SBA SMALL BUSINESS PROCUREMENT AWARDS ARE NOT ALWAYS GOING TO SMALL BUSINESSES

REPORT NUMBER 5-14

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U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20416

OIG REPORT
Issue Date: February 24, 2005
Report Number: 5-14

TO: Allegra McCullough
Associate Deputy Administrator for Government Contracting and Business Development

FROM: Robert G. Seabrooks
Assistant Inspector General for Auditing

SUBJECT: SBA Small Business Procurement Awards are not Always Going to Small Businesses

At the request of the Ranking Member of the United States Senate Committee on Small Business and Entrepreneurship, the Office of Inspector General (OIG) conducted an evaluation to determine whether small business procurement awards reported by the Small Business Administration (SBA) in Fiscal Years (FY) 2001 and 2002 were indeed awarded to companies that were small at the time of the award. The OIG further examined issues related to small business government contracting. This report presents the results of our evaluation and is being forwarded to the Committee.

PURPOSE

The purpose of this evaluation was to:

1. determine whether small business procurement awards reported by SBA in FY 2001 and FY 2002 were indeed awarded to companies that were small at the time of the award; and
2. evaluate issues related to small business government contracting.

BACKGROUND

With passage of the Small Business Act of 1953, Congress voiced its conviction that the Federal Government should "aid, counsel, assist, and protect … the interests of small-business concerns … to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government … be placed with

small business enterprises." To support this proclamation, Congress sets government-wide procurement goals for participation by small business concerns. While each Federal agency has its individual small business procurement goals, the overall goal is "23 percent of the total value of all prime contract awards for each fiscal year." Within the 23 percent, there are also government-wide goals for different categories of small business, such as HUBZone and women-owned businesses. The SBA's Office of Government Contracting and Business Development's (GC&BD) responsibility is to ensure that all agencies set annual goals (for all of the small business categories) that cumulatively will meet the government-wide goals.

GC&BD further aids small business by administering programs, such as the Section 8(a) Business Development Program [8(a) BD Program] and the Small Disadvantaged Business Certification Program, that offer support for federal contractors. The SBA is also responsible for establishing numerical small business size standards on an industry-by-industry basis under the North American Industry Classification System (NAICS). NAICS codes are essential to small business contracting because it is through the NAICS code listed in a solicitation that offerors can appropriately represent themselves as small or large business concerns. While the Small Business Act defines a small business as one "which is independently owned and operated and which is not dominant in its field of operation," the distinctions are complex. Overall, small business size standards can range from $750,000 to $28.5 million in average annual sales and from 100 to 1,500 in number of employees. Several SBA programs have either alternative or unique size standards.

METHODOLOGY & SCOPE

To determine whether small business procurement awards reported by SBA were indeed awarded to companies that were small at the time of the award, we selected for initial review the ten highest dollar value awards from October 1, 2000 to September 30, 2001 that were reported as going to small business and the ten highest dollar value awards from October 1, 2001, to June 30, 2002, that were reported as going to small business. From the original list of 20, 6 awards were selected for closer study. The dollar amounts of the six procurements ranged from $844,000 to over $28 million, and totaled over $36 million.

The major sources of data for the six in-depth reviews were the procurement files provided by SBA's Office of Procurement and Grants Management (OPGM). Data from the files reviewed included, but was not limited to, (1) the award date; (2) the award's NAICS code; and (3) the size standard for the respective NAICS codes.

As the protector of small business interests, SBA should be taking the lead in ensuring that businesses that are legitimately small are receiving government contracts. Thus, we sought evidence of whether SBA attempted to obtain current size information from either the business itself or other reputable sources. It is important to note, however, that all of the cases under review were task orders from multiple award contracts [i.e., five were from the General Services Administration's (GSA) Schedules

and one was from a National Institute of Health (NIH) government-wide acquisition contract (GWAC)]. As ordered by the Federal Acquisition Regulation[1] (FAR), an agency can rely on the small business representations made by the contractors at the Schedules contract level. Thus, SBA was not obligated to ensure that the companies were actually small at the time of the procurements, but it could have.

In determining whether a company was small for the particular procurement, we compared the company's size at the time of the award to the size standard for the award's NAICS code. We used the NAICS code reported in the Federal Procurement Data System (FPDS) because, at the time of the procurements under study, FPDS was the official source for information on federal government contract actions. For the four companies that were in the 8(a) BD Program at the time of review, information was obtained from SBA's SACS/MEDCOR[2] database. The fifth case concerned a company that had been purchased by a larger firm shortly after the original procurement in 1996; size information was obtained from the parent company's annual reports, available on the Internet. For the sixth case, an order from an NIH GWAC, we relied on the company's self-certification to NIH that it was large as of 2000.

In addition to the contract files, relevant regulations including the FAR, the Code of Federal Regulations[3] (CFR), the Small Business Act (P.L. 85-536) and other laws were reviewed. For clarification, we conducted interviews with SBA and other Federal agency personnel.

FINDING: LARGE BUSINESS CONTRACT ACTIONS WERE REPORTED AS SMALL BUSINESS AWARDS

The SBA awarded four of the six high dollar procurements, reported as small business procurements, to large companies at the time of the procurements. This occurred because SBA utilized multiple award contracts, which do not require that agencies obtain current size certifications, and did not ask contractors for an updated size certification. Regulations provide that a contractor self-certify its size when responding to a solicitation. At the time of the procurements under study, that size certification remained valid throughout the life of the contract, unless a procuring agency requested an updated certification. Because contracts can be active for many years, companies may become large, and an agency can still obtain credit for small business procurement. Because SBA is the protector of small business, we believe SBA should avoid "small business" procurements with large businesses, even though the regulations permit such a practice.

In reviewing this issue, we noted a variety of problems with small business procurement practices.

[1] CFR, Title 48, Federal Acquisition Regulations System
[2] Servicing and Contracts System/Minority Enterprise Development Central Office Repository
[3] CFR, Title 13, Business Credit and Assistance

A. Small Business Contracting Regulations

Various regulations emerged as possible reasons for the confusion surrounding the awarding and reporting of small business awards. These include "life of the contract" allowances due to purchases from multiple award vehicles and inconsistencies between the FAR and the Small Business Act.

1. Life of the Contract

When SBA awarded the procurements in this evaluation, a multiple award vehicle (e.g., Schedules contracts and GWACs) regulation allowed a contractor to retain its small business size status for the initial 5-year term and subsequent option periods of the contract, which could extend the contract for another 15 years. Thus, a contractor remained "small" for the life of the contract even if it outgrew the size standard, merged with a large company or was purchased by a large company.

The four procurements that went to large companies at the time of procurement fell under this regulation. In one case, the company certified that it was small when it submitted an offer for a GSA Schedules contract, but a month after it was awarded the contract the company was bought by a larger company. This transaction was publicly disclosed as the parent company's Web site indicated its ownership of the company under review. In another case, the company was small when it was originally awarded an NIH GWAC in 1996. However, by the time of the specific SBA action (2002), the company had reported to NIH that it was not a small business, and the information was displayed on NIH's Web site. The two other cases simply exceeded the size standards for their contracts – one company surpassed the size standard by more than $4.5 million, and the other company had more than double the maximum average annual sales allowed. Nevertheless, the life of the contract regulation allowed these high dollar procurements that were awarded to large businesses to be reported as small business awards. In all four of these cases, we found no evidence that SBA attempted to obtain current size information.

In May 2003, GSA, the Office of Management and Budget (OMB) and SBA testified before the House Small Business Committee regarding their proposed regulation changes to resolve this situation. First, a GSA representative acknowledged that many complaints regarding large businesses receiving federal contracts intended for small businesses involved awards made through schedules and GWACs. Noting the life of the contract regulation as a problem, the speaker stated that as of March 1, 2003, GSA implemented a new policy requiring "re-representation of business status at contract renewal, i.e., prior to exercise of the contract option period." However, this new requirement still allows a company that outgrows its size standard to continue to qualify as small for up to 5 years.

OMB and SBA both testified regarding their intent to require annual re-certification. OMB's Office of Federal Procurement Policy (OFPP) representative testified that the four agencies (GSA, NIH, the Department of Commerce, and the

National Aeronautics and Space Administration) that administer GWACs were instructed "to develop schedules identifying when their small business GWAC contractors will begin annual certification of their size status." The SBA representative assured the Committee that SBA "takes very seriously its responsibility for ensuring that only small businesses obtain Federal contracts . . . intended for small businesses." He further stated that SBA had proposed a rule to require annual re-certification of small business status for contractors operating under any multiple award contracts.

As of October 2004, only GSA had implemented a re-certification policy. The SBA had not reached a decision on its proposed annual re-certification rule, and in June 2004, OFPP decided not to pursue a separate annual re-certification policy for GWACs. Instead, OFPP advised GWAC agencies that they would be held to the re-certification cycle specified by SBA.

While a decision on annual re-certification had not been made, in May 2004, SBA agreed to implement an OIG recommendation (see Audit Report Number 4-16, http://www.sba.gov/ig/4-16.pdf) for SBA procurements that requires Schedules contractors classified as small businesses to certify their size for task orders exceeding $500,000 to ensure that they meet applicable size standards. Furthermore, SBA changed the regulation allowing companies purchased by large businesses to continue to be considered small. The SBA implemented a final rule stating that in the case of a small business being purchased after December 21, 2004, the new entity must self-certify its size at the time of novation.

2. Inconsistent Regulations

There are inconsistencies in the regulations that could affect small business procurement. Both the Small Business Act and the FAR state that acquisitions exceeding $2,500 but not greater than $100,000 are "reserved exclusively for small business concerns" with one exception. The Small Business Act exception reads: "unless the contracting officer *is unable to obtain* offers from two or more small business concerns." The FAR exception reads: "unless the contracting officer *determines there is not a reasonable expectation of obtaining* offers from two or more responsible small business concerns." This difference can be interpreted to mean that, according to the Small Business Act, the contracting officer must at least attempt to award the contract as a set-aside. If two or more competitive offers are not received, then the award does not have to be reserved for a small business. The FAR on the other hand allows the contracting officer to avoid the set-aside based solely on the "reasonable expectation" that two or more competitive offers from small business concerns will not be received. The SBA's exception offers small businesses greater protection.

B. GSA Schedules Problems

With two major legislative efforts, the Federal Acquisition Streamlining Act of 1994 (FASA) and the Clinger-Cohen Act of 1996, Congress established new acquisition vehicles, such as multiple award contracts, which can be accessed through the GSA

Schedules, and GWACs, which can be accessed through GSA GWAC Centers. The purpose of these vehicles is to streamline and simplify the procurement process and get the best possible price for products and services. All federal agencies are encouraged to use these vehicles rather than issuing new contracts. When an agency purchases from a small business on the Schedules, it can count the procurement towards its small business procurement goals.

There are three areas that are a cause for concern when purchasing from small businesses on the Schedules: (1) size self-certifications, (2) the avoidance of small business set-asides and other rules, and (3) data quality. Because part of SBA's mission is to protect the interests of small businesses by ensuring that a fair proportion of Government purchases are placed with small businesses, these concerns need to be addressed.

The first problem involves how businesses self-certify their size for GSA Schedules contracts. Using the FAR's "Offeror Representations and Certifications-Commercial Items" provision in solicitations, GSA requests that an offeror represent whether it is a small business concern or not. However, these solicitations are not always clearly associated with a specific NAICS code and corresponding small business size standard. While some GSA Schedules solicitations involve only one NAICS code, other solicitations can contain either numerous NAICS codes or no NAICS code at all. Further complicating the matter is that, according to a GSA official, when numerous NAICS codes are included in an offer, offerors are expected to primarily self-certify their size to the code which accounts for the greatest percentage of contract value. This contradicts SBA's CFR, which states, "If a procurement calls for two or more specific end items or types of services with different size standards and the offeror may submit an offer on any or all end items or types of services [which is the case with some GSA Schedules solicitations], the offeror must meet the size standard for each end item or service item for which it submits an offer."

This problem has two consequences. First, GSA is possibly allowing contractors to self-certify as small when they may not meet the size standards for every item or service for which they submit an offer. Second, because the FAR directs purchasing agencies to "rely on the small business representations made by schedule contractors at the contract level," agencies will receive credit for purchasing from a "small" company even if the company is not small for the product/service actually being provided.

The second problem with using the Schedules for small business purchases is that, in simplifying the acquisition process, regulations [e.g., Part 19 (Small Business Programs) of the FAR] meant to provide small businesses with "maximum practicable opportunities" to participate in Federal Government procurement no longer apply. Particularly worrisome is the fact that the Schedules allow agencies to award "pseudo-set-asides" and gain credit for small business purchases without having to follow SBA's rigorous small business set-aside regulations. One of our cases illustrates this point. In October 2000, SBA's OPGM issued a solicitation for a Blanket Purchase Agreement

(BPA)[4] to three 8(a) firms with current GSA Schedules contracts. The solicitation stated, "This [Information Systems Support] ISS BPA is intended as an 8(a) set-aside." OPGM decided to award BPAs to all three firms, but prior to awarding the BPAs, a legal review pointed out that "because they were not set-aside for 8(a) competition as provided for in SBA's regulations" the BPAs could not be referred to as 8(a) set-asides. Other correspondence also indicates that OPGM was overly concerned with obtaining "permission to count awards made against the BPA towards the agency's 8(a) goals," which was eventually received.

Although the awards counted towards the Agency's 8(a) goal, at least one of the firms exceeded the contract's size standard at the time of award. Because OPGM went through the Schedules instead of establishing legitimate set-asides, where the firm would have had to certify its size in response to the solicitation, the award counted towards the Agency's small business goals even though the firm was not small. While SBA was not obligated to verify a contractor's size when purchasing from the Schedules, it could have, and for all of the cases, current size information was readily available:

- Four cases were in the 8(a) BD Program; thus, size information was available in SBA's SACS/MEDCOR database.
- The fifth case concerned a company that had been purchased by a large company; this information was available on both companies' Web sites.
- For the sixth case, size information could be found on NIH's Web site.

It would only have taken "a short amount of time" to find this information. If SBA had put as much effort into verifying whether the company currently met the award's size standard as it put into trying to find ways to earn credit towards its small business goals, then perhaps the contract action would have been awarded to a company that was legitimately small at the time of award, and SBA would have protected small business interests as well as worked towards achieving its procurement goals.

Other set-aside regulations that do not apply to purchases off the Schedules include the non-manufacturer and 50 percent rules. In two of our cases, not only were the companies not small at the time of the award, but SBA was able to purchase the products of large companies (e.g., Gateway, Compaq, Microsoft, etc.) through "small" companies because the non-manufacturer rule[5] does not apply to the Schedules. The Agency received credit towards its small business goals for these procurements. Another rule that did not apply in one of our cases is the 50 percent rule, which states that in order to be awarded a small business set-aside contract or an 8(a) contract for services, the small business concern must agree to perform at least 50 percent of the cost of the contract incurred for personnel with its own employees. The OIG in a previous report (see Audit Report Number 4-16, http://www.sba.gov/ig/4-16.pdf) determined that the company,

[4] A BPA is a simplified purchasing method that establishes a "charge account" with a contractor in order to easily purchase supplies or services that are needed repeatedly.
[5] 13 CFR 121.406 states that for small business set-asides or 8(a) contracts where the contractor is a wholesaler or retailer who normally sells the supplied items, these items must be manufactured or processed by a domestic small business concern, and the firm must not exceed 500 employees.

which was small at the time of the award, only performed 39 percent of the cost of labor with its own employees. In these cases, the fact that these rules do not apply worked against protecting the interests of small business while at the same time garnering the Agency credit towards its small business goals.

The third problem encountered with the Schedules is that information supplied by GSA is not always accurate. For instance, one case involved an 8(a) firm whose Schedules profile did not note that the company was in the 8(a) BD Program. This error possibly cost the company small business awards.

C. Source List Difficulties

PRO-*Net*, SBA's Internet-based database with information on small, disadvantaged, 8(a), and women-owned businesses was meant to be used by small businesses as a marketing tool and by contracting officers and prime contractors as a search engine. However, there was concern that large firms were incorrectly self-certifying themselves as small. This concern was supported by the fact that SBA purged from PRO-*Net* over 300 large companies that had incorrectly self-identified as small businesses. Of the four cases in this evaluation that were not small, two had size information listed in their PRO-*Net* profiles that indicated that they were small for the awards' NAICS codes.

In the aforementioned House Committee hearing, an SBA official noted that "PRO-*Net* . . . does serve as the authoritative source of eligibility information on firms certified by the SBA" under the 8(a) BD, HUBZone and Small Disadvantaged Business Programs. However, indicating some awareness of the problems with PRO-*Net*, the same official added that the database was not intended to validate eligibility, but rather was to be used "for preliminary identification of qualified small business vendors." The testimony continued, "A contracting officer cannot assume nor is there guidance that suggests that a business listed on PRO-*Net* is an eligible small business for a specific procurement." This testimony is refuted by SBA's SOP 60 02 6, which encourages procurement representatives to use PRO-*Net* "to match small business firms to the solicitation's requirements."

In the continuing effort to simplify the procurement process, SBA partnered with the Department of Defense (DOD), OMB and GSA to integrate PRO-*Net*'s function as the authoritative source for vendors that are certified in SBA's 8(a) BD, HUBZone and Small Disadvantaged Business Programs with DOD's Central Contractor Registration (CCR). The integration began on January 1, 2004, creating one database for entering and searching small business sources. Yet, problems remain.

First, companies registering with CCR are initially allowed to self-certify as "small," "8(a)," "HUBZone," etc. The SBA routinely receives updated data from CCR, and the data is processed through an internal database that calculates whether companies are small and verifies whether they are certified in preference programs. The results are then transferred back to CCR. If the calculations/verifications show that a company is

small/in a preference program, the company is placed in CCR's "Dynamic Small Business Search." If the calculations/verifications show that the company is not small, no changes are made to the information the company self-certified, and the company can be found through the main "CCR Search." Thus, through the "CCR Search," one can find companies that incorrectly self-certified as small or as being in preference programs. This leads to the second problem.

On the old PRO-*Net* Web page, contracting officers are instructed to rely on the "Dynamic Small Business Search" when looking for vendors that are certified in SBA's 8(a) BD, HUBZone and Small Disadvantaged Business Programs. However, there are several search options at the CCR Web site, and it is not prominently displayed that the "Dynamic Small Business Search," as opposed to other search options, is required to ensure that SBA has calculated/verified the size/status of each business. Furthermore, there is no guidance in the FAR regarding the "Dynamic Small Business Search."

CONCLUSION

Of the six high dollar procurements we evaluated, four awards went to companies that were not small at the time of the specific purchase by SBA. While determining whether these small business procurement awards were indeed awarded to companies that were small at the time of the award, several important issues related to small business government contracting emerged. Between various problems with the GSA Schedules, inconsistent regulations, and incorrect data in source lists, we discovered that there are many factors affecting whether a small business procurement is awarded to a small business or to an "other than small business."

Like all areas of federal procurement, issues related to small business awards are very complex, and resolving these issues is not a simple task. However, the following recommendations should resolve some of these issues.

RECOMMENDATIONS

We recommend that the Associate Deputy Administrator for Government Contracting and Business Development take the following actions:

(1) Finalize the proposed SBA rule under which a firm that receives a multiple award contract must certify annually on the anniversary date of the contract award that it continues to be a small business for all relevant size standards.

(2) Coordinate with the FAR Council to resolve the set-aside exception inconsistency in the regulations. The SBA should ensure that the language in the Small Business Act is implemented in the FAR.

(3) Work with GSA to ensure that small business representations in response to GSA Schedules contract solicitations are following size eligibility requirements for government procurement, specifically that "if a procurement calls for two or more

specific end items or types of services with different size standards and the offeror may submit an offer on any or all end items or types of services, *the offeror must meet the size standard for each end item or service item for which it submits an offer*" (13 CFR § 121.407).

(4) Work with the FAR Council to require compliance with set-aside regulations on multiple award vehicle (i.e., Schedules and GWACs) purchases when agencies limit their requests for quotations to small businesses.

(5) Continue working with DOD and GSA to modify CCR so that (1) the small business and preference program self-certify buttons are removed, and (2) contracting officers are clearly advised that small businesses can only be found through the "Dynamic Small Business Search."

THE AGENCY'S RESPONSE

The Agency agreed with Recommendations 1, 2 and 5 and plans to take actions in the near future that will address these recommendations. While Recommendation 3 refers to small business representations at the establishment of a GSA Schedules contract, the Agency's response focuses on the designation of small business status on task orders. The Agency states, "We agree that SBA and GSA need to discuss the designation of small business status on orders, and possibly initiate a FAR case to clarify how NAICS codes apply to orders from these contract vehicles." In regards to Recommendation 4, the Agency disagreed by concluding that "on unrestricted contracts and orders against an unrestricted contract, set-aside provisions do not apply." See Appendix 1 for the full text of the Agency's response.

OIG EVALUATION OF THE AGENCY'S RESPONSE

Since the Agency agreed with Recommendations 1, 2 and 5, we have limited our evaluation to the points of disagreement. We modified Recommendation 2 to state that SBA should coordinate with the FAR Council rather than GSA.

On Recommendation 3, we disagree with the Agency's focus on the designation of small business status on orders from the GSA Schedules. The Agency states, "GSA has not clearly implemented a process by which to designate the small business status of a contractor on an order." However, there is a clear process for designating the small business status of a contractor on an order – if a contractor is awarded a GSA Schedules contract as a small business (and/or any other variation of "small business," such as "SBA Certified 8(a) firm"), then all subsequent orders will be classified as "small business" awards. The process that GSA has not clearly implemented is how to classify a contractor as "small" when establishing the original GSA Schedules contract. If GSA properly follows SBA's size eligibility requirements for government procurement, which it is not currently doing, then the small business status of all orders and the NAICS code flowing from a Schedules contract will be designated correctly. To clarify our

recommendation, we modified it to refer to small business representations in response to GSA Schedules contract solicitations.

Regarding Recommendation 4, the FAR defines a small business set-aside as "the reserving of an acquisition exclusively for participation by small business concerns." We found that, by definition, agencies are electing to "set-aside" procurements for small businesses on the GSA Schedules by issuing requests for quotations restricted to small businesses. Although the FAR states that FAR Part 19 (Small Business Programs) does not apply to orders from a Schedules contract, some guidance to govern these "set-asides" that are being conducted through the Schedules is needed. To make Recommendation 4 more specific, we modified it to specifically state that compliance with set-aside regulations should be required when agencies limit their requests for quotations to small businesses. We also modified the recommendation to state that SBA should coordinate with the FAR Council rather than GSA.

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The recommendations in this report are based on the conclusions of the OIG. The recommendations are subject to review, management decision and action by your office in accordance with existing Agency procedures for follow-up and resolution.

Please provide us your management decision for each recommendation within 30 days. Your management decisions should be recorded on the attached SBA Forms 1824, "Recommendation Action Sheet," and show either your proposed corrective action and target date for completion, or explanation of your disagreement with our recommendations.

Should you or your staff have any questions, please contact Robert G. Hultberg, Director, Business Development Programs Group at 202-205-[FOIA Ex. 2].

Attachments

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

DATE: February 1, 2005

TO: Robert G. Seabrooks
Assistant Inspector General for Auditing

FROM: Allegra F. McCullough
Associate Administrator for Government Contracting and Business Development

SUBJECT: Response to the Inspector General Draft Report entitled "SBA Small business Procurement Awards are not Always Going to Small Business"

The Inspector General's Office recently completed a review of the contracts awarded by SBA's Office of Procurements and Grants Management between October 1, 2000 and September 30, 2002. Of the twenty contracts reviewed, six of the awards ranging from $844,000 to $28 million were selected for further study. The IG states that all of the cases reviewed were "task orders from multiple award contracts (i.e., five were from General Service Administration (GSA) Schedules, and one was from a National Institute of Health (NIH), government-wide acquisition contract (GWAC)." Four companies were SBA 8(a) Program Participants, one company was acquired by a larger company and one company's size status was determined from the information given to NIH by the small business contractor.

We have reviewed the IG's Report and offer the following responses to the recommendations.

(1) Finalize the proposed SBA rule under which a firm that receives a multiple award contract must certify annually on the anniversary data of the contract award that it continues to be a small business for all relevant size standards.

We are currently finalizing the proposed rule under which a firm must recertify its size on long-term multiple award contracts, multiple award schedule contracts and government-wide acquisition contracts. We expect to send the final regulation to the Office of Management and Budget for review and clearance by February 28th.

(2) Coordinate with GSA and resolve the set-aside exception inconsistency in the regulations. SBA should ensure that the language in the Small Business Act is implemented in the FAR.

We will initiate a Federal Acquisition Regulation (FAR) case through the FAR Council, to revise FAR 19.502-2 "Total small business set-asides", to reflect the statutory requirements of 15 U.S.C 644(j).

(3) Work with GSA to ensure that small business representations are following size eligibility requirements for government procurement, specifically that "if a procurement calls for two or more specific end items or types of services with different size standards and the offeror may submit an offer on any or all end items or types of services, *the offeror must meet the size standard for each end item or service item for which its submits an offer"* (13 CFR § 121.407).

GSA schedules identify NAICS codes by specific item numbers (SINS). However, GSA has not clearly implemented a process by which to designate the small business status of a contractor on an order. The small business size regulations do allow multiple NAICS on contracts where an offeror may submit a bid on one or more items. This approach is not entirely appropriate for GSA schedules. We agree that SBA and GSA need to discuss the designation of small business status on orders, and possibly initiate a FAR case to clarify how NAICS codes apply to orders from these contract vehicles.

(4) Work with GSA to require compliance with set-aside regulations on Schedule purchases when agencies are claiming credit towards their small business goals.

In order to set-aside a contract for small business participation, a contracting officer must assure that a small business offering a product that it did not manufacture, "furnishes in the performance of the contract, the product of a small business manufacturer or producer. The end product furnished must be manufactured or produced in the United States or its outlying areas" [FAR 19.102(f)]. FAR 19.102(f) also contains provisions for the contracting officer to request waivers to this requirement prior to the issuance of a solicitation. The statutory authority for SBA to issue a waiver to this requirement can be found at 15 USC 637 (a)(17). SBA's Office of Government Contracting periodically reviews requests from contracting activities to waive the provisions of the "non-manufacturer rule." Where SBA grants a request to waive that requirement, agencies reporting awards to small "non-manufacturers" are in compliance with the contract goaling reporting requirements. On unrestricted contracts and orders against an unrestricted contract, set-aside provisions do not apply.

(5) Continue working with DOD and GSA to modify CCR so that (1) the small business and preference program self-certify buttons are removed, and (2) contracting officers are clearly advised that small businesses can only be found through the "Dynamic Small Business Search."

In April 2005, the self-certification of 8(a), HUBZone and SDB will be deactivated on CCR. These certification fields in CCR will be populated only by the SBA.

The CCR small business representation will also be removed and replaced by an automated check conducted by SBA. Through the Dynamic Small Business Search (DSBS), a registrant's employment and revenue information will be compared to the size standard(s) for the NAICS code(s) identified for its business. CCR will list which NAICS codes the business qualifies as a small business. A contracting officer will be able to search for small businesses either through the DSBS and CCR.

APPENDIX 2

REPORT DISTRIBUTION

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