

REPORT BY THE
Comptroller General
OF THE UNITED STATES

report

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**The Mandatory Small Business
Subcontracting Test: Considerations
For Public Law 95-507's
New Subcontracting Program**

GAO attempted to evaluate the Mandatory Small Business Subcontracting Test which was intended to increase small business subcontracting by using goals. Because of the way the test was conducted, GAO was unable to evaluate it. However, GAO identified the following problems in the test procurements which will require consideration during the implementation of Public Law 95-507's subcontracting program:

- The lack of a clear and consistent definition for the term "subcontract" in solicitations and contracts.
- The difficulties with using incentives to increase small business subcontracting.
- The refusal and potential refusal of normal suppliers to bid on procurements for commercial items.
- The procuring activities' lack of adequate data and methodology to prepare goals for inclusion in solicitations which would increase small business subcontracting.



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

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The Honorable Lawton Chiles, Chairman,
Subcommittee on Federal Spending Practices
and Open Government
Committee on Governmental Affairs
United States Senate and
The Honorable John J. LaFalce, Chairman,
Subcommittee on General Oversight and
Minority Enterprise
Committee on Small Business
House of Representatives

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This is our final report on the Mandatory Small Business Subcontracting Test in response to your subcommittees' request of February 3, and 16, 1978. At the request of the Office of Federal Procurement Policy, six Federal agencies participated in the test. On May 19, 1978, we sent the subcommittees' chairmen an interim status report of the test.

Our review was performed at headquarters and regional activities of the Departments of Defense; Energy; Health, Education, and Welfare; and the Interior. We also visited the General Services Administration and the National Aeronautics and Space Administration. We reviewed 40 test contracts at 15 procuring activities within these agencies.

The results of our review were discussed with personnel of the six agencies involved in the test, and they agreed with our findings. Also, we discussed the problems we identified in the test procurements with the Office of Federal Procurement Policy. The Office is considering possible solutions to these problems.

BACKGROUND

In response to recommendation A-48 of the Commission on Government Procurement, the Office of Federal Procurement Policy initiated the Mandatory Small Business Subcontracting Test on March 11, 1976. The Departments of Defense; Energy; Health, Education, and Welfare; and the Interior participated in the test, as well as the General Services Administration and the National Aeronautics and Space Administration.

Prior to the completion of our review, the Small Business Act and the Small Business Investment Act of 1958 were amended by the enactment of Public Law 95-507 on October 24, 1978.

Public Law 95-507 established a new small business and small disadvantaged business subcontracting program. Also, the legislation established an Office of Small and Disadvantaged Business Utilization in each Federal agency with procurement authority. This unit will be responsible for implementing and executing the legislation's subcontracting program within the agency.

Basic similarities between the test ~~we reviewed~~ and the new legislation are the (1) intent to increase small business subcontracting, (2) use of goals for small business subcontracting, and (3) use of incentives in negotiated procurements to increase small business subcontracting.

W/C The way the test was conducted prevented an evaluation of mandatory small business subcontracting. Of 40 contracts reviewed, 23 did not provide useful information for test purposes, due to defects in the design and implementation of the test. The majority of the remaining 17 contracts were not sufficiently complete to evaluate the results.

These procedural defects experienced in the test may be avoided in implementing Public Law 95-507's subcontracting program because of the establishment of an Office of ~~Small and Disadvantaged Business Utilization~~ in Federal agencies which have procurement authority.

Several problems identified in the test procurements, however, require consideration during the implementation of Public Law 95-507's subcontracting program. These are

- the lack of a clear and consistent definition for the term "subcontract" in solicitations and contracts,
- the difficulties with using incentives to increase small business subcontracting,
- the refusal and potential refusal of normal suppliers to bid on procurements for commercial items, and

- ~~The~~ procuring activities' lack of adequate data and methodology to prepare goals for inclusion in solicitations which would increase small business subcontracting.

RECOMMENDATION FOR THE CONGRESS

We are recommending that the Congress ^{should} amend the law to exempt low bidders and successful offerors on procurements for commercial items from submitting subcontracting information on individual contracts. We consider this necessary because several normal suppliers of commercial items to the General Services Administration either refused to bid on test procurements requiring subcontracting information or notified the Administration that they would not bid if future procurements required subcontracting information.

We are drafting the required legislation and will provide it to the appropriate congressional committees.

RECOMMENDATIONS FOR THE OFFICE OF FEDERAL PROCUREMENT POLICY

We are recommending that the Administrator for Federal Procurement Policy take the following actions:

- Should:*
 - Define the term subcontract for use in Public Law 95-507's subcontracting program and require the inclusion of the definition in solicitations and contracts. In defining the term subcontract, the Administrator should consider (1) the requirements of the various kinds of Federal procurements and (2) the procuring activities' ability to evaluate, administer, and determine compliance with subcontracting plans. We consider a definition for the term subcontract necessary to avoid potential disputes between Federal agencies and their contractors.
 - Instruct agencies to provide the rationale for a particular subcontracting incentive provision in their memorandums of negotiations. As a minimum, the information required should include (1) the level of subcontracting participation contained in the prime contractor's proposal for small business concerns

and small disadvantaged business concerns and (2) the subcontracting participation level at which incentives will be provided. We consider this necessary for documentation purposes.

Further details of the test and problems which need consideration during the implementation of Public Law 95-507's subcontracting program are contained in appendix I. Brief descriptions of the individual test procurements categorized as construction, manufacturing and production, research and development, support services, and facilities management and maintenance and operations are shown in appendixes II through VI, respectively.

Unless you announce its contents earlier, no further distribution of this report will be made until 10 days from the date of the report.


Comptroller General
of the United States

ANALYSIS OF THE TEST AND PROBLEMS FOR
CONSIDERATION DURING THE IMPLEMENTATION
OF PUBLIC LAW 95-507'S SUBCONTRACTING
PROGRAM

In response to recommendation A-48 of the Commission on Government Procurement, the Office of Federal Procurement Policy (OFPP) initiated the Mandatory Small Business Subcontracting Test on March 11, 1976. The Departments of Defense; Energy; Health, Education, and Welfare; Interior; the General Services Administration; and the National Aeronautics and Space Administration participated in the test.

Without regard to uniformity, OFPP requested the agencies to develop their own test programs to promote a variety of approaches and provided the following test criteria:

- Select at least one procurement in each major procurement category, such as research and development, manufacturing and production, construction, facilities management, and maintenance and operations services.
- Select procurements with a dollar value sufficiently large to justify subcontracting opportunities.
- Base mandatory small business subcontracting percentages on a presolicitation determination of subcontract potential and availability of sufficient small business firms to compete for the work identified for subcontract award.
- Set mandatory percentages at levels higher than those achieved historically for similar work under voluntary small business subcontracting procedures.
- Select competitive and noncompetitive procurements. Mandatory small business subcontracting requirements could be negotiated as a part of the make or buy program, instead of being established by the Government in advance.
- Promote small business subcontracting in addition to normal agency procedures.

--Complete an evaluation of test procurements by March 31, 1977.

Subsequent to the initial instructions, the OFPP:

--Advised the agencies that small business prime contractors were to be included in the test.

--Extended the test period to include contracts awarded up until October 1977, after agencies notified it that they were experiencing difficulty identifying procurements which were suitable for the test.

--Decided to have an independent organization evaluate the test results.

The agencies awarded 55 test contracts classified as follows: 28 manufacturing and production, 8 research and development, 12 construction, 3 maintenance and operations, 2 facilities management, and 2 support services.

Also, the Department of Energy awarded about 82 cooperative agreements under a single test solicitation. The cooperative agreements, in which the Department has a cost-sharing relationship with the performing organization, were for solar heating and demonstration projects.

ENACTMENT OF PUBLIC LAW 95-507

Prior to the completion of our review, the Small Business Act and the Small Business Investment Act of 1958 were amended by the enactment of Public Law 95-507 on October 24, 1978.

Public Law 95-507 established a new small business and small disadvantaged business subcontracting program. Also, the legislation established an Office of Small and Disadvantaged Business Utilization in each Federal agency with procurement authority. This unit will be responsible for implementing and executing the legislation's subcontracting program within the agency.

Basic similarities between the test and the legislation are the (1) intent to increase small business subcontracting, (2) use of goals for small business subcontracting, and (3) use of incentives in negotiated procurements to increase small business subcontracting.

The legislation requires the apparent successful offeror or low bidder for construction contracts exceeding \$1 million and all other contracts exceeding \$500,000 to submit subcontracting plans for the utilization of small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals. Subcontracting plans will include percentage goals for using such firms.

Prior compliance with subcontracting plans on other contracts will be considered in determining the responsibility of the offeror or bidder for the award of the contract. Also, the failure of any contractor or subcontractor to comply in good faith with subcontracting plans is considered a material breach of that contract or subcontract.

The legislation also authorizes agencies to use incentives in negotiated procurements to encourage subcontracting to small businesses and small disadvantaged businesses.

DEFECTIVE DESIGN AND IMPLEMENTATION
PREVENTED AN ADEQUATE TEST OF
MANDATORY SMALL BUSINESS SUBCONTRACTING

The initial 1-year test period did not provide sufficient time for agencies to (1) develop test plans, (2) select test procurements, and (3) evaluate completed contracts. OFPP extended the test period to include contracts awarded up until October 1977, after agencies notified it that they were having difficulty identifying test procurements. However, the extension failed to correct the problems caused by the defective design and implementation of the test.

Test clauses were inserted in procurements
at various stages of the procurement process

Procuring activities inserted subcontracting clauses in five procurements involving five contracts at various stages of the procurement process, such as after (1) solicitations were issued, (2) successful offerors were determined, (3) arrangements were made between the procuring activity and the contractor for small business subcontracting, and (4) a contract was awarded.

Mandatory small business subcontracting clauses should have been included in the original solicitations for these test procurements. Since they were not, we were unable to determine if any potential prime contractor would have refused to compete because of the mandatory clause in the

solicitation. In each of these five test procurements, the successful offeror had submitted its proposal prior to the introduction of the mandatory small business subcontracting clause in the procurement process. As a result, the mandatory small business subcontracting clause had no effect on the offerors' proposals.

Procuring activity personnel acknowledged that these were not good test procurements because the mandatory small business subcontracting clause was not included in the solicitations. However, they explained these procurements were selected because no other procurements were available for test purposes in the specific test procurement categories during the period of the test.

Ineffective test clause used

The General Services Administration's Federal Supply Service used a mandatory small business subcontracting clause which was confusing and ineffective.

The clause required bidders to subcontract some portion of the prime contract to small businesses. Also, the clause required bidders to submit, as a percent of their bid price, their normal experience for (1) total subcontracts, (2) small business subcontracts, and (3) a small business subcontract increase goal for the procurement.

Individual solicitations for these formally advertised procurements requested bids on up to 59 separate commercial items within a broad commodity classification. Bidders submitted their subcontracting information based on their total bid for a variety of the solicited items. However, bidders generally did not receive contract awards for the total number of items on which their total bid and subcontracting information was based. Procuring activity personnel did not evaluate the subcontracting information to determine if any adjustments were required for bidders receiving awards for only a portion of the items on which they submitted bids. Therefore, subcontracting information included in the contract provisions applied to the original total bids and may not apply to the specific items purchased under the contracts.

Also, submissions from bidders showed their confusion with the clause. In several cases, bidders submitted information showing their normal small business subcontracting experience exceeded their normal experience for total subcontracting. For example, one bidder receiving a contract

submitted data which showed its normal total subcontracting experience represented 31 percent of the bid price, while its normal small business subcontracting experience represented 38 percent of its bid price.

The 18 contracts awarded under these procurements did not provide useful information for test purposes.

Thirteen contracts were either in progress, terminated, or delayed

Solicitations for 17 test contracts contained mandatory small business subcontracting requirements which could be understood by potential suppliers. Four of these contracts were complete at the time of our review. However, of the remaining 13 contracts

--11 were in progress with completion dates ranging into the 1980s,

--1 was terminated due to an environmental suit, and

--1 was delayed due to a cut in funding.

During the course of our review, we found that the amount of small business subcontracting shown as a percentage of total subcontracting could vary significantly over the course of the contract. These variations occur because the prime contractor awards subcontracts throughout the course of the contract. For example, one prime contractor reporting on a quarterly basis reported that it awarded 97.5 percent, 4.7 percent, and 73.1 percent of its total subcontracts to small businesses respectively during the first three quarters of the contract. These variations occurred because of changes in the mix between large and small business subcontract awards during the quarterly periods. As a result it cannot be determined if a prime contractor will meet the contract's mandatory small business subcontracting percentage until the contract is completed.

SEVERAL PROBLEMS IDENTIFIED IN THE TEST REQUIRE CONSIDERATION DURING THE IMPLEMENTATION OF PUBLIC LAW 95-507'S SUBCONTRACTING PROGRAM

Several problems identified in the test procurements require consideration during the implementation of Public

Law 95-507's subcontracting program, since its provisions are similar to those in the test.

The following problems were identified: (1) the lack of a clear and consistent definition for the term subcontract in solicitations and contracts, (2) difficulties with using incentives to increase small business subcontracting, (3) the refusal and potential refusal of normal suppliers to bid on procurements for commercial items, and (4) procuring activities' lack of adequate data and methodology to prepare goals for inclusion in solicitations which would increase small business subcontracting.

Lack of clear and consistent definition
for the term subcontract in solicitations
and contracts

Although interpretations of the term subcontract varied, the standard mandatory small business subcontracting clause required contractors to award a designated percentage of subcontracts to small businesses. Similarly, Public Law 95-507's subcontracting plans require percentage goals for the utilization of small businesses and small disadvantaged businesses as subcontractors. However, the legislation does not define the term "subcontractor."

Contractors in the test procurements generally procured supplies and services under (1) subcontracting arrangements, (2) purchasing arrangements, and (3) consulting arrangements. Although the majority of the test procurements did not define the term subcontract, several procuring activities attempted to clarify the term in solicitations and contracts. Following are examples of the definitions provided:

--"* * * the term 'subcontract' includes all construction, modifications, materials, supplies, and service work contracted for by the prime contractor * * *."

--"The term 'subcontracts and purchases' as used herein means procurement by the contractor of any article, material, or service required for performance of this contract, including where reasonably allocable to this contract, an appropriate portion of stock inventory, purchases of plant maintenance, repair, operation, and capital equipment."

--"* * * subcontracts (to include vendors) * * *."

As shown by the above definitions, there is a lack of consistency in defining subcontract.

Under the current small business subcontracting program's reporting requirements, outlined in the Defense Acquisition Regulation and the Federal Procurement Regulation, participating contractors are required to report subcontracts to and purchases from large, small, and minority businesses. The reporting forms prescribed by these regulations define subcontracts and purchases as procurement by a business concern of any article, material, or service, including the Federal agency portion of stock inventory and, where reasonably determined to be attributable to Federal agency contracting, purchases of plant maintenance, repair, operation, and capital equipment, entering into the performance of an agency supply, service, or facility contract. Procurement of experimental, developmental, and research work is included under the definition.

Although this definition of subcontracts and purchases appears to effectively include all contractor expenditures related or allocable to a Federal procurement, consideration should be given to the procuring activities' ability to evaluate, administer, and determine compliance with subcontracting plans. For example, an Air Force research and development contractor participating in the test used this definition to support a portion of indirect purchases charged to a general and administrative account as small business subcontracts. The procuring activity did not take exception to this classification. Including contractor expenditures charged to overhead accounts for use in subcontracting plans may prove to be difficult for procuring activities to evaluate and administer.

Also, clarification of whether individual consultants are subcontractors is needed. Contracting officers at the Departments of Energy and Health, Education, and Welfare were concerned about the status of individual consultants. For example, in a Department of Energy support service test contract, the contractor reported individual consultants as small business subcontractors. The contracting officer was concerned that these consultants may not be subcontractors and felt a future determination of their status was required.

CONCLUSIONS

A clear definition for the term subcontract should be developed and applied consistently in solicitations and

contracts. Such a definition should consider the requirements of the various kinds of Federal contracts and the procuring activities' ability to evaluate, administer, and determine compliance with subcontracting plans.

RECOMMENDATION

We recommend that the Administrator for Federal Procurement Policy define the term subcontract for use in Public Law 95-507's subcontracting program and require the inclusion of the definition in solicitations and contracts.

Difficulties with using incentives to increase small business subcontracting

The Department of Energy experienced difficulty with the use of its incentive provision to increase small business subcontracting. Problems encountered by the Department and additional information we developed from test procurements at various agencies should be considered during the implementation of Public Law 95-507's incentive provisions for negotiated procurements.

The incentive clause, developed by the Department, provided that the contractor's initial profit would be increased by 0.1 percent of the estimated contract cost for each percentage point of small business subcontracting above the mandatory percentage in the contract. Failure to meet the mandatory percentage would result in reducing the initial profit 0.2 percent of the estimated contract cost for each percentage point achieved below the mandatory percentage. The maximum increase or reduction in the initial profit was limited to 2 percent of the estimated contract cost.

The incentive provision was tested in a support service procurement. In this type of procurement, the agency requests proposals for an estimated level of effort. Specific task orders are issued under the resulting contract as work requirements become known to the procuring agency.

The successful offeror in the test procurement based its proposal on using a small business subcontractor representing 31 percent of its estimated contract cost. However, the offeror proposed that a 15-percent goal be placed in the contract. The offeror noted that the subcontractor's participation in the contract depended entirely upon the requirements of the individual task orders placed by the Department of Energy, and that the level of effort proposed for the subcontractor in the offeror's proposal could not be guaranteed.

A final percentage of 23 percent of the estimated contract cost was negotiated between the offeror and contracting officer and included in the contract. The 23-percent goal was also the baseline for the incentive provisions. In this contract, the contractor could increase its initial profit due to the incentive provision by meeting a level of effort below the level it originally proposed for small business subcontracting.

The contracting officer explained that the 23-percent figure was the best figure he could negotiate because

- the mandatory subcontracting clause with the incentive provision was not introduced in the procurement process until after the successful offeror had submitted its original proposal and
- the contractor was unwilling to accept the reduction in fee provision at the 31-percent level of estimated costs because it could not control the individual task orders issued by the Department of Energy and this would affect its ability to subcontract.

The contractor and the contracting officer agreed that the contractor's ability to meet or exceed either the 31-percent subcontracting estimate or the 23-percent subcontracting goal is dependent on requirements of individual task orders which were entirely within the control of the contracting agency. Under these circumstances we do not believe support-service contracts are an appropriate vehicle for incentive provisions, since incentives operate effectively when a contractor has advance knowledge of the work to be performed and has the discretion to increase or decrease awards to small businesses.

Although the above test procurement was the only procurement we reviewed in which an incentive clause was used, information from several other test procurements should be considered.

In several test procurements at various agencies, contractors proposed small business subcontracting percentage goals for inclusion in contracts which were actually lower than the estimated small business participation contained in their proposals. For example, in one procurement, a contractor proposed a goal to award 40 percent of the estimated contract cost to small businesses. However, our

review of the contractor's proposal disclosed that it had indicated it expected to use five small business subcontractors, which represented 56 percent of its estimated cost. Reliance on the 40-percent figure as a baseline for incentive awards would have resulted in an unwarranted benefit to the contractor without effectively increasing small business subcontracting.

CONCLUSIONS

Incentives to increase small business subcontracting should be used selectively in Federal negotiated procurements. Offerors' proposals should be carefully reviewed to determine the extent of intended subcontracting to small businesses and/or small disadvantaged businesses. The intended subcontracting level from the offeror's proposal and the baseline for incentive awards should be documented in the contract memorandum of negotiations. Incentive awards should not be provided to the contractor unless the contractor exceeds the level of subcontracting to small businesses and/or small disadvantaged businesses upon which its proposal is based. Also, any recent prior experience by the contractor on a similar procurement should be considered in determining incentive provisions.

RECOMMENDATION

We recommend that the Administrator for Federal Procurement Policy instruct agencies to provide the rationale for a particular subcontracting incentive provision in memorandums of negotiations.

Refusal and potential refusal of normal suppliers to bid on procurements for commercial items

The General Services Administration's Federal Supply Service experienced considerable difficulty in its manufacturing and production test procurements for commercial items. The difficulties the Federal Supply Service encountered were not related to the defects of its small business subcontracting clause.

In one procurement, a normal supplier refused to bid due to the subcontracting clause, while a second refused to complete the clause because its suppliers were large businesses. The latter bid was declared nonresponsive to the solicitation. Contracts were not awarded for the items on

this solicitation which the companies normally supplied because of substantially higher prices from the second low bidder or a lack of any bid. The items were resolicited with the mandatory subcontracting clause deleted and the normal suppliers submitted bids and received contracts.

In four of the eight procurements reviewed, the mandatory clause was deleted from the solicitations after adverse comments were received from normal suppliers. The normal suppliers complained that

- several of the solicited items did not present subcontracting opportunities,
- Government production is performed simultaneously with commercial production and subcontracting data could not be calculated without significantly increasing administrative costs,
- labor agreements precluded subcontracting work which could be performed in-house, and
- importers would not be able to comply with the clause.

In addition to the test procurements, the Federal Supply Service notified manufacturers of automobiles, trucks, and tires that future procurements would include the mandatory small business subcontracting clause.

The manufacturers generally explained that

- Government sales represent a small portion of their total sales,
- Government items are assembled simultaneously with commercial items,
- the component parts ordered for commercial production are the same used on Government items,
- submission of subcontract information required by the clause would force manufacturers to develop separate procurement systems for Government items, and
- the increased costs and administrative tasks would result in refusal to bid on future procurements or reconsiderations of the manufacturers' status as suppliers to the General Services Administration.

CONCLUSIONS

As can be seen from the above examples, the requirements to submit data for small business subcontracting on individual commercial item procurements may result in normal suppliers declining to bid on these procurements. The alternative would be to have suppliers submit subcontracting estimates on their broad product lines. However, this does not appear to be an effective method of increasing small business subcontracting, since these estimates would be based primarily on commercial production and would be achieved regardless of Government intervention.

RECOMMENDATION

We recommend that the Congress amend the law to exempt low bidders and successful offerors on procurements for commercial items from submitting subcontracting plans on individual contracts.

Procuring activities lack adequate data and methodology for establishing small business subcontracting goals in solicitations

The methods used to develop small business subcontracting percentage goals for inclusion in solicitations did not appear to be an effective way to increase small business subcontracting. Personnel at the various procuring activities consistently explained they did not have information to develop subcontracting goals for inclusion in solicitations.

Fourteen test contracts were awarded under solicitations which contained Government-developed small business subcontracting goals. In 13 of these test contracts, the small business subcontracting percentage appearing in the solicitations was included in the contract. Examples of these contracts follow.

A Navy research and development solicitation contained a requirement that the prime contractor award 50 percent of the total dollar value of subcontracts to small businesses. The 50-percent requirement was based on the arbitrary determination of the contracting officer, who explained that he did not have adequate information to develop a small business subcontracting percentage. The successful offeror responded to the contracting officer that its analysis of the procurement disclosed that a 30-percent requirement would be more realistic. The 30-percent requirement was accepted and

included in the contract. The contract was in progress at the time of our review, and the contractor had awarded 82 percent of the subcontracts to small businesses.

Three Department of the Interior construction solicitations contained a requirement that 60 percent of all subcontracts and purchases would be awarded to small businesses. The 60-percent requirement was based on an analysis of prior contractors' subcontracting experience for similar procurements, which showed that 43 percent of their subcontracts and purchases were awarded to small businesses. This amount was arbitrarily increased to 60 percent and included in the solicitations. Each of the prime contractors receiving awards for these three procurements exceeded the mandatory percentage, but each reported that the mandatory percentage did not increase small business subcontracting except in one subcontract award, since most of their normal subcontractors and suppliers were small businesses.

Although prime contractors receiving awards for these procurements exceeded the subcontracting goals, one bidder in each of two procurements notified Government personnel that they were experiencing difficulty complying with the 60-percent requirement. In one of these procurements, the contracting officer told one of the two bidders which was experiencing difficulty with the 60-percent requirement not to submit a bid if it could not comply with the requirement. Both of the bidders submitted bids on the procurements, but neither was the low bidder.

A General Services Administration construction solicitation contained a requirement that 50 percent of the contract price should be awarded to small business subcontractors. Based on an analysis of the procurement requirements, the procuring activity determined that 39 percent of its estimated bid price could be awarded to small businesses. This amount was arbitrarily increased to 50 percent and placed in the solicitation. The contractor receiving the contract subcontracted 73 percent of its bid price to small businesses and believed the same results would have been achieved without the subcontracting goal in the solicitation.

Personnel at the various procuring activities consistently explained they did not have information to develop subcontracting goals for inclusion in solicitations which would assure competition at the prime contract level and, at the same time, increase small business subcontracting.

CONSTRUCTION CONTRACTS

We reviewed six construction contracts awarded by the Departments of Defense, Energy, and the Interior and the General Services Administration.

DEPARTMENT OF DEFENSE

The Navy awarded a test contract under formally advertised procurement procedures to construct an automotive maintenance shop and expand its utility systems.

The solicitation notified bidders that at least 75 percent of the total value of all subcontracts should be awarded to small businesses. Navy personnel explained that the 75-percent figure was determined by a review of the procurement work requirements, which showed that most of the work could be subcontracted to small businesses.

Subcontract was defined in the solicitation and contract as "all construction, modifications, materials, supplies and service work contracted for by the prime contractor."

The contract was awarded with the 75-percent subcontracting requirement and was complete at the time of our review. Although the contractor awarded 90 percent of the subcontracts to small businesses, the Navy determined that small business subcontracting was not increased by using the clause. This was because the contractor normally works with small business concerns on a regular basis, and all small business concerns awarded subcontracts were the low bidders for the subcontracts when the prime contractor prepared its original bid. (See contract A on p. 17.)

DEPARTMENT OF ENERGY

The Department awarded a test contract for the design, construction, and operation of a coal gasification plant. The contract consists of three phases: (1) a design phase, (2) a construction phase, and (3) an operation phase. The Mandatory Small Business Subcontracting Test applied only to the construction phase of the contract. The mandatory subcontracting clause was not included in the original solicitation, but was presented to the successful offeror during negotiations.

Since the plant was not designed prior to the award of the contract, the contracting officer did not know the work requirements for the construction phase of the contract. During contract negotiations, the contracting officer arbitrarily proposed that 10 percent of the estimated construction cost be awarded to small businesses, while the successful offeror proposed 2 percent. A 5-percent level was negotiated and included in the contract.

Construction of the plant had not begun at the time we reviewed the contract. (See contract B on p. 17.)

DEPARTMENT OF THE INTERIOR

The Bureau of Reclamation awarded three test contracts for constructing a dam, a dam powerplant, and an irrigation project under formally advertised procurement procedures. All contracts were awarded by the same procuring activity.

The solicitations for the three procurements notified bidders that, as a prerequisite to contract award, the contractor must agree to award 60 percent of the dollar value of all subcontracts and purchases to small businesses. Subcontracts and purchases were defined in the solicitations as procurement by the contractor of

"any article, material or service required for performance of the contract, including where reasonably allocable to the contract an appropriate portion of stock inventory, purchases of plant maintenance, repair, operation and capital equipment."

The 60-percent requirement in the solicitations was based on (1) an analysis of prior contractors' subcontracting experience over the latest 4-year period, which showed that they awarded an average of 43 percent of the subcontracts to small businesses and (2) an arbitrary increase from 43 percent to 60 percent.

One bidder in each of two procurements notified Government personnel that they were experiencing difficulty with the mandatory percentage. In one procurement, the contracting officer told a bidder not to bid if it could not meet the specifications. Both bidders did bid, but neither submitted a low bid.

All three contracts were awarded with the 60-percent subcontracting requirement. At the time of our review, one contract was terminated due to an environmental suit, one was delayed due to a cut in funding, and one was in progress.

Reports from the prime contractors showed that each contractor was exceeding the mandatory percentage.

In the terminated contract, the prime contractor did select a small business subcontractor over a large business subcontractor for an item valued at approximately \$35,000. The contractor in this procurement explained that it prepared its bid for the project based on the low bids received from subcontractors and suppliers. It was unable to obtain an official definition for a small business until after submitting its bid to the agency. After the contractor received a definition for small business, it found that more than 60 percent of the dollar value of the low bids for subcontracts and purchases was from small businesses. For one purchase order, the contractor had received two nearly identical bids from a large and a small business. Ordinarily, the prime contractor would have awarded the subcontract to the large business with which it had prior experience. Due to the contract clause, the prime contractor awarded the subcontract to the small business with which it had no prior experience. The contractor would have exceeded the 60-percent figure in the solicitation even if it had selected the large business.

Generally, prime contractors stated that their normal subcontractors and suppliers were mostly small businesses and, because of this, the clause had no effect. (See contracts C on p. 17.)

GENERAL SERVICES ADMINISTRATION

The Public Buildings Service awarded a test contract under formally advertised procurement procedures for construction of a Federal building.

The solicitation notified bidders that the contractor would be required to subcontract not less than 50 percent of the prime contract price to small businesses. This percentage was based on a review of the proposed procurement work and material requirements which indicated that 39 percent of its estimated bid price could be awarded to small businesses. This 39-percent figure was arbitrarily increased to 50 percent.

The contract was awarded with the 50-percent subcontract provision and was completed at the time of our review. The contractor exceeded the mandatory percentage, but reported that small businesses received no benefits due to the use of the subcontracting clause. The contractor believed the same results would have been achieved without the clause. (See contract D on p. 17.)

Construction Contracts

<u>Contract</u>	Prime contractor size	Dollar value of basic contract	Contract status at time of review	Small business subcontracting percentage		
				Based on value of	In contract	Reported achieved by contractor
A	Small	\$ 1,006,900	Complete	Subcon-tracts	75	90
B	Large	199,386,300	Work not initiated	Estimated construction costs	5	-
C	Small	9,762,916	Delayed	Subcon-tracts and purchases	60	82
C	Small	4,989,900	Terminated	Subcon-tracts and purchases	60	83
C	Large	12,792,430	In progress	Subcon-tracts and purchases	60	91
D	Small	1,393,000	Complete	Contract price	50	73

MANUFACTURING AND PRODUCTION CONTRACTS

We reviewed 24 manufacturing and production test contracts awarded by the Department of Defense and the General Services Administration. Twenty of these contracts were for standard commercial items or commercial items slightly modified to meet Government specifications. The remaining four contracts were noncommercial procurements.

COMMERCIAL ITEMS

In the test procurements, bids were solicited on a variety of different line items within a general commodity classification. For example, in a procurement for engineers wrenches, bids were requested on 41 separate varieties of wrenches. Businesses submitted bids for each of the line items they would supply and the low responsive and responsible bidder for the individual line items received contract awards. This method of procurement resulted in several contract awards from a single solicitation.

Several of the procurements restricted bidding on separate line items to small businesses while one procurement contained a 50-percent labor surplus area set-aside provision.

General Services Administration

We reviewed eight of the Federal Supply Service's formally advertised procurements.

The clause used in the solicitations for the test procurements required prime contractors to subcontract some portion of the contract to small businesses. Also, bidders were required to submit their normal subcontracting experience as a percent of their bid price for (1) total subcontracts, (2) small business subcontracts, and (3) a small business subcontract increase goal for the procurement.

Individual solicitations for these formally advertised procurements requested bids on up to 59 separate commercial items within a broad commodity classification. Bidders submitted their subcontracting information based on their total bid for a variety of the solicited items. However, bidders generally did not receive contract awards for the total number of items on which their total bid and subcontracting information was based. Procuring activity personnel did not evaluate the subcontracting information to determine if any adjustments were required for bidders receiving awards for only a portion of the items on which they submitted bids.

Therefore, subcontracting information included in the contract provisions applied to the original total bids and may not apply to the specific items awarded under the contracts.

Also, submissions from bidders showed their confusion with the clause. In several cases, bidders submitted information indicating their normal small business subcontracting experience exceeded their normal experience for total subcontracting. For example, one bidder receiving a contract submitted data which indicated its normal total subcontracting experience represented 31 percent of the bid price, while its normal small business subcontracting experience represented 38 percent of its bid price.

Brief descriptions of these procurements follow.

Vises

Bids were requested on 40 line items with an estimated value of \$1.1 million. Eight of the line items were set-aside for award to small businesses.

One contract for five line items was awarded to a large business with a small business subcontracting plan. However, in the subcontracting plan the prime contractor indicated its normal subcontracting experience for total subcontracts represented 31 percent of its bid price, while its normal small business subcontracting experience represented 38 percent of its bid price. Procuring activity personnel could not explain this discrepancy. (See procurement A on p. 26.)

In this procurement, a normal supplier of six solicited line items refused to bid because of the subcontracting clause. The bid of a second normal supplier of one line item was declared nonresponsive after the firm refused to accept the clause because its subcontractors were large businesses.

No awards were made for the items the two businesses normally supplied due to substantially higher prices from the second low bidder or the lack of any bid. These items were resolicited with the subcontracting clause deleted, and both normal suppliers submitted bids and received awards.

Shovels, picks, scoops, and hoes

Bids were requested on 29 line items with an estimated value of \$700,000. The subcontracting clause was deleted from the solicitation due to adverse comments from normal suppliers. Following are samples of these comments.

- The items consisted of too few components for substantial subcontracting.
- Government and commercial requirements are produced simultaneously, and small business subcontracts cannot be identified for individual items.
- Labor agreements preclude subcontracting any work which can be performed in-house.

Scissors, shears, scrapers, and nibbling tools

Bids were requested on 36 line items with an estimated value of \$2.3 million. Twelve of the line items were set aside for award to small businesses. The subcontracting clause was deleted from the solicitation due to adverse comments from normal suppliers. Following are samples of these comments.

- Whenever a standard item is on a solicitation, it is made from existing inventory. Although purchased from small and large businesses, the items are intermingled in the stock area. Therefore, it is impossible to determine which materials used in the production of the end item were purchased from small businesses.
- Labor agreements preclude subcontracting any work which can be performed in-house.
- The supplier is an importer of the items and only repacks, marks, and ships the item. If the clause is applicable, it could preclude the supplier from bidding.

Engineers wrenches

Bids were requested on 41 line items with an estimated value of \$358,000. The clause was deleted from the solicitation due to adverse comments from normal suppliers. Following are samples of these comments.

- Government and commercial production is intermingled, and the requirements of the clause would result in a clerical nightmare with resultant increased costs.
- The item does not present subcontracting opportunities.

--The subcontracting requirement appears to preclude the consideration of any offer of a foreign-source item by an importer.

Electric tools

Bids were requested on 15 line items with an estimated value of \$1.1 million. All seven contracts awarded under the solicitation contained a mandatory small business subcontracting clause. Small businesses received five of the prime contracts. Although prime contractors for five of the seven contracts proposed to increase small business subcontracting in their original bids, subcontracting reports indicating their subcontracting experience on the test contracts were not available at the procuring activity. (See procurement B on p. 26.)

Electric portable drills

Bids were requested on 19 line items with an estimated value of \$954,000. Contracts were awarded to two large businesses.

The contractor receiving awards for the majority of items based its subcontracting information on its broad product line. The contractor explained this was done because determining the small business subcontracting estimates on an item-by-item basis would have cost thousands of dollars and, without assurance of being low bidder, the information would have made bidding too expensive for participation. A contractor representative explained that estimates of small business purchases for the firm's product lines represented between 25 to 45 percent of its purchases. The contractor representative further explained that General Services Administration procurements represent less than 0.4 percent of its gross sales and if any information other than product line estimates were required by subcontracting plans, the business would stop bidding on General Services Administration procurements. (See procurement C on p. 26.)

Tool boxes and cabinets

Bids were requested on 24 line items with an estimated value of \$2.9 million. Eight line items were set-aside for award to small businesses. All four contracts resulting from the solicitation were awarded to small businesses and included the small business subcontracting clause.

Although two of the prime contractors indicated an intent to increase small business subcontracting in their

original bids, subcontracting reports indicating their subcontracting experience on the test contracts were not available at the procuring activity. (See procurement D on p. 26.)

Gauges

Bids were requested on 59 line items with an estimated value of \$550,000. Thirty-eight line items were set-aside for award to small businesses. Eleven contracts were awarded under the solicitation with 9 contracts awarded to small businesses. Of the 11 contracts, only 4 were awarded with a mandatory small business subcontracting clause. Although the solicitation was issued on October 11, 1977, contracts were not awarded until after October 31, 1977, which was the last date for contract award in the extended test period. Any bidder questioning the clause was not required to complete it.

In two of the test contracts, including the small business subcontracting clause, prime contractors proposed to increase small business subcontracting in their original bids. However, subcontracting reports indicating their experience on the test contracts were not available at the procuring activity. (See procurement E on p. 26.)

Adverse comments received from manufacturers of automobiles, trucks, and tires

In addition to the test procurements, the Federal Supply Service notified major manufacturers of automobiles, trucks, and tires that it intended to include its subcontracting clause in future procurements.

The major manufacturers generally responded that if the clause was included in future procurements, they would either not bid or reevaluate their position as supplier to the General Services Administration. Following are a sample of their comments.

- Government sales account for less than 1 percent of the manufacturer's total business.
- Although best estimates of small business subcontracting is between 5 and 33 percent, accumulating data on an item-by-item basis for trucks would increase costs by nearly \$1,800 for each line item. The manufacturer would hate to see a long and mutually satisfying relationship with the agency jeopardized by this clause.

- A requirement such as this would not be applicable in the manufacturer's business, as there is no such thing as subcontracting in the manufacturing of tires. If such a program is implemented, the manufacturer would be unable to respond on future solicitations for automobile tires and tubes.
- It would be impossible to comply with the requirements of the clause. Motor vehicles delivered to the General Services Administration are intermingled on the same assembly lines as other vehicles. Should the proposed clause be required in future solicitations, the manufacturer would not be able to bid.

Department of Defense

The Defense Logistics Agency tested a formally advertised procurement for microfiche viewers. The procurement included a 50-percent labor surplus area set-aside provision.

The solicitation notified bidders that at least 25 percent of the dollar value of all subcontracts should be awarded to small businesses. The mandatory subcontracting amount was determined by a Government industrial specialist after he determined that the cost of certain parts represented approximately 25 percent of the total subcontracting costs.

Two contracts were awarded under the solicitation with the 25-percent subcontracting requirement. One contract was awarded to a small business, while a large business received the award for the labor surplus area set-aside. Both contracts were complete at the time of our review, and both contractors exceeded their goals.

The Defense Logistics Agency, in its evaluation of the test procurements, determined that small business subcontracting was not increased by using the mandatory subcontracting percentage in the solicitation and contract. The Agency explained that in a formally advertised procurement, the percentage factor must be determined prior to solicitation and, therefore, cannot be adjusted to the capabilities of a particular contractor. (See contracts A on p. 27.)

NONCOMMERCIAL ITEMS

The Army awarded two of the test contracts for noncommercial items.

One contract was for constructing a production line with an option to purchase artillery projectiles built on the production line. The mandatory subcontracting clause was presented to the contractor at the time the option for the artillery projectiles was exercised and applied only to the production of the artillery projectiles.

The contractor was advised that 10 percent of the total dollar value of all subcontracts should be awarded to small businesses. The 10-percent requirement was based on procuring activity personnels' analysis of the procurement.

The 10-percent requirement was incorporated into the contract and, at the time of our review, the contractor was exceeding its goal. (See contract B on p. 27.)

The second Army contract was for equipment used on a military vehicle and was awarded under formally advertised procurement procedures. The solicitation notified bidders that at least 40 percent of the total dollar value of all subcontracts should be awarded to small businesses. The percentage was based on a review of the normal supplier's previous proposal for the item. Procuring activity personnel determined that approximately 45 percent of the prior procurement was for subcontracted items. A sampling of the subcontractors revealed that a substantial number of the subcontractors were small businesses. Based on this, a 40-percent requirement was used in the clause.

The contract was awarded with the 40-percent requirement and was in progress at the time of our review. The contractor had orally notified the procurement office that 100 percent of the subcontracts were awarded to small businesses. (See contract C on p. 27.)

The Defense Logistics Agency awarded a test contract under competitive negotiated procurement procedures for electronic circuit card assemblies used on naval vessels. The solicitation notified offerors that at least 25 percent of the total dollar value of all subcontracts should be awarded to small businesses. This percentage was arbitrarily determined by the contracting officer.

The contract was awarded with the 25-percent requirement and was in progress at the time of our review. No subcontracting reports from the contractor were available at the procuring activity. (See contract D on p. 27.)

The Navy awarded a test contract for naval buoys under noncompetitive negotiated procurement procedures. The solicitation notified the offeror that a percentage would be negotiated for small business subcontracting, based on the total dollar value of all subcontracts.

A 40-percent requirement was negotiated and included in the contract. The contract was in progress at the time of our review. No subcontracting reports were available at the procuring activity. (See contract E on p. 27.)

Manufacturing and Production Contracts
Federal Supply Service Contracts for Commercial Items

<u>Procurement</u>	<u>Prime contractor size</u>	<u>Dollar value of basic contract</u>	<u>Bidders response to solicitation normal subcontracting experience as a percent of bid price</u>			<u>Goal increase reported achieved by contractor</u>
			<u>Total sub- contracts</u>	<u>Small business subcontracts</u>	<u>Goal increase</u>	
A	Large	\$ 120,700	31	38	5	3
B	Large	229,633	27	8	0	0
	Small	5,525	50	50	10	(a)
	Small	99,914	60	18	0	(a)
	Small	51,065	48	13	5	(a)
	Small	82,810	35	35	5	(a)
	Large	550,501	53	23	4	(a)
	Small	30,924	65	20	100	(a)
C	Large	949,347	27	8	0	0
	Large	3,100	57	32	0	0
D	Small	1,007,300	40	40	0	(a)
	Small	398,351	27	16	3	(a)
	Small	30,446	30	30	0	(a)
	Small	34,620	10	10	3	(a)
E	Small	23,700	56	100	0	(a)
	Small	76,900	50	50	100	(a)
	Small	64,017	18	12	16	(a)
	Small	2,760	40	5	0	(a)

a/Information not available at procuring activity.

APPENDIX III

APPENDIX III

Manufacturing and Production Contracts
Department of Defense

<u>Contract</u>	<u>Prime contractor size</u>	<u>Dollar value of basic contract</u>	<u>Contract status at time of review</u>	<u>Small business subcontracting percentage</u>		<u>Reported achieved by contractor</u>
				<u>Based on value of</u>	<u>In contract</u>	
<u>Commercial items</u>						
A	Small	\$ 233,975	Complete	Subcontracts	25	83
A	Large	469,525	Complete	Subcontracts	25	a/38
<u>Noncommercial items</u>						
B	Large	12,084,000	In progress	Subcontracts	10	44
C	Small	700,859	In progress	Subcontracts	40	100
D	Large	339,755	In progress	Subcontracts	25	(b)
E	Small	4,540,799	In progress	Subcontracts	40	(b)

a/Labor surplus area contract.

b/Information not available at procuring activity.

RESEARCH AND DEVELOPMENT CONTRACTS

We reviewed five research and development test contracts awarded by the Department of Defense and the National Aeronautics and Space Administration.

DEPARTMENT OF DEFENSE

The Air Force awarded a test contract for the design, development, and delivery of a missile system under competitive negotiated procurement procedures. The solicitation required offerors to propose a percentage of the total dollar value of all subcontracts for award to small businesses.

The successful offeror proposed that 20 percent of its total subcontract value would be awarded to small businesses. This percent was based on its experience on a similar contract with an adjustment to reflect the differences between the two procurements.

The successful offeror's plan was evaluated, determined satisfactory, and the 20-percent requirement was included in the contract provisions.

The contract was in progress at the time of our review, and the contractor had awarded 26 percent of the subcontract value to small businesses. This amount included 21 percent attributable to direct subcontracts and 5 percent attributable to indirect purchases charged to a general and administrative account. The contractor supported the inclusion of the indirect purchases in its subcontract reports by referring to a definition for subcontracts and purchases in a reporting form required by the Defense Acquisition Regulation under the current small business subcontracting program. Military subcontracts and purchases are defined in the Department of Defense form 1140-1 as

"any article, material or service, including Defense portion of stock inventory and, where reasonably determined to be attributable to Defense contracting, purchases of plant maintenance, repair, operation, and capital equipment, entering into the performance of a military supply, service or facility contract." (See contract A on p. 31.)

The Army awarded two test contracts, under competitive negotiated procurement procedures, for the validation phase

of a missile system. Both contracts resulted from one solicitation. Offerors were notified by the solicitation that at least 10 percent of the total dollar value of all subcontracts (to include vendors) should be awarded to small businesses. The 10-percent amount was determined by program office and procuring activity personnel, based on a review of the procurement requirements and an analysis of information received from offerors during the conceptual phase of the missile system.

Subcontracting plans submitted by the successful offerors were approved, and the 10-percent requirement was included in the contracts.

Both contracts were in progress at the time of our review, with reports from one contractor showing it was exceeding the 10-percent figure. Information on the second contract was not available at the procuring activity. (See contracts B on p. 31.)

The Navy awarded a test contract for the design, development, and delivery of a communications system. The subcontracting clause in this procurement was presented to the successful offeror after the issuance of the solicitation. The offeror was notified that at least 50 percent of the total dollar value of all subcontracts should be awarded to small businesses. The 50-percent requirement was based on the arbitrary determination of the contracting officer, who explained he did not have the information to develop a subcontracting percentage.

The successful offeror responded to the contracting officer that its analysis of potential small business purchases under the procurement indicated that a goal of 30 percent would be more realistic. The 30-percent goal was accepted and included in the contract.

The contract was in progress at the time of our review, and the contractor was exceeding its goal. (See contract C on p. 31.)

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

The Administration awarded a test contract under competitive negotiated procurement procedures for the support systems module for the Space Telescope. The solicitation required offerors to propose a minimum percent of the value of their proposals for a small business subcontracting goal.

The successful offeror proposed to award at least 1 percent of the total value of its proposal to small businesses. The successful offeror noted that the low percentage was due to (1) the Government furnishing equipment in lieu of the contractor purchasing equipment for the contract, (2) a large amount of in-house engineering, and (3) several subcontractors recently losing their small business status. The successful offeror's proposal was accepted, and the contract required that at least 1 percent of the total value of the contract be subcontracted to small businesses.

The contract was in progress at the time of our review, but the contractor had not begun to award subcontracts due to the early stage of the contract. (See contract D on p. 31.)

Research and Development Contracts

<u>Contract</u>	<u>Prime contractor size</u>	<u>Dollar value of basic contract</u>	<u>Contract status at time of review</u>	<u>Small business subcontracting percentage</u>		<u>Reported achieved by contractor</u>
				<u>Based on value of</u>	<u>In contract</u>	
A	Large	\$26,658,310	In progress	Subcontracts	20	26
B	Large	34,658,427	In progress	Subcontracts (including vendors)	10	(a)
B	Large	29,766,643	In progress	Subcontracts (including vendors)	10	73
C	Large	4,986,313	In progress	Subcontracts	30	82
D	Large	82,725,000	In progress	Prime contract	1	(b)

a/Information not available at procuring activity.

b/Contract was in early stage of execution and proposed small business subcontracts were not yet awarded.

SUPPORT-SERVICE CONTRACTS

We reviewed two support-service contracts awarded by the Departments of Energy and Health, Education, and Welfare. Solicitations for these procurements requested offerors to submit offers based on the agencies' estimated level of effort for the contract period. Specific work orders would be issued under the contracts, as work requirements were determined by the agencies.

DEPARTMENT OF ENERGY

The Department awarded a test contract for engineering, technical, and analytical services. The solicitation did not contain the mandatory subcontracting clause since the procurement was designated a test procurement during contract negotiations.

The clause submitted by the agency during negotiations required offerors to propose a minimum percentage of the estimated contract cost which would be subcontracted to small businesses. Also, the clause provided a profit incentive for small business subcontracting. The initial profit would be increased by 0.1 percent of the estimated contract cost for each percentage point of small business subcontracting above the mandatory percentage in the contract. Failure to meet the mandatory percentage would result in a reduction of the initial profit of 0.2 percent of the estimated contract cost for each percent achieved below the mandatory subcontracting percentage. The maximum increase or reduction in the initial profit was limited to 2 percent of the estimated contract cost.

The successful offeror's proposal was based on using a small business subcontractor representing 31 percent of its estimated contract cost. However, the offeror proposed that a 15-percent requirement be placed in the contract. The offeror noted that subcontractor participation in the contract depended entirely upon the requirements of the individual task orders placed by the Department of Energy. Consequently, the level of effort proposed for the subcontractor in the offeror's proposal could not be guaranteed.

A final percentage of 23 percent of the estimated contract cost was negotiated between the offeror and contracting officer and included in the contract. The 23-percent requirement also was the baseline for the incentive provisions. Thus, in this contract, the contractor

could increase its initial profit due to the incentive provision by meeting a level of effort below the level it originally proposed for small business subcontracting.

The contracting officer explained that the 23-percent requirement was the best he could negotiate because

- the mandatory subcontracting clause with the incentive provision was not introduced in the procurement process until after the successful offeror had submitted its original proposal, and
- the contractor was unwilling to accept the economic risk of the reduction in fee provision at the 31-percent level of estimated costs because it could not control the individual task orders issued under the contract by the Department of Energy and this would affect its ability to subcontract.

The contract was in progress at the time of our review, and the contractor had awarded 17 percent of the estimated contract cost to small businesses after 13 months of the 24-month contract period. The contractor included in its reports the names of individual consultants as small business subcontractors. The contracting officer was concerned that these consultants may not be subcontractors and felt that a future determination of their status as subcontractors would be required. (See contract A on p. 35.)

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE

The National Institutes of Health awarded a test contract under competitive negotiated procurement procedures for scientific, technical, analytical, and documentation services. The solicitation contained a small business subcontracting clause which notified offerors that the resultant contract would include a provision requiring the contractor to award a mandatory percentage of subcontract dollars to small businesses.

The offeror expressed its intent to place all subcontracted effort with small or minority businesses, but proposed that a 90-percent requirement be placed in the contract. The offeror and contracting officer negotiated a specific dollar amount of subcontracts to be awarded to small or minority business subcontractors for proposed documentation services. The dollar amount represented 100 percent of the estimated cost of these services.

The contract was in progress at the time of our review. The contractors' compliance with the clause cannot be determined before contract completion due to the use of the specific dollar figures. (See contract B on p. 35.)

Support-Service Contracts

<u>Contract</u>	<u>Prime contractor size</u>	<u>Dollar value of basic contract</u>	<u>Contract status at time of review</u>	<u>Small business subcontracting percentage</u>		<u>Reported achieved by contractor</u>
				<u>Based on value of</u>	<u>In contract</u>	
A	Large	\$1,692,018	In progress	Estimated contract cost	23	a/17
B	Large	3,403,104	In progress	(b)	(b)	(b)

a/Contractor awarded 17 percent of the estimated contract cost to small business subcontractors during the first 13 months of the 24-month contract period.

b/Subcontracting percentage was not used. Specific dollar amount of subcontracts was designated for award to small businesses. Contractor compliance with the clause cannot be determined until contract completion. The total amount designated in the contract was \$123,225. The amount reportedly achieved under the contract in progress has been \$75,647.

FACILITIES MANAGEMENT AND MAINTENANCEAND OPERATIONS CONTRACTS

We reviewed one facilities management and one maintenance and operation contract awarded by the Department of Defense. Also, we reviewed a procurement for constructing a Government-owned production line in a contractor-owned facility.

FACILITIES MANAGEMENT

The Navy awarded a contract for maintenance work at a Government-owned, contractor-operated facility.

The clause used in this procurement specified tasks which the procuring activity identified as being capable of performance by qualified competitive small business concerns. The contractor was required to subcontract the designated tasks to small businesses to the extent that the items normally would be subcontracted. In the event the contractor did not find small business firms to perform the work, prior written concurrence of the procuring contracting officer was required before subcontract placement.

This contract was designated a test contract after the contractor and procuring activity personnel had reached agreement on which tasks would be subcontracted to small businesses.

The contract was in progress at the time of our review, with the prime contractor awarding all but one of the designated tasks to small businesses. The contractor was unable to identify a competitive small business subcontractor for this one item. (See contract A on p. 38.)

MAINTENANCE AND OPERATIONS

The Navy awarded a test contract for the maintenance and operation of a test facility. Three months after contract award, the contract was modified to include the mandatory subcontracting clause.

The contractor and procuring activity personnel negotiated 17 percent of the total value of all subcontracts for award to small businesses as the subcontracting requirement.

The contract was in progress at the time of our review and the contractor was exceeding its goal. (See contract B on p. 38.)

CONSTRUCTION OF PRODUCTION LINE

The Army awarded a contract under competitive negotiated procurement procedures for constructing a Government-owned production line in a contractor's facility. The solicitation notified offerors that at least 10 percent of the total value of all subcontracts should be awarded to small businesses. The 10-percent requirement was based on the procuring activity's analysis of the procurement requirements.

The contract was awarded with the 10-percent subcontracting requirement and was in progress at the time of our review. The contractor was exceeding the mandatory goal in the contract. (See contract C on p. 38.)

Facilities Management and Maintenance
and Operations Contracts

<u>Contract</u>	<u>Prime contractor size</u>	<u>Dollar value of basic contract</u>	<u>Contract status at time of review</u>	<u>Small business subcontracting percentage</u>		<u>Reported achieved by contractor</u>
				<u>Based on value of</u>	<u>In contract</u>	
A	Large	\$ 304,500	In progress	(a)	(a)	(a)
B	Large	28,282,229	In progress	Subcontracts	17	42
C	Large	32,789,727	In progress	Subcontracts	10	35

a/Small business subcontracting clause did not contain a mandatory percentage. Specific line item tasks were designated for award to small businesses. The dollar value of the line items in the contract was \$174,500. The dollar value of subcontract awards to small businesses was \$170,000.

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