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Department of Defense Program to Help Minority-Run Businesses Get Subcontracts Not Working Well. PSAD-77-76; B-132740. February 28, 1977. Released March 3, 1977. 20 pp. + appendices.

Report to Rep. Joseph P. Addabbo, Chairman, House Committee on Small Business; SBA Oversight and Minority Enterprise Subcommittee; by Robert F. Keller, Acting Comptroller General.

Issue Area: Non-Discrimination and Equal Opportunity Programs: Effectiveness of Federal Minority Assistance Programs (1008); Federal Procurement of Goods and Services (1900).

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Congressional Relevance: House Committee on Small Business: SBA Oversight and Minority Enterprise Subcommittee.

Authority: A.S.P.R. 7-104.36. Executive Order 11625.

Implementation of the Department of Defense (DOD) Minority Business Enterprise (MBE) Subcontracting Program was reviewed; the review focused on the way DOD and four prime contractors implemented the program. The program calls for contracts over \$500,000 to have a clause stipulating that contractors identify and solicit minority businesses to perform subcontracting. Findings/Conclusions: DOD's implementation of the MBE Subcontracting Program is inadequate in three respects: (1) the contract clause overlooks certain key aspects and requirements necessary to assure program success; (2) the program is not adequately monitored and has inadequate standards to judge contractors' efforts; and (3) DOD contracting officers have not been given guidance on when the subcontracting clause should be inserted in prime contracts. Inadequate contract requirements and poorly planned programs are the primary reasons the subcontracting program is not effective. None of the prime contractors adequately complied with regulations for maintaining records related to minority business subcontracting. The contractors have not established a regular practice of soliciting bids from minority firms. About half of the minority businesses contacted were dissatisfied with the program. Recommendations: DOD should: include goals and objectives for contractors to achieve in identifying and soliciting minority firms capable of providing the required services; define the role of corporate liaison officials; and require contractors to record in summary form the number and value of solicitations made to minority businesses as well as awards to such businesses. (RRS)

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3/3/77



**REPORT OF THE
COMPTROLLER GENERAL
OF THE UNITED STATES**

**Department Of Defense Program
To Help Minority-run Businesses
Get Subcontracts
Not Working Well**

Inadequate contract requirements, coupled with programs poorly planned and carried out by contractors, result in fewer subcontract opportunities for minority businesses.

The Department of Defense should revise its contract requirements to provide contractors with more specific direction on how to involve minority businesses in subcontracting. In accordance with the Committee's wishes, no comments were obtained from the Department of Defense.



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-132740

The Honorable Joseph P. Addabbo
Chairman, Subcommittee on
SBA Oversight and Minority Enterprise
Committee on Small Business
House of Representatives

Dear Mr. Chairman:

This is our report on weaknesses in prime contractors implementation of the Minority Business Enterprise Subcontracting Program administered by the Department of Defense. Our review was made pursuant to your request of March 25, 1976.

In accordance with the instructions from your office, we did not obtain comments from the Department of Defense on the contents of this report.

Please note that this report contains recommendations to the Secretary of Defense which are set forth on pages 19 and 20. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House and Senate Committees on Government Operations not later than 60 days after the date of the report. A similar statement is to be submitted to the House Committee on Appropriations and to the Subcommittee on Defense, Senate Committee on Appropriations, with the agency's first request for appropriations made more than 60 days after the date of the report. We will be in touch with your office in the near future to arrange for release of the report so that the requirements of section 236 can be met.

Sincerely yours,

ACTING

R. F. Kistner
Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE
SUBCOMMITTEE ON SBA
OVERSIGHT AND MINORITY
ENTERPRISE, HOUSE COMMITTEE
ON SMALL BUSINESS

DEPARTMENT OF DEFENSE
PROGRAM TO HELP MINORITY-RUN
BUSINESSES GET SUBCONTRACTS
NOT WORKING WELL

D I G E S T

The Department of Defense Minority Business Enterprise Subcontracting Program calls for some contracts over \$500,000 to have a clause stipulating that contractors identify and solicit minority businesses to do the jobs. (See pp. 1 to 3 and app. I and II.)

The program developed by the Department of Defense and four of its prime contractors is ineffective because:

- The clause mentioned above does not spell out specifically how contractors are to promote subcontracting with minority firms.
- The program is not being adequately monitored and has standards that are inadequate to use in evaluating contractors' performance.
- Contracting officers do not have criteria for determining which contractors should participate in the program. There was no apparent justification for some of the largest Defense contractors not being required to participate in the program.

Inadequate contract requirements coupled with programs poorly planned and carried out by the contractors were the primary reasons why these subcontracting programs were not as effective as they could be.

None of the prime contractors had adequately complied with regulations for keeping certain records relating to minority business subcontracting. While the contractors had appointed liaison officers, as required, these officials received few instructions from management in three of the four cases reviewed; and, although two contractors kept adequate listings

of minority businesses, they generally were not routinely screening these listings to determine those businesses that could be solicited.

Finally, contractors had not established a regular practice of soliciting bids from minority firms.

And, how did the minority businesses feel about the program? About half of those contacted were dissatisfied with it. Most of the remaining were satisfied, even though many believed improvements, such as providing more Government publicity on minority business enterprise subcontracting opportunities and increasing the time to respond to solicitations, were needed. (See pp. 17 and 18.)

RECOMMENDATIONS

The Secretary of Defense should revise regulations on the contracts to provide contractors more specific direction on how to involve minority firms in subcontracting. To do this, the Department should

- include goals and objectives for contractors to achieve in identifying and soliciting minority firms capable of providing the required products and services,
- define the role of corporate liaison officials, including how they will be involved in coordinating and implementing programs, and
- require contractors to record in summary form the number and value of solicitations made to minority businesses as well as awards to such businesses.

The Department also should provide

- specific guidance to procurement contracting officers so they can determine those contractors who should be required to implement a Subcontracting Program and

--for more effective monitoring of the Subcontracting Program by developing performance standards for use in evaluating whether contractors comply with the contract requirements.

In accordance with the Committee's wishes, no comments were obtained from the Department of Defense.

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ABBREVIATIONS

ACO	Administrative Contracting Officer
ASPR	Armed Services Procurement Regulation
CAO	Contract Administration Office
DCAS	Defense Contract Administration Services
DOD	Department of Defense
GAO	General Accounting Office
MBE	Minority Business Enterprise
SBA	Small Business Administration

CHAPTER 1

INTRODUCTION

By letter dated March 25, 1976, the Chairman of the Subcommittee on Small Business Administration (SBA) Oversight and Minority Enterprise, House Committee on Small Business, asked us to conduct a full and detailed investigation of the Department of Defense (DOD) Minority Business Enterprise (MBE) Subcontracting Program. The request was initiated after investigations conducted by the Subcommittee indicated that DOD had not vigorously pursued enforcement of provisions of the Armed Services Procurement Regulation (ASPR) dealing with promoting participation of minority business enterprises as DOD subcontractors. The regulation provides for inclusion of a clause in most DOD prime contracts in excess of \$500,000 requiring prime contractors to establish a program enabling MBEs to be considered fairly as subcontractors and suppliers.

The Armed Services Procurement Regulation 7-104.36 defines a minority business enterprise as a business where at least 50 percent is owned by minority group members, or, in the case of publicly owned business, at least 51 percent of the stock is owned by minority group members. Minority group members are Black Americans, Spanish-Speaking American persons, American-Orientals, American-Indians, American Eskimos, and American Aleuts.

On May 25, 1976, we met with the Subcommittee staff primarily to reach agreement on the scope and extent of work to be performed to satisfy its request. It was agreed that we would determine:

- How DOD assures itself that contractors are complying with the contract clause.
- If the contractors have established viable minority subcontracting programs.
- How minority firms view DOD's MBE Subcontracting Program.

EVOLUTION OF DOD'S MINORITY BUSINESS ENTERPRISE SUBCONTRACTING PROGRAM

DOD's Minority Business Enterprise Subcontracting Program is an outgrowth of a national commitment to increase involvement of MBEs in Federal procurement programs and the

private enterprise system. Executive Order 11458, issued March 5, 1969, prescribed national efforts for developing and coordinating an MBE program. (See app. I.) This order resulted in the establishment of the Office of Minority Business Enterprise in the Department of Commerce.

On October 13, 1971, Executive Order 11458 was superseded by Executive Order 11625. Executive Order 11625 provides that it is in the national interest to have full participation in our free enterprise system by minority business enterprises and that all Federal departments and agencies are to increase their efforts in fostering and promoting minority business enterprise. The order provides that:

"The Secretary of Commerce, as he deems necessary or appropriate to enable him to better fulfill the responsibilities vested in him by subsection (a) of the Executive Order may:

"With the participation of other Federal departments and agencies as appropriate, develop comprehensive plans and specific program goals for the minority enterprise program; establish regular performance monitoring and reporting systems to assure that goals are being achieved; and evaluate the impact of Federal support in achieving the objectives established by this order."

In January 1970 and February 1972, the Office of the Assistant Secretary of Defense (Installations and Logistics) ASD (I&L) established DOD's responsibilities for increasing utilization of MBEs. The Directorate for Small Business and Economic Utilization Policy, under the Deputy Assistant Secretary (Procurement), advises the ASD (I&L) in matters relating to establishing, implementing, and executing the MBE Subcontracting Program.

As a means of implementing the program, ASPR was amended to establish a policy that minority business enterprises be accorded maximum practicable opportunity to participate in Government contracts and to require Government contractors to assume affirmative obligations in subcontracting with MBEs (See app. II.)

A September 10, 1975, report by the Subcommittee on SBA Oversight and Minority Enterprise concluded as follows:

"There is a glaring lack of specific objectives which each prime contractor should be required to achieve. There is a lack of enforcement provisions

and Federal agencies indicated a lack of any meaningful monitoring system. In short, the subcommittee concludes that title 41 contains an appropriate expression of Government policy but an ineffective mechanism to achieve that policy." 1/

Also, in a November 24, 1975, memorandum, the Director of Small Business and Economic Utilization Policy, Office of ASD (I&L), disclosed that an examination of 695 plants performing on DOD prime contracts indicated that over 50 percent had not made any minority subcontract awards during fiscal year 1975. This situation spurred DOD to initiate action bringing about some reforms in the program enabling it to carry out better the intent of Executive Order 11625.

For those contractors reporting, DOD program statistics for fiscal years 1973-75 are presented below:

<u>Subcontract awards by DOD prime contractors</u>	<u>FY 1973</u>	<u>FY 1974</u>	<u>FY 1975</u>
	----- (000,000 omitted) -----		
To small business concerns	\$ 3,971	\$ 4,584	\$ 5,002
To other business concerns	<u>7,123</u>	<u>7,455</u>	<u>7,729</u>
Total	<u>\$11,094</u>	<u>\$12,039</u>	<u>\$12,731</u>
To minority business concerns (included above in the dollar amount to small business concerns)	\$22	\$52	\$72
Percent of minority business subcontracts to small business subcontracts	0.6	1.1	1.4
Percent of minority business subcontracts to small and other business concerns	0.2	0.4	0.6

1/Title 41 contains the Code of Federal Regulation Sections dealing with public contracts.

SCOPE OF REVIEW

Our review was generally limited to determining the way DOD and four prime contractors implemented DOD's Minority Business Enterprise Subcontracting Program, as described in ASPR and in other Government promulgations. Our review included a determination of the adequacy of the ASPR contract clause as well as a determination of DOD's efforts to assure contractors' compliance with the clause. Statistics on subcontract awards by the four contractors reviewed are shown in appendix III.

Our review was performed at the following locations, offices, or organizations:

- DOD and the Departments of the Air Force, Army, and Navy. Principal organizations contacted in these departments included the (1) Directorate for Small Business and Economic Utilization Policy, ASD (I&L), (2) Headquarters, Defense Contract Administration Services, and selected field offices, and (3) other cognizant DOD organizations.
- Four DOD contractors, including seven plant facilities in the West and Midwest.
- Other Federal or federally funded agencies contacted included the (1) Small Business Administration, (2) Department of Commerce's Office of Minority Business Enterprise, (3) Minority Business Opportunity Committees, (4) National and Regional Purchasing Councils, and (5) National Aeronautics and Space Administration.
- Twenty-four minority business enterprises.

CHAPTER 2

NEED TO STRENGTHEN DEPARTMENT OF DEFENSE EFFORTS

TO PROMOTE SUBCONTRACTING WITH MINORITY

BUSINESS ENTERPRISES

We found that DOD's implementation of the MBE Subcontracting Program is inadequate in three respects. First, the contract clause to be included in selected prime contracts overlooks certain key aspects and requirements necessary to assure the probability of program success. Second, the program as presently conceived is not being adequately monitored by authorized DOD elements and suffers from inadequate standards to judge the effectiveness of prime contractors' efforts. Finally, DOD contracting officers have not been given guidance on when the MBE subcontract clause is to be included in prime contracts. As a result the programs developed by the prime contractors (discussed in ch. 3) are not as effective as they might be, and a substantial number of the largest DOD contractors are not even required to participate in the program.

ASPR PROVISIONS IMPLEMENTING AN MBE SUBCONTRACTING PROGRAM ARE INADEQUATE

The Executive order does not require Federal agencies to establish specific goals or objectives for implementing a minority business enterprise program. DOD, therefore, has not established official goals and objectives for contractors to meet. Further, the ASPR clause which is included in prime contracts is silent with respect to certain key aspects and requirements which are necessary for assuring the probability of program success. The clause does not require that program goals and objectives be established by contractors.

Only one of the four prime contractors we visited had actually developed goals and objectives of any kind or provided specific assistance. And even this one contractor's goal was questionable because it was not based on any study or assessment of the potential for soliciting bids or awarding contracts to minority firms.

The contract clause developed for this program requires contractors to establish source lists of MBEs and to solicit them. Weaknesses in the contractors' programs, discussed in chapter 3, relate directly to the absence of prescribed goals and objectives for accomplishing these requirements.

We believe that prime contractors can increase the involvement of minority firms through better efforts to identify and solicit qualified firms. Therefore related goals and objectives are needed to measure the performance of prime contractors.

NEED FOR DOD TO DEVELOP MONITORING GUIDELINES

Monitoring visits by DOD representatives to the contractors were usually very brief and pertained mainly to discussions with the contractors rather than verifying actions taken or accomplishments. DOD's monitoring of contractors' MBE Subcontracting Programs needs to be strengthened if there is to be any assurance that viable and effective programs are being implemented.

Contract Administration Offices (CAOs) monitor participating contractors' efforts to implement the MBE subcontracting program. Three of the prime contractors we reviewed were monitored by the Defense Contract Administration Services (DCAS) and the fourth prime contractor was monitored by the Air Force Contract Management Division. DCAS regulations provide that a small business specialist perform the monitoring function.

Reviews are conducted jointly by representatives from the SBA and DCAS generally on a quarterly basis.

DCAS monitors told us they normally take about 4 hours or less to conduct a complete review. The form used for such reviews includes the following questions.

"A. Contractors's discharge of obligation in accord with ASPR clause

- "1. Has contractor established a program to enable minority business enterprises to be considered fairly as suppliers?
- "2. Has a Liaison Officer been appointed to administer the contractor's Program?

- "3. Does contractor consider the potentialities of minority business enterprises in all make or buy decisions?
- "4. Does contractor provide equitable opportunity for minority businesses to compete for subcontracts?
- "5. Does contractor arrange solicitations, provide adequate bid preparation time, arrange quantities, specifications and delivery schedules to facilitate participation by minority businesses?
- "6. Does contractor maintain records and policies which reflect identification and use of minority business enterprises?
- "7. Does contractor cooperate with contracting officer in studies and surveys of the contractor's minority business enterprise procedures and practices?
- "8. When required, does the contractor submit periodic reports of subcontracting to known minority business enterprises?
- "9. Does the contractor include the Minority Business Subcontracting Program clause in applicable subcontracts in accord with contractual obligation?
- "10. Is the contracting officer notified concerning the placement of such orders?

"B. Extra contractual effort to support minority business program

- "1. Describe any unusual or extraordinary contract efforts. (There is also a provision for the monitor to explain any deficiencies found in the review and for an overall conclusion of the contractor's performance.)"

The monitoring reports we reviewed did not mention any of the problems found by our reviews. For example, we determined that one contractor had not screened any available listings of MBEs and was, therefore, unaware of many MBEs that could have been solicited for bids. Yet the DCAS monitor checked "yes" for question 4 cited earlier and concluded that this contractor, although it had not attempted to identify

MBEs from the directories, was providing an equitable opportunity for minority businesses to compete for subcontracts.

DCAS headquarters officials told us that in their opinion a contractor is in compliance with the MBE Subcontracting Program requirements if it (1) has appointed a liaison officer, (2) has a source listing of MBEs, and (3) solicited and awarded contracts to MBEs. We noted that the three contractors with formal MBE Subcontracting Programs had done most of these things to some extent; therefore, DCAS rated its program as satisfactory. DCAS officials stated, however, that they believed improved monitoring guidelines were needed.

The three DCASSs and one Air Force CAO concluded that all four contractors we reviewed had satisfactory programs. When we asked on what basis they judged each factor, they told us they used their best judgment because existing guidelines are vague and/or more specific guidelines have not been developed to assist them in making these determinations. However, one of the prime contractors whose MBE Subcontracting Program had been rated as satisfactory by DCAS told us that it had not implemented a formal MBE Subcontracting Program.

OTHER MONITORING PROBLEMS IDENTIFIED

Responsible DOD contract administration specialists were not monitoring the effectiveness of MBE Subcontracting Programs at major subcontractors of the four prime contractors reviewed.

The MBE Subcontracting Program clause requires the contractor to insert in any subcontract exceeding \$500,000 the language of the clause and to notify the prime contracting officer of the names of such subcontractors. Such notification was made by two of the prime contractors, but there was no monitoring of the subcontractor MBE programs. For the other two contractors, the MBE clause had not been included in the major subcontracts as required.

DOD CONTRACTING OFFICIALS NEED GUIDANCE FOR DETERMINING THE CONTRACTORS THAT SHOULD BE INCLUDED IN THE MBE SUBCONTRACTING PROGRAM

In our opinion DOD should provide improved guidance to procurement contracting officers to assist them in deciding when prime contractors should be required to establish a MBE Subcontracting Program.

ASPR in section 7-104.36(b) allows procurement contracting officers to exclude the mandatory MBE clause from contracts

exceeding \$500,000, if, in their opinion, substantial contracting opportunities do not exist for MBEs. However, ASPR sections 1-332 and 7-104.36(a) and (b) neither define what constitutes substantial subcontracting opportunities nor provide specific criteria for making this decision.

We compared DOD's listing of DOD contractors participating in the program to a separate listing of the names of DOD's 100 top contractors. This comparison showed that 39 of the contractors for fiscal year 1975 were not in DOD's report on companies participating in the MBE Subcontracting Program. We also determined that during fiscal year 1975, each of the 39 contractors received prime contract awards ranging from \$44 million to \$1.4 billion. Of the 39 companies, 14 were oil companies, 3 were major automobile manufacturers, 3 were nonprofit institutions, and the remainder were food or conglomerate industries.

We contacted DOD procurement offices that were responsible for awarding contracts to 1 of these 39 prime contractors and asked whether they were including the MBE clause in the large contracts they were awarding to this firm. These inquiries disclosed that the procurement office had not required contractors in the oil industry to establish MBE Subcontracting Programs. Additionally, we found an instance where the contracting officer had excluded the MBE clause from a contract to a DOD contractor already required by other contracts to have an MBE Subcontracting Program.

A policy division official at the Defense Fuel Supply Agency told us that the contracting officer, with the policy division's concurrence, excluded the MBE clause in the prime contracts awarded to petroleum companies believing that no significant opportunities for subcontract awards to MBEs existed.

The Agency said that although its total annual procurements from the oil companies exceeded \$2 billion, the oil companies' cost for the purchase of crude oil might be as high as 75 to 90 percent of individual contract value. This suggested to the Agency the lack of opportunity to subcontract with MBEs. We were told, however, that the Agency had not made any studies or obtained any documentation from the oil companies to substantiate the Agency's belief that many opportunities for awarding subcontracts to MBEs did not exist.

In another case a Navy procurement contracting officer, at the contractor's request, deleted the MBE clause in a contract by amendment because, in his opinion, substantial

opportunities for the company to subcontract with minority firms did not exist under that contract. This contracting officer told us he lacked adequate criteria for determining when a contracting officer may exclude the MBE clause. An official at the Defense Fuel Supply Agency similarly told us that no guidelines of this nature had been developed for their use.

ACTIONS TAKEN BY DOD TO IMPROVE
THE IMPLEMENTATION OF THE
MBE SUBCONTRACTING PROGRAM

DOD has recognized that the MBE Subcontracting Program has not been effective. Proposals or suggestions by DOD to improve the program include the following:

- The Deputy Assistant Secretary of Defense (Procurement) stated in a January 16, 1976, letter directed to aerospace, electronic, and national security industrial associations that action had been initiated to revise the ASPR to (1) require more accurate identification of potential minority business suppliers and (2) give some recognition to the costs involved in contractors' efforts to make awards to minority firms in negotiating contract prices. The letter also stated a DOD test program had been authorized to require certain contractors to subcontract a specified percentage of total subcontracts to minority firms.
- According to a DCAS headquarters official, DCAS plans to revise its procedures manual to clarify for DCAS reviewers certain MBE program requirements.
- DCAS stated that it planned to survey in late 1976 those contractors who had participated in the MBE Subcontracting Program during the last 3 fiscal years. The survey will evaluate contractors' awards to MBEs in the light of their awards made to small businesses; it will assume that the higher the percentage of subcontracting to small businesses, the greater the potential for subcontracting with MBEs.

A DOD policy level official told us that DOD is encouraging contractors to voluntarily set either of these goals for fiscal year 1977:

- Those contractors who previously made MBE subcontract awards were asked to set a goal of awarding 5 percent

more subcontract dollars to MBEs than awarded in the previous fiscal year.

--DOD has requested those contractors who reported zero dollar awards to set a goal of awarding four minority business subcontracts.

CHAPTER 3

PRIME CONTRACTORS' MINORITY BUSINESS ENTERPRISE

SUBCONTRACTING PROGRAMS CAN BE IMPROVED

The MBE Subcontracting Programs at the four prime contractors we examined were not as effective as they could have been because they were not fully complying with the requirements of the MBE contract clause and because of inadequacies in DOD's program discussed in chapter 2.

We found that prime contractors were not using available source lists to identify and solicit minority firms and were not soliciting minority firms previously qualified. We also found that the duties and responsibilities of company MBE liaison officials were not clearly defined and that required records were not maintained.

PROCEDURES FOR IDENTIFYING AND SOLICITING MBES ARE VAGUE

The MBE clause requires prime contractors to (1) develop procedures to comply with the policies set forth in the clause, including the establishment of a source list of MBEs, (2) identify and solicit MBEs, and (3) maintain records of these actions and of awards to minority firms.

Three of the contractors had issued policy statements indicating their intent that MBEs would have an equal opportunity to compete for all subcontracts that they can perform. However, the statements and directives of three of the four were not specific or were unclear concerning what steps and procedures the prime contractors would take to carry out that intent.

Officials at three of the prime contractors we reviewed indicated they had not determined their corporation's full potential to subcontract with MBEs. None of them had conducted any studies to identify

- the type of products and services procured that could be supplied by minority businesses and
- the minority businesses available and capable of providing these products and services.

Directories of various MBEs are available from local associations, SBA, the Department of Commerce's Office of Minority Enterprise, DCAS regional offices, and State agencies. The directories generally are classified by product or by type of service rendered.

One MBE liaison officer told us that he had not screened any MBE directories. This resulted in buyers being unaware of many potential MBE suppliers. We talked to five buyers at this company and learned that three had not used the directories. Four of the five buyers told us they solicited bids from only those few MBEs provided by the MBE liaison officer as a result of his participation at trade fairs and from known MBEs.

We found that one prime contractor had evaluated the capabilities of MBEs and subsequently included them on its list of approved suppliers but did not regularly solicit from these MBEs. For instance, of 39 MBEs on the approved supplier list, the buyers were soliciting bids from only 11 and a contractor official could not tell us why the others were not being solicited.

DUTIES AND RESPONSIBILITIES OF LIAISON OFFICERS ARE NOT DEFINED

One of the requirements of ASPR calls for the designation of MBE liaison officers. While all four of the prime contractors we visited had made such designations, only one of them had formally defined the duties and responsibilities of the person appointed to this position. We reviewed this contractor's program in detail at one plant and found that the liaison officer was not effectively discharging his assigned duties and responsibilities. For instance the liaison officer (1) did not use local MBE directories for locating potential MBE suppliers, (2) had initiated only minimal efforts to contact potential MBE suppliers, and (3) had made no efforts to contact and coordinate MBE-related matters with other Federal or federally funded organizations involved in coordinating and implementing the program, other than to inquire whether some small businesses had loans from the SBA.

At one prime contractor the liaison officer at the corporate headquarters stated that the liaison official at the plant location was responsible for identifying and screening potential MBE suppliers. At the plant, however, a procurement official, stated that his buyers were responsible for discharging these duties. Yet we found that no

one was effectively performing the function. The contractor's listing of suppliers contained the names of about 1,100 firms. However, plant officials told us that to their knowledge only three or four of these suppliers were known MBEs with which they dealt.

PROPER RECORDS ARE NOT MAINTAINED

Only one of the prime contractors visited provided us with records of solicitations to MBEs. The three other contractors recorded this type of information but retained it only in individual purchase order folders. These three contractors did not have any summary information on solicitations to MBEs.

DOD contractors who are not considered to be small businesses are required to submit a quarterly statistical report (DD Form 1140-1) on the total amount of awards to large and small businesses and to MBEs. Although all four prime contractors were regularly submitting these quarterly reports, three of the contractors' reports were inaccurate. The inaccuracies involved the reporting of non-MBEs as MBEs, exclusion of MBEs, cumulative instead of quarterly reporting, and other computational errors.

CHAPTER 4

COMMENTS BY MINORITY FIRMS ON

DOD'S SUBCONTRACTING PROGRAM

We contracted selected minority firms, some of which were listed in MBE directories, to obtain insight from minority businessmen about their experience with the MBE Subcontracting program and any recommendations they might have for improving it. About half of those contacted were dissatisfied with the program. Most of the remaining were satisfied, even though many believed that improvements were needed.

EFFORTS BY MINORITY FIRMS TO SOLICIT CONTRACTS FROM PRIME CONTRACTORS

Thirteen of the 24 minority firms we spoke to told us they had contacted at least 1 DOD contractor to explain their capabilities and to solicit business. Eight had received bid solicitations, of which five resulted in contract awards. Fourteen of the firms had contacted the SBA and other organizations, such as the Office of Minority Business Enterprise for assistance; a few had attended trade fairs; and 17 of the 24 firms contacted were also included in one or more of the many directories developed on minority firms.

Direct efforts by minority firms to increase their visibility and acceptance by contractors have not always been successful. For example, a vendor of stationery and office supplies named 11 contractors he had contacted and told us that his efforts had resulted in little business. He said that one of the contractors that solicits him does so only on very small orders amounting to about \$500 worth of business annually.

Similarly, six of the seven minority businessmen who had attended trade fairs indicated that, judging from the results, the trade fairs had been largely unproductive as far as new DOD contractor business was concerned. For example, one minority business attended six trade fairs in 1976 and contacted at least four DOD prime contractors with no results.

MINORITY FIRMS HAVE EXPERIENCED DIFFICULTY BREAKING INTO ESTABLISHED MARKETS

Some minority businessmen expressed concern that buyers solicited bids only from favorite vendors that they have dealt with for years. Based on our discussions with contractors, their concerns may be justified. Three of the four contractors we reviewed told us they have established sources of proven quality and reliability. One of these contractors stated that it would be imprudent to jeopardize beneficial relationships with proven supply sources by changing to new suppliers. Such a change, we were told, creates a risk which the contractor is often unwilling to accept because of the difficulty of determining beforehand if new suppliers can live up to the standards of regular suppliers.

One minority businessman said it has been his experience that contractors solicit MBEs to fill their less lucrative orders while reserving more profitable orders for their established sources of supply. He believes the Government should assist minority firms in getting the more profitable awards. Another minority businessman somewhat sympathized with contractors' use of established sources.

QUALITY CONTROL

For certain types of procurements, contractors often require their subcontractors to meet minimum quality control standards by

- writing an acceptable quality control manual,
- installing calibration or test equipment assuring that products are within the required tolerances, and
- periodically checking the accuracy of test equipment.

One concern of the contractors was whether suppliers could provide adequate quality control systems. Minority businessmen told us that even when such systems were established, their chances for obtaining business from prime contractors were not significantly increased. As a result some minority businessmen believed that their investment in a quality control system was not worth the cost.

One MBE told us that he hired a consultant at a cost of \$200 to write a quality control manual for his firm as a

prerequisite for obtaining awards from a prime contractor. According to the MBE the manual was later approved by the prime contractor, but over a year passed before the MBE received an award. The order was valued at less than the cost of the quality control manual itself. Another MBE told us that each contractor dealt with seemed to want the firm to establish a little different quality control system. This MBE, having worked for at least six contractors, stated that the firm's costs to adapt a quality control system for contractors had not been warranted by the resulting business.

NONRESPONSIVE BIDDERS

Buyers at two of the four contractors we reviewed told us that MBEs had not responded well to solicitations or had "no bid" items on solicitations. Our discussions with minority businessmen tended to support this assertion, but some reasons were given by MBEs why firms might "no bid" certain items or not bid at all. Some of these reasons are:

- The solicitations involved items already manufactured elsewhere, sometimes by a company having patent rights. Minority businessmen questioned whether they could be expected to overcome the competitive advantage.
- The solicitations involved items for which the business does not specialize.
- There was insufficient time to prepare bids.

RECOMMENDATIONS BY MINORITY BUSINESSMEN

Minority businessmen made a number of recommendations for program improvement, such as:

- Giving greater consideration to the potential for minority business subcontracting in selecting prime contractors for future DOD contracts.
- Providing assistance to minority businesses in obtaining needed, and sometimes exotic, raw materials.
- Establishing program goals.
- Increasing Government activity to insure that contractors provide MBEs an equitable share of the available business.

- Establishing a program administered by SBA which would result in subcontracts sufficient to warrant minority business investment in quality control systems.
- Providing more Government publicity on MBE contact points in various Federal agencies.
- Increasing the number of contractor surveys on the capabilities of minority businesses.
- Allowing MBEs more time to respond to solicitations.
- Reducing paperwork and simplifying it.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

There is a need for improved Department of Defense guidance and direction for implementing the MBE Subcontracting Program by agencies within DOD and by prime contractors. We believe that the Armed Services Procurement Regulation should be amended to provide for more specific contractual requirements on how contractors are to promote subcontracting with minority firms. There is a need for DOD to provide in prime contracts that contractors develop goals and objectives for identification and solicitation of minority firms which are capable of providing required products and services. DOD also needs to develop standards for monitoring and evaluating contractors' efforts under the MBE Subcontracting Program and needs to provide procurement contracting officers with adequate criteria for determining which prime contractors should participate in the MBE Subcontracting Program.

The MBE Subcontracting Programs implemented by the four prime contractors we reviewed were not viable or effective. We believe inadequate contract clause requirements coupled with poor program planning and execution by the prime contractors were the primary reasons why these MBE Subcontracting Programs were not effective.

None of the prime contractors had adequately complied with the ASPR requirements for keeping certain types of records on their MBE Subcontracting Program efforts. While the contractors had appointed liaison officers, as required by ASPR, such appointments achieved little because liaison officers had received very few instructions from management in three of the four cases we reviewed; and, although two prime contractors maintained adequate source listings of MBEs, they generally were not routinely screening these listings to determine MBEs that could be solicited. Finally, prime contractors had not established a regular practice of soliciting bids from minority firms.

RECOMMENDATIONS

We recommend that the Secretary of Defense revise the current contract clause to provide the contractors with more specific direction on increasing the involvement of minority firms in subcontracting. To accomplish this in the revised clause, DOD should:

- Include goals and objectives for prime contractors to achieve in identifying and soliciting minority firms capable of providing the required products and services.
- Define the role of corporate MBE liaison officials, including their duties in program coordination and program implementation.
- Require contractors to record in summary form the number and value of solicitations made to minority businesses as well as awards to such businesses.

We also recommend that the Department:

- Provide specific guidance to procurement contracting officers to guide them in determining those contractors that should be required to implement an MBE Subcontracting Program.
- Provide for more effective monitoring of the MBE Subcontracting Program through the development of performance standards to be used in evaluating prime contractors' compliance with the MBE Subcontracting Program contractual requirements.

EXECUTIVE ORDER 11625

**Prescribing Additional Arrangements for Developing and Coordinating
a National Program for Minority Business Enterprise**

The opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic justice for such persons and improve the functioning of our national economy.

The Office of Minority Business Enterprise, established in 1969, greatly facilitated the strengthening and expansion of our minority enterprise program. In order to take full advantage of resources and opportunities in the minority enterprise field, we now must build on this foundation. One important way of improving our efforts is by clarifying the authority of the Secretary of Commerce (a) to implement Federal policy in support of the minority business enterprise program; (b) provide additional technical and management assistance to disadvantaged businesses; (c) to assist in demonstration projects; and (d) to coordinate the participation of all Federal departments and agencies in an increased minority enterprise effort.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. Functions of the Secretary of Commerce. (a) The Secretary of Commerce (hereinafter referred to as "the Secretary") shall—

(1) Coordinate as consistent with law the plans, programs, and operations of the Federal Government which affect or may contribute to the establishment, preservation, and strengthening of minority business enterprise.

(2) Promote the mobilization of activities and resources of State and local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the growth of minority business enterprises, and facilitate the coordination of the efforts of these groups with those of Federal departments and agencies.

(3) Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the Nation in undertaking or promoting the establishment and successful operation of minority business enterprise.

(4) Within constraints of law and appropriations therefor, and according to his discretion, provide financial assistance to public and private organizations so that they may render technical and management assistance to minority business enterprises, and defray all or part of the costs of pilot or demonstration projects conducted by public or private agencies or organizations which are designed to overcome the special

problems of minority business enterprises or otherwise to further the purposes of this order.

(b) The Secretary, as he deems necessary or appropriate to enable him to better fulfill the responsibilities vested in him by subsection (a), may—

(1) With the participation of other Federal departments and agencies as appropriate, develop comprehensive plans and specific program goals for the minority enterprise program; establish regular performance monitoring and reporting systems to assure that goals are being achieved; and evaluate the impact of Federal support in achieving the objectives established by this order.

(2) Require a coordinated review of all proposed Federal training and technical assistance activities in direct support of the minority enterprise program to assure consistency with program goals and to avoid duplication.

(3) Convene, for purposes of coordination, meetings of the heads of such departments and agencies, or their designees, whose programs and activities may affect or contribute to the purposes of this order.

(4) Convene business leaders, educators, and other representatives of the private sector who are engaged in assisting the development of minority business enterprise or who could contribute to its development, for the purpose of proposing, evaluating and coordinating governmental and private activities in furtherance of the objective of this order.

(5) Confer with and advise officials of State and local governments.

(6) Provide the managerial and organizational framework through which joint or collaborative undertakings with Federal departments or agencies or private organizations can be planned and implemented.

(7) Recommend appropriate legislative or executive actions.

SEC. 2. Advisory Council for Minority Enterprise. (a) The Advisory Council for Minority Enterprise (hereinafter referred to as "the Council"), established by Executive Order No. 11458 of March 5, 1969, shall continue in existence under the terms of this order.

(b) The Council shall be composed of members appointed by the President from among persons, including members of minority groups and representatives from minority business enterprises, who are knowledgeable in this field and who are dedicated to the purposes of this order. The members shall serve for a term of two years and may be reappointed.

(c) The President shall designate one of the members of the Council as the Chairman of the Council.

(d) The Council shall meet at the call of the Secretary.

(e) The Council shall be advisory to the Secretary in which capacity it shall—

(1) Serve as a source of knowledge and information on developments in different fields and segments of our economic and social life which affect minority business enterprise.

(2) Keep abreast of plans, programs, and activities in the public and

the Secretary on any measures to better achieve the objectives of this order.

(3) Consider, and advise the Secretary, and such officials as he may designate, on problems and matters referred to the Council.

(f) For the purposes of Executive Order No. 11007 of February 26, 1962, the Council shall be deemed to have been formed by the Secretary.

(g) Members of the Council shall be entitled to receive travel and expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5701-5708) for persons in the Government service employed intermittently.

(h) The Secretary shall arrange for administrative support of the Council to the extent necessary, including use of any gifts or bequests accepted by the Department of Commerce pursuant to law.

SEC. 3. Responsibilities of Other Federal Departments and Agencies.

(a) The head of each Federal department and agency, or a representative designated by him, when and in the manner so requested by the Secretary, shall furnish information, assistance, and reports to, and shall otherwise cooperate with, the Secretary in the performance of his functions hereunder.

(b) The head of each Federal department or agency shall, when so requested by the Secretary, designate his Under Secretary or such other similar official to have primary and continuing responsibility for the participation and cooperation of that department or agency in matters concerning minority business enterprise.

(c) The officials designated under the preceding paragraph, when so requested, shall review and report to the Secretary upon the policies and programs of the minority business enterprise program, and shall keep the Secretary informed of all proposed budgets, plans and programs of his department or agency affecting minority business enterprise.

(d) The head of each Federal department or agency, or a representative designated by him, shall, to the extent provided under regulations issued by the Secretary after consultation with the official designated in paragraph (b) above, report to the Secretary on any activity that falls within the scope of the minority business enterprise program as defined herein and in those regulations.

(e) Each Federal department or agency shall, within constraints of law and appropriations therefor, continue all current efforts to foster and promote minority business enterprises and to support the program herein set forth, and shall cooperate with the Secretary of Commerce in increasing the total Federal effort.

SEC. 4. Reports. The Secretary shall, not later than 120 days after the close of each fiscal year, submit to the President a full report of his activities hereunder during the previous fiscal year. Further, the Secretary shall, from time to time, submit to the President his recommendations for legislation or other action as he deems desirable to promote the purposes of this order. Each Federal department or agency shall report to the Secretary as hereinabove provided on a timely basis so that the Secretary may consider such reports for his report and recommendations to the

President. Each Federal department or agency shall develop and implement systematic data collection processes which will provide to the Office of Minority Business Enterprise Information Center current data helpful in evaluating and promoting the efforts herein described.

SEC. 5. *Policies and Standards.* The Secretary may establish such policies, standards, definitions, criteria, and procedures to govern the implementation, interpretation, and application of this order, and generally perform such functions and take such steps as he may deem to be necessary or appropriate to achieve the purposes and carry out the provisions hereof.

SEC. 6. *Definitions.* For purposes of this order, the following definitions shall apply:

(a) "Minority business enterprise" means a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, Negroes, Puerto Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts.

(b) "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

SEC. 7. *Construction.* Nothing in this order shall be construed as subjecting any function vested in, or assigned pursuant to law to, any Federal department or agency or head thereof to the authority of any other agency or office exclusively, or as abrogating or restricting any such function in any manner.

SEC. 8. *Prior Executive Order.* Executive Order No. 11458 of March 5, 1969, is hereby superseded.



THE WHITE HOUSE,
October 13, 1971.

[FR Doc.71-15127 Filed 10-13-71;12:28 pm]

36 FR 199

October 14, 1971

ARMED SERVICES PROCUREMENT REGULATIONFOR THE MINORITY BUSINESS ENTERPRISESUBCONTRACTING PROGRAM 1/(October 1975)

ASPR was amended to address the national concerns expressed in Executive Order 11625 about minority business enterprises. Included below are pertinent excerpts from ASPR 1-332 Minority Business Enterprises.

"1-332.1 General.

"(a) In connection with Executive Order 11625, October 13, 1971, (36F.R.199, October 14, 1971), it has been determined that the national interest requires increased involvement of minority business enterprises in Federal procurement programs. Particular emphasis should be placed on utilizing minority enterprises for procurement involving small purchases, construction, and service contracts. Liaison should be maintained with Governmental and private sources maintaining lists of minority enterprises to insure that potential minority sources of supplies and services are listed on appropriate bidders lists.

"(b) * * * Additionally, to further the opportunities of minority business enterprises to participate in the performance of Government contracts, maximum practicable opportunity should be provided for these firms to participate as subcontractors and suppliers to prime contractors and subcontractors under Government contracts."

The specific requirements prime contractors must meet pursuant to Executive Order 11625 and ASPR 1-332 are outlined in ASPR 7-104.36 which states as follows:

"(b) The following clause shall be included in all contracts which may exceed \$500,000, * * * which, in the opinion of the contracting officer, offer substantial subcontracting possibilities. Furthermore, prime contractors who are to be awarded

1/These ASPR provisions were in effect at the time of our study.

contracts which may not exceed \$500,000 but which, in the opinion of the contracting officer, offer substantial subcontracting possibilities, shall be urged to accept the clause.

MINORITY BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM (1971 Nov)

"(a) The Contractor agrees to establish and conduct a program which will enable minority business enterprises (as defined in the clause, entitled, 'Utilization of Minority Business Enterprises') to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Contractor shall:

"(1) Designate a liaison officer who will administer the Contractor's 'Minority Business Enterprises Program.'

"(2) Provide adequate and timely consideration of the potentialities of known minority business enterprises in all 'make-or-buy' decisions.

"(3) Assure that known minority business enterprises will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority business enterprises

"(4) Maintain records showing (i) procedures which have been adopted to comply with the policies set forth in this clause, including the establishment of a source list of minority business enterprises, (ii) awards to minority business enterprises on the source list, and (iii) specific efforts to identify and award contracts to minority business enterprises.

"(5) Include the 'Utilization of Minority Business Enterprises' clause in subcontracts which offer substantial minority business enterprise subcontracting opportunities.

"(6) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's minority business enterprises procedures and practices that

the Contracting Officer may from time to time conduct.

"(7) Submit periodic reports of subcontracting to known minority business enterprises with respect to the records referred to in subparagraph (4) above, in such form and manner and at such time (not more often than quarterly) as the Contracting Officer may prescribe.

"(b) The Contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000 provisions which shall conform substantially to language of this clause, including this paragraph (b), and to notify the Contracting Officer of the names of such subcontractors."

TOTAL SUBCONTRACT AWARDS IN 1975
AT FOUR PRIME CONTRACTORS

	<u>Total procurements</u>	<u>MBE procurements</u>
Company A:		
Corporatewide	<u>a/\$2,700,000,000</u>	<u>a/\$1,165,896</u>
Plant #1	5,945,000	(b)
Plant #2	132,600,000	141,547
Plant #3	17,751,000	34,739
Company B	51,893,118	374,485
Company C	9,808,341	83,297
Company D	(b)	16,060

a/Corporatewide statistics.

b/Data unavailable.