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United States Government Accountability Office
Washington, DC 20548

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January 24, 2005

The Honorable Olympia J. Snowe
Chairman
The Honorable John Kerry
Ranking Minority Member
Committee on Small Business and Entrepreneurship
United States Senate

The Honorable Donald A. Manzullo
Chairman
The Honorable Nydia M. Velázquez
Ranking Minority Member
Committee on Small Business
House of Representatives

Subject: *Small Business Administration: Small Business Government Contracting Programs; Subcontracting*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Small Business Administration (SBA), entitled “Small Business Government Contracting Programs; Subcontracting” (RIN: 3245-AF12). We received the rule on January 11, 2005. It was published in the Federal Register as a final rule on December 20, 2004. 69 Fed. Reg. 75820.

The final rule provides a list of factors to consider in evaluating a prime contractor’s performance and good-faith efforts to achieve the requirements in its subcontracting plan.

The final rule was published on December 20, 2004, as a non-major rule under the Congressional Review Act. On January 10, 2005, SBA issued a correction in the Federal Register stating that the Office of Management and Budget had determined the rule to be major under the Act. Subsequently, SBA submitted the rule to our Office on January 11, 2005, with the corrected effective date of February 18, 2005. However, the effective date does not allow the 60-day delay in a rule’s effective date from the date of publication or receipt of the rule by Congress, whichever is later, as required by the Act. 5 U.S.C. 801(a)(3)(A).

SBA has advised us that, in the near future, a correction will be published in the Federal Register announcing a new effective date that complies with the Act.

Enclosed is our assessment of the SBA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that, with the exception of the effective date, SBA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Thomas J. McCool, Managing Director, Financial Markets and Community Investment. Mr. McCool can be reached at (202) 512-8678.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Stephen D. Kong
Deputy General Counsel
U.S. Small Business Administration

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
SMALL BUSINESS ADMINISTRATION
ENTITLED
"SMALL BUSINESS GOVERNMENT CONTRACTING PROGRAMS;
SUBCONTRACTING"
(RIN: 3245-AF12)

(i) Cost-benefit analysis

While SBA did not perform a cost-benefit analysis of the final rule, the amount of awards to small business subcontractors in fiscal year 2002 was \$34.4 billion. Even a marginal increase in the number of small business subcontract awards will result in the final rule having an economic impact of more than \$100 million in a year.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The SBA has certified that the final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million in any one year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On January 31, 2003, the SBA published a Notice of Proposed Rulemaking in the Federal Register. 67 Fed. Reg. 47244. In response to comments SBA received, it published a second Notice of Proposed Rulemaking on October 20, 2003. 67 Fed. Reg. 60015. SBA received 19 comments in response and discusses the comments in the preamble to the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule does not contain any information collections that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is promulgated under the authority found at 15 U.S.C. 634(b)(6), 637, and 644 and 31 U.S.C. 9701 and 9702.

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

The SBA states that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism impact analysis.