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SMALL BUSINESS

Nonprofit Agencies Employing the Disabled Seldom Seek Set-Aside Contracts



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**Resources, Community, and
Economic Development Division**

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November 27, 1992

The Honorable Dale L. Bumpers
Chairman
The Honorable Robert W. Kasten, Jr.
Ranking Minority Member
Committee on Small Business
United States Senate

The Honorable John J. LaFalce
Chairman
The Honorable Andy Ireland
Ranking Minority Member
Committee on Small Business
House of Representatives

Amendments to the Small Business Act that were enacted in 1988 authorized public or private nonprofit organizations for the handicapped—that is, nonprofit agencies employing persons with disabilities—to compete for small business set-aside contracts awarded by federal agencies between fiscal years 1989 and 1993. These nonprofit organizations sponsor rehabilitation programs for disabled workers and/or provide them with monetary employment or occupational rehabilitating activities that are educational or therapeutic. Previously, only for-profit firms could be awarded small business set-aside contracts. The 1988 amendments directed us to report on the impact that such contracts would have on for-profit small businesses from fiscal years 1989 through 1991. In line with this mandate, we issued an interim report in August 1990¹ stating that the nonprofit agencies' participation in the set-aside program was minimal, according to organizations representing these agencies.

This final report updates information presented in our interim report on (1) the extent to which nonprofit agencies are participating in the small business set-aside program and (2) the reasons for any limited participation and the actions taken to improve participation. The report also briefly discusses the program's impact on for-profit small businesses. At the time of our earlier work, the federal government had no data on the number or dollar value of small business set-aside contracts that were awarded to nonprofit agencies employing disabled persons. Such data,

¹Small Business: Low Participation in Set-Aside Program Expected for Sheltered Workshops (GAO/RCED-90-192, Aug. 6, 1990).

although limited, are now available through the first half of fiscal year 1992.

Results in Brief

The latest available data show that nonprofit agencies employing the disabled received less than 1 percent of all federal contracts set aside for small businesses during the 2-1/2-year period covered by our review. Furthermore, the total value of these contracts was lower than the ceilings established by the authorizing legislation.

According to organizations representing the nonprofit agencies, the reasons that the agencies are not bidding more on set-aside contracts are the same as those reported in our previous report. These reasons include (1) legislation that prohibits the nonprofit agencies from supplying a product or service on a permanent, noncompetitive basis once the product or service has been awarded under a competitive set-aside contract and (2) nonprofit agencies being unaware that they may bid on set-aside contracts or not knowing how to do so.

Actions to increase nonprofit agencies' participation in set-aside contracts have been limited. However, the Small Business Administration (SBA) has provided one organization that represents nonprofit agencies with a list of seminars where the agencies can learn how to do business with the federal government. As noted in our interim report, if greater participation by nonprofit agencies in the set-aside program is to be achieved, the Congress may wish to consider (1) designating a federal agency to counsel nonprofit agencies about bidding on set-aside contracts and (2) allowing products and services provided under the set-aside contracts to be added to the list of products and services that the nonprofit agencies provide to federal agencies on a permanent, noncompetitive basis.

Background

The Small Business Administration Reauthorization and Amendment Act of 1988 amended the Small Business Act and permitted nonprofit agencies employing the disabled to compete for federal government contracts that had previously been set aside exclusively for for-profit small businesses. As is the case with any competitively awarded contract under the set-aside program, a nonprofit agency must submit the lowest qualifying bid in order to receive a contract, and the contractor (be it a nonprofit agency or a for-profit business) must again compete for any follow-on contract each time one of these contracts expires.

While the 1988 legislation permitted nonprofit agencies to compete against for-profit small businesses, it limited the total dollar amount of contracts that could be awarded to nonprofit agencies to \$30 million in fiscal year 1989, \$40 million in fiscal year 1990, and \$50 million in each of fiscal years 1991, 1992, and 1993. The legislation made SBA responsible for ensuring that these ceiling amounts were not exceeded. To assist SBA in this effort, the legislation required (1) federal agencies to report all small business set-aside contracts awarded to nonprofit agencies to the Office of Federal Procurement Policy (OFPP) and (2) OFPP to compile the data reported by the agencies and provide it to SBA.

The legislation also prohibits items purchased from nonprofit agencies under set-aside contracts from being added to the list of items that federal agencies must purchase on a noncompetitive basis under provisions of the Javits-Wagner-O'Day (JWOD) Act.² Under the JWOD Program, once a commodity or service is approved for procurement, the federal government is generally required to purchase that commodity or service from the designated nonprofit agencies as long as the product or service is required.

Finally, the 1988 legislation established, within SBA, a task force of two members to review the awarding of set-aside contracts to nonprofit agencies and to recommend to SBA any administrative or statutory changes the task force deems appropriate. One task force member is appointed by the Administrator, SBA, and the other by the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped (CPBOSH). CPBOSH, a committee whose members are appointed by the President, is responsible for increasing employment opportunities for the blind and other severely disabled and is assisted by two national nongovernmental agencies—the National Industries for the Blind (NIB) and NISH (formerly the National Industries for the Severely Handicapped). The task force has met four times, in January and August of 1991 and February and August of 1992.

Nonprofit Agencies Have Received Few Set-Aside Contracts

Data obtained from federal agencies and nonprofit agencies clearly indicate that (1) the nonprofit agencies received only a very small portion of all small business set-aside contracts and (2) the total value of contracts awarded to nonprofit agencies has been far below the annual ceilings

²In 1938, the Wagner-O'Day Act established a program to give preferential treatment in government contracting to nonprofit agencies that employ the blind in the manufacture of brooms, mops, and other suitable commodities. In 1971, legislation sponsored by Senator Jacob Javits expanded the program's scope to include other severely disabled persons and to include services as well as products.

established in the legislation that authorized these contracts. However, it is unclear exactly how many set-aside contracts the nonprofit agencies have actually received. Federal agency reports to OFPP have not included all the small business set-aside contracts awarded to nonprofit agencies. Further, NISH and NIB reports to CPBOSH have included some contracts that were not small business set-aside contracts and excluded others that were set-aside contracts.

According to federal agency data submitted to OFPP, nonprofit agencies were awarded three Department of Defense (DOD) contracts totaling \$727,000 in fiscal year 1990 and two Department of Agriculture contracts totaling \$10,000 in fiscal year 1991. In addition, the data show that one DOD contract for \$79,000 was awarded during the first half of fiscal year 1992. According to the federal agency data, these contracts accounted for less than 1/100th of 1 percent of all small business set-aside contracts awarded by federal agencies during this 2-1/2-year period.

Table 1.1: Small Business Set-Aside Contracts Awarded to Nonprofit Agencies

| | FY 1990 | FY 1991 | FY 1992 ^a |
|--|-------------|-------------|----------------------|
| Set-aside contract actions involving nonprofit agencies | 3 | 2 | 1 |
| Dollars obligated (dollars in thousands) | \$727 | \$10 | \$79 |
| Total set-aside contract actions | 858,833 | 789,706 | 274,569 |
| Dollars obligated (dollars in thousands) | \$7,501,601 | \$6,839,151 | \$2,797,539 |
| Percent of set-aside contract obligations involving nonprofit agencies | .0097 | .0001 | .0028 |

^aRepresents contract awards and modifications for the period October 1, 1991, through March 31, 1992, obtained from OFPP in July 1992.

Source: OFPP.

The data on set-aside contracts awarded to nonprofit agencies that were provided to the advisory task force responsible for monitoring these contracts were incomplete and inaccurate. For instance, the OFPP reports submitted to SBA did not include all the federal set-aside contracts awarded to nonprofit agencies, and the set-aside purchases the nonprofit agency reported to CPBOSH included purchases that were not made under the set-aside program.

Prior to each meeting of the advisory task force, CPBOSH asked NIB and NISH to survey their respective memberships (i.e., work centers that participate in the JWOD Program) to determine the total value of the set-aside

contracts that nonprofit agencies had received. SBA asked OFPP for similar information. As of July 1992, NISH had reported that its members had received contracts totaling more than \$13.1 million; NIB had reported that its members had received no contracts; and OFPP had reported that federal agencies had reported awarding six contracts to nonprofit agencies totaling \$816,000.

At our request, OFPP took the information provided by NISH and attempted to determine why the federal agencies had not reported some of the set-aside contracts awarded to nonprofit agencies. Since most of the contracts had been awarded by defense agencies, OFPP asked DOD officials why purchases reported by NISH were not being identified by the Federal Procurement Data System.³ DOD officials told OFPP that at least three of the contracts, totaling \$166,000, were purchases required to be made under the JWOD Program and therefore should not have been included in the NISH reports. However, at least five other contracts, totaling \$10,530,000, were small business set-aside contracts that had not been reported by the federal agencies but should have been. According to DOD officials, these five contract actions were not reported apparently because the nonprofit agencies had certified themselves as small businesses rather than as nonprofit agencies, and so the contracts were reported as ones awarded to small businesses. An OFPP official said the reporting problems probably occurred because (1) the nonprofit agencies did not know the correct certification procedures and (2) the contracting officials from the federal agencies did not understand which type of certification takes precedence for reporting purposes.

When we asked NIB for information on its members' participation in the small business set-aside program, NIB officials said they did not have this information but would ask NIB's 85 member agencies. In June 1992, NIB reported that during the years 1989-1991, 8 member agencies bid on 23 small business set-aside contracts and had been awarded a total of 9 contracts. However, a NIB official said that while several agencies provided NIB with bid solicitation numbers, none provided information on the number or the dollar value of contracts awarded.

³The Federal Procurement Data System, operated by the Federal Procurement Data Center, is a computer-based system for collecting, developing, and disseminating procurement data to the Congress, the executive agencies, and the private sector.

Reasons for the Nonprofit Agencies' Limited Participation

The reasons for the limited participation by nonprofit agencies in the small business set-aside program are the same as the ones we reported in our August 1990 interim report. According to SBA, CPBOSH, and NIB officials, the nonprofit agencies' primary concern is the legislative restriction that prohibits items supplied under competitively bid set-aside contracts from being added to the list of products and/or services that are permanently awarded to nonprofit agencies under the JWOD Program. Other problems, according to these officials, are that some nonprofit agencies do not know (1) who can participate in the set-aside program and/or (2) how to bid on small business set-aside contracts. However, CPBOSH officials added that the latter problems will be of minor importance as long as the legislative restriction exists.

The advisory task force has discussed the reasons for the limited participation by nonprofit agencies, but actions to address these issues have been limited to SBA providing information on seminars where nonprofit agencies can learn about doing business with the federal government.

Reasons for Limited Participation Are Similar to Those Reported Two Years Ago

Our August 1990 report stated that nonprofit agency officials believed that the provision in Public Law 100-590 that prohibits adding items to the JWOD list that have been supplied under the small business set-aside program was a major reason for the low participation of the nonprofit agencies. Officials representing the nonprofit agencies at that time gave the following reasons why those agencies preferred the JWOD Program and did not want to preclude an item from being added to the JWOD list by supplying it under a small business set-aside contract:

- The Executive Director, CPBOSH, said that nonprofit agencies want the stability that long-term contracts provide under the JWOD Program, and that this stability is not available in the set-aside program. CPBOSH's General Counsel said that the legislative prohibition on switching items to the JWOD Program is the major reason for nonprofit agencies' low participation.
- The President of Goodwill Industries of America, Inc., said that it is difficult for a nonprofit agency to justify the capital expenditures needed to produce an item under a set-aside contract because the agency might not receive any subsequent contracts. Under the JWOD Program, however, the same capital expenditures may be feasible because the permanent award allows the nonprofit agency to take advantage of the long-term amortization of capital equipment.

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- An official of the National Easter Seal Society said the short-term or “temporary” nature of set-aside contracts makes it difficult for nonprofit agencies to participate because of the extended training and learning curve many of the agencies’ disabled employees need.

At the time of our prior review, SBA officials responsible for monitoring the small business set-aside program said that many nonprofit agencies did not know they were eligible to participate in the small business set-aside program. In addition, officials from organizations representing nonprofit agencies told us that insufficient knowledge about who could participate and about how the set-aside program worked, as illustrated in the following examples, also contributed to the low level of participation:

- The Director of SBA’s Office of Procurement Policy and Liaison believed that few nonprofit agencies knew that they were eligible to participate in the set-aside program because the program was not publicized. He also said that it would take a couple of years for contracting officers throughout the federal government to become familiar with this facet of the set-aside program. Further, while contracting officers’ lack of information was not a widespread problem, personnel turnover and the absence of training for contracting officers could affect the program.
- The Executive Director, CPBOSH, said that many nonprofit agencies were unaware of the specific federal contracts available under the small business set-aside program. She also said that NISH, which was established to help nonprofit agencies pursue federal contracts under the JWOD Program, did not have the resources necessary to train nonprofit agency personnel in bidding on set-aside contracts.
- An official of the National Association of Rehabilitation Facilities who surveyed 160 of the association’s member facilities said he believed that few association members had placed bids on set-aside contracts because most members were unfamiliar with the government procurement process.

However, the Executive Director, CPBOSH, emphasized that as far as increasing nonprofit agencies’ participation in the set-aside program, outreach and training are of limited importance as long as nonprofit agencies are prohibited from adding items to the JWOD list that have been bought through the set-aside program. She said that nonprofit agencies that are not participating now might be interested in bidding on set-aside contracts if the prohibition was removed—and if it were removed, these nonprofit agencies might need guidance on how to bid on set-aside contracts. She also said that federal agencies might be more willing to

have items added to the JWOD list if they were able to use a set-aside contract to evaluate a nonprofit agency's capabilities to meet the federal agency's needs.

When NIB asked its 85 member agencies to explain their low participation in the small business set-aside program, eighteen agencies responded. The major reason these respondents gave for not participating more was that items purchased through this program could not be added to the JWOD list. According to NIB, most nonprofit agencies for the blind are relatively small. Consequently, these agencies are less likely to make large capital investments to manufacture a product or develop a service without some form of long-term guarantee for a return on their investment. Additionally, the mission of these agencies is to employ people who are blind, and short-term contracts are not conducive to meeting this goal because of training needs and related issues that affect the targeted population.

Actions Taken to Address Reasons for Limited Participation

During its first meeting on January 30, 1991, the advisory task force established by the 1988 legislation discussed the interim GAO report and the reasons that the report gave for the nonprofit agencies' low participation in the set-aside program. The CPBOSH representative suggested that the task force consider action to have the legislative restriction removed. However, the SBA representative said that SBA could not support such action because it would be detrimental to for-profit small businesses, as it would deprive them of future procurement opportunities. Because of the SBA representative's objection to the proposal, the task force made no recommendation regarding the legislative prohibition. The task force also made no recommendation as to who should be responsible for program outreach and training. However, the SBA representative did offer to provide CPBOSH information concerning upcoming training and seminars on how to do business with the federal government.

As of August 1992, SBA had not offered any training or seminars that specifically address the information needs of nonprofit agencies. SBA officials said that nonprofit agencies seeking information on how to do business with the federal government can obtain it at procurement conferences for small businesses that are held periodically at various locations across the nation. At the second meeting of the task force on August 21, 1991, the SBA representative provided the CPBOSH representative with a list of these procurement conferences maintained by SBA in its Procurement Automated Source System (PASS), and the representative said that SBA would make this list available on a quarterly basis. CPBOSH

provides NISH and NIB with copies of these lists; a NIB official said that he reviews the lists and passes this information on to NIB members located in the vicinity of the conferences.

Also at the second task force meeting, the CPBOSH representative asked if nonprofit agencies could be included in PASS. PASS provides federal contracting offices a computerized inventory of small business concerns that are potential suppliers of goods and services needed by the federal government. In this way, if a nonprofit agency were included in PASS, federal contracting officers could notify the agency when small business set-aside contract opportunities became available.

The SBA representative declined CPBOSH's request. In so doing, the SBA representative relied on a 1985 opinion of counsel, issued before enactment of Public Law 100-590, advising that, by statute, PASS could be made available only to profit-making small businesses.⁴ SBA's Associate Counsel told us that he believes there is still doubt over whether SBA has the statutory authority to include nonprofit agencies in PASS through regulatory action. He told us that, in light of the intervening enactment of Public Law 100-590, his office will reconsider this question over the next few months. In the event that SBA concludes that the agency has statutory authority to do so, SBA will consider taking the regulatory action necessary to include nonprofit agencies in PASS.

Only One Contract Award Appealed by a For-Profit Business

The 1988 legislation authorizing participation by nonprofit agencies in the small business set-aside program allows a for-profit small business that has experienced, or is likely to experience, severe economic injury as the result of a contract being awarded to a nonprofit agency to file an appeal of the proposed award with the SBA Administrator. However, as of July 22, 1992, SBA had received only one appeal and denied it because the for-profit business' bid was too high and would not have been accepted. SBA also stated in its decision that the for-profit business had not submitted sufficient information along with the appeal for SBA to determine economic injury.

Conclusions

While the 1988 amendments to the Small Business Act provided nonprofit agencies with the opportunity to compete for contracts previously set aside exclusively for for-profit small businesses, participation by nonprofit

⁴The 1985 opinion covered the issue of whether large and small businesses could be included in PASS. The opinion concluded that under SBA's governing statutes, PASS was available only to small business entities.

agencies in the set-aside program has been minimal. Contract award data compiled and reported by federal agencies and organizations representing nonprofit agencies vary but nonetheless clearly indicate that (1) nonprofit agencies received only a very small portion of all small business set-aside contracts awarded during the 2-1/2-year period covered by our review and (2) the total value of these contracts has been far below the dollar ceilings established by the legislation.

In addition, the information obtained during this review reaffirms the conclusions presented in our August 1990 interim report. That is, the temporary nature of set-aside contracts and the prohibition on transferring items to the JWOD Program makes bidding on set-aside contracts undesirable and/or uneconomical for many nonprofit agencies. These restrictions, combined with the fact that some nonprofit agencies are not aware that they are eligible to participate in the program and/or do not know how to bid on federal set-aside contracts, limit participation in the program. Unless changes are made to alter or remove these barriers, nonprofit agencies may not increase their participation.

Our interim report stated that if greater participation by the nonprofit agencies is to be achieved, the legislation authorizing the agencies' participation needs to be modified to reduce or remove some of the barriers. On the basis of the additional information obtained during this review, we believe that the position we took in the interim report remains valid. Specifically, the Congress may wish to consider (1) designating a federal agency responsible for informing nonprofit agencies about the set-aside program and providing training on how to bid on federal contracts and (2) allowing items supplied by nonprofit agencies under set-aside contracts to be transferred to the list of items supplied exclusively by these agencies under the JWOD Program.

We conducted our review from May 1992 to September 1992 in accordance with generally accepted government auditing standards. To determine the extent to which nonprofit agencies have participated in the small business set-aside program, we obtained federal data on small business set-aside contract awards from OFPP and private industry data from CPBOSH and NIB. Information on appeals of contract awards by for-profit businesses was obtained from SBA.

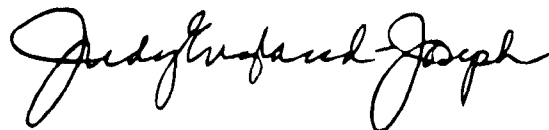
To determine why the level of nonprofit agency participation in the small business set-aside program has been low, we interviewed officials from

SBA, CPBOSH, and NIB. In addition, NIB surveyed its affiliated agencies to determine the reasons for their limited participation in this program.

We discussed the facts contained in this report with officials from SBA's Office of Procurement Assistance and the Office of Management and Budget's OFPP and with CPBOSH's Executive Director and General Counsel, all of whom generally agreed with the facts presented. We incorporated their suggested revisions where appropriate. However, as agreed with your offices, we did not obtain written agency comments on this report.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will provide copies of this report to the Administrator, SBA; the Director, Office of Management and Budget; the Administrator, OFPP; and the Executive Director, CPBOSH.

If you or your staff have any questions about this report, please contact me at (202) 275-5525. Major contributors to this report are listed in appendix I.



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