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Report to the Ranking Member, Committee on Small Business and Entrepreneurship, U.S. Senate

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SMALL BUSINESS

More Transparency Needed in Prime Contract Goal Program

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Abbreviations

FPDC	Federal Procurement Data Center
NASA	National Aeronautics and Space Administration
SBA	Small Business Administration

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United States General Accounting Office
Washington, DC 20548

August 1, 2001

The Honorable Christopher S. Bond
Ranking Member
Committee on Small Business and Entrepreneurship
United States Senate

Dear Senator Bond:

The Small Business Reauthorization Act of 1997 directed the President to establish a goal of not less than 23 percent of the federal government's prime contracting dollars to be awarded to small businesses for each fiscal year.[1] The Small Business Administration (SBA) is charged with working with federal agencies to ensure that agency goals, in the aggregate, meet or exceed the 23-percent goal. To help SBA determine if agency goals are being met, the Federal Procurement Data Center (FPDC)—a unit of the General Services Administration—collects data on all federal contract actions and calculates the government's annual small business achievements based on procurement information received from the agencies. When calculating small business achievements, the FPDC follows SBA guidance to exclude certain types of contracts.

You have raised concerns about the goal-setting process and whether certain types of contract actions are properly excluded. You asked us to identify (1) SBA's process for establishing annual small business prime contract goals and the reasons for recent changes to the process; (2) the types of contracts that are excluded when achievements are calculated, as well as SBA's rationale for excluding them; and (3) the dollar value of the excluded contracts. In addition, because the only source of information about SBA's contract exclusions is its annual goal-setting guidance, we assessed the guidance for clarity and completeness.

Results in Brief

In fiscal year 2000, SBA changed its process for establishing the 23-percent government-wide small business prime contract goal by assigning goals directly to individual agencies after initial agency goal submissions and

[1] A prime contract is any direct contract between the government and a contractor. Congress has mandated additional goals for other businesses, such as women-owned small businesses, historically underutilized business zone businesses, and service-disabled veterans businesses. However, the subject of this report is the overall 23-percent prime contract goal.

subsequent revisions failed to total the 23-percent goal. The main reason for the government's difficulty in establishing the fiscal year 2000 goal was that the Department of Energy was directed to change its method of reporting its prime contract small business achievements. Actual achievements fell slightly short of the 23-percent goal, totaling 22.26 percent. SBA assigned agencies the same goals in fiscal year 2001. However, SBA lacks a formal, written approach that identifies its criteria for deriving individual agency goals. Furthermore, the Small Business Act,[2] which stipulates that agencies are to establish goals jointly with SBA, does not provide for SBA to assign goals without agency negotiations. While SBA began to assign goals as a matter of expediency in an attempt to establish the mandated goal, some agency officials stated that they did not have the opportunity to negotiate their fiscal year 2001 small business prime contract goal.

SBA has directed FPDC to exclude several types of contracts when calculating the percentage of federal procurements awarded to small businesses. These exclusions fall into three broad categories of contract actions: (1) those for which small businesses' chances to compete are limited or nonexistent, (2) those using non-appropriated funds, and (3) those made by agencies, such as the Federal Aviation Administration, which are not subject to the Federal Acquisition Regulation or are otherwise exempted by statute from following federal procurement regulations. SBA's decision to exclude these actions is within its discretion under its responsibility in the Small Business Act to administer the prime contract goal program.[3] However, SBA's rationale for making the exclusions is not documented. A special exclusion for the Federal Highway Administration has not been used.

The excluded contracts total about 10 percent of federal procurement dollars, representing about $22.6 billion in fiscal year 2000.[4] Most of the excluded dollars are for Department of Defense contracts for foreign sales and contracts performed outside the United States.

[2] 15 U.S.C. 644(g)(2).

[3] 15 U.S.C. 644(g)(1).

[4] The excluded dollars reflect contract actions over $25,000. These actions totaled 93 percent of all contract actions reported to FPDC in fiscal year 2000. Contract actions for $25,000 and less are reported in the aggregate for each agency and cannot be broken down into the specific categories of exclusions.

SBA's annual goaling guidance is the only source of information to which federal agencies, the small business community, and Congress can turn for information on the contracts that are excluded from the small business baseline. However, the guidance is unclear and incomplete, precluding a clear picture of the universe of contracts reflected in FPDC's annual reports of small business achievements.

We are making several recommendations that encourage SBA to (1) clearly communicate its goal-setting methodology, (2) ensure that all agencies have an opportunity to negotiate goals for fiscal year 2002 and subsequent years, (3) re-assess its rationale for making certain types of exclusions, and (4) clarify its guidance on small business goals. We sent a draft of this report to 11 federal agencies, all of which concurred with our findings and recommendations. Some agencies offered additional technical comments for clarification, which we have incorporated where appropriate.

Background

The Small Business Act of 1953[5] created SBA, whose function is to aid, counsel, assist, and protect the interests of small businesses. The Act also stipulated that SBA would ensure small businesses a fair proportion of government contracts. The Business Opportunity Development Reform Act of 1988[6] amended the Small Business Act to require the President to establish an annual government-wide goal of awarding not less than 20 percent of prime contract dollars to small businesses. The Small Business Reauthorization Act of 1997 further amended the Small Business Act to increase this goal to not less than 23 percent.[7] SBA is responsible for coordinating with executive branch agencies to ensure that the federal government meets the mandated goal. Of the federal agencies with procurement authority, 20 agencies accounted for over 99 percent of total government contract dollars in fiscal year 2000. These 20 agencies and their fiscal year 2000 procurement dollars, as reported to FPDC, are listed in appendix IV.

FPDC collects data on prime contract actions from over 50 executive branch agencies. These agencies report their prime contract actions to

[5] Public Law 83-163.

[6] Public Law 100-656; 102 Stat. 3853, 3881.

[7] Public Law 105-135; 111 Stat. 2592, 2632.

FPDC on standard forms.[8] Since fiscal year 1998, FPDC has used this information to compile the "Report on Annual Procurement Preference Goal Achievements" that summarizes total government prime contract actions and each agency's small business contract actions.[9]

Small Business Goal-Setting Process Has Changed

In fiscal year 2000, SBA assigned small business prime contract goals directly to agencies after initial agency goals did not total the 23-percent government-wide goal. At the same time, SBA assigned fiscal year 2001 goals without engaging in a formal negotiation process as had been done in the past. SBA adopted this change in strategy to ensure that the 23-percent goal was established, and that it was done in a timely manner. The government had difficulty establishing the 23-percent goal in fiscal year 2000. In addition, only 22.26 percent of procurement dollars were actually awarded to small businesses.[10] The difficulties were primarily because the Department of Energy was directed to change its method of calculating prime contract small business awards. While SBA's direct assignment of goals was intended to meet the statutory goal-setting requirement, SBA has not documented the criteria it used to derive the assigned goals. Furthermore, the direct assignment of goals has reduced the consultation and negotiation process envisioned by Congress. Some agency officials noted that they did not have the opportunity to negotiate fiscal year 2001 goals.

Federal agencies' initial goal submissions to SBA for fiscal year 2000 totaled only 20.4 percent in the aggregate, falling short of the mandated 23-percent government-wide goal. SBA's requests to agencies to increase their goals resulted in a government-wide goal of only 21.2 percent. In February 2000, SBA decided to assign goals directly to the 20 agencies that account for over 99 percent of procurement dollars so that the 23-percent

[8] Prime contract actions for awards include, but are not limited to, definitive contracts, letter contracts, modifications to contracts, purchase orders under blanket purchase agreements, and orders under indefinite delivery contracts.

[9] Purchase card transactions are reported to FPDC, but they are not included in the small business baseline. The purchase card, issued to a broad range of authorized agency personnel to acquire goods and services, is similar in nature to a corporate credit card and, according to federal acquisition policy, is the preferred method for purchases of $2,500 or less. These transactions are not tracked to determine the socio-economic status of the vendors. Thus, the effect of increased use of purchase cards on the small business community is not known. In fiscal year 2000, about $12 billion was spent in purchase card transactions—up from $10 billion in fiscal year 1999.

[10] Appendix V shows small business achievements by agency.

goal could be met. At the same time, in a conference call between SBA and the agencies, SBA assigned fiscal year 2001 goals that were identical to the 2000 goals.

Department of Energy Was Directed to Change Its Method of Calculating Small Business Achievements

In a memorandum to the agencies, the SBA Associate Deputy Administrator cited a significant change in the way the Department of Energy calculates its small business achievements as a key reason for the difficulties in setting the fiscal year 2000 goal and a primary justification for SBA's decision to unilaterally assign goals. As shown in appendix IV, the Department of Energy is second only to the Department of Defense in the procurement dollars it reports. Based on a 1991 letter from the Office of Management and Budget's Office of Federal Procurement Policy, the Department of Energy had been counting contracts awarded by its management and operating contractors as prime contracts rather than subcontracts.[11] Specifically, the letter stated that "a strong case can be made for management and operating contractors to be treated, for the purposes of small business goaling, as Government prime contracts." The ruling noted that procurements made by management and operating contractors are for the direct benefit of the federal government and that these contractors are required to follow Department of Energy procurement rules and policies that are similar to those government agencies must use in awarding contracts.

Using this methodology, the Department of Energy awarded about 18 percent of its prime contracts to small businesses in fiscal year 1998 and about 17 percent in 1999, according to FPDC reports. However, in the opinion of SBA officials, awards made by the Department's management and operating contractors are actually subcontracts, not prime contracts. Nevertheless, the Department of Energy continued to support its practice of counting them as prime contracts. In 1999, SBA and the Department of Energy asked the Office of Federal Procurement Policy to resolve this disagreement.

In November 1999, the Office of Federal Procurement Policy reversed its earlier position and, supporting SBA's position, determined that the contracts awarded by the Department's management and operating

[11] A significant portion of the Department of Energy's mission is carried out by industrial, academic, and nonprofit institutions operating the Department-owned plants and laboratories under a management and operating relationship. For example, management and operating contractors operate nine major, multi-program National Laboratories located throughout the United States. These laboratories provide scientific support for the Department's programs and provide a scientific staff with various capabilities to support technology programs.

contractors should be counted as subcontracts. The Administrator, Office of Federal Procurement Policy, stated in the decision that federal agencies should be consistent in the types of awards counted as prime contracts. As a result of the change in methodology, the Department of Energy's reported prime contract actions to small businesses fell sharply. In fiscal year 2000, the Department's prime contract goal dropped to 5 percent from its 18-percent goal in fiscal year 1999. This reduction in the Department of Energy's small business goal affected the government's overall ability to establish the 23-percent goal.

SBA Cites Improved Timeliness as Benefit of Assigned Goals

According to SBA officials, the direct assignment of goals—as was done in fiscal years 2000 and 2001—has not only ensured that the mandated 23-percent goal will be established, but it has also ensured that goals will be established in a timely manner. Guidance issued by the Office of Management and Budget's Office of Federal Procurement Policy stipulates that small business prime contract goals are to be established by the start of the fiscal year.[12] However, both SBA and the agencies have been delinquent in setting goals in a timely manner. For example, in fiscal years 1998, 1999, and to a lesser extent in fiscal year 2000, many agency goals were established after the start of the fiscal year. However, we found no link between the timeliness of goal-setting and actual awards to small businesses.

According to SBA records, all 20 large agencies submitted goals after the start of fiscal year 1999. One reason for the delay was that SBA's letter requesting goals from individual agencies was not distributed until more than 2 weeks after the fiscal year began. In addition, SBA's deadline for agencies to submit their 1998 and 1999 goals was 1 to 2 months after the start of the fiscal year. SBA officials explained that designating a grace period enabled agencies to evaluate the prior year's performance and develop strategies for improvement. The officials acknowledged, however, that the period was not used for this purpose because FPDC does not issue preliminary prior-year results until the second quarter of the following fiscal year.

Despite SBA's lenient deadlines, most agencies did not submit their goals on time. For example, in fiscal year 1999 only one agency—the Department of Defense—met SBA's deadline of November 1, 1998. Three agencies submitted goals in the second quarter, three submitted goals in

[12] Policy Letter 99-1.

the third quarter, and one submitted its goal in the fourth quarter. Some small agencies did not establish any goals at all. Timeliness improved in fiscal year 2000, when 11 agencies met SBA's deadline. Once again, some small agencies did not submit goals at all.

When the large agencies were late in submitting goals, SBA followed up with letters. However, SBA conducted little if any follow-up with the small agencies because they represent a very small fraction of federal procurement dollars. Timeliness of goal submissions was not a problem in fiscal year 2001, because SBA assigned the goals directly.

We did not find a link between timeliness of goal-setting and actual small business achievements. For example, the Department of Commerce, which submitted its fiscal year 1999 goal 4 months after SBA's deadline, exceeded its goal of 35 percent, awarding 40.83 percent of its prime contract actions to small businesses. On the other hand, the Department of Agriculture, which missed SBA's deadline by only 2 days, did not achieve its goal of 45.1 percent, awarding small businesses only 37.96 percent of its prime contract actions.

SBA's Approach for Assigning Goals Is Not Documented or Shared With Agencies

The approach and criteria SBA used to derive individual agency goals in fiscal years 2000 and 2001 have not been formalized or shared with the procurement agencies. Some agency officials expressed confusion about how SBA had determined the assigned goal for their agencies. The extent to which SBA changed individual agencies' fiscal year 2000 goals from the negotiated fiscal year 1999 goals varied by agency. The February 2000 memorandum from SBA's Associate Deputy Administrator stated that every agency was assigned an increased goal compared to the 1999 goals. However, while most of the agency goals were increased, goals for four agencies—in addition to the Department of Energy—decreased. SBA officials could not explain their methodology for assigning fiscal year 2000 goals.

Table 1 compares fiscal year 1999 negotiated goals with SBA's assigned goals for fiscal year 2000.

Table 1: Comparison of Negotiated and Assigned Goals

In percent

Agency	Fiscal year 1999 negotiated goals	SBA's fiscal year 2000 assigned goals	Percent change fiscal year 1999 goal to fiscal year 2000
Department of Agriculture	45.1	43.0	-4.7
Department of Commerce	35.0	40.0	14.3
Department of Defense	20.6	23.0	11.7
Department of Education	23.0	23.5	2.2
Department of Energy[a]	18.0	5.0	-72.2
Department of Health and Human Services	32.3	32.0	-0.9
Department of Housing and Urban Development	23.0	26.0	13.0
Department of Interior	59.0	57.0	-3.4
Department of Justice	31.5	31.5	0.0
Department of Labor	25.7	24.0	-6.6
Department of State	35.0	36.5	4.3
Department of Transportation	30.5	32.0	4.9
Department of Treasury	23.0	25.0	8.7
Department of Veterans Affairs	35.0	35.5	1.4
Environmental Protection Agency	23.0	23.5	2.2
General Services Administration	36.0	38.0	5.6
National Aeronautics and Space Administration	11.4	12.4	8.8
Social Security Administration	35.0	35.5	1.4
Tennessee Valley Authority	21.3	22.5	5.6
U.S. Agency for International Development	28.0	28.5	1.8

Source: GAO analysis of SBA data.

[a] The Department of Energy's goal dropped substantially in fiscal year 2000 due to a change in its methodology for calculating prime contract actions awarded to small businesses.

Some Agencies Did Not Believe There Was Opportunity to Negotiate Fiscal Year 2001 Goals

According to SBA officials, given SBA's mandate to establish a goal of not less than 23 percent and the difficulties in setting that goal in fiscal year 2000, they had little choice other than to assign goals that year. SBA notified agencies in a conference call early in 2000 that their fiscal year 2001 goals would be identical to their 2000 goals. Some agency officials said that they appreciated knowing their fiscal year 2001 goals well ahead of the start of the fiscal year. Other officials, however, noted that they did not have the opportunity to consult with SBA about the 2001 goals.

SBA's practice of assigning goals has weakened the consultation process that Congress envisioned. The Small Business Act provides that:

> The head of each federal agency shall, after consultation with the Administration [SBA], establish goals for participation by small business concerns…in procurement contracts of such agency. Goals established under this subsection shall be jointly established by the Administration and the head of each Federal agency….[13]

Agencies have recourse if they disagree with SBA. The law provides for agencies to submit their disagreement on established goals to the Administrator, Office of Federal Procurement Policy for final determination. Thus far, no agencies have done so in response to the assigned goals.

SBA's Rationale for Exclusions Is Not Clearly Defined

Since fiscal year 1998, SBA has directed FPDC to exclude certain types of contracts when calculating annual small business prime contract achievements. SBA officials explained that the excluded contracts fall into three broad categories of contract actions: (1) those for which small businesses' chances to compete are limited or nonexistent, (2) those using non-appropriated funds[14], and (3) those made by agencies that are not subject to the Federal Acquisition Regulation or are otherwise exempt from federal procurement regulations. SBA officials' decision to exclude certain types of contracts from the small business calculations is consistent with SBA's authority under the Small Business Act. However, SBA's rationale for making these exclusions is not documented.

Prior to 1998, agencies reported their small business achievements directly to SBA and excluded from their calculations certain types of contracts, such as those for which small businesses had a limited or no chance to compete. SBA then published an annual report summarizing each agency's achievements. SBA officials said that in some cases they were not aware of all exclusions the agencies made when reporting their numbers. In 1998, the reporting process changed, with FPDC reporting small

[13] 15 U.S.C. 644(g)(2).

[14] Non-appropriated funds are obtained through a means other than a congressional appropriation, for the most part through user fees. Examples of activities that operate with non-appropriated funds include the U.S. Postal Service and the Defense Department's Army/Air Force Exchange—a morale, welfare, and recreation activity. In most cases, entities operating with non-appropriated funds do not report their contract actions to FPDC, consistent with FPDC guidelines. Officials at the Department of State, NASA, and the General Services Administration told us that their agencies do not use any non-appropriated funds. According to a Department of Energy official, the only entity in that agency using non-appropriated funds is the Bonneville Power Administration, which does not report its awards to FPDC.

business achievements based on information received from the agencies. With this change, some of the exclusions were no longer made. An example of this change is a contract between NASA and the California Institute of Technology to operate the Jet Propulsion Laboratory, a federally funded research and development center. SBA and NASA had agreed that this contract would be excluded from NASA's small business reports to SBA, because small businesses would have little chance to compete for it. Since 1998, however, when the reporting method changed and FPDC began to report small business goals, the contract has been included in NASA's business achievement results.

We found that one exclusion, made on the basis that small businesses would have a limited chance to compete, has not been applied consistently across the government. In 1998, SBA granted an exclusion to the Federal Highway Administration for its anticipated congressionally-directed contract actions, based on the premise that small businesses would have a limited chance to compete for these contracts. However, this exclusion has not been used, nor has such an exclusion been granted to any other government agency. In addition, while SBA excludes the United States Mint's contract actions on the basis that it is a non-appropriated activity, an additional reason to exclude these actions is the Mint's legislated exemption from federal procurement regulations.

Table 2 shows the types of contracts that are excluded from the small business achievement calculations and SBA's explanation of its rationale for the exclusions.

Table 2: Types of Excluded Contracts and SBA's Rationale

Type of exclusion	SBA's rationale for the exclusion		
	Small businesses have limited chance to compete for the award	Award made with non-appropriated funds	Awarding agency is not subject to the Federal Acquisition Regulation
Foreign sales[a]	X		
Contracts performed outside the United States[b]	X		
Mandatory sources[c]	X		
American Institute in Taiwan[d]	X		
American embassies	X		
Federal Aviation Administration[e]			X
Federal Highway Administration[f]	X		
Bureau of Engraving and Printing		X	
Office of the Comptroller of the Currency		X	
Office of Thrift Supervision		X	
United States Mint		X	

Source: Rationale provided by SBA headquarters officials.

[a] SBA's guidance refers to this type of exclusion as "foreign military sales"; however, according to FPDC the category actually applies to all foreign sales. For example, the State Department reports foreign sales to FPDC.

[b] While SBA's guidance states that contracts awarded and performed outside the United States are excluded, in practice this is done only for certain designated State Department embassies that are specifically identified in FPDC's programming logic. All other contract actions performed outside the United States are excluded regardless of where the contract was awarded. This issue is discussed further on p. 16.

[c] The Federal Acquisition Regulation directs procuring agencies to satisfy requirements for supplies and services from specified sources. Contracts awarded to two of these sources—Federal Prison Industries, Inc., and nonprofit agencies under the Committee for Purchase from People Who Are Blind or Severely Disabled—are excluded from the small business baseline. Federal Prison Industries, Inc., a self-supporting, wholly owned government corporation of the District of Columbia, provides training and employment for prisoners through the sale of its supplies and services to government agencies. The Committee for Purchase from People Who Are Blind or Severely Disabled, an independent government activity, maintains a procurement list of all supplies and services required to be purchased from nonprofit agencies participating in the Javits-Wagner-0'Day Act (41 U.S.C. 46-48c).

[d] The American Institute in Taiwan is a nonprofit, private corporation. The Taiwan Relations Act requires that all U.S. government transactions regarding Taiwan be conducted through the Institute. (Public Law 96-8). The Department of State provides a large part of the Institute's funding and guidance in its operations.

[e] The Federal Aviation Administration does not report its contract actions to FPDC. The Department of Transportation and Related Agencies Appropriations Act of 1996 (Public Law 104-50) required the Federal Aviation Administration to develop and implement an acquisition management system for more timely and cost-effective acquisitions of equipment and materials. The Act specifically provided that this new acquisition management system was not subject to the provisions of the Small Business Act or the Federal Acquisition Regulation (Section 348 of Public Law 104-50; 109 Stat. 436, 460).

[f] The Federal Highway Administration, as discussed below, has an exclusion for contract actions that Congress encouraged the agency to award to designated sources.

Federal Highway Administration Exclusion Has Not Been Used

According to officials at the Department of Transportation and FPDC, the Department of Transportation's Senior Procurement Executive requested in 1998 that FPDC exclude from the small business baseline those contract actions that Congress had encouraged the Federal Highway Administration to award to certain sources, primarily universities and research centers. SBA agreed, based on the rationale that small businesses would have no chance to compete for these contracts; and in 1998 FPDC implemented the exclusion. The Federal Highway Administration is the only government agency with this type of exclusion.

In practice, however, according to Department of Transportation officials, the Federal Highway Administration has awarded no contract actions to the sources cited by Congress. Rather, these awards are made in the form of assistance agreements (grants or cooperative agreements), which are not reported to FPDC, in accordance with FPDC's guidelines. The officials said that when the Senior Procurement Executive requested the exclusion in 1998, it was anticipated that the Federal Highway Administration might award contracts—as opposed to assistance agreements—to congressionally-directed sources, but that this has not occurred to date.

Nevertheless, according to FPDC records, the Federal Highway Administration has reported contract actions meeting the exclusion criteria. In 1998, 1999, and 2000, FPDC subtracted $298,000, $20,000, and $1.7 million, respectively, from the Federal Highway Administration's small business baseline based on the 1998 agreement. Further, FPDC data show that all of these actions were awarded to small businesses. Department of Transportation officials stated that Federal Highway Administration personnel had miscoded these actions and that they should not have been excluded from the baseline. The officials stated that the errors have been corrected in the agency's database.

Legislative Basis Exists for U.S. Mint Exclusion

As noted in table 2, four Treasury bureaus report contract actions to FPDC, and SBA in turn has directed FPDC to exclude these contracts from the small business baseline on the basis that they use non-appropriated funds. The U.S. Mint operates under the Public Enterprise Fund. In the Public Enterprise Act of 1995, Congress exempted the Mint from all federal procurement regulations.[15] This statutory exemption is an additional reason to exclude the Mint's contract actions.

[15] 31 U.S.C. 5136.

Exclusions Represent About 10 Percent of Total Procurements

From fiscal year 1998 through 2000, the excluded contracts that we could quantify accounted for about 10 percent of all federal procurement dollars. The vast majority of the exclusions are for Department of Defense contracts for foreign sales and contracts performed outside the United States. The excluded contract dollars are shown in table 3.

Table 3: Dollars Excluded From Small Business Achievement Calculations

Dollars in thousands			
	Fiscal year		
Type of exclusions	**1998**	**1999**	**2000**
Foreign sales	$6,285,758	6,247,123	$8,627,588
Contracts performed outside the United States[a]	6,707,838	8,367,576	9,007,269
Mandatory sources	790,098	841,927	836,230
American Institute in Taiwan	14,211	8,311	5,874
Department of State			
American embassies	513,494	856,788	103,547
Department of Transportation			
Federal Aviation Administration	2,300,000	2,200,000	3,056,224
Federal Highway Administration	298	20	1,719
Department of the Treasury			
Office of Comptroller of the Currency	40,816	36,886	27,523
Office of Thrift Supervision	26,464	10,673	15,950
U.S. Mint	723,209	969,304	729,167
Bureau of Engraving and Printing	163,499	245,630	163,393
Total exclusions	**$17,565,685**	**$19,784,238**	**$22,574,484**
Total federal procurements	**$197,298,455**	**$198,750,943**	**$218,845,738**
Exclusions as a percent of total procurements	**8.9%**	**10.0%**	**10.3%**

[a]As stated earlier, in practice, FPDC's programming logic does not track where contracts are awarded, with the exception of specific State Department embassies.

Source: Dollar values are from FPDC, with the exception of the Federal Aviation Administration dollars, which were obtained directly from the agency.

The Department of State's policy is not to report its personal services contract actions to FPDC. However, according to FPDC data, some State Department contracting officers did report personal services contracts, in the amount of $6.5 million in fiscal year 2000. The Department of State

could not quantify the total dollar value of its personal services contract actions.[16]

Most Exclusions Pertain to Defense Department

In fiscal year 2000, Department of Defense contract actions accounted for about $17.4 billion, or 77 percent of the $22.6 billion in total exclusions for fiscal year 2000. Most of the Department's excluded dollars were for foreign sales and contracts performed outside the United States. Figure 1 shows the percent of exclusions by agency.

Figure 1: Percent of Exclusions by Agency

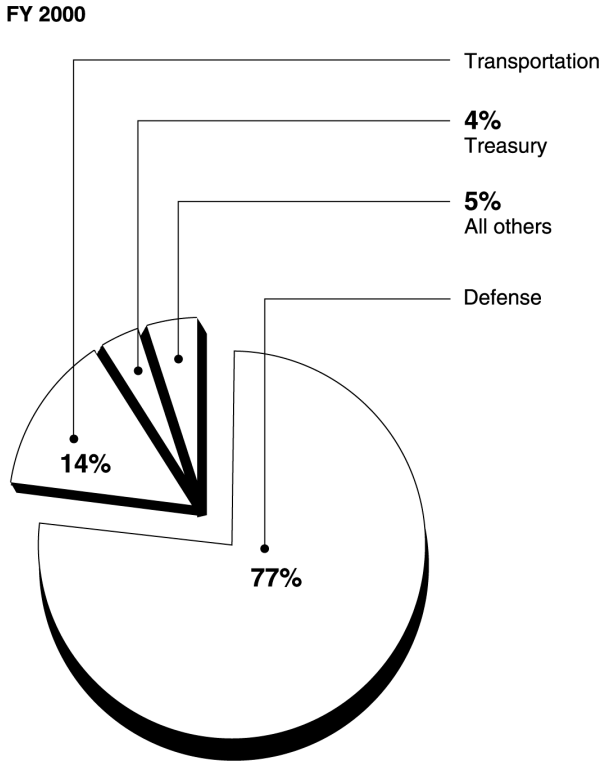
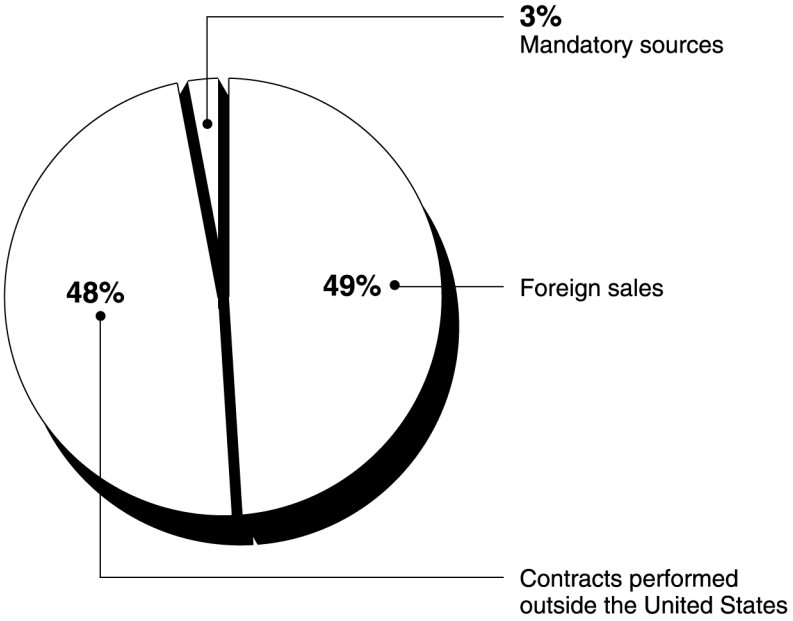


Figure 2 shows the types of exclusions for the Department of Defense, which accounts for 77 percent of the excluded dollars.

[16]The Department of State's decision not to report personal services contracts is based on the Internal Revenue Service's definition of an employee. The State Department's position is that since its personal services contractors receive the same benefits as federal employees and the Internal Revenue Service deducts taxes from their wages, they are in essence federal employees and should not be considered as contractors for purposes of reporting to FPDC. Neither SBA nor FPDC's guidance mentions that these contracts are not reported.

Figure 2: Defense Department's Excluded Contracts

FY 2000



Note: Not included in the figure is about .01 percent for the American Institute in Taiwan.

Appendix VI lists the exclusions by agency for fiscal year 2000.

SBA Guidance Is Unclear and Incomplete

Although SBA's annual guidance on goal-setting lists the types of contracts that FPDC excludes in its annual calculations of small business achievements, the guidance is confusing and incomplete. The absence of a rationale for each exclusion—as discussed above—and the lack of distinction between categories of exclusions, along with other shortcomings, have made the guidance a less than "user-friendly" document. The guidance is the only source of information available to Congress, the small business community, and federal agencies on the contracts excluded from the small business achievement calculations. However, the guidance presents an unclear picture of the contract exclusions. Examples of weaknesses in the guidance are:

- FPDC instructs federal agencies not to report contracts that use predominantly non-appropriated funds and contracts from agencies that are not subject to the Federal Acquisition Regulation, such as the Federal Aviation Administration. However, when listing the exclusions, SBA's guidance does not distinguish between these types of contracts--that are never included in the FPDC database--and contracts that SBA explicitly directed FPDC to exclude for purposes of calculating small business achievements (e.g., the Federal Highway Administration exclusion). Consequently, readers reviewing the guidance come away with the impression that SBA is directing more exclusions than is actually the case.
- The guidance states that the exclusions include "Wholesale Supply Sources, such as stock programs of the Defense Logistics Agency, the Department of Veterans Affairs, and military inventory control points." Wholesale supply sources are mandatory sources under the Federal Acquisition Regulation. SBA officials said that this exclusion pertains to transactions between federal agencies. For example, the military services purchase spare parts from the Defense Logistics Agency, which is a mandatory source. However, these transactions are not contract actions. Rather, they are simply intra-governmental transfers of funds and, as such, are not reported to FPDC. Thus, no exclusions are made in practice for the wholesale supply source category. The inclusion of this category in the guidance as an "exclusion" is confusing and misleading.
- The guidance lists contracts awarded and performed outside the United States as a type of exclusion. In practice, however, the exclusion applies only to the place of performance, not to the location at which the contract was awarded. The exception is contract actions reported by certain Department of State embassies, which are specifically identified in FPDC's programming logic and automatically excluded from the small business achievements. SBA officials explained that, except for these embassies, FPDC does not currently have a mechanism for capturing the location of the contract award. All other contract actions performed outside the United States are excluded, regardless of where the contract was awarded. SBA's guidance is misleading in stating that excluded contracts necessarily have to be awarded and performed outside the United States.

Conclusions

The lack of transparency in SBA's process for deriving individual agency goals is a matter of concern. SBA's methodology for establishing these goals is neither clearly documented nor communicated to the procurement agencies. A transparent methodology is especially critical in light of the fact that the Small Business Act directs goals to be established through a consultation process and that this process has been weakened with the direct assignment of goals.

SBA's failure to document the reasons for excluding certain types of contracts precludes a clear picture of how small business achievements are calculated. The lack of documentation has also contributed to confusion about the Federal Highway Administration exclusion. In addition, the lack of sufficient detail in SBA's guidance makes it difficult for Congress, procurement agencies, and the small business community to be aware of the excluded contracts and the rationale for the exclusions.

Recommendations for Executive Action

We recommend that the Administrator of SBA

- Set forth clearly the approach and criteria used to establish individual agency goals. This documentation should be presented in SBA's annual guidance and in letters to individual procurement agencies.
- Ensure that all agencies have an opportunity to negotiate goals for fiscal year 2002 and future years.
- Determine whether the exclusion for the Federal Highway Administration is appropriate.
- Document SBA's rationale for excluding contracts from the small business baseline and ensure that this documentation reflects the fact that the United States Mint is legislatively exempt from the Federal Acquisition Regulation.
- Revise the goaling guidance to (1) clarify the types of contracts that are excluded at the behest of SBA versus those that are not reported to FPDC, (2) delete reference to the wholesale supply source exclusion if it is determined to be inapplicable, and (3) reflect the fact that FPDC excludes contracts performed outside the United States and, with the exception of specific State Department embassies, does not consider where the contract was awarded.

Agency Comments and Our Evaluation

We received written comments on a draft of this report from SBA, the Department of State, and NASA. We also received oral comments and comments via e-mail from 8 other agencies, as discussed below. All agencies generally agreed with our findings and recommendations.

SBA concurred with our findings and recommendations and offered additional technical comments which we have incorporated where appropriate. SBA's comments appear in appendix I.

The Department of State noted that we had failed to distinguish between those contracts that are performed outside the United States and those that are awarded and performed outside the United States. We have

clarified the wording on this issue in the report. The State Department's comments appear in appendix II.

NASA concurred with our recommendations to the extent that they affect NASA as a procuring agency and noted that the agency continues to work closely with SBA in establishing and exceeding its small business goals. NASA's comments appear in appendix III.

We received oral comments or comments via e-mail from the Departments of Defense, Energy, Treasury, and Transportation; the General Services Administration; the Office of Federal Procurement Policy; the U.S. Agency for International Development; and FPDC.

The Departments of Defense and Energy and the Office of Federal Procurement Policy concurred with our findings and had no further comments.

The General Services Administration's Office of Enterprise Development concurred with our findings and recommendations. The Office added that, to enhance agency performance and results related to small business participation in federal procurement, it is imperative that a collaborative process, informed by reliable trend analysis, be instituted between federal agencies and SBA. The Administration remains committed to providing small businesses with maximum practical procurement opportunities and working with SBA to implement the recommendations in the report.

The Department of Transportation and FPDC concurred with the report's findings and offered technical comments that we have incorporated where appropriate. FPDC noted that it was unaware that the State Department policy was not to report personal service contract actions. FPDC provided us with data showing that about $6.5 million had in fact been reported in fiscal year 2000.

The Department of Treasury had no comments on the substance of the report, but suggested the following ideas for improving the SBA goaling process:

(1) SBA drafts a set of recommended goals for each agency based on statutory requirements, past performance, and prior goals.

(2) SBA sends goals to agencies for review.

(3) Agencies may accept goals or negotiate them based on special circumstances such as major special projects, budget, etc.

The U.S. Agency for International Development concurred with the State Department's comment about clarifying our discussion regarding contracts awarded and performed overseas.

Scope and Methodology

To identify the process by which small business prime contract goals are established, we reviewed the Small Business Reauthorization Act of 1997 and other pertinent legislation; guidance issued by the Office of Federal Procurement Policy, SBA, and FPDC; prior GAO reports; and FPDC's final reports on small business achievements for fiscal years 1998, 1999, and 2000. We reviewed correspondence between SBA and the Departments of Defense and Energy; the General Services Administration; and NASA. These four agencies awarded about 83 percent of federal prime contract dollars in fiscal year 2000. We also held discussions with officials at SBA, FPDC, and the Office of Federal Procurement Policy; the Departments of Defense, Energy, and State; the General Services Administration; NASA; and the Chair of the Office of Small and Disadvantaged Business Utilization Interagency Council.

To determine (1) the types of contracts that are excluded when FPDC calculates small business achievements, as well as the rationale for excluding these contracts and (2) the adequacy of SBA's guidance, we reviewed SBA guidance from fiscal years 1998 through 2001, FPDC guidance and programming logic, relevant legislation, and prior GAO reports. We held discussions with officials at SBA and FPDC; the Departments of Defense, Energy, State, Transportation, and Treasury; the General Services Administration; the Office of Federal Procurement Policy; and NASA.

To determine the dollar value of the excluded contracts and the dollar value of total procurements, we used FPDC's annual reports on the small business program from fiscal year 1998 through 2000 and special reports generated by FPDC. We obtained the dollar value of contracts awarded by the Federal Aviation Administration directly from the Administration, as these contracts are no longer reported to FPDC. Government-wide dollar value of contracts awarded with non-appropriated funds were not available.

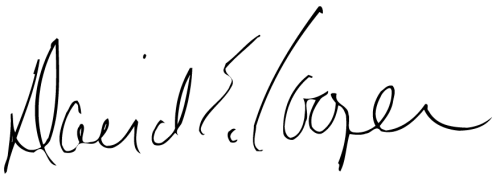
We conducted our review between November 2000 and July 2001 in accordance with generally accepted government auditing standards.

We are sending copies of this report to other interested congressional committees and the Secretaries of Defense, Energy, State, Transportation, and Treasury. We also are sending copies to the Director, Office of Management and Budget; the Administrator, General Services Administration; the Administrator, NASA; the Administrator, SBA; the Administrator, Office of Federal Procurement Policy; and the Administrator, U.S. Agency for International Development. We will make copies available to others upon request.

As requested by your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this letter. We will then send copies to others who are interested and make copies available to others who request them.

Key contributors to this assignment were Michele Mackin, William McPhail, and James Smoak. If you have any questions regarding this report, please contact me on (202) 512-4125 or Hilary Sullivan on (214) 777-5652.

Sincerely yours,



David E. Cooper, Director
Acquisition and Sourcing Management

Appendix I: Comments From the Small Business Administration

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

OFFICE OF THE ADMINISTRATOR

JUL 19 2001

Mr. David E. Cooper
Director
Acquisition and Sourcing Management Issues
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Cooper:

Thank you for forwarding copies of the U.S. General Accounting Office's (GAO) draft report entitled Small Business: More Transparency Needed in Prime Contract Goal Program (GAO-01-551) for review and comment by the U.S. Small Business Administration (SBA). Our comments pertain to those areas where we have some concerns with the draft report.

We agree with the report's overall finding that the goaling process could be improved by more transparency in its presentation to the Congress and the public. To this end, SBA will revise the goaling guidance to comply with GAO's recommendations, including recommendations concerning the types of contracts excluded from the goaling requirements.

We believe the report could be strengthened by a more refined discussion of the parameters in which the goaling process operates. In the "Results in Brief", GAO discusses how SBA changed its process of establishing goals. On page 1, the first sentence leads the reader to believe that SBA failed to conduct negotiations with the agencies prior to assigning the goals for FY 2000 and FY 2001. We recommend that the first and second sentences be revised as follows: "*In FY 2000, SBA assigned small business procurement goals directly to the agencies after the initial agency goals submissions and subsequent discussions did not total the 23 percent government-wide goal. At the same time, SBA assigned the same goals for FY 2001.*" This change would be consistent with the discussion on page 4, which describes the process that SBA used prior to assigning the goals.

The report places considerable emphasis on the "negotiation process" relative to establishing the goals. The Small Business Act requires agencies to establish goals in consultation with SBA. However, when the agencies initially and in subsequent discussions with SBA propose goals that, in the aggregate, fall below the statutorily

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Mr. David E. Cooper Page 2

mandated 23 percent, SBA adjusts individual agency goals to ensure that the government-wide goal meets the statutory minimum. Agencies may seek additional modification to their individual goals through further negotiations with SBA. In the event of a disagreement, the Small Business Act authorizes agencies to submit the matter to the Office of Federal Procurement Policy for resolution. As GAO correctly points out on page 9 of its report, no agency has sought such recourse concerning its adjusted goal.

On page 2, under the "Results in Brief", the report states in the first paragraph that SBA lacks a formal, written approach that identifies the criteria for deriving individual agencies' goals. As mentioned above, SBA will adopt GAO's recommendation to issue written guidance regarding individual agency goals. We note that, while we may not currently have a formal written approach, SBA advised the agencies in a February 4, 2000 Memorandum from SBA's Associate Deputy Administrator, which you cite in the draft report, that the FY 2000 goals were established based on a review of the agencies' FY 1999 proposed goals and their FY 1999 preliminary accomplishments. As a general rule, an agency's past performance is a good indication of future goals.

We thank you and your staff for their cooperation and recommendations for improving the goaling program. We look forward to receiving the final report.

Sincerely,

John Whitmore
Acting Administrator

Appendix II: Comments From the Department of State

United States Department of State

Chief Financial Officer

Washington, D.C. 20520-7427

JUL 19 2001

Dear Ms. Westin:

We appreciate the opportunity to review your draft report, "SMALL BUSINESS: More Transparency Needed in Prime Contract Goal Program" (GAO-01-551, GAO Job Code 120001).

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Ms. Durie N. White, Director, Office of Small and Disadvantaged Business Utilization, at 703-875-6824.

Sincerely,

Larry J. Eisenhart
Acting

Enclosure:

As stated.

cc: GAO/ASM - Mr. Cooper
State/OIG - Mr. Atkins
State/A/SDBU - Ms. White

Ms. Susan S. Westin,
Managing Director,
International Affairs and Trade,
U.S. General Accounting Office.

DEPARTMENT OF STATE COMMENTS
ON GAO DRAFT REPORT
"SMALL BUSINESS: More Transparency Needed in
Prime Contract Goal Program"
(GAO-01-51, GAO Code 120001)

When discussing exclusions to the goaling/reporting process, GAO fails to distinguish between those contracts that are performed entirely outside the United States and those that are both awarded AND performed entirely outside the U.S. (see pages 13 and 15). The Department of State does, in fact, include in its base of contract awards against which it sets small business goals and which it reports in the baseline of its annual achievements those contracts awarded domestically for performance in part or in totality outside the U.S. As much as 40 percent of State's domestic contract awards are for performance outside the U.S. The Department of State would have a bare-boned Small Business program if it were to exclude such awards. The Department has only a small presence within the U.S. as compared to its overseas operations.

Appendix III: Comments From the National Aeronautics and Space Administration

National Aeronautics and
Space Administration
Office of the Administrator
Washington, DC 20546-0001

JUL 19 2001

Mr. David E. Cooper
Director
Acquisition and Sourcing Management
United States General Accounting Office
Washington, DC 20548

Dear Mr. Cooper:

We appreciate the opportunity to review and provide comments to the draft report, entitled, Small Business: More Transparency Needed in Prime Contract Goal Program. We have reviewed the report in detail and are in agreement with the recommendations to the extent that they affect NASA as a procuring Agency.

NASA continues to work closely with the Small Business Administration in establishing and exceeding its small business goals. From Fiscal Year (FY) 1992 to 2000, NASA has increased its awards to small businesses from $906 to $1,485 million, which is an increase of 64 percent. When small business subcontracting is added to direct prime awards, the total dollars awarded to small businesses amounts to about $3.5 billion or 32 percent of NASA's contract budget. Public Law 101-144, passed by Congress in 1989, requires NASA to establish an annual goal of at least 8 percent of the value of awards to small disadvantaged businesses (including women-owned) and Historically Black Colleges and Universities and other minority educational institutions. In FY 2000, NASA achieved 18.3 percent of the goal.

NASA has been a leader in the Federal Government in offering greater opportunities for small businesses to contribute to our missions. We plan to continue in this endeavor. Should you have any questions, please call Mr. Ralph Thomas, Associate Administrator for Small and Disadvantaged Business Utilization, at (202) 358-2088.

Sincerely,

Daniel R. Mulville
Associate Deputy Administrator

Appendix IV: Procurement Dollars Reported in Fiscal Year 2000

Dollars in thousands

	Fiscal year 2000	
Procurement agency	**Procurement dollars**	**Percent of total procurements**
Department of Agriculture	$3,532,937	1.6
Department of Commerce	1,911,903	0.9
Department of Defense	142,047,609	64.9
Department of Education	899,296	0.4
Department of Energy	16,909,511	7.7
Department of Health and Human Services	4,541,865	2.1
Department of Housing and Urban Development	1,108,526	0.5
Department of Interior	1,436,386	0.7
Department of Justice	3,659,726	1.7
Department of Labor	1,329,765	0.6
Department of State	1,543,355	0.7
Department of Transportation	1,933,751	0.9
Department of Treasury	2,858,828	1.3
Department of Veterans Affairs	5,286,214	2.4
Environmental Protection Agency	991,569	0.5
General Services Administration	11,118,974	5.1
National Aeronautics and Space Administration	11,066,765	5.1
Social Security Administration	580,302	0.3
Tennessee Valley Authority	4,416,682	2.0
U.S. Agency for International Development	455,223	0.2
Remaining agencies	1,216,551	.6
Total - all agencies	**$218,845,738**	**100.0**[a]

[a] Total does not equal 100 percent due to rounding.

Source: Dollar values obtained from the Federal Procurement Data Center.

Appendix V: Agency Small Business Achievements in Fiscal Year 2000

Table 4 shows dollars obligated to small businesses for all federal agencies having procurement authority. As previously stated, 20 agencies account for over 99 percent of all federal purchases. The table also shows the percent of procurement dollars awarded to small businesses after taking into account each agency's exclusions of certain procurement actions as discussed above.

Table 4: Agency Small Business Achievements

Dollars in thousands

	Fiscal year 2000	
Procurement agency	**Dollars obligated to small businesses**	**Percent of procurements awarded to small businesses**
Department of Agriculture	$1,435,009	38.58
Department of Commerce	638,057	33.61
Department of Defense	27,029,062	21.41
Department of Education	125,927	13.86
Department of Energy	500,254	2.96
Department of Health and Human Services	1,129,116	26.02
Department of Housing and Urban Development	427,424	40.66
Department of Interior	871,686	61.13
Department of Justice	1,192,246	32.75
Department of Labor	347,700	26.05
Department of State	420,908	42.45
Department of Transportation	1,010,013	53.45
Department of Treasury	614,301	32.14
Department of Veterans Affairs	1,594,865	30.34
Agency for International Development	66,666	18.54
Environmental Protection Agency	277,681	25.56
General Services Administration	4,386,284	40.03
National Aeronautics and Space Administration	1,485,504	13.54
Social Security Administration	217,345	38.66
Tennessee Valley Authority	454,021	10.31
Remaining agencies	494,645	0.25
Total - All agencies	**$ 44,718,714**	**22.26**

Source: Dollar values and percentages obtained from the Federal Procurement Data Center. Percentages were calculated based on the procurement dollars after the various exclusions were taken into account.

Appendix VI: Total Federal Procurements and Exclusions for Fiscal Year 2000

Table 5 shows the total dollar value of fiscal year 2000 procurements and exclusions for all federal agencies having procurement authority. Twenty agencies account for 99.5 percent of all federal purchases.

Table 5: Total Federal Procurement and Exclusions for Fiscal Year 2000

Dollars in thousands

Procurement agency	Total procurements	Total exclusions	Exclusions as a percent of total procurements
Department of Agriculture	$3,532,937	$33,542	0.95
Department of Commerce	1,911,903	14,404	0.75
Department of Defense	142,047,609	17,387,058	12.24
Department of Education	899,296	0	0
Department of Energy	16,909,511	15,006	0.09
Department of Health and Human Services	4,541,865	16,622	0.37
Department of Housing and Urban Development	1,108,526	891	0.08
Department of Interior	1,436,386	10,071	0.70
Department of Justice	3,659,726	34,196	0.93
Department of Labor	1,329,765	251	0.02
Department of State	1,543,355	465,142	30.14
Department of Transportation	1,933,751	3,069,503	[a]
Department of Treasury	2,858,828	1,006,017	35.19
Department of Veterans Affairs	5,286,214	25,348	0.48
Agency for International Development	455,223	89,143	19.58
Environmental Protection Agency	991,569	1,225	0.12
General Services Administration	11,118,974	162,759	1.46
National Aeronautics and Space Administration	11,066,765	95,378	0.86
Social Security Administration	580,302	15,839	2.73
Tennessee Valley Authority	4,416,682	9,500	0.22
Remaining agencies	1,216,551	122,589	10.08
Total—All agencies	**$218,845,738**	**$22,574,484**	**10.32**

Source: Dollar values obtained from the Federal Procurement Data Center.

[a] The excluded dollars for the Department of Transportation are greater than the total procurement dollars because the excluded dollars include Federal Aviation Administration contract actions, while the total procurement dollars do not. As discussed earlier, the Department of Transportation and Related Agencies Appropriations Act of 1996 exempted the Federal Aviation Administration from the Small Business Act and the Federal Acquisition Regulation. Accordingly, the Administration stopped reporting to FPDC during fiscal year 2000 and its contract actions are not reflected in the total procurement dollars reported by FPDC.

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