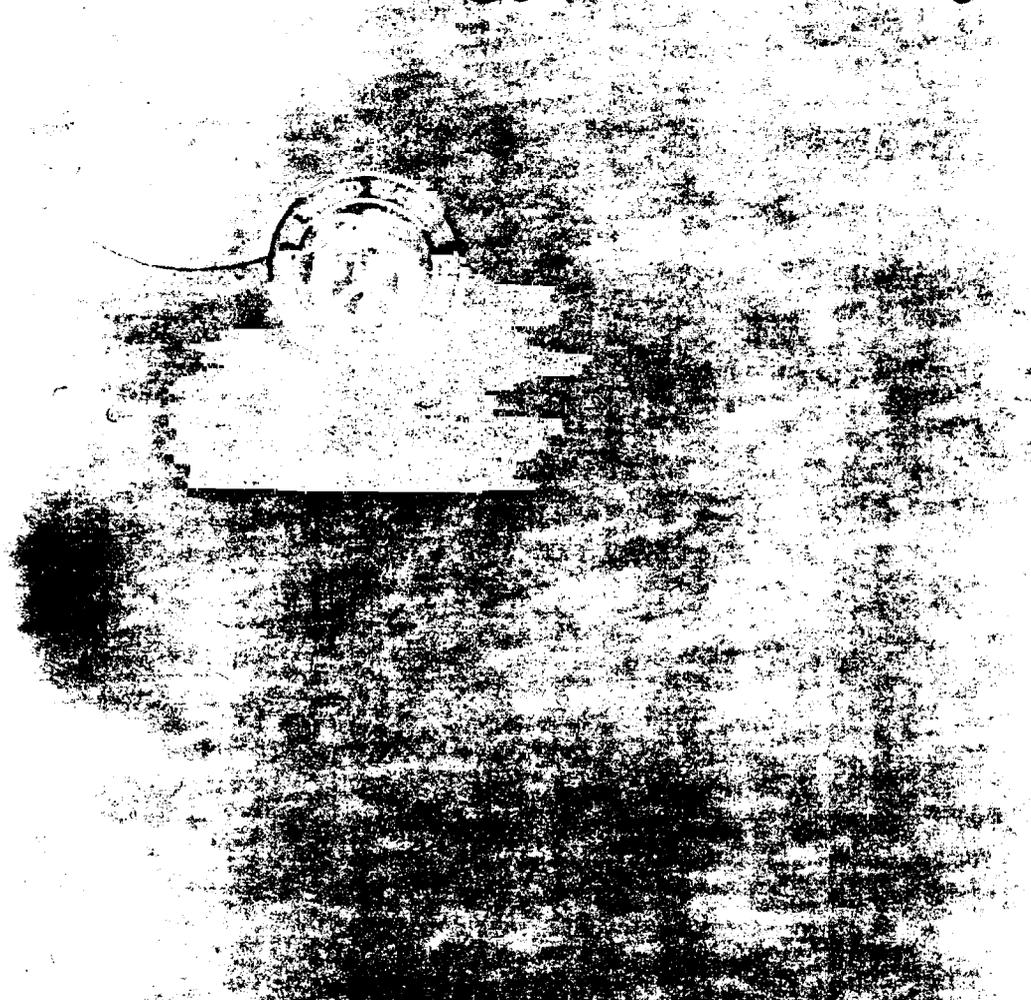


May 1988

PROCUREMENT

Compliance With Subcontracting Requirements at GSA, Energy, and Navy



General Government Division

B-229245

May 24, 1988

The Honorable John J. LaFalce
Chairman, Committee on Small Business
House of Representatives

Dear Mr. Chairman:

As requested by the former Committee Chairman, we have reviewed the compliance of the General Services Administration (GSA) and the Departments of Energy and the Navy with certain statutory requirements for subcontracting with small and small disadvantaged businesses.

On November 10, 1987, we briefed the Committee on the results of our review. Subsequently, the Committee requested that we summarize and formally transmit the information presented at the briefing. In this report we transmit that data supplemented by a brief discussion of the major points and comments from the three agencies on our findings.

Section 211 of Public Law 95-507, enacted on October 24, 1978, requires that with certain exceptions contracts and contract modifications awarded by federal agencies that exceed \$500,000, or \$1 million in the case of construction contracts, contain a subcontracting plan providing for the maximum practicable utilization of small and small disadvantaged businesses.

As agreed with the Committee, the objective of our work was to provide information on the extent to which GSA, Energy, and the Navy have complied with the subcontracting requirements for the Committee's use in assessing these agencies' overall compliance with and administration of the requirements. To accomplish our objective, we determined if subcontracting plans were included in contracts if required, what goals were set for participation of small and small disadvantaged businesses, and whether these goals were being achieved. We also determined the extent to which the agencies use techniques such as incentive clauses and remedial actions to promote the use of small and small disadvantaged businesses. We reviewed 2,052 individual contract files at 15 procurement offices in 5 locations. A detailed explanation of the scope and methodology of our work is given in appendix I.

Results in Brief

About 50 percent of the 2,052 contracts in our sample contained the required subcontracting plans. We found that overall about 11 percent

of the 1,008 contracts and contract modifications that did not have subcontracting plans should have had one. These consisted of 11 of 503 contract actions at GSA, 15 of 233 at Energy, and 84 of 272 at Navy. We found that about 89 percent of the contracts and contract modifications that did not have plans had reasons that were justified.

Requirements for Subcontracting Plan

According to the Federal Acquisition Regulation, contracting officers are ultimately responsible for ensuring that a subcontracting plan, when required, is submitted by the prime contractor and made a material part of the contract. Most of the instances at Energy and all of those at GSA where contracts or modifications should have had plans but did not were attributed by agency officials to a mistaken interpretation of the regulations. In addition, Energy officials attributed several instances to oversight. At the Navy, officials told us all of the instances were the result of oversight. Appendix I contains a detailed explanation of the contracts we reviewed that did not have a subcontracting plan and the reasons why.

Subcontracting Goals

Each plan must contain separate goals for the participation of small and small disadvantaged businesses in the subcontracting to be done under the contract. During our review of those contracts containing subcontracting plans, we collected data on each plan's subcontracting goals along with other information pertaining to the plan. Highlights of the data we collected are contained in appendix I.

According to the Federal Acquisition Regulation, the adequacy of each subcontracting goal should be individually assessed by appropriate agency officials on the basis of a number of factors, such as the opportunity for subcontracting in the prime contract, the potential small and small disadvantaged businesses that could participate, and the extent of subcontracting in similar contracts in the past. Because there are no quantitative criteria for evaluating subcontracting goals, either in law or regulation, a meaningful comparison of goals is not possible. Moreover, it is not feasible to compare one agency's goals to another's, even if it were possible to compare goals for individual plans, because data are often inconsistent.

During our review, we attempted to determine how successful contractors are in achieving the goals contained in the subcontracting plans. Although the available data permitted only a limited analysis on an

aggregate basis, it appears that in general, most of the subcontracting goals at the three agencies we reviewed are being achieved.

Remedial Actions and Incentive Clauses

We also inquired into the use of remedial actions by GSA, Energy, and the Navy against contractors when subcontracting goals were not achieved. Agency officials could not recall any instance of such actions ever having been taken.

Finally, we reviewed the use of incentive clauses by GSA, Energy, and the Navy as a means of increasing subcontracting opportunities for small and small disadvantaged businesses. We were told that such incentive clauses are never used at GSA and only very rarely at Energy. Navy records indicated that incentive clauses were used in some cases at one of the three commands we visited.

Agency Comments and Our Evaluation

A draft of this report was provided to GSA, Energy, and the Department of Defense for comment. The Office of the Secretary of Defense provided oral comments and said it fully concurred with our observations. GSA's comments, included as appendix II, concerned contracts that did not contain subcontracting plans due to erroneous calculation of contract dollar values. GSA said it became aware of this problem just before our study and has initiated corrective action. Energy described the draft report as informative and well-balanced but identified several areas where it thought the report could be improved. The Department's comments, along with our response, are included as appendix III.

As arranged with the Committee, we plan no further distribution of this report until 30 days from the issuance date unless you publicly announce its contents earlier. At that time we will send copies to the Administrator of General Services and the Secretaries of Defense, the

Navy, and Energy, and to others upon request. If you have any questions, please contact me on 275-8676 or Michael L. Eid on 557-7944.

Sincerely yours,

A handwritten signature in black ink that reads "L. Nye Stevens". The signature is written in a cursive style with a large, stylized initial "L" and "S".

L. Nye Stevens
Associate Director

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Abbreviations

GSA	General Services Administration
OSDBU	Office of Small and Disadvantaged Business Utilization
NavAir	Naval Air Systems Command
NavSea	Naval Sea Systems Command

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Compliance With and Administration of Subcontracting Requirements at GSA, Energy, and the Navy

This appendix presents the contents of a briefing given on November 10, 1987, before representatives of the House Committee on Small Business. The work was done in response to a request by the former Committee Chairman that we review the compliance of the General Services Administration (GSA) and the Departments of Energy and the Navy with certain statutory requirements for subcontracting with small and small disadvantaged businesses.

Background

Section 211 of Public Law 95-507 requires that federal contracts and contract modifications exceeding \$500,000, or \$1 million in the case of construction contracts, contain a subcontracting plan providing for the maximum practicable utilization of small and small disadvantaged businesses.

For negotiated contracts, the apparently successful offeror must submit an acceptable subcontracting plan before the contract is awarded. If the offeror fails to negotiate a subcontracting plan acceptable to the contracting officer within the time limit prescribed by the contracting officer, the offeror is ineligible for the award. For sealed bid acquisitions that meet the dollar threshold, the successful bidder awarded the contract must submit an acceptable plan within the time limit prescribed by the contracting officer.

Subcontracting plans are not required for contracts

- with small business concerns,
- for personal services,
- to be performed entirely outside the United States, and
- where the contracting officer certifies that no subcontracting opportunities exist.

Each subcontracting plan must include

- separate percentage goals for using small and small disadvantaged businesses as subcontractors;
- the name of an individual employed by the offeror who will administer the offeror's subcontracting program and a description of the individual's duties;
- a description of the efforts the offeror will make to ensure that small and small disadvantaged business concerns will have an equitable opportunity to compete for subcontracts;

- assurances that the offeror will require all subcontractors (except small businesses) that receive awards in excess of \$500,000 (\$1 million for construction subcontracts) to also prepare and implement a subcontracting plan; and
- a description of the types of records the offeror will maintain to demonstrate compliance with the requirements and goals in the plan.

Public Law 95-507 also requires each federal agency with procurement authority to establish an Office of Small and Disadvantaged Business Utilization (OSDBU) that is responsible for, among other things, implementing the subcontracting program within the agency. GSA, Energy, and the Navy have also established positions for Small Business Specialists who, besides implementing OSDBU's policies and programs at the local level, review and approve proposed subcontracting plans. The contracting officer making the procurement, however, is ultimately responsible for ensuring that subcontracting plans are prepared and submitted when required and made a material part of the contract or modification.

The Small Business Administration has also been given the responsibility by the Office of Management and Budget to review all subcontracting plans in an advisory capacity. Monitoring the contractor's performance of the subcontracting plan after the contract has been awarded is the responsibility of the contracting officer who is administering the contract. This individual may or may not be the same person responsible for the procurement. Section 211 of Public Law 95-507 specifies that failure to comply in good faith with the requirements of the subcontracting plan can be considered a material breach of contract.

Objective, Scope, and Methodology

As agreed with the House Small Business Committee, the objective of our work was to provide information the Committee desired to assess how well GSA, Energy, and the Navy are complying with and administering the subcontracting provisions contained in section 211 of Public Law 95-507.

To accomplish our objective, we reviewed 2,052 contract files at 15 procurement offices in the Washington, D.C., and San Francisco metropolitan areas and in Chicago, New York City, and Oak Ridge, Tennessee. Table I.1 lists the procurement offices we visited and shows the number of contracts reviewed at each location.

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Subcontracting Requirements at GSA,
Energy, and the Navy**

**Table I.1: Procurement Offices Visited
and Contracts Reviewed**

Procurement office	Contracts reviewed		Total
	With plans	Without plans	
GSA			
Tools	33	69	102
Automotive	64	17	81
Furniture	55	85	140
Office supplies	95	148	243
Office equipment	60	30	90
Special programs	5	7	12
Scientific equipment	21	27	48
ADP	132	120	252
Totals	465	503	968
Energy			
Washington, D.C.	34	21	55
Chicago	88	116	204
San Francisco	56	30	86
Oak Ridge, TN	46	66	112
Totals	224	233	457
Navy			
NavAir	116	100	216
NavSea	151	145	296
Strategic Systems Project Office	88	27	115
Totals	355	272	627
Totals	1,044	1,008	2,052

For those contracts with a subcontracting plan, we recorded data concerning various aspects of the plan. For those contracts without a plan, we reviewed contract files and talked with responsible procurement personnel to determine why there was no plan and determined if the reason was valid and properly documented.

We also looked at (1) the size of the subcontracting goals in terms of dollars and as a percentage of total subcontracting to be done under the contract, (2) the extent to which subcontracting goals were being achieved, (3) remedial actions taken for substantial nonperformance of subcontracting plans, and (4) the use of incentive clauses to increase

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subcontracting opportunities for small and small disadvantaged businesses.

Our sampling methodology varied according to the type of procurement activity at each of the three agencies we reviewed. Contracts at the Department of Energy are normally for very long periods of time and most procurement actions consist of modifications to existing contracts rather than new awards. To assure adequate audit coverage, we identified all contracts that were open during fiscal year 1986 that had a total face value of \$500,000 or more.¹ We visited 4 of Energy's 15 procurement offices—the 3 with the most open contracts and the Washington, D.C., office—and reviewed 61 percent of all open contracts with a face value of \$500,000 or more. For each contract we reviewed, we examined the most recent action for \$500,000 or more—either the basic award or a contract modification—that was completed before October 1, 1986.

Almost all procurement actions at GSA are contract awards rather than contract modifications. In addition, there are a number of multiyear contracts that last from 2 to 3 years. To maximize our audit coverage under these conditions, we identified all contracts for \$500,000 or more that were awarded in the 18-month period ending in March 1987 and visited the eight GSA procurement offices that had awarded almost two-thirds of these contracts.

In general, the Navy's procurement actions are a mixture of awards and contract modifications. Moreover, the Navy's procurement offices are much more numerous and widespread than those of Energy and GSA. We selected for review the three offices that had the largest dollar volume of procurement actions during fiscal year 1986. In all, these three offices accounted for 53 percent of all Navy procurement dollars during that period. At each of these locations, we identified all open contracts that had a total face value of \$500,000 or more and reviewed the most recent action on each contract—either award or modification—completed during fiscal year 1986 that met the dollar criteria. In some cases we reviewed a representative sample of contract actions.

We did our work from October 1986 to October 1987 in accordance with generally accepted government auditing standards.

¹ Although the law specifies contracts over \$500,000, we chose to examine contracts for \$500,000 or more when we learned that some contracts for exactly \$500,000 had subcontracting plans prepared for them.

Compliance With Subcontracting Provisions

Approximately half of the contracts and contract modifications we examined did not have subcontracting plans. In most instances, the reasons given for a procurement not having a plan were justified. While each agency had a number of unjustified reasons, the Navy had the most instances where procurements that should have had subcontracting plans did not.

GSA

The number of contracts we reviewed at GSA that did not have subcontracting plans is shown in table I.2 along with the reasons cited for the contracts not having a plan. The majority of these contracts—over 80 percent—were awarded to small businesses and thus did not require a subcontracting plan. Almost 15 percent were purchases from mandatory sources, such as Federal Prison Industries and workshops of the National Industries of the Blind. GSA does not consider these to be actual contracts but treats them as such to facilitate handling.² Consequently, GSA believes they are also exempt from the requirement for subcontracting plans. While most of the other reasons cited were justified, we identified 11 contracts that did not have a valid reason. These were multiyear contracts with a total face value exceeding the dollar threshold but for which the contracting officer had applied the dollar criteria on an annual basis. For example, the contracting officer determined that a 3-year contract with a total value of \$1.2 million did not require a plan since the annual value was only \$400,000 a year. Because the dollar threshold applies to the total value of a contract and not the value computed on an annual basis, all of these contracts should have had plans submitted by the contractors.

²GAO is currently reviewing the question of whether these purchases are contracts subject to the requirements of section 211 of Public Law 95-507. We will relay under separate cover our position on this issue to GSA.

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Table I.2: GSA Contracts, \$500,000 or Greater, Without Subcontracting Plans

Office	Contracts without plans	Reasons cited for no plan	
		Justified	Not justified
Tools	69	67 2	Small business Mandatory source
Automotive	17	15 1 1	Small business No opportunities Original award below threshold
Furniture	85	67 1 13 1	Small business No opportunities Mandatory source \$500,000 exactly
Office supplies	148	93 53 2	Small business Mandatory source Original award below threshold
Office equipment	30	22 1	Small business Outside U.S.
Special programs	7	5 1 1	Small business Mandatory source Outside U.S.
Scientific equipment	27	26	Small business
ADP	120	118 2	Small business No opportunities
Totals	503	413 69 4 3 2 1	Small business Mandatory source No opportunities Original award below threshold Outside U.S. \$500,000 exactly

Department of Energy

Table I.3 illustrates that very few of the contract awards and modifications without plans at the Department of Energy had been awarded to small businesses. Approximately two-thirds were situations where the initial award was either below the dollar threshold or was made before the act was implemented. Subsequent modifications to these contracts were each below the dollar threshold so that although each contract had a total face value exceeding \$500,000, none had a plan because no individual action for the contract exceeded the dollar threshold.

While most of the remaining contract actions had valid reasons for not having a subcontracting plan, we identified 15 at two Energy locations that did not have plans when they should have. Agency officials told us that nine of these cases were the result of oversight. The remaining six

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were cases similar to those found at GSA where multiyear contracts or modifications had been awarded but the contracting officer had applied the criteria on an annual basis.

Department of the Navy

Table I.4 summarizes the procurement actions we reviewed at the Navy that did not have subcontracting plans. Similar to GSA, the most frequently cited reason for a contract action not having a subcontracting plan was that the award was made to a small business. However, 84 of the 272 actions we reviewed, or 31 percent, should have had subcontracting plans but did not. In all 84 cases, the reason given by Navy officials for failing to obtain a subcontracting plan was oversight.

**Table I.3: Department of Energy
Procurement Actions, \$500,000 or More,
Without Subcontracting Plans**

Office	Contracts without plans	Reasons cited for no plan	
		Justified	Not justified
Washington, D.C.	21	1 Small business 16 No opportunities 1 Outside U.S. 3 Original award below threshold	
Chicago	116	11 No opportunities 67 Awarded prior to act 8 Plan expired 30 Original award below threshold	
Oak Ridge, TN	66	2 Small business 4 No opportunities 7 Plan expired 6 Awarded prior to act 1 \$500,000 exactly 36 Original award below threshold	4 Overlooked 6 Contract value put on annual basis
San Francisco	30	1 Small business 9 No opportunities 9 Awarded prior to act 6 Original award below threshold	5 Overlooked
Totals	233	4 Small business 82 Awarded prior to act 40 No opportunities 75 Original award below threshold 1 Outside U.S. 1 \$500,000 exactly 15 Plan expired	6 Contract value put on annual basis 9 Overlooked

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 Energy, and the Navy

Table I.4: Department of the Navy
 Procurement Actions, \$500,000 or More,
 Without Subcontracting Plans

Office	Contracts without plans	Reasons cited for no plan	
		Justified	Not justified
NavAir	100	27	52
		13	Overlooked
		6	Overlooked
		1	Overlooked
		1	Overlooked
NavSea	145	85	30
		16	Overlooked
		3	Overlooked
		1	Overlooked
		10	Overlooked
Strategic Systems Project Office	27	3	2
		19	Overlooked
		3	Overlooked
Totals	272	115	84
		41	Overlooked
		16	Overlooked
		4	Overlooked
		1	Overlooked
		10	Overlooked
		1	Overlooked

Subcontracting Goals for Small and Small Disadvantaged Businesses

Slightly more than half of the contract awards and modifications we examined had subcontracting plans. These plans contained goals for the use of small and small disadvantaged businesses as subcontractors, which were expressed as a percentage of the total amount of subcontracting to be done under the action. Selected statistics for the small business and small disadvantaged business goals we reviewed are presented in tables I.5 and I.6. There are differences in data among the agencies and a lack of quantitative standards for subcontracting goals. For these reasons, we do not believe that these statistics should be used as a means of comparing the subcontracting goals of one agency to another, nor do we think it is feasible to compare the goals of any one plan to that of another.

In some cases, not all of the subcontracting data from a plan were available. We excluded these cases when we calculated the statistics on subcontracting goals. We excluded most of GSA's subcontracting plans when we calculated that agency's averages for another reason. Firms selling commercial products to the government are authorized to prepare "companywide" subcontracting plans. These plans show goals and amounts

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to be subcontracted for the entire company and apply to all federal contracts awarded the company during the period covered by the plan. Because GSA purchases so many commercial products, 80 percent of the subcontracting plans we reviewed at that agency were companywide plans. Including data from companywide plans in calculating GSA averages would not present a representative picture of that agency's subcontracting program since none of the data relate specifically to contracts awarded by the agency. Consequently, companywide subcontracting plans were not included when we calculated statistics on GSA's subcontracting goals.

In addition to the difficulties in collecting comparable data among agencies, an even more basic difficulty in trying to compare any one plan to another is the absence of quantitative criteria for assessing the reasonableness of subcontracting goals. In general, goals are evaluated individually using subjective standards based upon knowledge and experience. Contracting officers, SBA representatives, and the agency's Small Business Specialists consider, for example, the opportunity for subcontracting in the prime contract, potential small and disadvantaged businesses that could participate in the contract, and the amount of subcontracting in similar contracts in the past. In our opinion, the variability of these standards does not make it feasible to compare one plan's subcontracting goals to those of another plan.

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Table I.5: Small Business Subcontracting Goals

Agency/location	Plans reviewed	No. of plans used in goal computations ^a	Goals ^b		
			Mean (%)	Median (%)	Range (%)
Navy					
NavAir	116	108	38	36	0-100
NavSea	151	135	43	40	0-100
Strategic Systems Project Office	88	84	38	36	0-100
Overall	355	327	40	37	0-100
Energy					
Washington, D.C.	34	29	56	59	05-100
Chicago	88	88	32	29	4-100
San Francisco	56	50	40	40	0-100
Oak Ridge, TN	46	40	42	40	2-100
Overall	224	207	39	38	0-100
GSA					
Tools	33	6	59	45	34-100
Automotive	64	1	38	38	38
Furniture	55	4	22	22	3-43
Office supplies	95	77	21	8	0-100
Office equipment	60	1	10	10	10
Special programs	5	1	49	49	49
Scientific equipment	21	1	3	3	3
ADP	132	0	0	0	0
Overall	465	91	23	12	0-100

^aPlans with incomplete data on subcontracting goals were excluded when calculating statistics. Companywide plans were also excluded from calculations.

^bGoals are expressed as the percentage of total subcontracting under a contract to be awarded to small businesses.

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**Table I.6: Small Disadvantaged Business
Subcontracting Goals**

Agency/location	Plans reviewed	No. of plans used in goal computations ^a	Goals ^b		
			Mean (%)	Median (%)	Range (%)
Navy					
NavAir	116	108	1	1	0-13
NavSea	151	135	4	1	0-68
Strategic Systems Project Office	88	84	3	1	0-100
Overall	355	327	3	1	0-100
Energy					
Washington, D.C.	34	22	14	5	0-89
Chicago	88	88	3	2	0-26
San Francisco	56	50	7	2	0-56
Oak Ridge, TN	46	40	11	5	0-70
Overall	224	200	7	3	0-89
GSA					
Tools	33	6	14	3	4-50
Automotive	64	1	4	4	4
Furniture	55	4	6	6	1-10
Office supplies	95	77	1	2	0-7
Office equipment	60	1	1	1	1
Special programs	5	1	3	3	3
Scientific equipment	21	1	1	1	1
ADP	132	0	0	0	0
Overall	465	91	2	1	0-50

^aPlans with incomplete data on subcontracting goals were excluded when calculating statistics. Companywide plans were also excluded from calculations.

^bGoals are expressed as the percentage of total subcontracting under a contract to be awarded to small disadvantaged businesses.

**Success in Achieving
Subcontracting Goals**

During our review we attempted to determine to what extent subcontracting goals were being achieved at GSA, Energy, and the Navy. Although we were unable to obtain a uniform measurement among the three agencies because of different recordkeeping practices, we obtained some broad indications that most subcontracting goals are being achieved.

Companies with contracts that have subcontracting plans are required to report the progress made against subcontracting goals. Two reports

are prepared: one for each individual contract and another for all contracts the company has with any particular agency. At the three agencies we visited, the reports on individual contracts are sent to the contracting officer administering the contract. Because these reports are widely dispersed across the country and are very difficult to obtain, we chose not to use them in our review.

The reports measuring companywide performance are submitted to OSDBU at GSA, Energy, and the Navy and thus are available at a centralized location. Even so, the value of these reports in measuring performance is somewhat limited, and the way they are summarized and reported differs among the three agencies.

The Navy receives companywide performance reports only for those contracts it administers. Most Navy contracts are in fact administered by the Defense Logistics Agency. In fiscal year 1986, the Navy was administering 1,916 contracts with subcontracting plans that had been awarded to 86 companies. Of these contracts, 131 were completed during this period. Of the completed contracts, 110 had met or exceeded the subcontracting goal for small businesses and achieved, on average, 139.8 percent of the goal. Eighty had met or exceeded the goal for small disadvantaged businesses and achieved, on average, 157.6 percent of the goal.

Twenty-one of the completed contracts did not meet the small business goal, achieving, on average, 34.1 percent of the goal. Similarly, 44 contracts did not meet the small disadvantaged goal, achieving an average of 29.6 percent. Seven of the completed contracts did not have small disadvantaged goals in their subcontracting plans.

Although the Department of Energy does have centralized reports on the performance of contractors for subcontracting goals, these reports are limited to contracts that are still open. To obtain an accurate and complete measure of performance against goals, we believe it would be necessary to review plans for completed contracts.

Energy does have some data available to measure the percentage of subcontracted dollars that went to small and small disadvantaged businesses. In fiscal year 1986, the total dollar amount of subcontracts reported by prime contractors was \$4.7 billion. Of this, approximately half went to small businesses, and slightly more than 5 percent went to small disadvantaged businesses. What the aggregate goals were for that period, however, is unknown because Energy does not keep that data.

Data at GSA are also limited because only data on the aggregate goals and total performance against those goals are available. In fiscal year 1986, the aggregate GSA small business and small disadvantaged business goals were \$212.5 million and \$12.8 million, respectively. This represented 25 percent of all subcontracted dollars for small businesses and 1.5 percent of all subcontracted dollars for small disadvantaged businesses. The actual performance of all contractors for that period saw 32.6 percent of total subcontracted dollars going to small businesses and 1.8 percent going to small disadvantaged businesses.

Although we could not measure the performance of individual contractors because data are not available, on an aggregate basis GSA exceeded both subcontracting goals for fiscal year 1986.

Use of Incentive Clauses and Remedial Actions

Section 211 of Public Law 95-507 also authorized federal agencies to include incentive clauses in negotiated contracts as a means of encouraging subcontracting opportunities for small and small disadvantaged businesses.

Although records are not kept on the use of such clauses at GSA and Energy, we were informed by officials of those agencies that the clause is never used at GSA and only very rarely used at Energy.

The Navy does keep records of the use of incentive clauses and we found that at least at one of the commands we visited, these clauses are used to some extent. Out of 411 active contracts that were identified at NavSea, Navy records indicated that 30 used incentive clauses. We found no evidence that incentive clauses were used at the other two commands we visited.

Finally, we asked GSA, Energy, and Navy officials whether punitive or remedial actions had been taken against any contractor for failing to meet a subcontracting goal without having demonstrated a good faith effort to do so. We were informed by officials at each agency that to the best of their knowledge, such actions have never been taken.

Comments From the General Services Administration



General Services Administration
Washington, DC 20405

March 31, 1988

Dear Mr. Fogel:

Thank you for the opportunity to review draft GAO Audit Report #GAO26/GGD-88-.

Our only comment concerns the Federal Supply Service multiyear contracts which did not contain subcontracting plans due to erroneous calculation of the contract dollar values. We have been informed by the Federal Supply Service (FSS) that they became aware of this problem just prior to the study, and that the correct application of contract dollar values in determining whether or not a plan is required has been called to the attention of the supervisors.

We have also been informed that the FSS Procurement Management Division is preparing a notice to all FSS contracting activities on this subject. We will forward a copy to you upon receipt.

In addition, we will request the Office of Acquisition Policy to include an article in the GSA Acquisition News on the correct method of calculating multiyear contract dollar values with regard to subcontracting plans.

Sincerely,

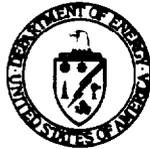
A handwritten signature in cursive script, appearing to read "John F. Wynn, Jr.".

JOHN F. WYNN, JR.
Director
Office of Small and Disadvantaged
Business Utilization

Mr. Richard L. Fogel
Assistant Comptroller General
General Government Division
United States General Accounting Office
Washington, DC 20548

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Comments From the Department of Energy



Department of Energy
Washington, DC 20585

April 6, 1988

Mr. J. Dexter Peach
Assistant Comptroller General
Resources, Community, and
Economic Development Division
U.S. General Accounting Office
Washington, D.C. 20549

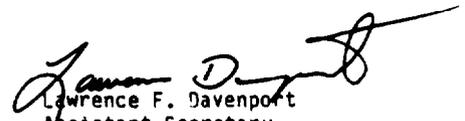
Dear Mr. Peach:

The Department of Energy (DOE) appreciates the opportunity to review and comment on the General Accounting Office (GAO) draft report entitled "Procurement: Compliance with Subcontracting Requirements at GSA, Energy, and Navy."

This report contains no recommendations. We have found it informative and well balanced in its presentation. We, however, have identified four areas in which we believe the report could be meaningfully improved. Those detailed comments are enclosed.

The DOE hopes that these comments will be helpful to the GAO in its preparation of the final report.

Sincerely,


Lawrence F. Davenport
Assistant Secretary
Management and Administration

Enclosure



Celebrating the U.S. Constitution Bicentennial — 1787-1987

Department of Energy Comments on the GAO Draft Report
"Procurement: Compliance with Subcontracting Requirements
at GSA, Energy and Navy" (GAO/GGD-88-)

Now on p. 2.

1. Page 4 - "According to the Federal Acquisition Regulations, the adequacy of each subcontracting goal should be individually assessed ..."

Now on p. 15.

Page 21- "[W]e do not believe that these statistics should be used as a means of comparing subcontracting goals of one agency to another nor do we think it is feasible to compare the goals of any one plan to that of another."

Comment- In light of these two quotations and other material on pages 4, 21 and 24 and the notes on pages 22 and 23, the draft report makes it clear that comparisons of subcontracting plan goals from one contract to another, let alone the comparison of summary data from one agency to another, result in no valid conclusions.

Now on pp. 17 and 18.

See GAO comment 1.

See GAO comment 2.

See GAO comment 3.

For these reasons we believe that the three goals columns on pages 22 and 23 should be deleted. The information in the third goals column is not subheaded, making its value even more questionable.

In our opinion the most relevant data that could be presented in this context are (1) cases in which individual goals were not achieved so as to suggest a less than good faith effort on the part of the contractor; and (2) instances, in GAO's opinion, in which plans did not reflect all expected subcontracting opportunities.

Now on p. 3.

2. Page 5 - "We also inquired into the use of remedial actions by GSA, Energy, and the Navy against contractors when subcontracting goals were not achieved."

Now on p. 20.

Page 28- "[W]e asked GSA, Energy, and Navy officials whether punitive or remedial actions had been taken against any contractor for failing to substantially meet a subcontracting goal."

See GAO comment 4.

Comment- We believe that the report should make it clear that a goal is just that, a target that one expects to achieve with good faith effort. One consideration in establishing meaningful goals is that achievement is not certain. We believe that the report should note that a mere failure to achieve a goal is not a basis for "remedial action;" e.g., termination for default. The Department of Energy believes that the basis for such dramatic remedial action as termination for default is conduct on the

Appendix III
Comments From the Department of Energy

See GAO comment 5.

part of the contractor that demonstrates bad faith in failing to achieve its goals.

Furthermore, we believe that to put the statement that "[a]gency officials could not recall any instance of such action ever having been taken" in proper context, the report should note whether, during the course of its review, GAO found instances that it believes warrant remedial action.

See GAO comment 6.
Now on p. 3.
Now on p. 20.

Also, we believe the heading of the portion of the report page 5 is misleading. That heading should more closely parallel the related heading on page 28 by mentioning "remedial action."

Now on p. 3.

3. Page 5 - "Finally, we reviewed the use of incentive clauses by GSA, Energy and Navy as a means of increasing subcontracting opportunities for small and small disadvantaged business."

Now on p. 20.

Page 28- "Section 211 of Public Law 95-507 also authorized federal agencies to include incentive clauses in negotiated contracts as a means of encouraging subcontracting opportunities for small and small disadvantaged business."

See GAO comment 7.

Comment- We believe the report should note that the use of such incentive provisions in a meaningful way is difficult and can result in the Government's paying incentives when the actual amount of subcontracting with small and small disadvantaged business is not significantly above what it might otherwise have been. Incentive provisions may provide motivation for the proposer to propose low goals or to fail to disclose all subcontracting opportunities. Also, other factors, such as an underrun of a contract, can significantly increase the percentage of a contract's value subcontracted to small or small disadvantaged business without increasing the number of actions or dollars actually subcontracted.

Now on p. 16.

4. Page 24- "[A]n even more basic problem in trying to compare any one plan to another is the absence of quantitative criteria for assessing the reasonableness of subcontracting goals."

See GAO comment 8.
Now on pp. 2 and 16.

Comment- We believe that in this discussion the report should note that, as stated on pages 4 and 21, the goals are to be set on a contract-by-contract basis and would vary even for the same requirement if different contractors were used. The only valid judgment, in our opinion, is whether, on an individual contract basis, individual goals reflect a good faith effort by the contractor to maximize the involvement of small and small disadvantaged businesses in its subcontracting opportunities.

Also, in light of this, perhaps the term "problem" in the above-quoted statement should be replaced with the phrase "reason for not."

The following are GAO's comments on the Department of Energy's letter dated April 6, 1988.

GAO Comments

1. Energy believes that the statistics on subcontracting goals should be deleted in light of statements in our report that conclusions cannot be drawn from them. While we continue to believe that the goal data should not be used for comparative analyses, we also believe the summary tables are needed to meet the objective of our review and provide an overall picture of the subcontracting plans we reviewed.
2. The subheading was placed in the wrong position in the draft report. The error has been corrected.
3. We agree that such information would be helpful to Energy in improving the management of the program. However, as pointed out in the report, data on contractor performance on goals in individual plans are maintained on a decentralized basis and are difficult to obtain. Consequently, we did not include an analysis of this type in the scope of our review. Similarly, to identify plans that did not reflect all expected subcontracting opportunities would require an evaluation of individual subcontracting plans which was also not within the scope of our review.
4. Energy is correct that failure to achieve a subcontracting goal is not a basis by itself for termination for default. Failure to act in "good faith" would also have to be demonstrated. We recognized this point on page 9 of the report by stating that "Section 211 of Public Law 95-507 specifies that failure to comply in good faith with the requirements of the subcontracting plan can be considered a material breach of contract." (Underlining added.) Given Energy's comment, we incorporated additional language on page 20 of the report for greater clarification.
5. An evaluation of the performance of contractors on subcontracting goals of individual plans was outside the scope of our review so that we were unable to form any opinions as to which cases might warrant remedial action.
6. We modified the cited heading.
7. Our review did not attempt to identify what problems can occur when using incentive clauses to increase subcontracting opportunities for

small and small disadvantaged businesses. Consequently, our work provides no basis for making such comments and we can neither confirm nor dispute Energy's view on the matter.

8. In making this statement, we were not attempting to identify a deficiency in how subcontracting plans are evaluated but rather to emphasize that any evaluation of the adequacy of individual contract goals would have to be subjective and not based on quantitative analysis. We made a minor word change to clarify this point.

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