THEIR APPLICATIONS. OUR ANALYSIS OF THE 144 APPLICANTS WHO WERE DENIED BOND GUARANTEES SHOWED THAT 87 WERE NOT ELIGIBLE FOR SURETY BOND WAIVERS BECAUSE THEY WERE FOUND NOT TO BE 8(a) FIRMS. OF THE REMAINING 57 FIRMS, 48 HAD BEEN IN THE 8(a) PROGRAM LONGER THAN 1 YEAR AND WERE, THEREFORE, NOT LEGALLY ELIGIBLE. SIX OF THE REMAINING NINE FIRMS HAD BEEN IN BUSINESS LONGER THAN THE MAXIMUM ALLOWED 2 YEARS, AND TWO OF THE THREE APPLICANTS WHO OTHERWISE MET THE CRITERIA, REQUESTED BONDING ON CONTRACTS THAT EXCEEDED \$100,000. BASED ON THIS ANALYSIS, SBA'S SURETY BOND WAIVER PROVISION, IF IT HAD BEEN IMPLEMENTED, MIGHT HAVE ASSISTED ONLY ONE 8(a) FIRM.

DESPITE THE RESULTS OF OUR ANALYSIS AND THE CONCERNS RAISED BY SBA OFFICIALS, WE BELIEVE THAT EXTENDING THE SURETY BOND WAIVER PROVISION BEYOND THE SEPTEMBER 30, 1981, EXPIRATION DATE WOULD BE REASONABLE BECAUSE SBA HAS NOT IMPLEMENTED THE PROVISION.

PROCEDURES NEEDED TO IMPLEMENT THE PROVISION, OR IDENTIFY AND PROCESS SURETY BOND WAIVERS, HAVE NOT BEEN ISSUED. ALSO, SOME FIRMS WHICH SBA DISTRICT OFFICIALS SAID WERE DENIED CONTRACTS OR ADMITTANCE INTO THE 8(a) PROGRAM BECAUSE OF THEIR INABILITY TO OBTAIN BONDING MIGHT HAVE BEEN HELPED IF THE PROVISION HAD BEEN IMPLEMENTED SOON AFTER IT WAS PASSED. NO STATISTICS WERE AVAILABLE ON THE NUMBER OF FIRMS THAT WERE DENIED ADMITTANCE TO THE 8(a) PROGRAM BECAUSE OF THEIR INABILITY TO GET BONDING.

WE SUGGESTED IN OUR REPORT THAT THE CONGRESS CONSIDER EXTENDING THE SURETY BOND WAIVER PROVISION 2 YEARS, TO SEPTEMBER 30, 1983, AND REQUIRE SBA TO REPORT TO THE CONGRESS ON THE PROVISION'S EFFECTIVENESS BEFORE THE REVISED EXPIRATION DATE. A PROGRAM EXTENSION WOULD ALLOW SBA SUFFICIENT TIME TO (1) IMPLEMENT THE SURETY BOND WAIVER PROVISION, (2) RESOLVE, IF FOUND SUBSTANTIATED, SOME OF THE SURETY BOND WAIVER CONCERNS PERCEIVED BY ITS FIELD OFFICES--SUCH AS RAISING THE \$100,000 LIMITATION, AND (3) DETERMINE HOW EFFECTIVE THE PROVISION WILL BE IN ASSISTING SMALL AND SMALL MINORITY BUSINESSES.

SBA AGREED THAT A 2-YEAR EXTENSION OF THE BOND WAIVER PROVISION WOULD ENABLE IT TO (1) FINALIZE AND DISTRIBUTE IMPLEMENTING PROCEDURES TO ITS FIELD OFFICES, (2) IDENTIFY ELIGIBLE CONCERNS THAT HAVE A NEED FOR BOND WAIVERS, AND (3) MONITOR AND REPORT ON THE EFFECTIVENESS OF THE BOND WAIVER PROVISION.

WE NOTE THAT H.R. 4500, WOULD EXTEND THE SURETY BOND WAIVER PROVISION FOR 2 YEARS, THROUGH FISCAL YEAR 1983. TWO YEARS SEEMS TO BE A REASONABLE AMOUNT OF TIME FOR SBA TO ISSUE ITS OPERATING

PROCEDURES, CARRY OUT THE PROGRAM, AND REPORT TO THE CONGRESS ON THE PROGRAM'S RESULTS.

THE 8(a) PILOT PROGRAM

LET ME ALSO COMMENT BRIEFLY ON THE 8(a) PILOT PROGRAM.

THE COMPTROLLER GENERAL'S REPORT ON THE PILOT PROGRAM WAS RELEASED TO THE CONGRESS ON JANUARY 23, 1981, (CED-81-22).

WE POINTED OUT THAT THIS PROGRAM HAD NOT BEEN SUCCESSFUL. WE CONCLUDED THAT THE SUCCESSFUL USE OF THE PILOT PROGRAM DEPENDED, IN PART, ON SBA'S ABILITY TO HAVE INFORMATION AVAILABLE ON THE QUALIFICATIONS OF 8(a) FIRMS. SBA NEEDS TO KNOW ENOUGH ABOUT PROCUREMENT OPPORTUNITIES TO JUDGE WHETHER A PARTICULAR FIRM CAN DO THE JOB. WE STATED THAT THESE REQUIREMENTS COULD ONLY BE FULFILLED IF SBA HAD A WORKABLE SYSTEM ENSURING THAT ITS FIELD PERSONNEL WERE BEING USED IN CRITICAL DECISIONS REGARDING THE SELECTION AND CERTIFICATION OF FIRMS, AND IF PROCUREMENT CENTER REPRESENTATIVES WERE BEING USED TO LOCATE PROCUREMENT OPPORTUNITIES.

THE ARMY, WITH A HISTORY OF COOPERATION IN OFFERING CONTRACTS TO THE REGULAR 8(a) PROGRAM, WAS SELECTED FOR PILOT PROGRAM PARTICIPATION. WE CONCLUDED THAT OPPORTUNITIES EXIST TO MORE FULLY TEST THE PILOT PROGRAM IN AN ADDITIONAL AGENCY THAT HAS BEEN RELUCTANT TO VOLUNTEER PROCUREMENTS TO THE REGULAR 8(a) PROGRAM.

WE RECOMMENDED THAT BEFORE ANY FURTHER CONTRACTS ARE SELECTED AND AWARDED UNDER THE PILOT PROGRAM, THE ADMINISTRATOR, SEA SHOULD:

--DIRECT PROGRAM OFFICIALS TO DILIGENTLY ENFORCE THE PILOT PROGRAM'S OBJECTIVE BY DEMANDING CONTRACTS ONLY WHEN THE ARMY IS RELUCTANT TO OFFER THEM UNDER THE REGULAR 8(a) PROGRAM. ALSO, THESE OFFICIALS SHOULD USE THE PILOT PROGRAM ONLY WHEN A QUALIFIED FIRM IS AVAILABLE.

--DIRECT PROGRAM OFFICIALS TO MAKE SURE THAT 8(a) FIRMS SELECTED FOR THE PILOT PROGRAM HAVE THE CAPABILITIES TO DO THE JOB SUCCESSFULLY. SBA SHOULD USE INFORMATION ON THE FIRM'S PAST PERFORMANCE IN DELIVERING ON 8(a) CONTRACTS.

--DIRECT PROGRAM OFFICIALS TO MAKE SURE THAT PROCUREMENT CENTER REPRESENTATIVES HAVE ENOUGH INFORMATION ON 8(a) FIRMS' CAPABILITIES SO THAT THIS DATA CAN BE USED TO MATCH QUALIFIED FIRMS TO PROCUREMENTS.

--REQUEST THE OFFICE OF THE INSPECTOR GENERAL TO CONDUCT REVIEWS OF THE THREE INITIAL PILOT CONTRACTS TO FIND OUT HOW EFFECTIVELY CONTRACTORS PERFORMED.

WE RECOMMENDED THAT THE CONGRESS AMEND THE AUTHORIZING LEGISLATION TO ALLOW FOR FURTHER TESTING OF THE PILOT PROGRAM IN AN ADDITIONAL AGENCY THAT HAS YET TO DEMONSTRATE ITS COMPLETE SUPPORT FOR THE 8(a) PROGRAM.

H.R. 4500 WOULD AUTHORIZE A 2-YEAR EXTENSION OF THE PILOT PROGRAM. AS I HAVE ALREADY NOTED, WE BELIEVE IT IS IMPORTANT THAT SBA SOLVE THE PROBLEMS WE IDENTIFIED BEFORE ANY FURTHER CONTRACTS ARE SELECTED AND AWARDED. WE HAVE NOT YET HAD THE OPPORTUNITY TO DETERMINE WHETHER SBA HAS CORRECTED THESE PROBLEMS. WE UNDERSTAND, HOWEVER, THAT SBA'S OFFICE OF THE INSPECTOR GENERAL IS REVIEWING THE THREE INITIAL PILOT CONTRACTS. IN ADDITION, WE

LEARNED THROUGH DISCUSSIONS LAST WEEK WITH 8(a) PROGRAM OFFICIALS THAT SBA PLANS TO MAKE SEVERAL CHANGES TO THE PROGRAM ALONG THE LINES OF OUR REPORT RECOMMENDATIONS. WE ARE IN FAVOR OF AN EXTENSION OF THE PROGRAM PROVIDED SBA IMPLEMENTS THESE CHANGES.

H.R. 4500 DOES NOT CONTAIN A PROVISION AS WE RECOMMENDED THAT WOULD AMEND THE AUTHORIZING LEGISLATION TO ALLOW FOR FURTHER TESTING OF THE PILOT PROGRAM IN AN ADDITIONAL AGENCY. WE WOULD SUPPORT SUCH A PROVISION IF THE NEW PILOT AGENCY IS ONE THAT HAS YET TO DEMONSTRATE ITS COMPLETE SUPPORT FOR THE 8(a) PROGRAM. IN THIS CONNECTION, WE POINTED OUT IN OUR REPORT THAT SBA AND THE ARMY DIFFERED ON WHETHER THE PILOT PROGRAM SHOULD EMPHASIZE THE QUALITY OR QUANTITY OF CONTRACTS. THE SUBCOMMITTEE MAY WISH TO CLARIFY IN H.R. 4500 WHETHER QUALITY OR QUANTITY OF CONTRACTS, OR BOTH, SHOULD BE EMPHASIZED.

- - - -

MR. CHAIRMAN, THIS CONCLUDES MY PREPARED STATEMENT. WE WILL BE GLAD TO RESPOND TO ANY QUESTIONS.

REPORTS GAO ISSUEDPURSUANT TO PUBLIC LAW 95-507

1. "Status Report on Small and Small Minority Business Subcontracting and Waiver of Surety Bonding for 8(a) Firms" (CED-80-130, Aug. 20, 1980)

The Small Business Administration has not fully implemented the section 7(j)(3) subcontracting program and the section 8(a)(2) surety bond waiver provision of the Small Business Act. Under section 7(j)(3), SBA, with the assistance of a presidentially appointed Advisory Committee, is to encourage large businesses to place subcontracts with small firms. Problems impeding progress in implementing section 7(j)(3) include

- delays in establishing the Presidentially appointed Advisory Committee,
- the lack of specific committee functions and goals, and
- the exclusive focus of the committee on Federal subcontracting instead of on private sector subcontracting.

Despite problems in implementing section 7(j)(3), SBA has taken several actions to help small and small minority businesses compete in the private sector.

Under the surety bond waiver provision, the SBA Administrator is authorized to waive any bond required by a Government procurement officer on contracts under SBA's section 8(a) Business Development Program. This provision also has not been implemented. A major cause for this appears to be a disagreement or misunderstanding between two SBA offices concerning who was responsible for implementing the provision.

GAO makes recommendations to help alleviate the problems impeding implementation of the two provisions.

2. "Most Borrowers of Economic Opportunity Loans Have Not Succeeded in Business" (CED-81-3, Dec. 8, 1980)

SBA's Economic Opportunity Loans have not been an effective way to help disadvantaged people start or improve their own businesses. More borrowers have defaulted on the loans than have repaid them. Many who paid off their loans have not remained in business. Furthermore, the

outlook for borrowers with active loans is not good since many are in financial difficulty.

The program provides services to borrowers whose limited capital, inexperience, and other factors make high rates of loss and business failure unavoidable. Nevertheless, program results could improve if SBA changed the way it manages the program and took measures to help borrowers overcome their undercapitalization and inexperience.

If program results do not improve, congressional oversight committees should determine whether the program's objectives could be better achieved by transferring its funds to other Federal programs for disadvantaged businesses.

3. "The 8(a) Pilot Program for Disadvantaged Small Businesses Has Not Been Effective" (CED-81-22, Jan. 23, 1981)

SBA's use of a special pilot program which gives it the authority to demand contracts for the 8(a) program has not been successful.

SBA (1) did not have enough information to properly assess and match 8(a) firms' capabilities with pilot procurements and (2) approved 8(a) firms to perform pilot contracts without knowing their capabilities. GAO believes SBA made a poor choice of those firms that were awarded the three initial pilot contracts.

There is a difference between Army, which was selected as the pilot agency, and SBA over the way the pilot program can be used most effectively. GAO is recommending that the Congress allow further testing of the pilot program in an additional agency that, unlike the Army, has not demonstrated its complete support of the 8(a) program.

4. "The SBA 8(a) Procurement Program--A Promise Unfulfilled" (CED-81-55, Apr. 8, 1981)

SBA's 8(a) Procurement Program gives noncompetitive Government contracts and other aid to help disadvantaged business owners become self-sufficient. Few aided firms have graduated as competitive businesses. The bulk of 8(a) contracts has gone to a select group of firms. Many firms have not built-up commercial sales, rely on 8(a) contracts, and view the program as an end in itself.

SBA is reluctant to remove from the program firms that are needed to meet yearly contract volume goals. Because of this, other disadvantaged firms cannot participate. Insufficient staff, vague graduation criteria, and poor records

also hamper the program's effectiveness. Further, the small business community is concerned about the program's future impact on its businesses.

GAO proposes several alternatives and recommendations to restructure the 8(a) program and resolve its problems.