

104
MEMO

THE ABUSES IN THE SBA's 8(a) PROCUREMENT PROGRAM

Y 4. SM 1:104-59

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HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS HOUSE OF REPRESENTATIVES

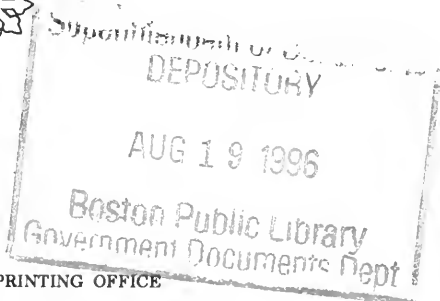
ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

WASHINGTON, DC, DECEMBER 13, 1995

Printed for the use of the Committee on Small Business

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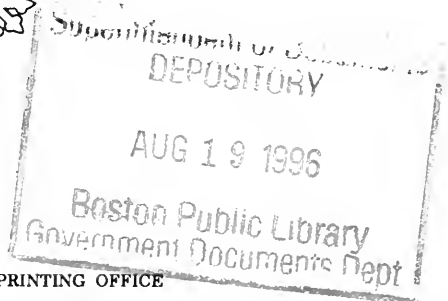
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CONTENTS

Hearing held on December 13, 1995	Page 1
---	-----------

WITNESSES

WEDNESDAY, DECEMBER 13, 1995

Campbell, William, Chief Financial Officer, U.S. Coast Guard	11
Innerbichler, Nicholas R., CEO, TAMSCO.	12
Jenkins, Calvin, Associate Administrator, Minority Small Business and Capital Ownership Development, U.S. Small Business Administration	8
Lee, Karen S., Deputy Inspector General, U.S. Small Business Administration	6
Wheeler, Donald J., Director, Office of Special Investigations, U.S. General Accounting Office	4

APPENDIX

Opening statements:

Clayton, Hon. Eva	41
Flake, Hon. Floyd H.	43
Hilliard, Hon. Earl F.	46
LaFalce, Hon. John	48
Manzullo, Hon. Donald A.	50
Meyers, Hon. Jan	60
Mfume, Hon. Kweisi	65

Prepared statements:

Innerbichler, Nicholas R.	66
Jenkins, Calvin	75
Lee, Karen S.	100
Wheeler, Donald J.	119

Additional material:

GAO Report: 8(a) Is Vulnerable to Program and Contractor Abuse	129
Questions and answers to Chair Meyers from GAO	155
Questions and answers to Chair Meyers from SBA	180
Questions and answers to Chair Meyers from Coast Guard	198
Questions and answers to Chair Meyers from TAMSCO	215
Questions and answers to Chair Meyers from I-NET	221

THE ABUSES IN THE SBA's 8(a) PROCUREMENT PROGRAM

WEDNESDAY, DECEMBER 13, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room 2359, Rayburn House Office Building, Hon. Jan Meyers (chair of the Committee) presiding.

Chair MEYERS. The Committee will come to order. We have competing meetings taking place this morning, and I think we will have more Members here beginning at 10 o'clock, but we will go ahead and start because I hate to have everybody waiting so long.

Today the Committee on Small Business Administration will conduct an oversight hearing into the Small Business Administration's Minority Enterprise Development, or 8(a) Program, as it is commonly known. For my colleagues on the Committee and those present with an interest in this program, it will come as no surprise that I have had grave concerns about 8(a).

This Committee for years has heard from entities like the U.S. General Accounting Office about abuses and fraud in the 8(a) Program. In fact, ever since I've been here, and I have been here for 11 years these reports have been punctuated by the occasional scandals, some of them resulting in convictions and jail time. In particular, the WEDTECH scandal prompted a legislative overhaul of this program in 1988. Once more this Committee is assembled to hear the same sad GAO and SBA Inspector General reports about how 8(a) firms, the SBA and contracting agencies have conspired to game the system.

The 8(a) Program began as a way of helping to develop small business owned by socially and economically disadvantaged individuals. The rationale which I do not crawl with is that someone who is socially and economically disadvantaged will have a harder time than the average small business owner in obtaining access to capital and credit and in competing with the average business in the same field owned by a nondisadvantaged individual. However, the 8(a) Program as it is operated today bears almost no resemblance to this vision. It has become corporate welfare in the worst sense of the term.

In reading the SBA IG's testimony submitted for today's hearing, it's clear that 8(a) doesn't just help socially and economically disadvantaged individuals get on an equal footing with the average nondisadvantaged small business. It allows millionaires with big companies, sometimes with as many as 1,500 employees, to obtain

sole source contracts under expedited procedures. The SBA IG looked at 50 larger sized firms in the 8(a) Program and found that 35 of the 50 participant owners were millionaires, but remained classified as economically disadvantaged. The IG also found that these firms were doing far better than the average firm in similar lines of business in terms of business assets, revenue, gross profit, working capital, and net worth. However, these firms continued to stay in the program pulling down multimillion dollar sole source contracts.

Even more galling to me is that the SBA allows these companies to continue in the program, turning a blind eye to regulatory violations and abuses. Then when a situation really gets bad and the SBA decides to get tough, it makes a referral to the Justice Department only to be turned down because the SBA has acted as an accomplice allowing the situation to occur.

Congressional efforts to fix the program in 1988 have failed and I believe for two main reasons: First, the legislation was flawed in some respects creating perverse incentives for SBA employees to encourage abuse of the program; and second, a mind set seems to exist at the SBA and among contracting agencies that their mission is to find loop-holes in the law violating the spirit, if not the letter, of the law governing this program.

The SBA has the tools to graduate firms early from the program when it's clear they have gotten their leg up and are doing well, but they rarely do it and when the SBA does notify a firm of its intent to graduate them early from the program, it takes at least a year to get it done and the firm loads its plate with huge sole source contracts.

Given all of these abuses surrounding the sole source authority in this program, I am going to take this opportunity to call upon Administrator Lader, who unfortunately is not here today, to place an immediate moratorium on all sole source contracting through the 8(a) Program. These abuses must be stopped. He has the authority to do this under current law, and I hope he has the will to do what is right. I realize my views on this may be harshly criticized by some of my colleagues on this Committee, but I ask them to think for a moment about the hundreds and perhaps thousands of socially and economically disadvantaged firms that have gotten nothing from this program because of the greed of a few.

At this point I recognize the ranking minority member Mr. LaFalce for an opening statement.

Mr. LAFALCE. Thank you very much Madame Chair for convening this hearing on the Small Business Administration's Minority Enterprise Development Program, commonly referred to as the 8(a) Program.

I appreciate the sincerity of your remarks and the intensity of your conviction, but I'm not sure we should go quite as far as you have suggested. This program does have a history of problems as well as a history of achievements.

In the problems category, the Small Business Committee has worked hard in an attempt to reform 8(a) by legislating tighter company performance requirements and more responsive and rigorous Agency implementation and oversight of the program. I believe

that effort has been worthwhile, although there are many more efforts still needed.

Some of the problems routinely heard about in the mid-1980's have been corrected. To give but one example, a few years ago the processing time for 8(a) applications was outrageously long and was indicative of poor program management. Today applications are processed on average within roughly 90 days which is the target this Committee set. If that sounds like a small problem and an easy fix, let me assure all it was a nationwide and deeply entrenched flaw in the program. It was fixed. The number of persistent problems has been diminishing. Agency awareness of current problems is high, and the intention and commitment to remedy them is strong.

On the achievement side of the ledger there are hundreds of firms that did get their start in the 8(a) Program that are now established and providing jobs and generating tax revenue. We are quick enough to criticize other countries whose economic and social structures and policies keep down their minority groups. We should be proud that our Government provides at least this opportunity to economically and socially disadvantaged individuals in this country. What if we didn't?

In 1994, according to data provided by the Small Business Administration, 6.2 percent of all Federal contract dollars went to small disadvantaged firms, but without the 8(a) Program that figure would plummet to 3 percent of Federal contract dollars. It would be more than cut in half, suggesting to me that without a program such as 8(a) Federal contracting dollars and contracting opportunities would not, on their own, find their way to small disadvantaged firms.

The General Accounting Office Report, which is the principal subject of today's hearing, has investigated two firms. I believe there are approximately 5,700 firms currently participating in the program and these two firms had indications of possible regulatory or criminal violations. It could be considered quite an illogical leap to interpret GAO's findings on these two companies as necessarily representative of all 8(a) firms. Of course, these findings should, however, make us increasingly vigilant and vigorous in our oversight.

The 8(a) Program is well-intentioned, it's ambitious, it's complex, and the problem it attempts to deal with, the problem of enormous past discrimination, is very widespread and very complex. So, we cannot minimize the problems facing the program, nor should we run away from them. I think we should await recommendations from the Department of Justice regarding possible changes in the program, await those recommendations eagerly, and attempt to deal with their recommendations expeditiously. I think we should work with the SBA in making and in fact requiring a better program, but I don't think we should launch a broadside attack or condemnation of the entirety of the program because there are in fact some cheats in it.

The challenge is to move responsibly. To do much more to keep those people out, but surely not to let them be our excuse for giving up. I thank the chair, I'd ask unanimous consent to include in the record a statement from Mr. Earl Hilliard.

Chair MEYERS. Without objection. Thank you Mr. LaFalce.

Our first witness will be Mr. Donald Wheeler, Director of the Office of Special Investigations of the U.S. General Accounting Office, Mr. Wheeler.

[Mr. Hilliard's statement may be found in the appendix.]

TESTIMONY OF DONALD J. WHEELER, DIRECTOR, OFFICE OF SPECIAL INVESTIGATIONS, U.S. GENERAL ACCOUNTING OFFICE

Mr. WHEELER. Madame Chair and members of the Committee, we are pleased to be here today to discuss our September 1995 report concerning case studies of two firms that participated in the 8(a) Minority Business Development Program.

I will summarize our prepared testimony and ask that you include the complete statement in the record.

Chair MEYERS. Without objection, it will be done.

Mr. WHEELER. The 8(a) Program is to promote the development of small businesses owned and controlled by socially and economically disadvantaged individuals. Today we will discuss program and contractor abuses involving two of the top 25 8(a) contractors in terms of total dollars awarded in fiscal year 1992.

In summary, our investigation revealed 8(a) Program abuse and ineffective SBA oversight of the two firms. We questioned SBA's justification for accepting the firms into the program.

During the application process both firms provided information that gave rise to questions about their eligibility to participate in the 8(a) Program, but SBA never fully resolved those questions. Further, one firm misrepresented its qualifications to enter and remain in the program, however, SBA's 8(a) Program office did not act to suspend the firm's contracts or remove it from the program after learning of the misrepresentations.

Regarding the second firm, we questioned the practices of the contracting Agency, the Coast Guard. In a contract with the second firm, Coast Guard officials changed the contract's original classification code to one for which the firm qualified and altered the contract's minimum value to direct an Indefinite Delivery Indefinite Quantity (IDIQ) contract to the firm avoiding Federal competition requirements.

The two high technology firms on which we focused were I-NET, Inc. and TAMSCO. They were the third and ninth largest 8(a) firms, respectively, in terms of total dollars awarded for fiscal year 1992, a year when the top 25 of over 4,400 active 8(a) Program participants received about 22 percent of the total 8(a) contract dollars. For the almost 10 years that they were in the 8(a) Program, they were awarded over \$864 million in 8(a) contracts.

SBA regulations state that an 8(a) Program applicant must unconditionally own at least 51 percent of the firm and control its operations. In 1984 SBA officials recommended that both I-NET and TAMSCO be denied acceptance into the program because of questions regarding who controlled the firms. However, although SBA never fully resolved the questions about control of the firms, both were allowed entry into and remained in the program. In addition, both continued to benefit from contracts they received in the 8(a) Program.

SBA district officials four times recommended that I-NET not be admitted to the 8(a) Program. However, a regional SBA official overturned district officials objections. SBA district officials had determined that I-NET's owner and president, Mrs. Kavelle Bajaj, lacked the knowledge and experience to run a high technology computer firm.

They had further determined that Kuljit (Ken) Bajaj, Mrs. Bajaj's husband and a recognized expert in the field who did not qualify for the program, would actually control and run the firm's operations. In fact, a former I-NET vice president told us that Mr. Bajaj had hired him in January 1985 to help start and run the business and to "teach" Mrs. Bajaj how to run a business. In addition, on the résumé he submitted to SBA's Office of Inspector General, Mr. Bajaj stated that he was "responsible for day-to-day operations" of I-NET.

Regarding TAMSCO, SBA district officials twice recommended that the firm's application for admittance to the 8(a) Program be denied, but were overruled. They were concerned that TAMSCO's nondisadvantaged vice president and 49-percent owner, William Bilawa, would improperly benefit from the 8(a) Program and that the disadvantaged president and 51 percent owner, Nicholas Innerbichler, would not exercise complete control. SBA officials knew, for example, that contrary to SBA regulations, TAMSCO's board of directors was initially structured so that its only two members, Mr. Innerbichler and Mr. Bilawa, had equal voting power.

SBA, under its regulations, could have terminated I-NET's 8(a) participation or suspended its contracts when it learned of misrepresentations by I-NET and when it learned that I-NET had exceeded size standard. However, SBA took no such action. Mrs. Bajaj failed to disclose to SBA, as required, that she had provided 24.5 percent ownership interest to each of two persons. Subsequently, Mrs. Bajaj submitted false statements to SBA that did not reflect these transactions.

In 1986 and 1988 she falsely reported to SBA that 49 percent of I-NET stock was unissued, when a 24.5 percent ownership was still outstanding with one of the persons. She falsely certified on a résumé submitted to SBA that she held an Associate of Arts Degree in computer science and technology.

Additionally, SBA regulations require it to verify that an 8(a) firm is a small business for each contract it receives. However, for several years SBA did not recognize or react to misleading financial statements that served to misrepresent I-NET's size.

I-NET submitted financial statements to SBA from 1988 through 1990 that excluded certain revenues from its total sales, explaining the exclusion in notes to the statements. But SBA did not notice or act on the information in these notes until 1992. These exclusions enabled I-NET to obtain at least 11 contracts for which it was otherwise ineligible.

SBA allowed I-NET to stay in the 8(a) Program for almost 2 additional years after I-NET had exceeded its size limits and SBA officials had first recommended its early "graduation" from the program. Indeed, SBA awarded I-NET at least \$62 million in addi-

tional contracts after SBA-OIG recommended that it receive no more 8(a) contracts because of its excessive size.

As to the Coast Guard contract with TAMSCO, we determined Coast Guard contracting officials had directed a noncompetitive 8(a) contract to TAMSCO using the IDIQ contracting option and avoiding competition. They awarded the contract with a potential maximum value of \$14 million 1 day before TAMSCO's term in the 8(a) Program expired in September 1993.

The notes of one Coast Guard contracting official referred to this contract as a "graduation present" to TAMSCO. Coast Guard officials told us that the Coast Guard viewed competition of contracts as a hindrance to its mission. Thus, to award the contract to TAMSCO, Coast Guard officials; one, changed the contract's original Standard Industrial Classification Code, which TAMSCO had outgrown, to one for which TAMSCO qualified; and two, lowered the contract's original labor hours by 46 percent, to avoid the \$3 million threshold required for competitive IDIQ service contracts.

This concludes my prepared statement. I would be happy to respond to any questions that you may have.

Chair MEYERS. Thank you Mr. Wheeler. Our next witness will be Ms. Karen Lee, Deputy Inspector General, U.S. Small Business Administration.

[Mr. Wheeler's statement may be found in the appendix.]

TESTIMONY OF KAREN S. LEE, DEPUTY INSPECTOR GENERAL, U.S. SMALL BUSINESS ADMINISTRATION

Ms. LEE. Thank you Madame Chair and members of the Committee. I have submitted a written statement—

Chair MEYERS. Would you use the microphone please, and they're very directional—

Ms. LEE. OK.

Chair MEYERS. If you would speak directly into it, otherwise those in the back of the room can't hear.

Ms. LEE. I've submitted a written statement, which I would ask be included in the record, and I will summarize that.

Since Mr. Wheeler has testified on the details of I-NET and we have not done any work on TAMSCO, I will address my remarks to the major systemic problems we have discovered in our audits and investigations and some solutions for the problems. At the outset I would like to emphasize that the current management of the 8(a) Program recognizes these problems and is working on developing solutions to them.

Our investigative resource commitment to the 8(a) Program has declined for reasons I have outlined in the written statement. Nonetheless, over the past 3 years we have obtained 26 indictments, 25 convictions, and approximately \$60 million in financial recoveries.

Employee corruption has been a problem with eight employees convicted since 1987. In most of these cases higher level officials were lax in their oversight. We believe, however, that the conviction and sentencing to prison terms of two assistant directors has deterred such activity over the past 2 years.

In cases of participant fraud, due diligence on the part of responsible SBA employees would frequently have prevented the fraud or

would have contributed to discovery sooner. In some instances, the abuse of discretionary authority by SBA employees has resulted in fraud referrals being declined by the Department of Justice because the Agency knowingly permitted violations of its own policies and regulations.

In the audit area, our work has identified three major systemic problems which we refer to as eligibility, competition, and brokering.

Individuals are eligible for the 8(a) Program if they are socially and economically disadvantaged. In 199-495 we audited the continuing eligibility review process and evaluated the adequacy of procedures for assuring that 8(a) participants continue to meet the requirements.

We reviewed 50 larger companies serviced by five offices around the country. The audit concluded that participants remained in the program even though they had accumulated substantial wealth or had overcome impediments to obtain access to financial markets and resources. Specific findings include the following.

Six individuals had overcome their economic disadvantage, but remained in the program because they understated their personal net worth or SBA employees made errors in calculating the individual's personal net worth. Personal annual income was not considered when economic disadvantage assessments were made. For example, 17 participants had compensation ranging from \$500,000 to \$2.5 million over a 2 year period.

Continuing eligibility reviews did not include comparisons of 8(a) firms with others in the same or similar lines of business. For example, 32 companies exceeded the average business assets, revenue, gross profit, working capital, and net worth of other companies in a similar line of business.

Wealthy individuals remained eligible because equity in their companies and primary residences and their spouses assets are not considered in determining net worth. In our sample, 35 of the 50 were millionaires.

Program officials agreed with the majority of our audit recommendations, and they have initiated steps to analyze continuing eligibility more carefully.

Unfortunately, the economic disadvantage aspect of eligibility is extremely complex, it is time consuming to properly administer, and it relies on the self certification by participants. It also requires accounting knowledge and financial analysis experience to determine net worth and the continued existence of economic disadvantage.

There is a corollary issue related to the lack of enforcement of economic criteria. The failure to graduate those 8(a) companies that are successful is a contributing factor to the concentration in the award of contracts. Based on a computer run of 8(a) companies with active contracts as of December 1995, the largest 200 companies, out of 5,700 in the program, commanded 50.4 percent of the contracts in terms of dollar value. These contracts total over \$14 billion, or an average of \$70 million for each of the 200 companies. Over half of the 5,700 companies have no active contracts.

More objective criteria must be instituted to make the program easier to administer, especially in light of current budget cutting,

and more difficult to circumvent. More objective criteria would also help to foster broader participation in Federal contracts by companies in the 8(a) Program.

We believe that the single most important measure that could be taken to minimize abuse, simplify program administration, and reduce concentration, would be the establishment of a ceiling on the dollar amount of contracts that a participating company could receive. The current exclusions in determining net worth should also be eliminated.

Turning now to competitive procurements, the SBA has closed one major loophole, the use of IDIQ contracts. Another loophole permitted splitting of one proposed \$9 million contract into three, each with a value under \$3 million at which competitive, rather than sole source, procurement is required.

The 1988 amendments also required 8(a) companies to obtain certain levels of non8(a) business. This requirement is known as competitive mix. In a recent audit we found that this requirement has not been effectively enforced and many companies are not in compliance. The program officials have agreed with our recommendations that mandatory limits be placed on the dollar value of 8(a) contracts awarded when 8(a) companies do not meet the competitive mix requirement.

The final issue is excessive sub-contracting and brokering. Audits have disclosed a number of instances in which 8(a) contractors provided significant amounts of equipment on contracts awarded under SIC codes for services. These 8(a) contractors, however, were not manufacturers or regular dealers in the equipment as required by SBA's regulations. These audits also disclosed that much of the equipment was obtained from large manufacturers, a violation of the nonmanufacturer regulations. This improper subcontracting occurred because SBA did not apply the subcontracting, brokering, or nonmanufacturing requirements to contracts which are classified as service contracts.

We believe a cap on the dollar amount of contracts that an 8(a) company could receive would alleviate many of the subcontracting problems as well, because a cap would serve as a disincentive to passing through contract funding to subcontractors.

That concludes my formal remarks, Madame Chair. I would be happy to answer any questions the Committee may have.

Chair MEYERS. Thank you Ms. Lee. Our next witness is Mr. Cal Jenkins, Associate Administrator, Minority Small Business and Capital Ownership Development, U.S. Small Business Administration.

[Mrs. Lee's statement may be found in the appendix.]

TESTIMONY OF CALVIN JENKINS, ASSOCIATE ADMINISTRATOR, MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT, U.S. SMALL BUSINESS ADMINISTRATION

Mr. JENKINS. Madame Chair I would like to summarize my statement and include my entire written statement in the record.

Madame Chair and members of the Committee, I welcome the opportunity to appear before you today to discuss the future of the

Small Business Administration's Minority Enterprise Development Program.

Let me begin by emphasizing a fundamental point. The essence of the Small Business Administration's 8(a) Program is to provide business development opportunity to disadvantaged firms through structured access to Federal procurement contracts. This is widely recognized as both a necessary and fitting goal of Government.

President Clinton, in his July address on affirmative action and release of the White House Affirmative Action Review, directed the Department of Justice to work with the agencies in reviewing Federal affirmative action programs to ensure that such programs are consistent with the law. We are working with the Department of Justice in examining the 8(a) Program as part of this review and in seeking to improve the program.

At a time when the demographics of our Nation are changing dramatically in terms of minority groups presenting a larger percentage of the overall population, there is a need to empower and provide real economic opportunities to these individuals. It is these business owners who will play a major role in carrying the spirit of entrepreneurship, business formation, and capitalism into the 21st century.

In our written testimony, we have highlighted and expanded on two issues that we need to address: Concentration of contracts and eligibility.

GAO in its report has called into question two firms that are no longer in the 8(a) Program, I-NET and TAMSCO. SBA has carefully reviewed the case files of these firms and agrees in part with the GAO report. SBA is aware of and concerned with the GAO findings. SBA regulations are adequate to deal with these situations, but can be further refined.

SBA has reviewed the original files on I-NET and believe that SBA initial eligibility review was consistent with program policy. Had our review indicated that firm had given us false statements, this matter would have been immediately forwarded to the SBA inspector general for a full investigation. This was SBA policy at the time and it is our policy today.

The GAO also found that SBA failed to recognize that I-NET had submitted financial statements that excluded revenues from the firm's total sales. These exclusions permitted I-NET to receive contracts for which it was not eligible. SBA regulations concerning representation of company size are clear, and in fact, are the cornerstone of all SBA Programs. The firm's financial statements to the SBA were misleading as they excluded certain revenue items.

Further, the firm improperly self-certified as a small business on a number of contract awards. The district office failed to catch this misleading statement, and to properly evaluate and verify the company's representations concerning size.

With regard to I-NET's graduation from the program, SBA initiated proceedings on September 28, 1992 and the firm agreed to graduate on June 16, 1994. From a business standpoint, there is no incentive for a firm to graduate early from the program. This highlights the need to strengthen the SBA regulations concerning the evaluation and processing of companies for early graduation.

SBA review of TAMSCO indicated the following: District and regional offices recommended decline of the firm's application for technical reasons. Regarding control of the board of directors, this recommendation was overturned by the Headquarters Eligibility Specialist and the firm was approved by the Associate Administrator for Minority Small Business and Capital Ownership and Development. We find no reason to disagree with this decision.

Abuse of competitive thresholds and abuse of Indefinite Delivery Indefinite Quality (IDIQ) contracts is an issue that has been addressed. SBA thought it could rely on the contract value certified by a U.S. Government contracting officer. We could not. Consequently, to prevent abuse, on June 7, 1995 the SBA published a regulation that required competitive thresholds of \$3 million for services, \$5 million for manufacturing, to be applied to the total Government estimate, including all options, for all Government contracts including IDIQ's.

The GAO reported that this firm received at least 22 contract awards within 2 weeks of its graduation from the 8(a) Program. The report was critical of the fact that 13 of the awards were IDIQ contracts from a number of Government agencies. There is no regulatory prohibition against 8(a) contract award under these circumstances. Even during the week prior to graduation. Firms that are in compliance with 8(a) eligibility requirements and business activity targets or remedial measures, can receive contracts under the program right up until the time of the program term of completion. The firm was not in compliance with its competitive business activity targets, but in compliance with its remedial measures. Consequently, the firm was eligible for the contract awards.

SBA has successfully addressed many concerns raised by past GAO and IG reports. For example, application processing. Currently the average processing time for initial applications is 93 days. Over the last 3 years, the average processing time has been reduced from 208 days to the current level.

Management Information Systems. In 1995 the Agency implemented the MEDCOR Data Tracking System. It is now fully operational. Annual portfolio reviews; 84 percent of all 8(a) firms were reviewed during fiscal year 1995, compared to 57 percent in fiscal year 1994. It is expected that the review will be completed for all 8(a) firms this fiscal year.

Terminations of ineligible firms. In the last 18 months 334 ineligible firms were removed from the program. SBA processed more termination actions in that period than it had processed in all prior years accumulatively.

In conclusion, SBA's 8(a) Program has done much to assist disadvantaged entrepreneurs and to bring the benefits of diversity, creativity and innovation to the American economy. For this reason every President from Richard Nixon to Bill Clinton has supported the program. This concludes my testimony and I will be happy to answer any questions you may have.

Chair MEYERS. Thank you Mr. Jenkins. Our next witness is Mr. William Campbell, Chief Financial Officer, U.S. Coast Guard.

[Mr. Jenkins' statement may be found in the appendix.]

**TESTIMONY OF WILLIAM CAMPBELL, CHIEF FINANCIAL
OFFICER, U.S. COAST GUARD**

Mr. CAMPBELL. Good Morning Mrs. Meyers. I'd like to thank the Committee for the opportunity to come here and represent the Coast Guard on this issue.

I'd like to make three points. First, we took the anonymous allegations regarding TAMSCO very seriously. We are very concerned about any allegation or appearance of impropriety in contracting. We immediately contacted the Department of Transportation, Office of Inspector General, and reported the allegations, and we convened a formal investigation.

The investigative officer was a captain with 23 years commissioned service, 8 years as a contracting officer, and in various times had, had an unlimited contracting officer warrant, so he was an expert in procurement.

The investigation took over 5 days with sworn testimony involving 16 individuals and 123 exhibits. The report of investigation had an extensive review within the Coast Guard including our Chief Council, Chief of Staff, and the Commandant of the Coast Guard.

Our report came to the conclusion that there was no wrongdoing. However, we are always concerned of, as I said, even the appearance of a conflict of interest, and we took additional steps on our own to prevent any misuses of the 8(a) Contracting Program.

We have gone to a single Head of Contracting A (HCA) activity to ensure that there's consistent execution of contracting policies across the Coast Guard, I am that head of contracting activity. We have provided additional training to both technical and contracting personnel on the 8(a) Program. Some of the training for the contracting personnel is mandatory. We did an extensive review of our small business standard operating procedure to make improvements to it, and we developed a small business marketing guide that we thought would make for more appropriate behavior by 8(a) firms when marketing our personnel.

These Coast Guard initiatives are now in a pilot program being done at Coast Guard headquarters and we intend to migrate those changes into the field at a later date.

Second, I'd like to point out that the Coast Guard has an extensive organizational system of checks and balances within contracting. This prevents collusion or inappropriate behavior, we believe. We have separated operational contracting functions from policy and oversight. All contracting decisions are made by the contracting officers, and we try to ensure that no undue influence is permitted from technical personnel or program personnel, and we have periodic procurement management reviews to insure full compliance with all statutes, regulations and policies.

I am concerned after reading the GAO report that we have looked at the same thing and come to different conclusions. So, I am not completely sanguine and I would welcome the opportunity to sit down with the General Accounting Office, go over whatever evidence they may have that was not available to us, and answer any questions they may have.

I do believe after reading the GAO report that we covered all of those issues and more in our investigation, but as I said since we

weren't privy to their working papers, I am still uncomfortable that there might be something that hasn't been addressed.

There were some issues that GAO raised that I believe were incorrect. We have provided the Committee staff with documentation that shows that the Coast Guard did not change the Standard Industrial Classification code, the SIC code. We provided information on the description of the duties to be done to the Small Business Administration. They recommended the SIC code and gave us justification why that was the appropriate SIC code.

As far as the 8(a) Program being a way around competition, I don't know where that statement came from. I am the Coast Guard's Senior Competition Advocate and I can assure you that it is not our policy to avoid competition using 8(a) or any other method, and we do not view competition as an impediment to our operations. In fact, the Coast Guard has an admirable record. I was unable to, because of short notice of being able to testify, pull together statistics, but historically the majority of all of our procurements are full and open competition.

In looking back at information that is available, the sole source award was appropriate and fully complied with the SBA regulations at the time, and I can assure you there was no violation of the Competition in Contracting Act. It was not pertinent to this case. The reason that the award was made so close to the graduation date is that I stopped the award that would have been made in the Spring until we could perform a full, formal investigation and determine if the allegations were correct. Not being able to prove that the allegations were correct, I felt that justice delayed was justice denied, and we went forward and awarded the contract.

As I said, I'd be happy to meet with the General Accounting Office and their representatives to go over any differences we may have, and I'd be happy to answer any questions that the Committee might have.

Chair MEYERS. Thank you Mr. Campbell. Our next witness is Mr. Nicholas Innerbichler who is the CEO of TAMSCO.

[The information may be found in the appendix.]

TESTIMONY OF NICHOLAS R. INNERBICHLER, CEO, TAMSCO.

Mr. INNERBICHLER. Good morning Madame Chair. I would like to summarize my testimony. I would like the actual testimony to be included as part of the record.

Chair MEYERS. Without objection.

Mr. INNERBICHLER. I would like to take the opportunity to thank you for allowing me to provide a full and factual record regarding the GAO, September 1995, report. I am humbled to be here to give my opinion regarding the 8(a) Program to those of you who hold the power to bring new life into or extinguish this program, a program that has meant and continues to mean so much to so many minority business men and women.

If some members of this Committee were in my place, you would feel outraged at the demeanor of the GAO report, but as a minority I have grown up experiencing bias and prejudice every day of my life. As regards to TAMSCO in the GAO, the GAO report is less than full presentation of the facts. It is fraught with misrepresentation, it's prejudicial and exploitive of TAMSCO and its employees.

The GAO would lead you to believe that if minority individuals and companies are successful under the 8(a) Program, it must be done under illegal and improper means. On the contrary, our success at TAMSCO is rooted in hard work, the entrepreneurial spirit of our employees, and delivering quality products on time and within contract costs.

In brief GAO has not been fair or accurate in suggesting that SBA failed to properly address 8(a) Program eligibility with regard to TAMSCO. TAMSCO scrupulously abided by all and any requirements in the application process and throughout the company's program term. With regard to the IDIQ sole source contract awarded by Coast Guard, GAO's report misleads by failing to mention the Coast Guard extensively reviewed charges described in GAO's report almost 2½ years ago and found charges without any merit. As GAO well should have known, the facts do not even remotely support or justify concern that rules concerning competition were violated in award to TAMSCO.

By way of introduction, I was born in Magdalena, New Mexico. I'm of Hispanic heritage. Before I started TAMSCO, I had spent 20 years in the Aerospace business, starting as a file clerk and moving my way up into middle management. My career had stalled and it had stalled for two reasons: First, I did not have a college degree, and my ethnic background was going to limit my professional career. So, I decided to start my own company.

When I formed TAMSCO, I anticipated applying for the 8(a) Program. From the onset, TAMSCO paid careful attention to SBA rules and regulations. The company was expressly structured to insure that at all times I owned 51 percent of outstanding stock and retained complete control of the company.

What have we achieved at TAMSCO? We have 557 employees of which 48 percent are minorities. We are a systems integration and manufacturing business. We develop complex software for air traffic control systems. In fact, if you fly the Atlantic or the Pacific routes, you'll be flying on routes that have been generated by our software that we have developed.

Our company pays \$6.87 million annually in Federal and State income and benefit withholding taxes and we subcontract in excess of \$12 million annually. That's a significant tax base and a significant repayment to the Government. We are an active participant or a major financial contributor to minority business coalitions in advocacy of minority business rights and equality.

We also pay back the minority business community by helping 8(a) startup firms in small business with developmental assistance and subcontracts. We support minority universities. We are in our third year of our scholarship program at TAMSCO. We award two scholarships yearly, and one of those scholarships goes to a minority child or one of our minority employees.

I'd like to look at the GAO report and its inaccuracies. First of all with regard to our program participation term, our program term ran from September 18, 1984 until September 18, 1993. The reason for that is that at that time your term started when you were awarded your first 8(a) contract.

With respect to the negative control or eligibility issues, as part of our application, we provided to the SBA our bylaws which pro-

vides that there is one vote for each share of stock outstanding. There are 5,000 shares. I hold 2,550. Mr. Bilawa holds 2,450. That's in compliance with the code of Federal regulations and SBA regs. The bylaws expressly describe powers and duties of the president as chief executive officer with charge and control of all its business affairs and properties.

Further, as part of our application, we provided a board of directors June 23, 1983 resolution which said that I was the only corporation official empowered to sign checks. In our height, I have total control of day to day operation and final approval on all corporate matters.

Much is made about the fact that Mr. Bilawa and I had a previous working relationship. We did not falsify that. We provided that as part of our resumes that were part of the application process. Much ado was done about where our first office location was, that it was located in Mr. Bilawa's home. Well we had our office in his kitchen. We had our word processing in his dining room, we had our files and our supplies in the basement. Quite frankly, I lived in an apartment, a one-bedroom apartment, not much place to have an office. However, by the time we started 8(a) Program participation in August 1984, we had established our corporate office in Beltsville, Maryland and have had our office there or in Calverton ever since then.

The report would lead you to believe that we were denied entry into the 8(a) Program on two occasions. Contrary to the report, we were never denied entry into the 8(a) Program. The only letter that we ever received concerning our application was a letter approving us for participation in the 8(a) Program.

Because this meant so much to me to get into the 8(a) Program, I stashed the application on a weekly basis while it was at the district office, the regional office, and the central office. We are aware because of persistent inquiries, that two of many SBA officials did not favor admission on issues of negative control and financial stability. We provided briefings to the SBA national office personnel to ensure decisionmakers understood the company structure and all the steps we had taken to ensure that I had day-to-day control of the company.

We addressed the financial stability issue by providing SBA with updated information on awarded contracts, banking and savings balances, and showed within the original application package a bank commitment for an asset based line of credit.

Now I would like to address the Coast Guard sole source contract. The criticism of the Coast Guard contract is based on contract type, minimum value, SIC code, and that it was a graduation present to TAMSCO.

The Coast Guard thoroughly investigated this contract award. The investigation was triggered by an anonymous letter that was received in the Spring of 1993. It was extremely thorough; it was months-long; there were sworn statements from 16 individual witness; 123 documentary exhibits were considered. In fact, the three volumes of the formal board of inquiry was provided by the Coast Guard to TAMSCO.

What was the result of the Coast Guard's inquiry? No wrong doing or improper conduct by Coast Guard, TAMSCO or SBA. Pro-

curement was entirely proper. The contract was not awarded until completion of the review by the Coast Guard, full exoneration of TAMSCO, detailed findings that the contract awarded TAMSCO complied with all procurement laws and regulations, and that there was no conspiracy or improper conduct on the part of TAMSCO, the Coast Guard or the SBA.

I'd like you to note, that the GAO did not even refer to the extensive Coast Guard preaward inquiry as clear proof either of bias or ignorance, neither of which speaks well for the report.

The specifics on the Coast Guard contract—the Indefinite Delivery Indefinite Quantity type contract was the only contract type to afford the Coast Guard vital flexibility in sensible increments when and if TAMSCO performed adequately. It made no sense to commit the Coast Guard to guarantee to pay for tasks until detailed requirements and needs for such tasks were firmly established.

To use an example, of the total aggregate ceiling of all TAMSCO's awarded IDIQ's, TAMSCO has been able to perform and bill less than 41 percent over the life of our existence, whether those are 8(a) or competitive IDIQ's.

With respect to the minimum value and guarantee commitment to the contract, careful and conservative estimates were prepared by the Coast Guard. The Coast Guard formal findings determined the actual guaranteed minimum value of the contract, \$2.1 million, was developed properly and without the intent to insure sole source award to TAMSCO.

As regard to the SIC code, there was a disagreement at Coast Guard over the SIC code between the acquisition people and the program people. To overcome that, they delivered the statement of work to the SBA, for the SBA to determine what the proper SIC code should be. Upon statement review of the work statement by SBA, SIC code 4813, telecommunications, for the requirement that was identified.

As regard to graduation presents, no presents, there are no presents, even under the 8(a) Program. We self marketed, we aggressively worked for and earned each contract. We have always been straightforward and honest in dealing with Government customers. We have scrupulously abided by all procurement laws and regulations. We strictly adhered to all eligibility requirements of SBA's 8(a) Program.

We are mystified by GAO's suggestion that TAMSCO in any way abused the 8(a) Program. We are confident that SBA files relating to our program participation and Coast Guard's formal review record will substantiate TAMSCO's assertions. We are extremely disappointed with GAO's report and cooperated fully with the GAO. They asked for an hour of my time, an hour of Mr. Bilawa's time. When the investigators made their exit, they assured me that they had found absolutely no indication that TAMSCO did anything other than follow the established rules and regulations.

I am not at all relieved. Our valued reputation and the hard-working employees of TAMSCO have suffered unfairly from publicity spawned by GAO's poor work and its lack of integrity.

In closing, members of the Committee, I would like to ask you a rhetorical question. What was the Congress's goal in enacting the 8(a) Program? If that goal was to allow minority men and women

the opportunity to establish successful businesses, to stand on an even par in the American free enterprise system, and to make vital contributions to the American economy, then you have succeeded with TAMSCO and many others. If you came here with open minds, then my words will have made a difference today. But if you came here closed-minded, then like the wind at sea, or the falling tree in the forest with no one around, you will not have heard my words. Thank you.

[Mr. Innerbichler's statement may be found in the appendix.]

Chair MEYERS. Thank you Mr. Innerbichler.

I have some questions and I'm sure that a number of our Members do, and so I'll try to be brief. We're going to start the lights and I'd like people not to make 5-minute speeches and then ask a series of 10 questions. So, that I'd like you to ask your question and try to get a response within a reasonable amount of time only because there are quite a few Members here.

Mr. Jenkins, business opportunity specialists are reviewed in part based on their success at getting 8(a) contracts for their client 8(a) firms aren't they?

Mr. JENKINS. Yes, they are.

Chair MEYERS. I think that was probably one of our mistakes in 1988. So, wouldn't you consider having an opportunity specialist deciding on a SIC code designation to be a conflict of interest?

Mr. JENKINS. Yes, and it is not our policy to provide the Coast Guard or any other Agency an SIC code. That is a contracting officer's responsibility.

Chair MEYERS. Business opportunity specialists don't receive any special training in contracting, so why would a contracting professional defer to their judgment?

Mr. JENKINS. As I mentioned, they would not. I am not aware that happened, that is not our policy to provide a SIC code. Certainly we are offered an SIC code for our review. In concurrence we do not make the initial determination on what a particular requirement should have—what the SIC code should be on a particular requirement.

Chair MEYERS. I'm going to read just briefly from Mr. Wheeler's report. He said they awarded the contract, this is TAMSCO, with the potential maximum value of \$14 million 1 day before TAMSCO's term in the 8(a) Program expired in 1993. The notes of one Coast Guard contracting official referred to this contract, the notes of a Coast Guard official as a graduation present to TAMSCO. Coast Guard officials told us that the Coast Guard viewed competition of contracts as a hindrance to its mission and that it was always their intention to award the contract to TAMSCO. Thus, Coast Guard officials changed the contract's original standard industrial classification code, or SIC code, which TAMSCO had outgrown to one for which TAMSCO qualified, and two, lowered the contract's original labor hours by 46 percent to avoid the \$3 million threshold required for competitive IDIQ contracts.

Now, I would like—yes, that's in the GAO report. I guess I am not terribly surprised that the three units that were involved in this, SBA, the Coast Guard, all spent all of that time looking at it and none of the three of them found anything wrong with it, but

when someone from the outside looked at it, it seems very wrong and they said so.

Ms. Lee, in hearing your and Mr. Wheeler's testimony with regard to eligibility questions raised about the principals of I-NET and TAMSCO, when they were making application to the 8(a) Program, it sounds to me as if they kept tinkering with their structure until it was acceptable to the SBA. Isn't this a bit suspect? Don't these changes amount to rather cosmetic changes just to gain access to the program?

Ms. LEE. We have some concerns about that. We have never done any auditing work on TAMSCO, so I cannot address that company. We are concerned that it is possible for an applicant, if they do not strictly meet the criteria for entry into the program at the time of application, to go back and, with the stroke of a pen so to speak, change the controlling ownership, divest themselves of assets to come under the eligibility threshold, and take various other actions to make themselves eligible.

One way of addressing that would be to build some presumptions into the law that if you have made certain kinds of changes within some period of time before you apply, there is a presumption that those changes were made for the sole purpose of meeting the eligibility requirements and, therefore, will be disregarded.

Chair MEYERS. The SBA district and regional offices, not just one but both, offices recommended that Kavelle Bajaj of I-NET not be certified in the 8(a) Program. However, this decision was overturned by the central office, why is that?

Ms. LEE. Are you addressing that question to me?

Chair MEYERS. Yes, did you discover why that was?

Ms. LEE. Based on the audit work that we did, it appeared that the primary reason for overturning the lower level recommendations and allowing the company in was additional documentation that indicated the owner had taken some courses in Computer Sciences. The Regional Counsel believed these courses gave her at least minimally adequate expertise to run the company because she was now more knowledgeable about the work. That is why they ultimately made the decision to allow them in the program.

Chair MEYERS. Mr. Wheeler, finally, I would ask you to react to the fact that it's been indicated; "Well gosh this is just two companies out of all those thousands that are in the wrong." Can you elaborate on how many firms you looked at and maybe Ms. Lee, could you also react to that? Mr. Wheeler.

Mr. WHEELER. Madame Chair, basically we looked at two firms — I-NET and AMSCO — and 8(a) activities concerning those firms and, in the case of TAMSCO, the Coast Guard. Our findings pertain to only those two firms.

The firms were identified from those in the top 25 in terms of contract dollars awarded in 1992. This work built on earlier work that GAO had done concerning problems in the management and administration of the program, particularly as it related to concentration of contract dollars and contracts among 8(a) participants.

Chair MEYERS. Thank you. So, you looked at the top 25 and selected these two from that top 25.

Mr. WHEELER. Yes, Madame Chair.

Ms. LEE. Yes. We did a major audit in which we looked at 50 of the largest companies. We have not, however, done any audits in which we selected a purely random sample from which one could legitimately make suggestions as to the universe.

While it is true that we identified some problems with companies that we did audit, from those audits we could not legitimately make projections and say "X" percent of the 5,700 companies in the program have these kinds of problems.

Chair MEYERS. Well, of the 5,700 who are certified—now that's certified is it not?

Ms. LEE. As eligible, yes.

Chair MEYERS. Yes. Half of them had no contracts at all, is that right?

Ms. LEE. Yes.

Chair MEYERS. And—

Ms. LEE. At least as December 1995.

Chair MEYERS. I will yield at this time to Mr. LaFalce.

Mr. LAFALCE. Thank you very much Madame Chair. I think your questions have been helpful. Mr. Wheeler you've looked at two firms in this report, that's it, correct?

Mr. WHEELER. That's true, Mr. LaFalce.

Mr. LAFALCE. Alright.

Mr. WHEELER. Yes.

Mr. LAFALCE. Both of these firms were certified as eligible about a dozen years or so ago, 10 or 11.

Mr. WHEELER. In approximately 1984.

Mr. LAFALCE. 1984, Now let me not refer to I-NET because I-NET is not here at the witness table, but TAMSCO is, and let me have a jointure of issue. Did you in your report find anything that you think is criminally wrong with any governmental or private sector action with respect to TAMSCO?

Mr. WHEELER. Not at all, Mr. LaFalce. In fact we have no information that TAMSCO misrepresented anything to the SBA and our view with respect to the awarding of the IDIQ contract is that the drive to award the contract to TAMSCO came from within the Coast Guard.

Mr. LAFALCE. Well we're here in large part because of your report and we have 50 percent of your report present. Did you find any civil wrong-doing on the part of TAMSCO.

Mr. WHEELER. No, we found no violations of laws, rules, or regulations on the part of TAMSCO and we did not conclude that there were any.

Mr. LAFALCE. Well now, what are the problems then that you found with respect to TAMSCO that you think should lead us to make certain improvements in the program?

Now that we've established that there's no civil or criminal wrong doing. I'm sure Mr. Innerbichler appreciates that statement. What did you find that troubled you, that leads you to conclude that we can and should indeed make some improvements in the program?

Mr. WHEELER. The primary issue relating to TAMSCO by itself is the issue of eligibility—

Mr. LAFALCE. So, let's focus in on the issue of eligibility—

Mr. WHEELER. And—

Mr. LAFALCE. What changes should we make that are illustrated by the TAMSCO experience?

Mr. WHEELER. Let me speak to what we found. Basically, the problem with the issue of eligibility for TAMSCO is an SBA problem. In that particular instance there were issues, fairly serious issues—

Mr. LAFALCE. What were those issues?

Mr. WHEELER. Relating to control. In this particular instance there were concerns with respect to control—

Mr. LAFALCE. Well what were your concerns?

Mr. WHEELER. The concerns were that Mr. Innerbichler would not be able to exercise complete control over the firm as required in SBA regulations.

Mr. LAFALCE. Do the regulations require complete control or majority control?

Mr. WHEELER. I think what the regulations require is that he be able to control the day-to-day operations of the firm and—

Mr. LAFALCE. Can we be a bit more precise as to what the regulations call for, and of course Mr. Innerbichler is here and I do not know his qualifications, but he certainly makes quite an excellent presentation. He creates the appearance, at least during the testimony, that he's in control, knowledgeable. What's your problem?

Mr. WHEELER. Mr. LaFalce, it's not my problem. I believe it's SBA's problem.

Mr. LAFALCE. Well what's their problem?

Mr. WHEELER. In that context—

Mr. LAFALCE. I didn't mean it as your problem.

Chair MEYERS. Kindly let him finish.

Mr. LAFALCE. I'd like to.

Mr. WHEELER. We found concerns raised at two levels within the SBA itself relative to issues of control of the firm; the issues were twofold. One related to Mr. Innerbichler's inability to control the operations of the firm. Second, was the issue of whether or not the nondisadvantaged owner would benefit improperly from the program. In that particular instance, what SBA was concerned about, is that the articles of incorporation provided equal voting power for the two members of the board of directors.

The other materials that were submitted to SBA included the bylaws. The bylaws indicated that there would be three directors, but that conflicted with the articles of incorporation that indicated two. There were also other concerns.

Mr. LAFALCE. Alright. May I ask Mr. Innerbichler, how were those issues dealt with, some 11 years ago and since then?

Mr. INNERBICHLER. We became aware, Congressman, that the SBA region and district had concerns with respect to the eligibility and control, I think in the area of control, and the resumes that we submitted. Bill and I had worked together where I had been subordinate to Bill in the past. I think there was concern about that. I can't be positive. I never had any dialogue with the regional or the district office. The central office is where we had the dialogue and what we showed them there was just basically the stuff that was on our application. We didn't change anything; we didn't provide the SBA with new data; we didn't red line our application; we just relied on the data that was on our application.

The only new information we gave the central office was with respect to the financial liability, and that we had been awarded a competitive contract at Fort Monmouth. We had our own office now in the Beltsville area and that we had a commitment letter from Nations Bank which was Suburban Bank at the time in our application that said they were going to give us a line of—asset-based line of credit at the time we were entered into the 8(a) Program.

Mr. LAFALCE. What about the specific difficulties that Mr. Wheeler articulated with respect to the bylaws, the articles of incorporation, the 50/50 control et cetera, any kind of—

Mr. INNERBICHLER. As far as I know, Congressman, I have looked at that just recently. We've never changed them from day one. It requires that I own 51 percent of the stock, that I have day-to-day control.

Mr. LAFALCE. 51. Not 50?

Mr. INNERBICHLER. No, 51 percent. In fact, I believe that it says, and this is a quote of Federal regulations, if I may read it.

Mr. LAFALCE. Yes.

Mr. INNERBICHLER. "The socially and economically disadvantaged individual upon whom eligibility is based shall control the board of directors of an applicant or 8(a) concern either in actual numbers of voting directors or through weighted voting, e.g., in a concern having a two person board of directors or one individual on the board is disadvantaged and one is not, the disadvantaged vote, must be weighted, worth more than one vote, in order for the concerned to be eligible for 8(a) Program participation."

Mr. LAFALCE. How many members were on the board of directors, and are on the board of directors this year?

Mr. INNERBICHLER. There have only been two members on the board since day one.

Mr. LAFALCE. You have weighted control?

Mr. INNERBICHLER. Yes, I do.

Mr. LAFALCE. I see. Thank you very much.

Chair MEYERS. Mr. Talent, I think we will have time for you to ask questions if you'd like to do it now, or would you rather—

Mr. TALENT. One brief one. As often happens here, I have another hearing going on at the same time, Madame Chairman, so if I could ask a real brief question—

Chair MEYERS. Yes. In fact you don't have to—I think we will have your full 5 minutes before we have to go vote.

Mr. TALENT. Well I don't know, perhaps maybe Mr. Jenkins, maybe Mr. Innerbichler may want to comment on this because problems in getting certified is something I've had a lot of people complaining to me about in my district, and on both ends of it.

I mean, people feeling like well somebody else got certified who shouldn't have, and also saying I didn't get certified and I should have and they complain about contradictory kinds of Catch-22 regulations. In other words, if you don't have any financial backing, or enough financial backing well you're not competent enough to be certified. On the other hand if you do, then you're too wealthy to be certified. I mean I've had conversations like this with people. Maybe you could just, first of all Mr. Jenkins, comment in a general sense about whether you think that there is a need to try and make these rules for being certified more clear. I mean, clearly

what we have here is some questions that were raised, and Mr. Innerbichler feels like they were unjust on the part of the SBA, and he does sound like a very credible witness but, is the problem vague or maybe contradictory standards for being certified?

The other thing, and I want you to comment, and Mr. Innerbichler having been on both ends of this program, you've graduated now, right?

Mr. INNERBICHLER. Yes, sir.

Mr. TALENT. Seems to me there's a tension that the Congress has built into this that we all ought to openly acknowledge.

We want the agencies to utilize this program to contract with minority contractors. They develop a working relationship with somebody, they have confidence in them, this is an established firm, and then they start hitting the ceiling for graduation, and so now they need to get out and the agencies want to keep them in because they have a record of dealing with them. I mean, clearly that seems to be what happened here.

So, is this a tension that we need to just face down here as a Committee and as a Congress and resolve about whether we want to maybe lift these gaps in graduation or not and just try and force the Government to confront this issue better than we have? Because I can imagine the Coast Guard was very pleased to be able to get you, you don't have to comment on this, a contract the day before you graduated. They probably have great confidence in your firm. This is contracting with a minority firm which we want them to do and yet now for the most of the performance you're going to be out.

So, if you could comment, really anybody who feels they have a comment, on those two issues. First, do we have a problem realistically with vague and contradictory rules for getting certified, and second, how should we resolve that tension when firms get to the point that they're about ready to graduate? I mean should we just struggle with it as it is now, or is there something we can do?

Mr. JENKINS. Certainly, on that first point that you made—there have been a lot of concerns by companies that, on one hand the 8(a) Program, the rules and regulations are too stringent in terms of getting in.

One of the things we look at is the ability of a company to succeed in terms of being in business for 2 years, and experience in terms of contracting. We use the 2-year rule in order to ensure that companies applying for the program, possess the ability to succeed on Government contracts. So, we look to assist companies that go through the 9 year program, to come out a much stronger company.

Mr. TALENT. Doesn't it present, I mean, when you've got those kinds of, isn't it a recipe though for some level of arbitrariness on the part of your Agency? Because really, whoever's doing it can often come out, if they have a reason for wanting to come out one way or another, they can justify it coming out one way or another based on your regs?

Mr. JENKINS. Well one of the things SBA has done is structured it's 8(a) Program, Minority Enterprise Development Program, to provide for a central processing. Where as in the past all 69 districts processed 8(a) applications, applications are now processed

under one processing unit, so there is consistency in the determination.

Mr. TALENT. One brief follow-up on that by the way. Do you rely on, if there's a local government certification body with a similar program, a local government or a State program, do you rely on decisions they may have made to either certify or not certify somebody in considering, or is your process entirely separate?

Mr. JENKINS. Our process is entirely separate. In fact, what happens in many cases, a lot of local and State government agencies rely on the SBA certification as proof positive.

Mr. TALENT. OK.

Chair MEYERS. Don't even really pay a lot of attention to your local and district offices obviously.

Mr. JENKINS. Well once again, what happens in the 8(a) process, the decision to allow a firm into a program or decline a firm from the program rests by statute upon the Associate Administrator. The field offices makes recommendations, those recommendations are then reviewed by a headquarter's staff to determine if, in fact, those recommendations are consistent with our regulations and policies.

Mr. INNERBICHLER. Mr. Talent, Congressman Talent, excuse me. As far as the vagueness of the way the rules are laid out. The problem it causes is that it allows for subjectivity. That's number one. Number two is the experience level of the people who are actually reviewing the application process.

We were going into the high tech arena. There are very few business opportunity specialists that really had the entire high tech range to understand what you have to be, in order to be successful. I mean subjectivity came in with the fact that our resumes were in there, and I admitted to the fact that I had worked for Mr. Bilawa in the past. Mr. Bilawa was a little bit older than I was, he started in Aerospace before I did and he was also white. He also received supervision a little bit earlier.

With regards to the time in the program, I think the Minority Commission on Minority Business that was empaneled the last time the 8(a) law was reformed—it's a significant document, it was a bipartisan panel. They interviewed thousands and thousands of companies and individuals and it had some recommendations in there.

I don't think there's ever been a study done by the Congress, by the SBA to really look what is the timeframe that a company should be in the 8(a) Program. At one time it was 4 years, the chance of getting additional 3 years, now it's 9. What's the magic number? I don't think there's a magic number. I think you have to look at the individual companies, whether they're high tech, or whether their low tech, and each company takes different time.

Mr. TALENT. I don't want to make it more complicated than it is, but I don't see why we couldn't have bonus periods in the program if these companies do a good job in minority hiring themselves. I mean, one of the concerns that I've always had about the program is how much are we actually getting minority hiring, although most of these firms do a pretty good job of it.

We're going to have to go, I guess, Madame Chairman. But would you agree that clearly we do need to look at this? Because

this keeps coming up over and over again. I don't think there's a member of this Committee who hasn't had some kind of case work in his district on this and that we ought to take a look at the whole graduation concept and see that we couldn't make it work better?

Mr. INNERBICHLER. What I would do, if I was you, if I was the Committee, I would empanel someone from Harvard or Yale to study the problem and find out how long the time should be and make it then, make it very simple.

Mr. TALENT. That's the one thing you've said so far, Mr. Innerbichler, I'm not sure I agree with. I mean, Harvard or Yale? You were a good witness.

Mr. INNERBICHLER. How about the University of New Mexico?

Mr. TALENT. There you go, University of Missouri is not bad either.

Mr. INNERBICHLER. OK.

Mr. TALENT. Thank you Madame Chair.

Chair MEYERS. For the Committee's information, Mrs. Bajaj of I-NET was invited to testify but declined that invitation through her attorneys, and we will return in just a moment.

[Recess.]

Chair MEYERS. The meeting will come to order, and I think before we resume with questioning, I would like to recognize Mr. Wheeler because I'm not sure that he got a full opportunity to respond to an earlier question by Mr. LaFalce, and I kind of cut him off and went on to the next question and would you finish your response Mr. Wheeler?

Mr. WHEELER. Madame Chair, I think as to Mr. LaFalce's point, the most important information is that SBA itself, at two different levels, had very serious concerns about issues. First, was negative control involving the TAMSCO application. Second, it also had serious concerns as to whether the nondisadvantaged owner would benefit improperly from participation in the program.

We found nothing in the record to indicate that those areas of concern were addressed in terms of the SBA's ultimate decision to admit Tamsco to the program. We then went to the official that made that decision and he was not able to explain, in our view, adequately the decision he had made. In fact, when we asked him about how he dealt with the concerns and what his rationale was in terms of the concerns that had been raised, he said he did not have an explanation. I think that's an important point with respect to that issue. It's entirely possible that TAMSCO had no way of knowing that that had occurred.

Chair MEYERS. So, your response to Mr. LaFalce is that there was no civil or criminal problem here, but more a question of programs that just allow an appearance of something being wrong or of a criminal nature?

Mr. WHEELER. Well, I think it's twofold. With respect to the issue of SBA oversight, I think that in that particular instance, the fact that there's nothing in the file, there's no reason or rationale in terms of the ultimate decision, nor can the person that made the decision offer any explanation for how he dealt with these serious concerns, goes to the issue of effectiveness of SBA's management oversight of the program.

I think that with respect to the issue of the IDIQ contract award to TAMSCO, that issue goes more to what we refer to as abuse. I think that what we're talking about is that given the latitude in 8(a) contracting, and particularly with respect to the IDIQ contract option, there is lots of room to engage in abuses that don't necessarily violate criminal or civil law, or even necessarily, the regulations. I think that is the reason why there was a change in the regulations involving IDIQ going from minimums as thresholds to maximums. That's my point.

Chair MEYERS. Mr. Jenkins, let me follow up for just a moment and then we'll proceed with regular questioning.

Why is there nothing in the file? I mean if there is a change made, a variance allowed, a disagreement with the recommendations of both the local and the district office, I mean after all, they're on the scene and you're not on the scene. Why isn't there something in the file? Are there no written requirements? You don't have to document this in any way? You can just say, "well we'll do this," and you don't have to document it in any way?

Mr. JENKINS. No. That should not be the case. Our requirement is that there should be documentation in the file. In this case we are dealing with a file that's over 10 years old. I can't tell you the condition this file was in.

We're talking about a technical issue here, we're dealing with control. Mr. Innerbichler, in fact, owned 51 percent of the company, the issue went to the board of directors. We looked at whether or not there was negative control by the nondisadvantaged member, that is something that is normally identified to the companies and they are given an opportunity to correct that on reconsideration. We feel that, that is a technical error, we don't see any wrong doing in terms of the company trying to mislead us on that particular point.

Chair MEYERS. Alright. Mr. Fields.

Mr. FIELDS. Thank you Madame Chair. Ms. Lee, you mention in your testimony that over the past 3 years you have seen some reduction in fraud in the 8(a) Program, about 40 percent, is that not correct?

Ms. LEE. We said that we had seen some reduction for a number of reasons.

Mr. FIELDS. Some meaning 40 percent, is that not correct? According to your testimony.

Ms. LEE. I don't recall if I said 40 percent.

Mr. FIELDS. Page two of your original testimony.

Ms. LEE. Page two. The 40 percent is not a reduction in fraud, it is a reduction in the amount of time that our investigations division spends on investigations in the 8(a) Program.

The major reason we have reduced the amount of time we're spending on investigations in the 8(a) Program is the growth of the business loan and disaster loan portfolios. We feel we have to spend more time there. A second reason is that we have presented a number of fraud awareness training programs to SBA employees, and we do believe that we're getting some positive results out of that. Finally, in some respects, the reforms that were made in the 1988 legislation reduced some of the openings for fraud to occur.

Mr. FIELDS. Do you have any additional recommendations you would like to make?

Ms. LEE. Well one of the major ones I made earlier this morning is that we think much of the problem that currently exists in the 8(a) Program, could be alleviated by placing a cap on the dollar amount of contracts that an 8(a) firm could obtain.

If such a cap was incorporated into the requirements, I think you could alleviate the concentration problem, you could alleviate the abuse of the SIC codes that are assigned, and you would not have to worry so much about competitive mix. You would also alleviate the problems of determining whether or not somebody was still economically disadvantaged.

My concern is that there are tradeoffs here. The more complicated the program is to administer, the more discretion there is in program officials, and the more subjective the criteria, the more resources are required to administer that program effectively without having fraud and abuse occur. As resources are being cut, we think it is extraordinarily important to try to make the program simpler to administer, more objective, and less discretionary.

Mr. FIELDS. I understand. Of the 5,700 programs that you audited, how many did you find to have problem areas?

Ms. LEE. In most of the 8(a) audits that we have done, we've found problems. As I recall in rereading the audit reports that we've done in the last several years, there is only one in which we found no problems.

Mr. FIELDS. Mr. Wheeler, let me direct a few questions to you, relating to your testimony which I find to be somewhat speculative because you make mention of many accusations as relates to TAMSCO.

One that I would like to bring to your attention is, you mention that one of the Coast Guard contracting officials referred to the contract as a graduation present. Do you just listen to any and every comment, and make it a part of your report, I mean, is this some senior level official? Who makes such an accusation and how does it get to be such a major part of your report?

Mr. WHEELER. Mr. Fields, this wasn't just one person. Our report reflects the totality of the work that we did which encompassed taking a very close look at the formal board of inquiry conducted by the Coast Guard, taking a look at documents, and interviewing individuals associated with this particular contract. The issue with respect to the graduation present came up early in the discussions between TAMSCO and the Coast Guard. It came up more than once, as reflected in notes taken of those participating in the meetings and authenticated by the person that took them.

Mr. FIELDS. Who took those notes, are you at liberty to tell us who made—because we have a gentleman, Mr. Campbell who has represented the Coast Guard, in my opinion quite well. Now are you at liberty to tell us who these anonymous people are who are making these accusations, about this company, and about the Coast Guard's consent?

Mr. WHEELER. Mr. Fields, the individuals that told us this were not anonymous. In this particular instance, it happened to be one of the contracting officer's technical representatives who provided us notes. As a matter of fact, this particular issue came up in the

Coast Guard formal board of inquiry. A TAMSCO employee admitted that he had, in fact, used that term.

Mr. FIELDS. But let me say this, let me take it a step further. You admitted that the company did absolutely nothing wrong, is that correct?

Mr. WHEELER. What we have said is we have not concluded that there was any violation of any law or regulation here. I think the kind of conduct and activity that we're talking about, and we characterized it in the report, falls into that area of abuse, in which—

Mr. FIELDS. So, are you saying the company abused its—did they perpetrate any fraud on the Government? I'm talking about TAMSCO.

Mr. WHEELER. TAMSCO?

Mr. FIELDS. TAMSCO.

Mr. WHEELER. No. I have no information that it did that at all.

Mr. FIELDS. Alright. Now let me deal with the Coast Guard if you will. What if anything did the Coast Guard do wrong?

Mr. WHEELER. Effectively, from very early on in this activity, and we have this from more than one person, and these were key individuals involved—

Mr. FIELDS. Just tell me what, if anything, did they do wrong.

Mr. WHEELER. They decided up front that they were going to assure that TAMSCO received this contract in order to avoid competition.

Mr. FIELDS. How do you prove that? You can't prove it based on the document that I have before me.

Mr. WHEELER. It's the totality of the investigation that we conducted. It's a combination of examining records and documents that pertain to this particular transaction and interviewing witnesses that were key individuals associated with this particular award.

Mr. FIELDS. You've reached that conclusion based upon your findings.

Mr. WHEELER. Based upon the totality of the investigation that we conducted.

Mr. FIELDS. This report is the totality of your investigation is it not? Or you have something that's not included in this report.

Mr. WHEELER. Our report shows the results of the investigation that we conducted. It's laid out as a traditional investigative report. It is supported by the evidence, the documents, and the interviews.

Mr. FIELDS. Are any actions going to be taken against the Coast Guard?

Mr. WHEELER. GAO is not in a position to take any action against the Coast Guard.

Mr. FIELDS. Are you recommending that any action be taken against the Coast Guard?

Mr. WHEELER. No. We have made no recommendations.

Mr. FIELDS. Has the Coast Guard done anything wrong?

Mr. WHEELER. We believe that the Coast Guard abused the IDIQ contracting option.

Mr. FIELDS. So, if they did, you're not going to suggest that any action be taken against it?

Mr. WHEELER. I have no information that there were any laws, rules, or regulations violated.

Mr. FIELDS. So, no laws, rules or regulations—I'll be happy to yield to the Chair.

Chair MEYERS. Yes.

Mr. FIELDS. If no laws were violated, there's evidence you can't bring any charges if there are no laws violated, is that not correct? So what are we here for?

Chair MEYERS. Well, if the gentleman would yield.

Mr. FIELDS. I'll be happy to.

Chair MEYERS. Can I ask a question to follow up on that. It seems to me that we did a lot of tinkering with the size standard and the decision is supposed to be made by the Coast Guard, but instead, they sent that decision over to the business opportunity specialist whose ratings improve, the more 8(a) contracts he brings in. Now what is he going to decide? He is going to decide that gosh, this size standard is OK.

Now, maybe that's all right with you Mr. Fields, but it sounds like fraud, collusion and all sorts of wrong things to me and a lot what we have heard about this program in the last 11 years has sounded just like that, but when you start asking questions you really have a hard time pinning anything down. I think it's a disgrace.

Mr. FIELDS. My time is out, but when you start accusing people of violating laws that they have not violated and then say that there are no laws violated. I just think that we have to be very careful when we make these kinds of accusations, people's reputations are on the line.

Now this gentleman has already stated, Mr. Wheeler, that neither the company nor did the Coast Guard violate any rules or regulations, is that not correct?

You're here to tell us that we need to improve SBA, I agree with you 100 percent, we can tighten up the rules and regulations in the SBA, that's one thing, but to put the reputation and this gentleman and the character of his company on the line here is unfair to the Coast Guard and it's certainly unfair to this minority contractor, and this report firmly says that. I mean when you say that the Coast Guard has given this guy a Christmas gift or a graduation gift, I mean you question this person's integrity, now if you don't call that a question of the integrity of the Coast Guard, then what is?

Now if the Coast Guard has not violated any rules and regulations, and if the gentleman has not either, then I would just suggest to you, just as a member of this Committee, don't put those kinds of accusations in books. I mean, let's deal with rules and regulations, and facts, and I would conclude my remarks by saying that, I have a great problem with this report because I mean with this report, I'm ready to go in and have somebody investigated even further, maybe even have them put in jail, but you're not giving me anything at all to do any of that.

Chair MEYERS. Thank you Mr. Fields. Mr. Flake.

Mr. FLAKE. Thank you very much Madame Chair. My question is to Mr. Wheeler also. This booklet is titled, "8(a) Is Vulnerable to Contractor and Program Abuse," and as you know I've sat through this entire hearing this morning and to hear you say that

you took two firms out of 5,700 and out of a possible, perhaps half of that number who actually received 8(a) contracts.

It seems to me that the title itself suggests that the entire program is one that is fraught with such abuse and we hear words like fraud and so forth, when in fact one could not in any way consider this to be a legitimate study if you only used two samples out of a potential base of 5,700.

Do you honestly believe that this sample is a representative sample of which you can draw the conclusions that you draw in this particular document? When, in fact, even if you use a sample of 2 of the top 25 companies in 8(a) that does not in my opinion suggest that the program is necessarily fraught with abuses, and I'm just having a difficult time because I'm a former educator. One thing I don't think as an educator I would ever agree with is that this would be considered a reasonable sample in terms of trying to make a determination on the quality or lack thereof of any particular program. So, if you will comment on that I would be most appreciative.

Mr. WHEELER. Mr. Flake, I would agree with you. This is not a sample, it was an investigation of two particular companies and SBA's involvement with them. It is not possible to take our reported findings with respect to these two matters and project them to the larger universe of active 8(a) participating companies. I would agree with you on that entirely.

Mr. FLAKE. But you have done that, you have done that. The very title of this particular report says 8(a), it does not speak specific to I-NET or TAMSCO. It says 8(a) is vulnerable to program and contractor abuse. This does not speak to any particular element or any particular entity, as in those two that you investigated. This basically suggests that the entire program, wouldn't you agree with that, I mean, if you read this title and you did not read any further in this report, would you not conclude that this basically states that the entire program is vulnerable to contractor abuse?

Mr. WHEELER. Mr. Flake, it was our intention in laying out our methodology and in introducing the contents of the report to make it very clear that our findings were based on investigation of these two matters, and that was our intention in terms of issuing the findings in response to a Senate Subcommittee.

Mr. FLAKE. But it does not. I mean it paints such a broad brush on the whole program and I think you know the attitude in this place at the moment is one that anything that even suggests that there is abuse, anything that suggests that there is fraud, is subject to have a level of scrutiny that in most instances suggests that the program need not exist. Are you suggesting that the program need not exist, that the program does not serve any useful purpose?

Mr. WHEELER. No, Mr. Flake, not at all. In fact we report the facts, as we were asked to do. We made no recommendation whatever, and I would not want to suggest that one way or another.

Mr. FLAKE. You made those recommendations based on two of the contracting entities within a program of 5,700 potential entities.

Mr. WHEELER. Mr. Flake, we made no recommendations at all. We reported the facts, the results of our investigation of these two matters.

Mr. FLAKE. Alright. To Mr. Jenkins, as it relates to the overall 8(a) Program, and your analysis having seen this particular study, what improvements could you make in relationship to the issues that are raised therein, or have those improvements been made?

Mr. JENKINS. Yes. One of the major points in that report talks about the IDIQ contract. As I testified earlier, SBA thought it could rely on a certification by a U.S. Government Contracting Official, we could not. We changed the IDIQ portion of our program. We felt we should not have done that, but we went ahead and changed that. I mean, it's a legitimate part of Government procurement, but for the 8(a) Program, we changed that this past summer.

Mr. FLAKE. Did you make those changes based on the GAO study or did you make those changes based on an internal decision on the basis of your own analysis that it was time for such changes to take place?

Mr. JENKINS. Well, we based it in part on the GAO study. I don't think at the time our changes occurred that the final report had not come out, but in looking at that and looking at some of our internal IG reports, we based our decisions on some of those same issues.

Mr. FLAKE. Ms. Lee, you've seen the report and analyzed it. Are there issues in this particular report that you would consider to be punishable by crime. Are there issues here that suggest that there are criminal activities which the IG's office needs to follow up on?

Ms. LEE. As to TAMSCO, we have never done any auditing work, so I cannot address the TAMSCO situation with any validity.

In the I-NET situation, at the time we completed the audit, we did have some concerns that there were instances of fraud and false statements made to the SBA. We referred the matter to the Justice Department for possible prosecution. The Justice Department determined that because the Agency, in some instances, did not follow its own policies, procedures, and regulations, it was not a viable case for the Justice Department to pursue further. At that point it was dropped.

Mr. FLAKE. Would you consider this to be a fair study based on the fact that it is not a random sample but rather filled with two particular companies as opposed to a random sampling of a number of companies within the 8(a) Program?

Ms. LEE. as Mr. Wheeler suggested earlier and as I also suggested, neither GAO nor we have done a completely random sample of the universe such that we could take the results of that random sample and project it to apply to the entire universe.

Mr. FLAKE. Madame Chairman would it be in order for us to request a study that is more conclusive based on the number of companies that are within the 8(a) Program so that we might have a better chance or an opportunity for really doing an analysis based on fact rather than trying to determine what changes need to be made in the program based on this limited approach that has been taken by GAO in this instance.

Chair MEYERS. To respond to your question, let me ask how many GAO studies have been performed on the SBA and the 8(a) Program in the last 11 years?

Mr. WHEELER. Madame Chair, I don't have that number now. I certainly will get that number to you.

Chair MEYERS. Would it be 10 or 5?

Mr. WHEELER. I would venture probably in the neighborhood of four to five, but I really don't know, I would have to get back to you on that.

Chair MEYERS. As I recall, there have been four or five and they were more in the nature of sort of a general look at the program. This was an attempt to look at two problems in depth or some programs in depth and I don't think the point of it was to try to get at criminal investigations.

Now if what you are asking for, Mr. Flake, is a GAO investigation that would look at 2,500 programs, I think that's rather—

Mr. FLAKE. No, I asked for a random sample that you would do in any study. I mean I don't know any study where you do not collect data from enough, in this instance companies, that would give you a clearer indication in what is happening in the overall 8(a) Program, you cannot get that with any two programs.

I think a random sampling would probably require their looking at probably a hundred or so companies or some percent if they decided 10 percent, 5 percent or 3 percent. But there must be some scientific methodology that says this is the method we're using, this is what we're looking for, and then make a determination from that random sampling that we find throughout the program. We looked at the top 25, we looked at the lower 25, we looked at the top 50, the lower 50 and then we worked to a center point where you get a medium so that you can have a sense of what the program has to do with.

Chair MEYERS. Well I think you have also heard Ms. Lee say that they looked at 50 and they have looked at a number of program participants in past years and they have found maybe one program participant that had absolutely no questions involved in it at all.

Mr. FLAKE. Well I think if we do a GAO on the whole Government, we're going to find that problem, so I don't think the basis of trying to determine it on whether you have some problems, you're going, in this kind of program you're going to have problems. I can't imagine in any program that the Federal Government has that if we do a random sample, you're not going to have some problems with some programs by perhaps our definition.

But all of us understand, even as you heard the testimony of Mr. Innerbichler, the reality is that you cannot submit an application to the bank for a loan without the bank coming back and saying look at this particular category of things, we need more information on them. That's a standard business procedure, that's a standard business practice, so that you're definitely going to have that but that does not necessarily conclude that a program is wrought with fraud or that that program needs to be eliminated. It's simply a matter of getting the proper information and documentation.

Chair MEYERS. The gentleman's time has expired.

Mr. FLAKE. Thank you very much.

Chair MEYERS. Mr. Chrysler.

Mr. CHRYSLER. Madame Chairman, I apologize for arriving a little bit late, I'm just catching up on some of this information. It seems to me that we're talking about the third and ninth largest award out of some 4,400 awards in this program and that receive about 22 percent of the total dollars. It seems like these are good examples to be looking at and when one looks at the volume that they consume as compared to the rest of the program.

Chair MEYERS. No questions at this time? Thank you. Let's see, Ms. Clayton.

Ms. CLAYTON. Thank you Madame Chair. A couple of observations. Well let me just, my understanding is that this GAO audit was requested by Senator Nunn. Was the procedure for you to—how did you select these two? Did they come from the Inspector General or did they come from SBA itself?

Mr. WHEELER. The two companies were selected — based on our judgment — from a list of the top 25 companies for 1992.

Ms. CLAYTON. So, you took out of the top 25 who were receiving contracts, you just arbitrarily selected, or are they—

Mr. WHEELER. We went through the eligibility and application files for each of the 25 and we selected two. Actually, we initially selected four, but because of time and resource limitations and the fact that the Committee asked us to report out our work, we reported out on the two. Our decision was based on the strength of indicators that we found when we went through the eligibility and application files, but it was a judgment selection on our part.

Ms. CLAYTON. Now which Committee actually were put on the work?

Mr. WHEELER. It was the permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs.

Ms. CLAYTON. You have submitted this to Senator Nunn right?

Mr. WHEELER. Yes, we have, Mrs. Clayton.

Ms. CLAYTON. As a result of your—it submitting back to the Committee, they warrant this sufficient to have a hearing on?

Mr. WHEELER. No, what they elected to do is announce it through a press release.

Ms. CLAYTON. So, in fact, they did not see this being of sufficient value to have a hearing, and discussion on it, but Senator Nunn issued a statement?

Mr. WHEELER. Mrs. Clayton, I don't know the reasons why they elected not to have a hearing. There was a great deal of discussion in terms of doing so, but ultimately Senator Nunn decided not to, but I can't tell you why Senator Nunn decided not to hold hearings.

Chair MEYERS. Well Senator Nunn could not call a hearing. He is in the minority, and I don't know why the majority did not call the hearing.

Ms. CLAYTON. Well one of the reasons I'm sure was that the administration had asked that this hearing was not timely. That given that there was a review of all of the affirmative action opportunity for entrepreneurs, that giving them due time to make their investigation of all programs, the Justice Department is currently reviewing them, that a more timely opportunity would be in January rather than at this point, when we are anticipating the administration to make recommendation. I would assume—

Chair MEYERS. Well, I anticipate that we would have further hearings in January also, Ms. Clayton.

Ms. CLAYTON. Well that being the case Madame Chair, in all due deference, I think that to have had this hearing on a very limited number of entities, not called by this Committee, called by a Committee in the other house, and understand this position—I'm questioning, Madame Chair, the validity of having had this hearing for getting substance and information that we can use if indeed we plan to——

Chair MEYERS. The GAO investigation can be called by either house.

Ms. CLAYTON. But you didn't request——

Chair MEYERS. But certainly with the GAO report in front of us, I think it's appropriate that this Committee hold a hearing.

We sole source about \$4 billion worth of contracts every year, and if that isn't sufficient reason to investigate the possibility of mismanagement or fraud, or whatever you wish to call it, then I don't know what is.

Ms. CLAYTON. You're claiming my time. Now I would say Madame Chair that certainly you have a right to call for a GAO audit and you indeed have. In fact this is the second hearing I have been a part of where there has been a GAO audit this year, so there have been in a lot of years.

This was not called by this Committee. This was called by the Senate Committee, and apparently you looked at the trouble programs, you didn't really look at—you were looking for trouble programs is what you were looking for, right?

Mr. WHEELER. In this particular instance, we looked at the top 25 firms for 1992. We examined files for the 25, and focused on the two companies, based on the strength of indicators of problems.

Ms. CLAYTON. If there was some problems, then you went further.

Mr. WHEELER. Yes.

Ms. CLAYTON. My concern is, again, let me just speak to the value of the SBA. My concern is that we do need to reform SBA. I think that those of us who are protectors of SBA should not indicate that there are not problems and you're looking at this in terms of where you're reforming, it not something to suggest it is irreputable and should be done, making the leap of faith is though. Taking two and making the leap and applying it to the universe, as if everybody's a crook or potentially committing fraud, I think is stretching the validity of an objective Agency.

Looking at this as to how it can be instructive to us as we protect and reform the bill, is a legitimate use of investigation finding thing, but you have not done that, you didn't stop there. You said that this is indeed example of the fraud and, you didn't use the word abuse, but you said fraud, but you did say abuse. Yet in response to members of this panel, you can't find any rules or regulations that they actually abused. So, there's an inconsistency of your generalization than your treatment of your individual case. Certainly in TAMSCO you said there's no violation that you know of.

Mr. WHEELER. No. I have no information that——

Ms. CLAYTON. Well how do you come to your conclusion that's a part of your findings that there is abuse? Is it abuse on the part of the—it could be, is mismanagement a part of the Coast Guard?

Mr. WHEELER. It was abuse on the part of the Coast Guard involving the manner in which it awarded the contract.

Ms. CLAYTON. Is there some specific regulations that they did abuse that you want to cite for us?

Mr. WHEELER. Mrs. Clayton, I think that if we found that they had such a regulation and determined that they had actually violated it, we would have said so. I think that the definition for abuse is something that is considered contrary to accepted business practices and that kind of thing.

Ms. CLAYTON. Give me examples of that.

Mr. WHEELER. Well I think in this particular instance, the issue is the Coast Guard's intention to award this contract to TAMSCO, the actions it took to change the SIC Code so that it was one for which TAMSCO would qualify, and the rest of the activities—

Ms. CLAYTON. Could they not have quantified under a SIC Code? The fact that they made a change, was that a change that was not appropriate, did they not have the qualification to meet?

Mr. WHEELER. No, as our report says, the Coast Guard changed the SIC code to one that TAMSCO was qualified to work under. However, its reason for doing that was part of its effort to ensure that TAMSCO got the contract.

Ms. CLAYTON. I'm not trying to defend TAMSCO, because I have no basis for doing that, but I am also a defendant of people being set up to be scape goats because that violates every principle of Democracy and fair play. It seems to me that it's as a part of the GAO you have seen where the familiarial contracting with the same contractor is standard practice here. We do that with the defense contractors all the time. Look at—you want to talk about concentration, you concentrate who has the defense contracts, I mean big contractors. Why then do we find it to offend general practices when we're talking about small businesses and in particular minority small business.

I just think that what is required is an even handed, same standard. If we're going to—if we want to—I want to protect the program, my bias is up front. I'm not one to protect the program by pretending there aren't problems and aren't needs for reform. The best way to protect the program is to make it stronger, but you don't do that by flagging two programs that you know that there's program and then after, and make generalization, and under scrutiny you have to back away from using them as the example of the generalization. I mean, I think you do yourself a disservice in trying to have a general inspection of the program itself.

Madame Chair, I'm not calling for a further investigation, because I think in some ways we have had too many, but I am calling for us to have an objective deliberation as how we reform the program to meet the general standards and to make sure that mismanagement by any Agency is not there.

Chair MEYERS. Mr. Chrysler would like to ask a question at this time. He did not utilize his time, but let me just say first that to correct a false impression, the Justice Department's review is to determine the constitutionality of all minority business programs in-

cluding 8(a) under the Adarand decision. That has no bearing on the management of the 8(a) Program and therefore, the Justice Department is not looking at these particular cases involving eligibility or size standards or anything else. Mr. Chrysler.

Ms. CLAYTON. Madame Chair, could I ask to the base of your question. Does your question suggest that the minority eligibility is not a part of this discussion and that it should be a question of management rather than the eligibility?

Chair MEYERS. No. What you said was that you, I think, maybe I misunderstood you Ms. Clayton, was that this was not timely because the Justice Department was looking at it. The Justice Department is not looking at this, they are looking at the Adarand decision and the overall constitutionality of all minority preference programs.

Ms. CLAYTON. Well Madame Chairman, that's why I wanted to get that further. I am under the impression they are now looking at the legality Madame Chair, they are also looking at the effectiveness. Those programs are not—

Chair MEYERS. But, they are not looking at how you get into the program, or how you stay in the program or any of that. What they are looking at is whether the program itself is constitutional.

Ms. CLAYTON. Now I would disagree, but that's a point for another discussion. I would say that they are also looking at what works and what doesn't work, and if it doesn't work then we ought to not have it and it's a better way to work in. I thought they were looking beyond just the legal question. I thought they, the President said he would have a review by which program needed to be reformed and reform comes, speaks to management as well.

Chair MEYERS. I hope he is also looking at which programs which need to be eliminated as well as reformed. Mr. Chrysler.

Mr. CHRYSLER. Thank you Madame Chairman. Mr. Flake eluded a few minutes ago to the fact that as long as we have programs like this where we have the Government in the business of picking the winners and losers, we are going to have these kinds of problems. To equate these programs to the same as in the defense industry, well defense is an absolute necessary evil and these programs are not, that's the biggest difference.

Mr. JENKINS, is it standard procedure to have Federal agencies consulting with the SBA in order to determine size and classification standards so that a contract can be targeted to a specific company?

Mr. JENKINS. No, it's not. Basically when a contracting officer defines what the requirements are, they also should define what SIC code industrial classification code should apply. If this is something that the contracting officer would like SBA assistance and consultation in determining, certainly we do provide that assistance.

Mr. CHRYSLER. Mr. Wheeler, do you perceive that that's what happened in your investigation?

Mr. WHEELER. I think that's part of what happened. I think the evidence that we developed indicates that the decision was made up front, that TAMSCO would get the award of this contract and that the Coast Guard would go about determining how to ensure that that would happen.

I think with respect to the SIC code, the contracting officer appropriately determined an initial SIC code. I think that in meetings that took place, it was determined that TAMSCO was no longer eligible for that particular SIC code. They shared information that resulted ultimately in the statement of work that was used. They then reached out to SBA — and I understand the claim has been made that it was actually SBA that determined the ultimate SIC code, not the contracting officer at the Coast Guard. I believe that claim has been made.

So, I think in this particular instance, there were a number of events that occurred over the period of time that resulted in this contract being awarded the way it was.

Mr. CHRYSLER. Do you have any suggestions from your vast experience on how to prevent that in the future.

Mr. WHEELER. Mr. Chrysler, we did not make recommendations, as you know, with this report. We endeavored to report the facts so that, as Mrs. Clayton indicated it would, to meet the needs of the Committee and to inform it in terms of the kinds of activities that could occur.

One thing that I do want to note is that there was a change in the regulations, I believe earlier this year, with respect to the award of IDIQ contracts, which would make this more difficult to achieve, at least under the IDIQ contracting option.

Mr. CHRYSLER. Thank you.

Chair MEYERS. Thank you, Mr. Chrysler. Mr. Hilliard.

Mr. HILLIARD. Thank you very much Madame Chairman. Mr. Wheeler, I'm not going to ask you a question, but I would like for you to see a copy of my report.

I believe it has been made a part of the record already, but I do want to read something to you. It says — and the sentence I'm reading pertains to your Agency — it says, for an Agency commissioned to provide objective information to the American Government, this is tantamount to a betrayal of basic responsibility. From what I see, the conclusion that is in this report, 8(a) is Vulnerable to Program and Contractor Abuse, and when I saw your testimony, I realized that your testimony was slanted. I realized that the conclusion, this statement as the conclusion, was slanted. I also realized that there was no use of a scientific method employed in your study, that you just grabbed two companies that you wanted, or someone in charge wanted, to discuss.

But let me tell you this. I don't know how long I will be in Congress, but I want you to know that every time from here out I see a report from your Agency, it will be suspect. It is a shame that you would come and give testimony, as you have given, and as it is written, based on insufficient data, based on very limited circumstances that are totally inadequate and that would draw a conclusion that to me is just outright; borderline, if not in fact, prejudiced against the program or against whatever.

But I just want you to read my statement and you don't need to answer anything.

[Mr. Hilliard's statement may be found in the appendix.]

Mr. HILLIARD. Let me say this: we've got a long way to go in this country trying to create diversity and to make up and correct for years of problems that still linger from past segregation and cur-

rent and past discrimination. There are so many things that we need to do to correct that for this country to really be a true democracy. For someone in the capacity that you occupy or someone in charge of such an Agency, to bring a report like this, or to submit a report to someone in a Senatorial position, is a disservice.

But, regardless of the companies that were involved, regardless of the program that's in the Agency, it is a graver disservice to your Agency's integrity, and it will always question in my mind your Agency and especially anything that comes through under your charge, your integrity. Never again will anything from your Agency be taken for face value.

I will question, and my staff will question forever, any report that you submit. That's how strongly I feel about it, and I spent some time writing this up because I wanted to be a part of the record, because I would hate for someone a hundred years from now to come and see your testimony, and to see this, and draw anything like a conclusion without having read this. It's a shame and it's a blow to democracy.

Chair MEYERS. Thank you Mr. Hilliard. I think we have to be very clear here. I don't think that the GAO is biased and prejudiced or any of those things. I think they were told to do a couple of things, investigate some firms in depth and that's what they did. Nothing illegal occurred here because this program, 8(a), exempts firms from the very legalities that are mandated under the Procurement Integrity Act and other laws. If statements of work went back and forth between the Agency and the contractor anywhere else, it would be a violation of law. In this program, it's OK.

The Coast Guard abrogated its authority and relied on the SBA in relation to the size standard. I think this certainly indicates that there is something wrong either with the program or in both of those agencies.

I would recognize Mr. Bentsen.

Mr. BENTSEN. Thank you Madame Chair. I apologize for having to leave and come back. Let me, I have a few questions, let me just start though by saying that going through some of the data here, I think the statistics are startling when you look at the number of minority owner businesses from 1969 to 1993 going from 380,000 to 1.5 million, but then when you compare that with the fact that minorities comprise 20 percent of the population, yet they own less than 9 percent of American businesses, count for less than 4 percent of the gross business receipts and generate less than 3 percent of employment.

Those are startling statistics and it clearly shows a problem that exists, that we are not generating enough economic activity in all sectors of the economy, and I think that is something I think we all suffer for. I think we need to take that into context when we're talking about the 8(a) Program and talking about all disadvantaged business programs and what our goal is, and where we're trying to go. I think it's very important because I think we all benefit with a broader amount of economic activity.

Mr. Wheeler, let me ask you a couple of questions about your report. Let me start out by asking, you're in the investigations department I guess, or area. Have you done other reports regarding

Federal contracting, not necessarily SBA, but other types of Federal contracting?

Mr. WHEELER. Yes. Over the years, we have done a number of investigations, and we have done reports relating to contracting activity.

Mr. BENTSEN. So, that's your specialty in part or you have some expertise in that area?

Mr. WHEELER. Within the General Accounting Office, the Office of Special Investigations focuses on investigating very specific matters and allegations of wrong-doing.

Mr. BENTSEN. OK.

Mr. WHEELER. That was very consistent with what we were requested to do here.

Mr. BENTSEN. Let me ask a couple of questions. Is this situation with these two companies, is this an exclusive type situation? Is this 8(a) problem an exclusive type situation?

It seems to me a year ago I remember reading about a large corporation, General Electric I think that was, and if I'm wrong I would want the record to correct that, but it was fined for contracting and isn't it true that we find this problem exists, or similar type problems that exist throughout the Government? Is this mutually exclusive to the 8(a) Program or do we still have a major contracting problem with the Federal Government as a whole?

Mr. WHEELER. I would agree with you, Mr. Bentsen, that this kind of conduct doesn't apply just to those in the 8(a) Program and is the kind of activity that can be found in the larger Federal contracting community.

Mr. BENTSEN. Just in general, whether it's competitive or sole source or whatever?

Mr. WHEELER. Issues of competition and avoiding competition requirements have come up in a number of instances, and certainly not just in the 8(a) Program.

Mr. BENTSEN. Pricing problems and capitalization problems as well?

Mr. WHEELER. I can't respond to that specifically here in terms of issues of pricing. I know that, for example, in defense contracts, cost mischarging and those kinds of activities are common kind of activities that come up in the course of investigation of such contracts.

Mr. BENTSEN. Across the board, not just in this one sector of defense contracting, and this makes up just a small percentage of defense contracting, I think.

Mr. WHEELER. I—

Mr. BENTSEN. 5 percent, 10 percent, I don't even think it's 10 percent.

Mr. WHEELER. Yes, I really don't know.

Mr. BENTSEN. These are the two, out of the 25 top that you used as your batch, these were the 2 that you found with problems that were worth pursuing further in your study, is that right?

Mr. WHEELER. We found indicators in others that we looked at, but given the reality, this kind of work is very time and resource intensive, and given that, these were the two that we were able to complete our work on. It was in the course of our discussions with

the Committee that it was agreed that we would limit our investigation to several companies, yes.

Mr. BENTSEN. You didn't look beyond the top 25, you just used that as your batch?

Mr. WHEELER. Yes, that's true.

Mr. BENTSEN. So, do you think this is indicative beyond the top 25 or—

Mr. WHEELER. Mr. Bentsen, it's very difficult. Our findings pertain really to these two matters that we looked at. I'm really not in a position to project further in terms of the universe of 8(a) participants or even beyond that.

Mr. BENTSEN. Let me ask about the report, and I've just read the report today, but looking at it on page four where you talk about the SBA award and eligibility data for fiscal year 1992. Fiscal year 1992 was the period of time that you used right, for your report, for your study?

Mr. WHEELER. Yes, Mr. Bentsen. This work actually built on earlier work done by GAO with respect to administration and management of the program and one of the issues that it addressed was the issue of concentration, that there are very large amounts of contract dollars—

Mr. BENTSEN. I've read that report and I'm familiar with that, and I think that's a concern.

So, this related to the top 25 firms that were in place in fiscal year 1992, this is the previous administration, under the Bush administration and a different SBA. You said as of May 1995, 18 of these firms had exited the program, yet at least 17 are still performing contracts awarded while they were in the program. Were these contracts that were awarded going back to fiscal 1992 or subsequent to fiscal '92? Were these 1 year contracts, multiyear contracts?

Mr. WHEELER. I can't tell you off the top of my head Mr. Bentsen, I do know that there were contracts that these 17 companies had that carried through after they exited the program.

Mr. BENTSEN. You also say on page 11, under SBA allowed I-NET to remain in the 8(a) Program after it exceeded size limits, that I-NET had grown too large for continued program participation. SBA allowed the company to remain enrolled for almost 2 additional years. In fact, 6 days prior to I-NET's initially being recommended for early graduation in September 1992, it was awarded a \$134 million contract. The SBA official who approved the contract award was also responsible for initially recommending I-NET's early graduation. Let me ask you this, and I know my time is up, but I'd encourage the others if they could answer this. First of all this appeared to be happening in calendar years 1991 and 1992 and in the change of administration and in the change of the leadership of the SBA and the fact that you say that a number of these firms have been graduated from the program. Are we now seeing that some of this stuff is being cleaned up, where there's been a problem? Do you see improvement? Granted, you had to pick a time and place to do your study, but based upon what you say here, it looks like some of this is being dealt with, is that correct?

Mr. WHEELER. I would have to defer to both Ms. Lee and Mr. Jenkins with respect to the current period.

Mr. JENKINS. From the standpoint of the program office, we have. In the past 18 months, removed over 334 companies from the program. We are working aggressively with our Office of Inspector General, to look at ways of addressing any potential abuse of the program.

Mr. BENTSEN. So, it would appear that you've identified some of these problems, that you're trying to bring some efficiencies and correct these problems that may exist as you go forward, but still protect the integrity of the program and the goals of the program.

Mr. JENKINS. That's correct. We have also been working with the Department of Justice. The Justice Department is specifically looking at the 8(a) Program and looking at a lot of issues that could result in some changes to the program which would address some of these issues, but at this point there are a number of issues out there.

Mr. BENTSEN. I know my time is up, Madame Chair, and if I could just ask for the record, could you provide for the record if there is any data or case study which would show the statistical impact between the 8(a) Program and the number of minority businesses, and if it's possible to make the assumption, what it would be without that?

Mr. JENKINS. Yes.

Mr. BENTSEN. Over a 5 or 10 year period, or since inception?

Mr. JENKINS. Yes. Certainly we've looked at that very issue over the past few years and currently minority businesses account for about 6.2 percent of Federal procurement. Without the 8(a) Program, that number drops down to 3 percent.

Mr. BENTSEN. Thank you. I thank you Madame Chair.

Chair MEYERS. Thank you, Mr. Bentsen. I do think that your example, however, about GE was just exactly on the point. In other words, GE was fined and found in violation. In 8(a) this would be allowed, it's allowed to avoid competition and I think that is the very heart of the problems in this program.

Mr. BENTSEN. If the gentle lady would yield, the point I was trying to make is that I think fraud and waste is unfortunately, in contracting, is Governmentwide.

Chair MEYERS. But in one case it's illegal and in another case it is not.

Mr. BENTSEN. I don't disagree with you on that point, it shouldn't be tolerated. It should not be tolerated in any case in any program, but let's not throw the baby out with the bath water here. Let's see if we can clean it up here as DOD should clean up their contracting in every other Agency, and make it more efficient. Tax payers shouldn't tolerate it regardless of whether it's 8(a) or defense wide, but let's not do away with the whole program in the process. I agree with you in that respect.

Chair MEYERS. Mr. Chrysler do you have any questions?

Mr. CHRYSLER. I'm all set here, thank you.

Chair MEYERS. Alright. With that we will conclude the hearing. I thank all those who have participated and all those who were here today and others. I would ask of those here today to respond to written questions by those Members who are not here today. Thank you very much.

APPENDIX

Statement of Congresswoman Eva Clayton
Before the United States House of Representatives
Committee on Small Business
Hearing on the 8(a) Program
December 13, 1995

Madame Chairwoman, today the Small Business Committee has convened a hearing to discuss the findings of a recent General Accounting Office investigation into the potential regulatory violations of two former 8(a) firms -- I-NET, Inc. of Bethesda, Maryland, and Technical and Management Services (TAMSCO) of Calverton, Maryland. From its investigation of these two firms, the GAO raised two systemic problems with the 8(a) program. First, the investigation revealed that a disproportionate number of 8(a) contracts were awarded to a small number of firms in a few key geographic areas. The GAO report states that, "In fiscal year 1994, the top 50 firms represented 1 percent of the program participants and obtained 25 percent.... of the \$4.37 billion awarded." Second, the report raised serious concerns about the ability of SBA 8(a) program administrators to oversee 8(a) firms and to enforce SBA 8(a) eligibility standards. In the case of I-NET, the GAO discovered that in order to remain eligible for contracts, "I-NET excluded items from its financial statements, understating its total revenue; and it represented itself as a company at financial risk, although SBA found that I-NET's access to credit was considerable."

It is my hope, Madame Chairwoman, that this hearing will allow us to highlight these systematic problems and to offer constructive suggestions as to how best to solve them. For, Madame Chairwoman, it is my firm belief that the 8(a) program remains a vital tool through which to further minority small business participation in the federal procurement process. Impartial data shows that in 1986, all small disadvantaged firms received only 2.7 percent of the \$185 billion in total federal contract dollars. By 1994, with a reemphasis on the 8(a) program and other programs, this percentage shot up to 6.2 percent. In fiscal year 1994, there were approximately 5,300 firms participating in the 8(a) program generating over \$4.3 billion in contract awards. Operating at a cost of \$20.5 million dollars, it is estimated that the Program generated \$60 million dollars in tax revenue for the same year. Clearly, Madame Chairwoman, the 8(a) program is a necessary program and a wise investment of taxpayer dollars. Today's hearing, then, should be used to improve this valuable and vital program, not to smear and denigrate it.

However, Madame Chairwoman, the timing of this hearing and the method taken by the GAO to expose the problems of the 8(a) program, leads me to question the intent of this hearing. First, although the study was originally commissioned by Senator Nunn of Georgia, the Senate saw no reason to hold a hearing on this matter. Therefore, my question Madame Chairwoman is why at this

time, when the Administration is reviewing the 8(a) program and other set-aside programs, are we holding this hearing now? Could we not have waited until after the Administration published its findings in January to have a more detailed and well rounded hearing? Second, Madame Chairwoman, the GAO chose to investigate two firms which the SBA had already highlighted as potentially having some regulatory irregularities in their application documentation. So, are we not surprised that the investigation did discover some problems with the 8(a) program? Furthermore, Madame Chairwoman, in a program that has approximately 5,700 firms participating in it as of this year, how indicative of the whole program are problems with two former participants in the 8(a) program?

In conclusion, Madame Chairwoman, I believe that this hearing is valuable exercise if it allows us to improve the 8(a) program. However, Madame Chairwoman, if this hearing is simply political cover to eliminate the 8(a) program, I believe that this committee has done a great disservice to the thousands of 8(a) firms who have provided jobs and opportunity to economically disadvantaged communities throughout the country.

STATEMENT OF FLOYD H. FLAKE BEFORE THE HOUSE COMMITTEE ON SMALL
BUSINESS HEARING ON THE ABUSES IN THE SBA'S 8(a) PROCUREMENT PROGRAM
DECEMBER 13, 1995

THANK YOU MADAM CHAIR FOR CONVENING THIS HEARING TODAY. I AM PLEASED TO PARTICIPATE IN ANY DISCUSSION ON WAYS THAT WE CAN IMPROVE THE SMALL BUSINESS ADMINISTRATION'S 8(A) PROCUREMENT PROGRAM. I HOPE IN OUR DISCUSSION TODAY WE CAN DISCUSS THE REQUISITE CHANGES WHICH ALTER THIS COMMENDABLE PROGRAM SO THAT MANY MORE MINORITY ENTREPRENEURS AND SMALL, DISADVANTAGED FIRMS WILL HAVE THE OPPORTUNITY TO COMPETE EFFECTIVELY AND REMAIN FINANCIALLY VIABLE.

I APPRECIATE THE EFFORTS OF THE GENERAL ACCOUNTING OFFICE TO HELP US UNDERSTAND THE AREAS THAT NEED TO BE IMPROVED IN SBA'S 8(A) PROGRAM. I WOULD LIKE TO URGE MY COLLEAGUES TO CONSIDER THAT THIS REPORT SIMPLY HIGHLIGHTS THE MISCONDUCT OF TWO FIRMS AND,

BY NO MEANS, SHOULD BE SEEN AS REPRESENTATIVE OF THE MAJORITY OF FIRMS IN THE 8(A) PROGRAM.

THE 8(A) PROGRAM HAS INCREASED THE BUSINESS OWNERSHIP ASPIRATIONS OF MANY INDIVIDUALS WHO WOULD NOT OTHERWISE HAVE HAD THE CHANCE TO PURSUE ENTREPRENEURIAL EFFORTS. IN 1986, SMALL, DISADVANTAGED FIRMS RECEIVED ONLY 2.7 PERCENT OF FEDERAL CONTRACT DOLLARS. BY 1994, THAT PERCENTAGE HAS INCREASED TO 6.2 PERCENT, WITH THREE PERCENT OF THAT INCREASE DUE TO THE 8 (A) PROGRAM. WE MUST REMEMBER THAT THIS PROGRAM OFFERS BUSINESSES OPPORTUNITY TO USE THEIR CREATIVE TALENT TO ACCESS CAPITAL AS IT HAS DONE FOR BUSINESSES IN MY DISTRICT LIKE WECO CLEANING SPECIALISTS.

THEREFORE, I LOOK FORWARD TO OUR DISCUSSION TODAY ON WAYS THAT WE CAN IMPROVE THE

PROGRAM SO THAT THE 8(A) PROGRAM WILL BE ABLE
TO HELP MANY DESERVING ENTREPRENEURS IN THE
YEARS TO COME.

EARL F. HILLIARD
7TH DISTRICT, ALABAMA

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Congress of the United States
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Washington, DC 20515-0107

Before the Small Business Committee
December 13, 1995

"8 (a) Is Vulnerable to Program and Contractor Abuse"

Earl F. Hilliard
Member of Congress

The Government Accounting Office (GAO) report (GAO/OSI-95-15) is a disturbing document. Titled "Small Business Administration: 8 (a) Is Vulnerable to Program and Contractor Abuse," the report is one in a line of prejudiced, unscientific, unobjective jobs performed by the GAO on the programs of the Small Business Administration (SBA), and on the SBA itself. I have heard the same kind of slanted reports on minority programs and on the Small Business Investment Companies (SBIC) and Specialized Small Business Investment Companies (SSBIC) from the GAO this year. For an agency commissioned to provide objective information for the American government, this is tantamount to a betrayal of basic responsibility.

Any objective accountant, or any investigator with any respect for truth and a commitment to the purposes and thrust of this nation's government, would have looked at more than two firms which have already left the program, and which were obviously hand-picked to place the program in the worst possible light. I do not suggest that every firm in the 8 (a) program (or formerly in the program) should have been examined. Rather, it is clear that an objective investigation would have used a random selection of firms. Such an approach is economically feasible, since it is used by businesses which do polling and publish their results on a daily basis. The rules and techniques for objective, random selection are well and commonly known, and even the GAO, isolated as it pretends to be, must be aware of them. It is clear that such a random approach was used to discredit the program. It is even more clear that the prejudiced and subjective selection process has discredited the report and the GAO itself.

The GAO failed once again to place the purported problems in any perspective. I and my staff have asked in the past for the GAO to place its exposition of problems with small business programs in some kind of historical perspective, with no success. In a letter to Mr. Dan Gelber, Chief Counsel to the Minority Permanent Subcommittee on Investigations of the United States Senate, the SBA points out the utter lack of perspective in the GAO report. They go on to list the changes in program administration which would have made these problems impossible at the present time. The GAO undoubtedly knows this, yet this is unmentioned in the report. Without any historical perspective, the report cannot place in perspective any problems, and therefore gives the Small Business Committee no useful information whatsoever. Indeed, by substantially misrepresenting the 8 (a) program at present, and the SBA as well, the GAO does a disservice to

Congress and to the American people.

There is no mention of the successes of many companies due to participation in the 8 (a) program. There is instead, an implied slur to those companies, stating that no companies have ever "graduated" from the program. This is done by setting criteria for "graduation" so high that no company could be said to "graduate" unless it has, to continue the student metaphor, passed every course with an "A+", and achieved *summa com laude* status. Such false standards can only be used in an attempt to degrade the program and the firms which have successfully participated and gone on to be successful businesses without the assistance of the SBA. There are many such companies. Indeed, the company listed in the report on page 22 as the one with the highest value of contracts for both 1992 and in total contracts, Colsa, Inc., is from my State of Alabama, and has since graduated from the program honorably and successfully. It is interesting that it was skipped in the report, as well as several others ranked above the accused companies. By completely ignoring these and the many other successful companies in, or formerly in, the 8 (a) program, they are all smeared by the GAO with its broad and biased brush.

Some perspective could have been provided by relating this program and any problems it has to the larger world of government contracting. Do companies which are not 8 (a) qualified companies, especially gigantic national and transnational corporations, behave in a similar manner? Do the same problems exist outside of the aegis of the SBA? Are there problems that are greater than the alleged problems mentioned, and, if so, on what scope? If so, are they rarer or more common than those in the 8 (a) program? In relation to the report on the SBIC and SSBIC program, GAO was asked a similar question, and had no answer. It would appear that it still sees no need to place its reports in any perspective whatsoever.

Why is it that the GAO would produce such a report? There are several possibilities. Since this has been the pattern of the GAO reports in relation to the 8 (a) program and to the SBA, this is a real possibility. It could be prejudice, racial or otherwise, toward the program. In America today, this, unfortunately, is a real possibility. It could be due to a disdain for small business, coming from the arrogance that can come from those who are accustomed to working with programs which benefit gigantic corporations, and much larger agencies and departments. It could be due to a perception that it is their job in this Congress to attack any programs which can be considered to be affirmative action programs. I do not pretend to know the reason for this kind of unworthy work; I only know that it is truly unworthy.

I call upon GAO to provide the information missing in this report, as has been delineated above. I further believe that GAO should cease to investigate small business matters, and those concerning programs for minorities and women, until a special Congressional Committee on Investigations can be convened to study the GAO, and has reported to the Congress. Indeed, if GAO continues in the present direction without change, I believe that it will be discredited in the eyes of all of Congress, and will cease to have a useful function for the Congress and the American people.

Opening Statement of
The Honorable John J. LaFalce
Committee on Small Business
December 13, 1995

Thank you, Madam Chairman, for convening this hearing on the Small Business Administration's Minority Enterprise Development Program, commonly referred to as the 8(a) program.

This program has a history of problems as well as a record of achievements. In the problems category no one has worked harder than I in attempting to reform 8(a) by legislating tighter company performance requirements and more responsive and rigorous agency implementation and oversight of the program. And I know that that effort has been worthwhile. Some of the problems that I routinely heard about in the mid-1980s have been corrected. To give but one example, a few years ago the processing time for 8(a) applications was outrageously long and was emblematic of poor program management. Today applications are processed on average within roughly 90 days, which is the target this Committee set. If that sounds like a small problem and an easy fix, let me assure you it was a nation-wide and deeply entrenched flaw in the program. We got it fixed. The number of persistent problems has been diminishing, agency awareness of current problems is high and the intention and commitment to remedy them is strong.

On the achievements side of the ledger, there are hundreds of firms that got their start in the 8(a) program that are now established and providing jobs and generating tax revenue. We are quick enough to criticize other countries whose economic and social structures and policies keep down their minority groups. Let us be proud that our government provides this opportunity to economically and socially disadvantaged individuals in this country.

What if we didn't? In 1994, according to data provided by the Small Business Administration, 6.2 percent of all federal contract dollars went to small disadvantaged firms. Without the 8(a) program, that figure would plummet to a mere 3 percent of federal contract dollars, suggesting to me that, without a program such as 8(a), federal contracting dollars and contracting opportunities would not on their own find their way to small disadvantaged firms.

The General Accounting Office report, which is the subject of today's hearing, investigates 2 firms. Two 8(a) firms out of the 5,700 currently participating in the program. Two firms where indications of possible regulatory or criminal violations were present. GAO's findings on these 2 companies must not be interpreted as representative of all 8(a) firms.

The 8(a) program is well-intentioned, ambitious and complex. I have never minimized the problems facing this program, but neither have I run away from them. And we should not do so now. Let us await recommendations from the Department of Justice regarding possible changes in the program. Let us work with the SBA in making -- indeed, requiring -- a better program. But let us not just launch a wholesale attack or condemnation of the program because some participants are cheats. I daresay we would uncover undeserving and ineligible people in any government program or private sector initiative. The challenge is to do more to keep those people out, not to let them be our excuse for giving up.

Thank you, Madam Chairman.

STATEMENT OF THE HONORABLE DONALD MANZULLO
BEFORE THE SMALL BUSINESS COMMITTEE
DECEMBER 13, 1995
9:30AM ROOM 2359 RHOB

Madam Chair, I appreciate your willingness to hold hearings on this complex but timely subject.

Last September, the General Accounting Office completed an historic review of the Small Business Administration's (SBA) 8(a) minority set-aside program. The 8(a) program is designed to assist socially and economically disadvantaged businesses to obtain government contracts. What do these terms mean?

Socially disadvantaged individuals are defined as persons who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group, without regard to their individual qualities. African Americans, Hispanic Americans, Native Americans, and Asian

Americans are presumed by law to be socially disadvantaged.

Economically disadvantaged individuals are defined as socially disadvantaged persons who have difficulty competing in the free enterprise system because of limited access to credit or capital. These persons must have a net worth of less than \$750,000, excluding their residence and business.

Finally, these companies must be small businesses that is at least 51 percent owned by citizens of the United States who meet the above criteria. The daily management and operation of these small minority disadvantaged businesses (SMDB's) must also be controlled by owners who are socially and economically disadvantaged.

Companies complying with the guidelines of the 8(a) program would be certified by the SBA as a SMDB and would be given preferential treatment to compete for federal contracts throughout every agency. In fact, 8(a) firms

were able to be a "sole source" or the only competitor for certain contracts. But legislation was passed in the 100th Congress to permit competition among 8(a) firms for contracts worth more than \$3 million.

The GAO has concluded that abuses still continue in the 8(a) program. Among the top 25 8(a) contractors, the GAO selected four firms to investigate based on several red flags that should have caught the attention of the SBA. Because of time constraints, the GAO narrowed its investigation to two firms-- I-NET of Bethesda, Maryland and TAMSCO of Calverton, Maryland. The GAO's testimony reveals a host of horror stories associated with abusing the 8(a) program for personal profit.

This is on top of a previous audit earlier this year of the 8(a) program where, in reviewing 50 SMDB's that received at least \$10 million in contracts, auditors found:

1) Thirty-five of the 50 owners were worth more than \$1 million;

2) Five owners received salaries and bonuses of \$1 million to \$2.5 million over two years and seven others made more than \$750,000;

3) More than a dozen had stakes in their businesses of between \$1 million to \$9 million; and

4) Five had homes worth between \$800,000 and \$1.4 million.

Madam Chair, we are living under the threat of a \$5 trillion national debt. We simply cannot afford the luxury of continuing these type programs that are being taken advantage of by a very select but knowledgeable few.

Last March, the GAO testified that 8(a) contract dollars continue to be concentrated in a few firms, mostly in the Washington, D.C. area. Ninety-five percent of 8(a) contracts are awarded non-competitively because most contracts are for less than \$3 million. Very few new SMDB firms are added to the 8(a) program each year and awarded new government contracts.

It's time to pull this program up from its roots and start all over. I agree with the Rockford Register Star that "more scrutiny of federal contract awards...may be needed."¹ This hearing serves that function. If there is any preference to be given in the future, let it be based on evidence of discrimination, not presumed just because of a person's skin color.

¹ "A Reasoned Standard," Rockford Register Star, Insight/Editorial section, June 16, 1995.

Just yesterday, the Wall Street Journal reported that the number of firms owned by African-Americans increased 46 percent, going from 424,165 in 1987 to 620,192 in 1992, far outstripping the growth rate for businesses overall during that same time period, according to the Commerce Department. In fact, this is a conservative estimate because many firms do not identify the race of their owners. So, the 8(a) program may not be necessary as a minority business development tool if the private sector is already serving that function.

I welcome the opportunity to review the 8(a) program at this hearing, and I look forward to the testimony of the witnesses here this morning. Thank you, Madam Chair.

Millionaires in SBA program earn 'disadvantaged' status

KNOX HEDDER/TRIBUNE

WASHINGTON—Would you consider a millionaire "economically disadvantaged?"

Or someone with an \$800,000 home?

Or a businessman with a Mercedes-Benz, a Corvette, a Jeep Wrangler and a boat?

Probably not, but then you're out of the federal government.

Government audits show that a federal program has classified dozens of minority millionaires as "socially and economically disadvantaged," making them eligible for lucrative, no-competition government contracts.

The Small Business Administration program was started during the Nixon administration as a way to spur more minority-owned businesses.

But it is coming under increased scrutiny as President Clinton and Congress examine whether to modify or eliminate federal affirmative action programs.

Last year, federal auditors picked five SBA district offices and examined 50 "disadvantaged" companies that received at least \$10 million each in contracts. They found that:

- Thirty-five of the 50 owners were worth more than \$1 million.

- Five owners received salaries and bonuses of \$1 million to \$2.5 million over two years. Seven

others made more than \$750,000, and five others made between \$500,000 and \$750,000.

- More than a dozen had stakes in their businesses of between \$1 million to \$9 million.

- Five had homes worth \$800,000 to \$1.4 million. Ten more had homes worth more than \$400,000.

Critics have complained nearly one-third of the \$4.3 billion in contracts awarded last year went to firms in the Washington area.

Since the SBA program began in 1963, businesses classified as disadvantaged have been awarded more than 95,000 contracts worth \$48 billion. More than 5,000 companies now qualify.

The program, known as Section 8(a), defines disadvantaged people as "black Americans, Hispanic Americans, Native Americans, Indian tribes, Pacific Americans, Native Hawaiian organizations and other minorities." White women do not automatically qualify, but can apply for the program.

Eligible firms can win contracts from government agencies without competitive bidding for amounts less than \$5 million for manufacturing and \$3 million for other industries. Businesses can participate in the program for nine years.

To qualify, a business owner's net worth can't exceed \$250,000. Eventually, the limit rises to \$750,000.

The rub is that when it calculates net worth, the SBA doesn't include owners' equity in their companies and homes, or their spouses' wealth, according to federal auditors.

Loopholes and flaws allowed businesses to stay in the program long after owners got rich, contrary to the program's intent, the auditors complained.

Federal auditors point to Navcom Systems, Inc., a northern Virginia engineering and telecommunications firm as an example of a company that shouldn't be in the program anymore. The SBA said Navcom has received \$47 million in U.S. contracts since 1987.

In a report last year, auditors said the company's owner earned \$23 million from two companies over two years and had a net worth of \$11 million. While the report did not name Navcom, sources said it referred to that company. The owner's personal financial statement listed a Mercedes-Benz, a Corvette, a Jeep Wrangler, a van and a boat.

Navcom's owner, Elijah Jackson, did not return several telephone calls. His attorney, Patti White, said her client "disagrees vehemently" with the auditors' estimation of his worth and salary. "We contest the finding ... that we are no longer socially and economically disadvantaged," she said.

A reasoned standard

Saying the U.S. Supreme Court has turned the back on affirmative action by rejecting more scrutiny of federal contract awards raised the point that such scrutiny may be needed.

Fraud is recognized in the federal minority contracting program where any minority-owned business is presumed, without proof, to be disadvantaged. So what if that business merely employs minorities as front people? So what if records millions in profits? Minority ownership has long meant preferential treatment.

The Supreme Court ruled that the presumption must be backed up by some evidence of discrimination, the same rule used by the states. Legal scholars say this "strict scrutiny" test is a death knell. Justice Stephen Day O'Connor, in her majority opinion, insists that it is not.

No one can be sure the impact this ruling will have on affirmative action overall. All we know is that the federal program that transparently applies affirmative action to federal contracts will be reviewed. It should be.

The most affirmative action program was not born of the businessmen's effort to right past wrongs. It dates to President Franklin Roosevelt, who issued affirmative action-like decrees to World War II

defense contractors. In broad practice, it has gone virtually unchanged.

We do not discount the importance of the effort, but the impact of programs that followed in 1978, there were

over 60,000 minority-owned construction firms in the United States. After 10 years of intense affirmative action, there were nearly 100,000.

Women owned fewer than 10,000 construction firms in 1978. By 1987, they owned nearly 60,000. They represent critical economic self-sufficiency.

Less affirmative action is needed to the detriment of minority-owned businesses. Exploitation of the program has given birth to the agency-white middle class.

The suspicion in this case — as well as increased oversight — seems warranted.

As a vehicle to fairness, affirmative action review is timely.

ENTERPRISE

SBA Minority Program Is Under Attack in GAO Report

Evidence of Cooked Books, Phony Owners May Help GOP Kill Set-Asides

By PAUL M. BAZARTT

Small Reporter of The Wall Street Journal.
WASHINGTON—Congressional investigators are poised to take another crack at abuse and mismanagement of the government's biggest set-aside program for minority-owned businesses.

The General Accounting Office, Congress's investigative arm, has prepared a report that aims to illustrate, among other things, how successful companies took their books to remain eligible for certain minority-owned business set-aside competition by the Small Business Administration program. Last year, the so-called Section 8(a) program steered \$4.4 billion in U.S. contracts to minority-owned firms.

The GAO report, which is expected to be released publicly today, also describes lax oversight by SBA officials. In one case, the GAO said a Bethesda, Md., computer services firm, I-Net Inc., improperly received at least \$2 million in set-aside contracts, even though SBA officials had concluded that the company had grown too large to qualify for special treatment under 8(a).

In another case, congressional investigators found that Coast Guard officials inappropriately manipulated a multimillion-dollar contract so that it could be awarded without competitive bidding to Technical & Management Services Corp., a minority-owned firm in Silver Spring, Md. The GAO also says that it considered to be a telling exchange of e-mail computer messages between Coast Guard officials. One official defended the set-aside for Technical & Management Services as more convenient and efficient; the other responded that while he agreed, discovery of their exchange by auditors would be "absolute suicide. Erase it. Destroy the disk."

(Continued on page 83)

Management Services denied any wrongdoing in interviews yesterday and criticized the GAO report as misleading and unfair. But a senior SBA official, who asked not to be identified, said, "The GAO report points out a number of abuses in the program during the 1980s and early 1990s. It focuses on two former 8(a) firms that were awarded large numbers of contracts. We have been working aggressively since 1993 to correct these types of abuses and have made substantial progress."

Criticisms Abound

The report, a copy of which was obtained by The Wall Street Journal, is likely to give a push to congressional proposals to scale back or kill the 8(a) program. Sen. Sam Nunn (D., Ga.), who commissioned the GAO report, said in a separate statement yesterday that it "reveals how participating companies and government agencies exploit vulnerabilities in the 8(a) program."

Under Section 8(a), which is named for its place in the statute book, the SBA serves as an intermediary between small, "socially and economically disadvantaged" companies and other federal agencies seeking to do business with minority firms. If the controlling owner of 51% or more of a company's equity is a minority group member, that creates a legal presumption of minority ownership.

One criticism of 8(a) is that because of this presumption, a relatively small group of well-heeled firms, tied up with a lion's share of the contracts, The GAO said, were among this select group. During their time in the program, in the 1980s and 1990s, I-Net received set-aside federal contracts worth at least \$508 million, and Technical &

Management Services, owned by an Hispanic, got U.S. contracts worth at least \$56 million, the GAO said.

The tendency of federal agencies to manipulate the 8(a) contracting process to favor certain contractors has also attracted fire. The GAO said the Coast Guard judges competing contractors on the basis of a computer scoring system. The system of a computer scoring system, valued at \$15 million, is alleged to be altered to Techno-Call & Management Services. The Internal

Control & Management Services, which was awarded only one day before the company left the 8(a) program in September 1992, GAO investigators also pointed to a Coast Guard official's handwritten notes calling the contract a "graduation present" to the firm.

Sterling Book, the company's general counsel, said in an interview that there wasn't anything improper about the Coast Guard making adjustments in the contract, which he described as an extension of earlier work performed by Technical & Management Services. "Because we understood all their requirements, and had such a good track record with the Coast Guard, they were able to do that," he said. A former contractor, the lawyer said, "I'm a preferred contractor." The award at the 11th hour because the process was delayed by anonymous and never-proven fraud allegations.

Lax Oversight

In another segment of the GAO report, investigators said, "I-Net submitted financial statements to SBA that misrepresented its size by excluding certain revenue from the total sales, which allowed it to meet size standards for contracts in 1991 and 1992." The GAO report said I-Net explained the exclusion of millions of

dollars of revenue in footnotes to earlier financial statements, but the SBA didn't react until 1992, the GAO said.

Daniel Mauer, I-Net's general counsel, said in an interview that the excluded amounts were associated with equipment sales to the government in which I-Net served as the salesman, but from the

the company, SBA, he said, "The technical accounting issue," and he emphasized that I-Net had "fully disclosed its accounting methods to SBA in both the text and footnotes of financial statements and other reports."

In any event, the GAO said that by September 1992, SBA officials responsible for monitoring I-Net realized the firm had grown too large to continue in the 8(a) program. But the SBA allowed I-Net to participate until June 1994, during which time it was awarded set-aside contracts totaling at least \$65 million. SBA officials told GAO investigators they didn't believe they had authority to end I-Net's participation earlier, the GAO said.

In a written statement, Mauer said it left the program voluntarily and was "regulatory compliant" at all times.

ENTERPRISE

Number of Black-Owned Firms Rises 46%

Figures for '92 Outstrip Rate For All U.S. Companies, But Revenues Still Trail

By UDAYAN GUPTA

The number of black-owned businesses soared 46% from 1987 to 1992, far outstripping the growth rate for businesses overall, a Commerce Department survey found.

Businesses owned by African-Americans rose in number to 620,812 at the end of 1992, up from 424,165 five years earlier. Comparable data for all businesses showed a 26% increase to 17.3 million in 1992 from 13.7 million in 1987, according to the survey.

Black entrepreneurs still struggled with the limitations of small size. Their average business had revenue of only \$51,000 in 1992 — far below the \$192,000 figure for businesses in general.

California Leads

Total revenue at the black-owned businesses, which included individual proprietorships, partnerships or subchapter S corporations, rose 6% to \$32.2 billion in 1992. Revenue growth of comparable businesses in general rose 6% to \$3.32 trillion in the period.

California continued to have the most black-owned firms — 89,965 businesses, with revenue totaling \$6.5 billion. New York had the second-highest number—51,

312 firms, reporting total sales of \$2.2 billion. Texas had slightly fewer firms (50,000), but they had somewhat higher total sales of \$3.7 billion.

In 1992, 84% of all black-owned firms operated as individual proprietorships. Subchapter S corporations, which function largely like regular corporations but enjoy some of the tax advantages of partnerships, made up only 4% of all black-owned businesses. But they accounted for 36% of total sales of such companies.

Critics contended that the government survey may understate the growth of black-owned businesses. They noted that the Commerce Department's data collection methods excluded many businesses that refuse to report themselves as black-owned. "Why does the IRS need to know whether I am a black-owned business or not?" asked one New York business owner who didn't want to be identified. In addition, the survey excluded regular corporations, known as C corporations.

Critical Data Missing

"The census study is not a complete snapshot of black business," said Margaret C. Simms, director of research programs at the Joint Center for Political and Economic Studies, a Washington research concern that tracks minority businesses. Excluding the performance of C corporations "means the study did not capture the fastest-growing black owned companies," she said.

Over the last 18 months, large institutional investors have allocated more than \$50 million for investing in minority-owned businesses, precisely because they are among the fastest-growing and most

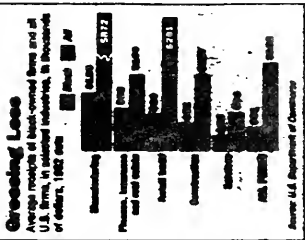
Affirmative-Action Suit Is Dropped by Contractor

By WALL STREET JOURNAL Staff Reporter
WASHINGTON — A San Diego defense contractor dropped a closely watched lawsuit challenging the constitutionality of the federal government's main affirmative action program in the government contracting industry.

Science Applications International Corp. said yesterday that it aborted the lawsuit because it was "broadly misinterpreted" as a broad attack on the Small Business Administration's so-called Section 8(a) program. The suit, filed last month in a federal court here, involved a contract to organize a prestigious annual science conference for the Defense Department. Science Applications, which had gotten the work on a competitive basis in past years, objected when the contract was set aside for a minority company.

"The purpose of SAIC's lawsuit was simply to force the government to open up the contract to competition," among minority-owned firms, the company said in a written statement, which went on to praise the 8(a) program in general. A spokeswoman for the Justice Department, who represents the government in the contract dispute, said she called upon the comment as to how the contract would now be handled.

Difficultly at minorities rather than simply low-income communities, she contended. For instance, she said, a study that the Joint Center is conducting indicates that 8(a) firms are likely than comparable nonminority firms to target low-income areas for employment.



financially underserved segment of the economy. Most of these companies are C corporations. The last few years have seen public offerings by a number of fast growing black-owned C corporations that were financed by minority venture capitalists, including BBT Holdings Inc., Envirotech Systems Corp. and United American Healthcare Inc.

Still, Dr. Simms and others say they believe that the data have implications for state and federal policy. The low sales figures of black-owned companies underscore the need for programs that assist companies that employ people in struggling communities such as inner cities, Dr. Simms said. The findings also suggest a continued need for programs directed spe-

STATEMENT OF JAN MEYERS, CHAIR
HEARING BEFORE THE
COMMITTEE ON SMALL BUSINESS
"ABUSES IN THE SBA 8(A) PROGRAM"
U.S. HOUSE OF REPRESENTATIVES
DECEMBER 13, 1995

The Committee will come to order.

Today, the Committee on Small Business will conduct an oversight hearing into the Small Business Administration's Minority Enterprise Development, or 8(a) program, to which it is commonly referred. For my colleagues on the Committee, and those present with an interest in this program, it will come as no surprise that I have had grave concerns about 8(a). This Committee, for years has heard from entities like the U.S. General Accounting Office about abuses and fraud in the 8(a) program. These reports have been punctuated by the occasional scandal, some of them resulting in convictions and jail time. In particular, the "Wedtech" scandal prompted a legislative overhaul of this program in 1988.

Once more, this Committee is assembled to hear the same sad GAO and SBA Inspector General reports about how 8(a) firms, the SBA, and contracting agencies have conspired to "game the system." The 8(a) program began as a way of helping to develop small businesses owned by socially and economically disadvantaged individuals. The rationale, which I do not quarrel with, is that someone who is socially and economically disadvantaged will have a harder time than the average small business owner in obtaining access to capital and credit, and in competing with the average business in the same field owned by a non-disadvantaged individual. However, the 8(a) program, as it is operated today, bears almost no resemblance to its vision. It has become "corporate welfare" in the worst sense of the term.

In reading the SBA I.G's testimony submitted for today's hearing, its clear that 8(a) doesn't just help "socially and economically" disadvantaged individuals get on an equal footing with the average non-disadvantaged small business. It allows millionaires with big companies (sometimes with as many as 1500

employees) to obtain sole source contracts under expedited procedures. The SBA I.G. looked at 50 larger sized firms in the 8(a) program and found that 35 of the 50 participant owners were millionaires, but remained classified as economically disadvantaged. The I.G. also found that these firms were doing far better than the average firm in similar lines of business, in terms of business assets, revenue, gross profit, working capital, and net worth. However, these firms continue to stay in the program, pulling down multi-million dollar sole source contracts.

Even more galling to me is that the SBA allows these companies to continue in the program, turning a blind eye to regulatory violations and abuses. Then, when a situation really gets bad and the SBA decides to get tough, it makes a referral to the Justice Department, only to be turned down because the SBA has acted as an accomplice, allowing the situation to occur.

Congressional efforts to fix the program in 1988 have failed, and I believe for two main reasons. (1) The legislation was flawed in some respects, creating perverse incentives for SBA employees to encourage abuse of the program, and (2) A mindset seems to exist at the SBA and among contracting agencies that their mission is to find "loopholes" in the law, violating the spirit, if not the letter of the law governing this program. The SBA has the tools to graduate firms early from the program, when it's clear they have gotten their "leg up" and are doing well. But they rarely do it, and when the SBA does notify a firm of its intent to graduate them early from the program, it takes at least a year to get it done, and the firm loads its plate with huge sole source contracts.

Given all of these abuses surrounding the sole source authority in this program, I am going to take this opportunity to call upon Administrator Lader, who unfortunately is not here today, to place an immediate moratorium on all sole source contracting through the 8(a) program. These abuses must be

stopped. He has the authority to do this under current law. I hope he has the will to do what is right.

I realize my views on this may be harshly criticized by some of my colleagues on this Committee. But I ask them to think for a moment about the hundreds and perhaps thousands of socially and economically disadvantaged firms that have gotten nothing from this program, because of the greed of a few.

At this point, I recognize the Ranking Minority Member, Mr. LaFalce, for an opening statement.

STATEMENT OF THE HONORABLE KWEISI MFUME
ON THE SMALL BUSINESS ADMINISTRATION 8(a) PROGRAM

December 13, 1995

Madame Chair, while we do not always agree on each issue that comes before this committee, I do, as a general rule, appreciate the hearings that you hold and the topics that you address. Unfortunately, this hearing is not an instance in which I can support your efforts.

The declared subject of today's hearing is "abuses in the Small Business Administration's Section 8(a) procurement program." While I am as opposed as any American to misuse of American funds, I am more outraged that this committee would use a GAO report, which has focused on a few isolated incidents, as a basis for attempting to dismantle an entire program that has helped employ hundreds of thousands of socially and economically disadvantaged people.

Earlier this year we heard from the SBA that 135,000 people were employed by 5,350 firms that participated in the 8(a) program in 1994. Of these 5,350 firms, the GAO has found problems with two. I believe that in a more reasonable time this committee may have taken these facts, along with all of the positive results that can be attributed to the 8(a) program, and looked for ways to eliminate the problems, improve the program, and therefore increase its overall benefits.

Yet in today's political climate, I am reading stories that this committee is leaning towards the elimination of the 8(a) program as well as several others that are intended to help minorities.

If it is the agenda of this Congress to repeal programs that help women or minorities, then I would hope that we could have an open and straightforward debate on the merits of these programs.

I am confident that the merits of these programs will be evident. Just two days ago the Census Bureau reported that while the number of black-owned businesses nation-wide had grown, there was little growth in their share of the revenues. Furthermore, only 6% of all federal procurement currently goes to minority-owned businesses; that number is likely to decrease as legislation such as FASA and H.R. 1670 make it harder for small and minority-owned businesses to compete in the federal marketplace.

I would urge you not to use a few isolated problems as an excuse for eliminating an entire program. Just as we did not dismantle the Pentagon when it was discovered we paid hundreds of dollars for a hammer, neither should we eliminate the SBA 8(a) program, simply because of a few isolated cases.

TESTIMONY

of

N. R. INNERBICHLER

PRESIDENT

TECHNICAL AND MANAGEMENT SERVICES CORPORATION

before

THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON SMALL BUSINESS

Wednesday, December 13, 1995

Thank you, Chairman Meyers and members of the Committee on Small Business, for the invitation to appear before you today. Technical and Management Services Corporation (TAMSCO) appreciates the opportunity to provide the Committee with a full and factual record with regard to the particulars presented by the General Accounting Office (GAO) in its September 1995 report, GAO/OSI-95-15 (GAO report), "8(a) Vulnerability to Program and Contractor Abuse." As regards TAMSCO, the GAO report is grounded on less than a full presentation of the facts, is fraught with misrepresentations and is prejudicial to and exploitative of TAMSCO and its employees.

The GAO report is premised on the notion that if minority individuals and their companies are successful under the Small Business Administration's (SBA) 8(a) Program, illegal and improper means were used. What the GAO report and 8(a) Program detractors refuse to acknowledge is that the success of TAMSCO (and the success of other 8(a) firms that TAMSCO knows) is rooted in the hard work of 8(a) business owners and their employees, in entrepreneurial spirit and fortitude and in demonstrated capability to provide quality products and services to Government customers on time and on a cost-effective basis. Nothing nefarious or abusive should be implied in such success: the development and success of such minority small businesses is the core mission of the 8(a) Program.

TAMSCO's remarks address the issues raised by GAO's report. In brief, GAO has not been fair or accurate in its suggestion that SBA failed to properly address 8(a) program eligibility issues as regards TAMSCO. TAMSCO scrupulously abided by all 8(a) requirements in the application process and throughout the company's program term. Moreover, with regard to the sole source contract awarded to TAMSCO by the Coast Guard, GAO's report misleads the Committee by failing even to mention that, almost two and a half years ago, the Coast Guard extensively reviewed the charges described in GAO's report and found those charges without any merit. As GAO well should have known, the facts do not even remotely support or justify concern that rules concerning competition were violated in award of the contract to TAMSCO.

I. INTRODUCTION TO TAMSCO AND BACKGROUND

As background, I was born in New Mexico of parents of Hispanic origin. I formed TAMSCO with William Bilawa, my colleague and friend of long standing, in late 1982. I had, by that time, approximately 20 years of experience in the defense aerospace industry, working my way from entry level positions to mid-management. My professional background included experience in quality assurance engineering, manufacturing management, production control, engineering and configuration and data management. I knew that my lack of college degree and ethnic background would limit my professional advancement within the defense aerospace establishment beyond middle management.

My career path overlapped with Bill Bilawa's at times and diverged from his at other times. At Lockheed Corporation, our employer immediately prior to starting TAMSCO, Bill Bilawa and I both held the position of Senior Quality Assurance Engineer, albeit in different business units of that company. When I formed TAMSCO, I anticipated applying for admission in the 8(a) Program in the event that we were able to establish the business as a viable entity. Accordingly, from the outset, TAMSCO paid careful attention to SBA rules and regulations. In fact, the company was expressly structured to ensure that, although Bill Bilawa would participate in ownership and management, at all times I owned 51 percent of the outstanding stock and remained in complete control of the company.

My fond hope, in forming and guiding TAMSCO's growth, was that, with enough effort, TAMSCO could provide Government customers with services and products in complex information management and systems integration contracts that equal or better those of large well-known companies. That is where we set our sights and that is what we are proud to have achieved. I also knew that it was possible to establish and operate a company where the inequities and unfairness that I experienced first-hand would not occur.

What have we achieved at TAMSCO? TAMSCO is a company positioned in and making a contribution to the mainstream of the American economy. We currently employ 557 individuals, of which 48% are minorities, in all aspects of systems integration from manufacturing to complex software development. TAMSCO's employees contribute substantially to Federal and state tax bases through income and benefit withholding taxes (\$6,867,466) on a salary base in excess of \$21,000,000 annually. TAMSCO's contracts with subcontractors and vendors are approximately \$12,000,000 annually. Prior to and since our graduation from the 8(a) Program in September 1993, TAMSCO has remained an active participant and major financial contributor in minority business coalitions in the advocacy for minority business rights and equality. Our contributions back to the minority business community also include active mentoring of 8(a) start-up firms through developmental assistance and subcontracts, support of minority universities and through TAMSCO's scholarship program.

II. GAO REPORT INACCURACIES

The GAO report is seriously inaccurate in its facts and irresponsible in its suggestion that TAMSCO abused 8(a) Program rules or regulations. Accordingly, we take this opportunity to provide the Committee with accurate information.

A. The GAO report states that TAMSCO's program participation ran from May 14, 1984, until September 18, 1993. In fact, TAMSCO's program participation term began on September 18, 1984, the date of award of TAMSCO's first 8(a) contract. The commencement of TAMSCO's participation term was in compliance and accordance with SBA's then existing regulations that commenced the program participation term

with the date of award of the participant's first 8(a) contract, not from date of acceptance into the 8(a) Program.

B. The GAO report indicates that, during review of TAMSCO for entry into the 8(a) Program, the SBA raised issues of negative control by TAMSCO's nondisadvantaged owner due to (1) the Board of Directors' structure, (2) the owners' prior relationship, (3) the owners' compensation, and (4) that the firm was located in the nondisadvantaged owner's residence. The thrust of the GAO report on the subject of TAMSCO's ownership and control was that, in the GAO's opinion, the SBA did not provide adequate explanation or justification for allowing TAMSCO to enter the 8(a) Program in 1984. In addition, the GAO report implies that SBA twice recommended that the firm's application be denied.

Insofar as TAMSCO knows, each of SBA's issues or concerns were adequately considered and properly resolved prior to the decision to admit TAMSCO into the 8(a) Program.

TAMSCO Board of Directors' Structure. During the 8(a) application process, I reviewed with as many SBA personnel as would meet with TAMSCO the provisions already established in our basic corporate documents to ensure that I remained in control of TAMSCO. For example, I reviewed with SBA our By-law provisions (which were part of TAMSCO's application). I believe now, as I believed then, that such provisions were fully consistent with SBA regulations.

Our By-laws provided that "[a]t all meetings of stockholders, every stockholder entitled to vote thereat shall have one (1) vote for each share of stock outstanding in his name on the books of the corporation on the date for the determination of stockholders entitled to vote at such meetings." Because I have at all times in the life of the corporation held majority ownership of outstanding shares of stock, this provision affords me complete control of the corporation.

Our By-laws also expressly described the powers and duties of the President, my position, as "[t]he President shall be the chief executive officer of the Corporation and shall have charge and control of all its business affairs and properties."

I also reviewed with SBA the additional protections established in a Special Meeting of TAMSCO's Board of Directors held on 23 June 1983, where the following resolutions were adopted and established:

That the President Nicholas R. Innerbichler of Technical and Management Services Corporation is the only corporation official empowered to sign checks in behalf of the corporation.

That the President Nicholas R. Innerbichler has total control of the day-to-day operation of Technical and Management Services Corporation, and has final approval on all matters concerning the operation of the corporation.

(A copy of this resolution also was contained in TAMSCO's 8(a) application package.)

As any manager and employee of TAMSCO or as my peers in the industry can attest, I always have maintained control of its operation and retain, in all matters, final approval relative to operations.

Owners' Prior Relationship and Compensation. TAMSCO's owners' prior working relationship was fully reported in its application for acceptance into the 8(a) Program. When TAMSCO applied for admission into the 8(a) Program in July 1983, we were scrupulously accurate in describing matters related to our relationship to SBA. We fully disclosed that there were times in our professional relationship when I formally reported to Bill Bilawa.

We also informed SBA that prior to commencing work for TAMSCO, Bill Bilawa earned a higher salary at Lockheed than I did for the same job (Bilawa at \$56,000/yr., Innerbichler at \$48,000/yr.). Although this was apparently significant enough to deserve mention in GAO's report, it is unremarkable given the societal practice of compensating individuals of minority groups less than their Caucasian counterparts, and the fact that Bill Bilawa had several years more experience in the industry than I. Indeed, it is practices just like unequal pay for equal work that SBA deemed essential in 1983 and still does today as part of the "Statement of Personal History" to substantiate claims of social and economic disadvantage. Insofar as TAMSCO knows, SBA found our explanations adequate and reasonable, as they should have. Frankly, we have trouble understanding why (absent a prejudice that they ought be careful not to admit) GAO questions whether I could function in a superior position to someone who had previously been paid a higher salary and to whom, at one time, I reported.

Location of TAMSCO's Initial Office. The facts behind the GAO report reference to TAMSCO being located at the Bill Bilawa's residence are unremarkable. TAMSCO had its initial makeshift office for a few months of operation in Bill Bilawa's kitchen. This was not because Bill Bilawa controlled the company in an improper, undisclosed manner; the company at that time simply could not afford to lease office space at going market rates. Upon the award of a Configuration Management contract from the Department of the Army (SATCOM), TAMSCO leased office space on Hertz Place in Beltsville, Maryland, beginning on August 1, 1984, six weeks prior to the beginning of its participation term in the 8(a) Program.

8(a) Application Approval. The GAO report suggests the SBA twice recommended that TAMSCO's application to the 8(a) Program be denied. It further suggests that SBA

officials concluded that the firm should be rejected because of negative control. These suggestions are misleading and erroneous.

Contrary to the GAO report, SBA never denied TAMSCO entry into the 8(a) Program. In the context of the lengthy and detailed certification process that included Regional, District and National Office review, two of the many SBA officials in the review cycle did not favor admitting TAMSCO. We were aware of this back in February 1984 because we made persistent inquiries of SBA about the status of our application. We were told that SBA had concerns about the financial viability of TAMSCO and about the issue of negative control, specifically the possibility that Bill Bilawa might be in a position to exercise control of the company. Because of the importance of these concerns to my fledgling business, I will remember these matters, even though more than ten years have passed.

As you might expect, when I learned of SBA's concerns, I set about to address them in a satisfactory manner. To address the financial viability issues, I provided SBA with even more updated information about contracts that we had competed for and won, our banking and savings balances and I advised them of a commitment from our bank for an asset-based line of credit. These materials were contained within and a part of TAMSCO's 8(a) application package. I also provided briefings for several SBA National Office personnel to ensure that the final decision makers at SBA understood the structure of our company and all the steps taken to ensure that I would control TAMSCO. I believe that our efforts convinced SBA National Office personnel that TAMSCO should be admitted into the Program.

C. The GAO identified as a principal concern with regard to TAMSCO a determination that U.S. Coast Guard officials directed a sole source contract to TAMSCO, avoiding federal competition requirements. This criticism is based on misleading and not well founded suggestions relating to: (1) the contract type; (2) the minimum value of the contract; (3) the SIC Code of the contract; and, (4) that the contract was a "graduation present" to TAMSCO. As GAO should know, the facts do not even remotely support or justify concern that rules for competition were violated in award of the subject contract to TAMSCO.¹

¹ The contract in question involved Coast Guard requirements to provide the capability for communication and interaction between the supply and the maintenance systems established to support Coast Guard aircraft. TAMSCO is exceedingly familiar with these systems. TAMSCO engineers designed and developed the maintenance system, which provides for tracking and scheduling of a wide variety of maintenance information, in late 1986, and has since operated and improved the system for the Coast Guard from our Beltsville, Maryland office. TAMSCO has also performed various tasks for the Coast Guard related to development of the supply system modules.

Although GAO failed to tell the Committee, the contract in question was thoroughly reviewed by the Coast Guard prior to award, including the allegations described by GAO. The Coast Guard's review was extremely thorough, months-long, and relied on sworn statements from all relevant personnel. Testimony was heard from sixteen individual witnesses and 123 documentary exhibits were considered.

The Coast Guard's inquiry concluded that there was no wrong-doing or improper conduct of the part of the Coast Guard or TAMSCO and that the procurement was entirely proper. Incredibly, GAO's report also failed to indicate that the contract was not awarded to TAMSCO until (1) completion of the review by the Coast Guard, (2) full exoneration of TAMSCO, (3) detailed findings that award of the contract to TAMSCO in fact complied with all procurement laws and regulations, and (4) detailed findings that there was no conspiracy or improper conduct on the part of TAMSCO or Coast Guard officials. That GAO did not even refer to the extensive Coast Guard pre-award inquiry is clear proof either of bias or ignorance - neither of which speaks well for the report.

As regards the issues raised by GAO concerning the Coast Guard contract, the facts are as follows:

Indefinite Delivery Indefinite Quantity (IDIQ) Contract. Early on in its requirements planning, the Coast Guard concluded that its needs for project integration dictated the selection of an IDIQ contract as the only contract type that would allow the necessary flexibility to accommodate the anticipated changes in the specific project requirements as they evolved. The IDIQ contract type was selected by the Coast Guard to afford the Government vital flexibility in progressing the subject telecommunications work through sensible increments when and if TAMSCO performed adequately. Frankly, in the circumstances of the subject contract, it made no sense to commit the Government by way of guarantee to pay for tasks until the detailed requirements and the need for such tasks were firmly established. In fact, those detailed requirements defied adequate definition at the time of award, hence the need for an IDIQ type contract.²

Minimum Value of the Contract. Similarly, there is also no reasonable basis for GAO's suggestion that the minimum value and guaranteed commitment of the contract was manipulated to avoid competition. GAO is flatly wrong to suggest manipulation in the careful and conservative estimates prepared by the Coast Guard for the work that they were prepared to guarantee to TAMSCO under the subject contract. Rather, as the Coast Guard determined in its formal findings, "the actual guaranteed minimum value of the contract,

² The IDIQ contract by definition recognizes that projects with anticipated changing requirements should be incrementally funded. In many, if not most, instances, IDIQ contracts never realize anything close to their maximum possible value. For example, TAMSCO has been able to exercise, perform and bill on less than 41% of the aggregate ceiling value of its IDIQ contracts.

\$2.1 million, was developed properly and without the intent to ensure sole source award to TAMSCO.” (Coast Guard Convening Authority’s Action, page 7)

SIC Code. In contrast to GAO’s suggestion that Coast Guard officials and TAMSCO manipulated the SIC code for the work so that TAMSCO would qualify, the SIC code for the work was actually determined by the SBA, independent of TAMSCO and the Coast Guard. The Coast Guard was unable to sort out internal disagreement about the central character of the work (and thus, the most appropriate SIC code assignment) and referred that decision to the SBA. In fact, the responsible contracting personnel did not disclose to the SBA the competing SIC codes under consideration. Upon their review of the statement of work of the integration effort, the SBA, not the Coast Guard, identified SIC Code 4813 for the requirement. Subsequently, Coast Guard officials assigned the SIC code recommended by SBA to the work. Any suggestion by GAO of manipulation in this matter is in error and irresponsible.

“Graduation Present”. The GAO report suggests that the Coast Guard contract in question was a “graduation present” to TAMSCO. Contrary to the popular belief by detractors of the 8(a) Program, the Federal marketplace gives no presents, even under the 8(a) Program. TAMSCO has self-marketed, aggressively worked for and earned each of its contract awards. The proximity in time of the contract award to TAMSCO’s graduation date was mainly the result of the time required for thorough review by the Coast Guard of the unsubstantiated allegations referenced above and was the culmination of appropriate and extensive self-marketing efforts.

III. CONCLUSION

TAMSCO has always been straightforward and honest in its dealings with its Government customers, has scrupulously abided by all procurement laws and regulations and has strictly adhered to all eligibility requirements of the SBA’s 8(a) Program. TAMSCO remains mystified as to the veiled suggestions in the GAO report that TAMSCO’s conduct in some way indicated abuse of the 8(a) Program. As heretofore addressed, TAMSCO is confident that SBA’s files relating to our participation in the 8(a) Program and the Coast Guard’s formal review record will substantiate TAMSCO’s assertions.

In conclusion, we are extremely disappointed with GAO’s report. When TAMSCO learned of GAO’s interest, we agreed to cooperate fully. As a practical matter, all GAO ever asked of TAMSCO was that we allow them interviews that, in total, did not exceed two hours. Following each interview, GAO’s investigators went out of their way to assure us that, although they had come to question the wisdom or value of certain 8(a) Program rules, TAMSCO should be relieved to know that they had found absolutely no indication that

TAMSCO did anything other than follow the established rules and regulations. As you might expect, we are not at all relieved. Our valued reputation and our hard working employees have suffered unfairly from publicity spawned by GAO's poor work and its lack of integrity.

Madame Chairman, this concludes my formal statement. TAMSCO appreciates the opportunity to address the GAO report before the Small Business Committee.



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



STATEMENT OF
CALVIN JENKINS
ASSOCIATE ADMINISTRATOR
FOR MINORITY SMALL BUSINESS
AND CAPITAL OWNERSHIP DEVELOPMENT
U.S. SMALL BUSINESS ADMINISTRATION
BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS

December 13, 1995

Madam Chairman and Members of the Committee, I welcome this opportunity to appear before you today to discuss the future of U.S. Small Business Administration's (SBA's) Minority Enterprise Development Program (MED). I am Calvin Jenkins, Associate Administrator for Minority Small Business and Capital Ownership Development. I have served in this capacity since September 3, 1995. I am accompanied by Michael McHale, Deputy Associate Administrator for Minority Small Business and Capital Ownership Development.

President Clinton in his July address on affirmative action and release of the White House's affirmative action review, directed the Department of Justice to work with the agencies in reviewing Federal affirmative action programs to ensure that such programs are consistent with the law. We are working with the department of justice in examining the 8(a) program as part of this review and in seeking to improve the program.

Let me begin by emphasizing a fundamental point, namely that the essence of the SBA's 8(a) Program is to provide business development opportunity to disadvantaged firms through structured access to Federal procurement contracts. This is widely recognized as both a necessary and fitting goal of government.

Contracting by minorities still represents a small piece of total federal contracting. In 1986, minority owned businesses received only 2.7% (\$5 billion) of the \$185 billion of total Federal procurement. This percentage participation in Federal procurement is not representative of the minority population or business ownership in this country. This finding was substantiated in 1988, when Congress enacted P.L. 100-656. It determined that the need for the 8(a) Program was just as

valid then as it was at its inception. In fact, it was noted that little progress had been made overcoming discriminating barriers to minority business success. SBA believes there is evidence that the 8(a) Program has indeed fostered business ownership by socially and economically disadvantaged persons, as intended by Congress. But the participation of minority-owned firms in federal procurement still is comparatively small. Fiscal Year 1994 data indicates that if 8(a) contract awards were not made, the minority-owned business percentage of total Federal contracting would be just over \$5 billion, representing only 3% of total procurement. Therefore, except for the growth in contract awards through the 8(a) Program, there has been minimal expansion in Federal contract awards to minority businesses during the last ten years (0.3%).

Current Federal procurement data further indicates that minority owned businesses have difficulty entering the Federal procurement market. From 1989 through 1994, total minority business contracting in the Federal sector (including SDB set asides and 8(a) contracts) has increased only 1.6%, up to 6.2%. Based on the most recent data available from the Department of Commerce's Census Bureau, minority owned businesses comprise 8.8% of the total business population, while minorities comprise 26.3% of the general population.

At this juncture in the history of the 8(a) and other minority small business assistance programs, the question can be asked whether the purposes of the programs have been fulfilled. The mere existence of the 8(a) Program has increased the business ownership aspirations of members of designated minority groups. Knowing that the 8(a) Program is available to mitigate the impact of social and economic disadvantage has caused some minority individuals to go into business when

they might not have otherwise. At a time when the demographics of our Nation are changing dramatically in terms of minority groups representing a larger percentage of the overall population, there is a need to empower and provide real economic development opportunity to these individuals. It is these business owners who will play a major role in carrying the spirit of entrepreneurship, business formation and capitalism into the 21st Century. We must provide the infrastructure and support mechanism to ensure that this potential is realized.

While SBA believes that the 8(a) Program is necessary, it does not condone the past or present abuses that have occurred, and we recognize the need to correct and prevent them from happening in the future. During the past two years the SBA has moved aggressively to correct abuses of the past, and to integrate better management controls into the program. However, SBA recognizes that more must be done to ensure equitable access to the benefits of the 8(a) Program -- to provide more opportunities to more Americans.

HISTORICAL PERSPECTIVE

The 8(a) Program that is at issue today before this Committee was originally fashioned out of Section 8(a) of the Small Business Act, near the end of the Johnson Administration, in response to civil disturbances in the late 1960's. Its intent was to assist minorities to enter the "business mainstream of the American economy."

Further impetus for contracts programs was provide by a series of Executive Orders issued during the Nixon Administration which sought to encourage the growth of minority business

enterprise (Executive Orders 11458, 11518, and 11625). The 8(a) Program has been fostered and encouraged by every administration since then, including the Reagan Administration. Under President Reagan, a number of important reforms were undertaken.

On November 15, 1988, President Reagan signed into law the "Business Opportunity Development Reform Act of 1988," P.L. 100-656. This law provided for, among other things, competition in the 8(a) Program above certain contract dollar thresholds, a nine-year participation term, and attainment of non-8(a) revenue at certain levels during program years 5 through 9.

With P.L. 100-656, Congress and President Reagan reaffirmed that the 8(a) Program was a primary tool for improving opportunities in the Federal procurement process for small business concerns owned and controlled by socially and economically disadvantaged individuals, and for bringing such concerns into the nation's economic mainstream. Yet Congress also found that, while some business success could be demonstrated as a result of the program, the enduring principal objectives of the program had not been fully achieved. However, a key finding of Congress was that the program objectives remained as valid as when the program was initiated in 1967.

Since its first 8(a) contract award in 1969, the 8(a) Program has awarded approximately 101,000 contracts valued at approximately \$53 billion. At present, there are approximately 5,700 certified 8(a) firms. During FY 1994, 8(a) Program participants received approximately 6,056 contracts. The total of all contract actions, including contracts and modifications, was valued at approximately \$5.5 billion which represented 3.2% of total procurement dollars awarded.

Preliminary internal data indicates that during FY 1995, program participants received over 6,000 contracts. When final data is available, it is expected that the dollar value of 8(a) contract awards will be consistent with the value for FY 1994. Also, during FY 1995, 2,162 program participants received contract awards. It is notable that in FY 1995, the number of firms receiving contracts increased 3% over the number of firms receiving contracts in FY 1994, and 35% over the number of firms receiving contracts in FY 1991.

The 8(a) Program has made it possible for many minority entrepreneurs to enter the Federal marketplace. The program is not a government "handout" or "giveaway." It is a means by which qualified businesses have produced goods and services which have met or exceeded market standards and agencies' needs. Historically, the contract default rate of 8(a) Program participants is less than the default rate of firms in general. This program has demonstrated that given the opportunity, disadvantaged firms can perform effectively and efficiently.

MAJOR ISSUES FACING THE 8(a) PROGRAM

In spite of a number of significant efforts undertaken by SBA during the past eighteen months to address issues raised by the Congress, it is recognized that the SBA has taken only the first steps in a continuing process of program reassessment and re-invention.

Concentration of Contacts

The General Accounting Office (GAO) and SBA's Office of the Inspector General (IG) have criticized the 8(a) Program because a limited number of companies have received the majority of 8(a) contracts. SBA believes that a number of factors contribute to the inequitable distribution of 8(a) contracts. This is a problem that must be solved for the 8(a) Program to be even more successful. A number of options are being discussed at the staff level. As the review ordered by the President proceeds, resolution of this problem will be foremost among the issues that the SBA and the Justice Department will address in improving the program.

It is important to realize that in Federal contracting at large, a small percentage of firms receive the majority of Federal procurement dollars. For example, in FY 1994, 100 firms (representing the largest suppliers of federal goods and services) received approximately 57 percent of all contract dollars awarded for contracts over \$25,000 (\$100 billion out of \$175 billion). At the Department of Defense, the top 100 firms received approximately 61% of all contract dollars. Within this group, the top ten firms received approximately 36%. The concentration of contracts within the 8(a) Program is not unique, but is actually consistent with the overall Federal marketplace.

8(a) firms are no different from other small businesses -- some will be more successful than others. Clearly, some 8(a) participants are more aggressive in marketing their firms than others, some have identified and developed a unique market niche, some provide outstanding customer service and contract performance, and some have the entrepreneurial spirit and tenacity that is necessary for effective market development and growth. Further, under the law, procuring agencies can nominate specific 8(a) firms for specific requirements. These factors make a difference and often determine what firm will receive a particular contract award.

Among the factors which define an 8(a) participants' success in obtaining contracts are firm proximity to Federal agencies, firm capabilities, access to credit and capital, effective marketing, and the level of 8(a) support contributed by each Federal agency. In addition, the current goaling process, which focuses only on total contract dollar awards, provides very little incentive for procuring agencies to utilize a larger number of firms or to consider identifying contract opportunities in different industries. Dollar goals can be met by awarding a few large 8(a) contracts to a few firms.

SBA has taken several steps to broaden the distribution of 8(a) sole source contracts. One of the major priorities of SBA's Office of Government Contracting is to identify contracting opportunities for the 8(a) Program. The Administrator has issued a memorandum to all district directors requiring districts to develop, in cooperation with the Office of Government Contracting staff, strategic plans to increase the number of contract opportunities for a greater percentage of its portfolio.

SBA's Office of Government Contracting also continues to take an active role in marketing and promoting the 8(a) Program by working with SBA District Offices and 8(a) concerns to identify additional contracting opportunities. SBA has also executed a Memorandum of Understanding (MOU) with the Department of Defense (DOD) to increase DOD awards to small disadvantaged businesses by five percent, with emphasis on the utilization of firms participating in the 8(a) Program. A key feature of this initiative is a commitment by DOD to give special attention to firms that have never received an 8(a) contract. In this way, SBA is working to increase the number of participants who actually receive contracts. Ongoing negotiations with other Federal agencies are expected to result in similar MOUs.

In addition, on Jun 7, 1995, SBA promulgated a final regulation to ensure that 8(a) contracts were distributed more widely on a geographical basis. This regulation is summarized as follows:

The distinctions between "local buy" and "national buy" offerings were eliminated, except for the construction industry, which is required by statute to be awarded within the county or State where the work is to be performed. Prior to this change, contracts classified as local buys, a service or product purchased to meet the specific needs of one user in one location, could be performed only by firms located within the jurisdiction of the District Office where the work was to be performed. This change allows 8(a) firms to market their services or products to the Federal government without geographical restrictions.

To increase the number of contracts available for competition, the "indefinite delivery, indefinite quantity" (IDIQ) contract "loophole" has been closed. Previously, IDIQ contracts with a minimum (not estimated) value below the competitive threshold were offered to SBA on a sole source basis. SBA relied on the minimum value in accepting these requirements into the 8(a) Program. Subsequently, many of these contracts were allowed to grow, through issuance of task orders by contracting officers of agencies other than SBA, to amounts far in excess of the competitive threshold. As a result, SBA found that the estimates of contract quantities by contracting offices were unreliable. To remedy this problem, on June 7, 1995, SBA published regulations that used the estimated value of the contract as the basis for determining if the contract should be let as an 8(a) competitive award, thus creating more opportunities for competition.

While SBA feels that these steps will assist in providing better distribution of 8(a) contracts, it does not believe they will guarantee equitable distribution of all 8(a) contracts, because it is up to each participant to market and seek out contract opportunities. The 8(a) Program can only provide assistance necessary for participating firms to become competitive, it does not guarantee the award of contracts or economic viability. It does, however, in collaboration with other Federal agencies, offer management and technical assistance, and access to capital that will assist a company in its efforts to grow.

An additional problem that contributes to contract concentration is the failure of 8(a) participants to meet required business activity targets standards (competitive business mix). These targets refer to the percentage of non-8(a) business a program participant must attain while in the

transitional stage (last five years) of program participation. Stricter enforcement of this requirement will also promote wider contract distribution. SBA has historically had difficulty in enforcing contract targets. Instead of a rigid enforcement of these targets, which would result in the Agency withholding 8(a) contract awards until a firm is in compliance, SBA has allowed a lesser standard of compliance. Firms have been allowed to develop remedial measures which have, in some areas, proven to be effective in bringing them into compliance with business activity targets. Again, this illustrates the need to strengthen SBA's regulations.

Eligibility

The Small Business Act defines "economically disadvantaged individuals" as "socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged, and such diminished opportunities have precluded or are likely to preclude such individuals from successfully competing in the open market."

The Agency's regulations state that the 8(a) program is not intended to assist concerns owned and controlled by socially disadvantaged individuals, who have accumulated substantial wealth, or have unlimited growth potential, or who have not experienced or have overcome impediments to obtaining access to financing, markets and resources. In determining economic disadvantage, SBA has attempted to follow Congressional intent as expressed in several reports, and the statute by exempting equity in personal residence, and in the 8(a) firm in calculating personal net worth.

While SBA considers factors relating both to the individual claiming disadvantaged status and to the applicant concern, the most important factor for determining eligibility for entrance into the program has been the individual's personal net worth. SBA regulations state that an individual whose net worth exceeds \$250,000, after excluding the individual's ownership interest in the applicant concern and the equity in his/her primary personal residence, will not be considered economically disadvantaged for the purposes of the 8(a) Program.

In addition to considering the net worth of the applicant, SBA also considers the individual's personal income for the past two years and the total fair market value of all assets. SBA is currently considering standards to provide further program guidance to address this issue.

Once a firm has been accepted into the 8(a) Program, it is subject to an annual assessment of its eligibility to continue in the program. This assessment is part of the annual review and addresses both continuing eligibility and a review of the company's business plan. At the completion of the annual review, a decision is made to recommend continuance, graduation or termination of the firm from the program. As indicated elsewhere, SBA has made comprehensive completion of annual reviews a goal for all District Offices.

According to current statutory authority, a participant firm may be recommended for graduation only when it has substantially achieved the targets, objectives, and goals set forth in its business plan, and has demonstrated the ability to compete in the marketplace without further

assistance under the 8(a) Program. These broad subjective criteria make it difficult to measure and to apply in support of a recommendation to graduate a specific firm.

Also, a firm may be recommended for termination from the program when it is determined that good cause exists to take this action. Examples of good cause generally include a firm's failure to continue to maintain its eligibility for program participation, and failure to comply with specific administrative/reporting requirements. The process and procedures for termination are quite specific and lengthy and make it difficult to terminate companies. It is important to note, however, that during the past eighteen months, 334 firms have been terminated from the program. This compares with the prior four years when a total of only 150 firms had been terminated from the program.

Success of Firms Completing the Program

As indicated earlier, firms that participate in the 8(a) Program are not fundamentally different from other small businesses -- some will succeed, while others may not. There are many factors that influence the relative level of success that a firm will attain. The training, experience and support that 8(a) firms receive from the SBA help to minimize the many obstacles that developing firms encounter. The opportunity to negotiate contracts in a controlled market setting, under the 8(a) Program reduces the risk of failure and serves as an excellent training and business development tool. While the 8(a) Program provides opportunity and assistance necessary for participating firms to become competitive, it does not guarantee contracts or success.

Measurement of business success and linkage of such success to specific causal factors are ambiguous at best. However, it is worthy to note that implicit in an 8(a) firm's completion of a nine year program term is a survival rate that substantially exceeds the average longevity of small businesses in general.

Each year, pursuant to P.L. 100-656, SBA reports indicia of "success" for businesses that exited the program during the preceding three years. In FY 1994, SBA reported that of 964 firms exiting the program between October 1, 1992, and September 30, 1994, 436 of the subject firms reported total revenues of \$3.6 billion, and an average per-firm revenue of \$8.3 million. These firms provided employment to approximately 35,600 individuals, and paid approximately \$60 million in taxes, which is almost three times the operating budget of SBA's Minority Enterprise Development Program. Also noteworthy is the fact that many of these firms have now developed the capability to compete in the Federal market system as experienced, responsible contractors. The inclusion of these firms in this market has the effect of increasing both the overall number and quality of prospective Federal contractors.

**GENERAL ACCOUNTING OFFICE REPORT ENTITLED
"8(A) IS VULNERABLE TO PROGRAM AND CONTRACTOR ABUSE"**

The GAO recently reviewed two former 8(a) firms concerning questionable practices involved in their application and participation in the 8(a) Program. The GAO specifically questioned (a) whether the two firms, I-NET, Inc., (I-NET) and Technical and Management Services Corporation (TAMSCO) were owned and controlled by socially and economically disadvantaged

individuals, as defined by 8(a) Program regulations, and (b) the propriety of certain contract awards to the two firms.

SBA has carefully reviewed the case files of these two firms and agree in part with the GAO report. SBA is aware of and concerned with the GAO's findings. SBA's regulations are adequate to deal with this situation, but can be further defined. It is important to note that neither I-NET nor TAMSCO now participate in the 8(a) program.

I-NET

SBA has reviewed the original files on I-NET and believes that SBA's initial eligibility review was consistent with program policy, that field staff reviewed the material carefully, and that the decision to recommend participation in the 8(a) Program was in compliance with the regulations. Since the regulations do not require proof of citizenship, SBA officials who reviewed the application were unaware that the applicant was not a citizen at the time of submission and review. SBA relies on the applicant to provide truthful information. While SBA's review of 8(a) companies is stringent, staff members are not trained as investigators, but as analysts. The information identified in the GAO and IG reports reflected problems that were not known to SBA at the time of its review. Had the review indicated that the firm had made false statements, this matter would have been immediately forwarded to SBA's IG for full investigation. This is SBA's current policy.

The GAO also found that SBA failed to recognize that I-NET had submitted financial statements that excluded revenues from the firm's total sales. These exclusions permitted I-NET to

receive contracts for which it was not eligible. SBA regulations concerning representation of company size are clear and, in fact, are the cornerstone of all SBA programs. The firm's financial submissions to the SBA were misleading as they excluded certain revenue items. Further, the firm improperly self-certified as a small business in submitting a number of contract proposals. The district office failed to catch the misleading financial statements, and to properly evaluate and verify the company's representations concerning its size. Having been made aware of these misrepresentations by the IG, the district office has notified procuring agencies that these awards were erroneously awarded, and has recommended that options not be exercised. SBA has also directed all District Offices to conduct annual reviews for their entire portfolio and to give special emphasis to each firms' financial statements and corporate tax returns.

With regard to I-NET's graduation from the program, SBA initiated proceedings on September 28, 1992, and the firm agreed to graduate on June 16, 1994. A question may be raised as to why the process took so long. From a business standpoint, there is no incentive to graduate from the program. This highlights the need to strengthen the SBA regulations concerning the evaluation and processing of companies for early graduation.

SBA's regulations make it difficult to make a case that a company should be graduated because the criteria allows a firm to argue that it is not yet able to work outside the program. In the matter involving I-NET, although the district office recommended graduation, the effective date of the action was delayed by cumbersome processing procedures and lack of rigorous evaluation criteria. Corollary delays in processing occurred because information submitted by the concern was

not provided in a timely manner and material requested was often incomplete. In general, early graduation or termination of firms from the program is a lengthy procedure, according substantial due process to the firms.

A large issue in this matter was the award of contracts during the graduation process. As long as a participant that is being processed for graduation is in compliance with program requirements, business development assistance, including the award of contracts, is available to the firm until a final determination is made on the graduation action. Therefore, during the period that the graduation was being processed, I-NET was allowed to self market and receive the contract awards that were referenced in the GAO Report.

Another issue raised in the GAO report is I-NET's proposed transfer of ownership which SBA initially reviewed as a transaction that would cause the firm to relinquish control to outside investors. GAO questioned whether the proposed transfer constituted a relinquishment of ownership or control which would cause I-NET's 8(a) contracts to be terminated for convenience under 15 U.S.C. 637(a)(21), absent a waiver by the Administrator. I-NET notified SBA that it intended to sell a minority ownership interest to several private investors and that the remaining stock held by the majority owner would be subject to certain restrictions. The firm believed that the individual upon whom I-NET's eligibility for the 8(a) Program was based would not relinquish ownership or control of I-NET, and therefore, that the termination for convenience/waiver provisions of 15 U.S.C. 637(a)(21) did not apply. Conversely, I-NET argued that if SBA ruled that there was such a

relinquishment of ownership or control, it would be eligible for a waiver of contract termination pursuant to 15 U.S.C. 637(a)(21).

SBA's Office of General Counsel is analyzing the I-NET transfer, and is discussing those issues with I-NET and its legal representatives. As the transaction was first structured, SBA's Office of General Counsel believed that the individual upon whom I-NET's 8(a) eligibility was based would relinquish control, and that a waiver was necessary to overcome the termination for convenience requirement. I-NET attempted to overcome the concerns of the Office of General Counsel by attempting to restructure the transaction and just recently provided new documentation to SBA's Office of General Counsel for review. The review will determine whether ownership or control is relinquished under the proposed restructured transaction, and if so, whether the transaction meets the legal requirements for a waiver.

TAMSCO

In terms of the eligibility review of this firm and I-NET, it is difficult now to second guess the determinations that were made by program staff over ten years ago. However, SBA's review indicates the following: District and Regional Offices recommended decline of the application for technical reasons. This recommendation was overturned by the Headquarters Eligibility Specialist and the firm was approved by the AA/MSB&COD who, by law, has final approval authority. The approval of the firm failed to properly address a flaw in the firm's corporate structure, which may have given the 49% owner of the firm equal authority on the board of directors, resulting in negative control. This technical error was easily correctable by the applicant. With this exception, it appears

that the application was processed according to Agency regulations and standard operating procedures. This case represents a processing oversight, but does not represent an abuse of the program.

The report also found that TAMSCO received a sole-source 8(a) contract that should have been awarded competitively through the program. In this case, the GAO reported that a U.S. Coast Guard contracting official, in an effort to direct the award of this contract to TAMSCO, changed the SIC Code designation and minimum contract value in order to circumvent SBA program regulations.

The GAO report was critical of the contracting agency for directing a noncompetitive contract that exceeded the competitive threshold established by law to the firm. A review of SBA's records revealed that the requirement was offered to the 8(a) Program in accordance with SBA regulations. There was no reason to second guess the contracting agency regarding the appropriateness of the selected contract type. SBA believed that it had the right to rely upon the certification of a United States Government Contracting Officer, who offered a contract to the 8(a) Program, to ensure that it was in compliance with applicable laws and regulations. It appears that in this instance, the IDIQ contracting mechanism was used to bypass regulations, the statutory requirements for 8(a) competition .

GAO criticized SBA regarding the application of competitive thresholds to IDIQ type contracts because it allowed agencies to circumvent competition requirements. Abuse of competitive thresholds through use of IDIQ contracts is an issue that has been addressed. On June 7, 1995, SBA

published a regulation that required the competitive threshold of \$3 million for services and \$5 million for manufacturing to be applied to the total government estimate, including all options for all government contracts, including IDIQ's.

The GAO reported that this firm received at least 22 contract awards within 2 weeks of its graduation from the 8(a) Program totaling at least \$63 million. The report was critical of the fact that 13 of the awards were IDIQ contracts from a number of government agencies. There is no regulatory prohibition against 8(a) contract awards, even during the week prior to graduation. Firms that are in compliance with 8(a) eligibility requirements, including but not limited to size requirements and business activity targets or remedial measures, can receive contracts under the program right up to the time of program term completion.

A review of the firm's business file revealed that the firm was not in compliance with its competitive business activity targets, but it was in compliance with its remedial measures. (Remedial measures range from requiring a firm to obtain management and technical assistance to reducing or eliminating sole source requirements.) Consequently, the firm was eligible for the contract awards.

However, SBA should have taken more stringent measures when it became evident that compliance with its remedial action plan would not ultimately bring the firm into compliance with its business activity targets. This case clearly demonstrates that existing regulations need extensive review with respect to firm compliance with business activity targets. SBA needs to provide

guidance to promote consistency with the application of the regulation and compliance with the intent of the law.

Recognition of some of the past problems in reviewing program applications has led to improvement in the overall quality of the process. SBA has provided program certification and eligibility staff training in analysis of financial information and application documentation. This will reduce the opportunity for approval of ineligible applications based on submission of misrepresented data. To ensure that only eligible firms receive contract awards under the program, and that business development goals are truly met, SBA has improved our review process, and mandated that all firms be reviewed annually, with particular emphasis placed on monitoring attainment of competitive business developmental goals. Further, SBA has accelerated the processing of termination and graduation actions to remove firms as soon as they are found to be ineligible. To preclude circumvention of competitive thresholds, SBA has published regulations closing the IDIQ "loophole." Also, SBA has established internal field office goals to increase the number of firms receiving contracts annually. Taken together, these and similar measures should ensure that only eligible firms enter the program and receive contracts, and that such contracts are more equitably distributed among program participants.

The SBA believes that the issues identified in the recent GAO report are not typical of today's 8(a) Program. However, the fact that these problems occurred, and others cited in earlier GAO and IG reports, have caused SBA to examine the program and propose steps to prevent them from recurring. The statutory authority for the program is complex. Nonetheless, as referenced

elsewhere in this testimony. SBA plans to take broad regulatory and administrative measures to increase the integrity of the program, make it more efficient, and minimize the potential for abuse.

MED PROGRAM ACCOMPLISHMENTS

SBA has successfully addressed concerns raised by past GAO and IG reports. These reports have identified weaknesses in the overall administration and management of the 8(a) Program. First, SBA's inability to develop an effective and accurate management information system has been cited repeatedly as a deficiency that has prevented the agency from properly managing and evaluating the MED Program. Second, SBA's failure to process program applications in a timely manner has been cited as a management problem that has caused the agency to consistently not meet statutory provisions. Third, the agency's failure to conduct comprehensive annual reviews of all portfolio firms has been identified as a deficiency which affects continuing program eligibility. Fourth, SBA's failure to terminate firms that are no longer eligible to participate in the program has been noted in the past.

Application Processing

In the last 18 months, SBA has made significant headway in meeting the 90-day statutory time frame for processing 8(a) applications. Currently, the average processing time for initial applications is 93 days. Over the last three years, the average processing time has been reduced from 208 days to the current level. Presently, the average processing time for reconsiderations is 46 days. Over the last three years, the average processing time has been reduced from 164 days to this level.

Within the next three months, all applications will be processed in accordance with the aforementioned statutory time frame.

Management Information Systems

Another criticism of SBA by GAO and the IG is SBA's failure to properly plan, develop, and implement an automated information system that allows the agency to collect, assess, and evaluate information regarding MED's programmatic performance. In August of 1994, SBA adopted a plan to complete automation of the MED program. Pursuant to this plan, in 1995 the agency implemented the Servicing and Contracts System/Minority Enterprise Development Central Office Repository.

The system is up and running in Headquarters and all field offices. It is a comprehensive tool that will enable SBA to monitor assistance provided, contracts awarded, business development progress, and compliance with statutory and regulatory requirements; and to measure program performance and accomplishment. Through this system SBA will be able to measure program effectiveness and identify program vulnerabilities before they become problems.

Annual Portfolio Reviews

Completion of an annual review for each program participant is essential in determining achievement of business objectives; identifying firm market, management, and financial weaknesses; and recommending effective business development strategies. Based upon internal management control reviews, as well as the aforementioned IG and GAO reports, SBA identified failure to conduct annual business plan reviews of program participants as a program flaw to be corrected.

To address this matter, last year, all districts were assigned a goal to complete an annual review for every company in their portfolios. As a result of this goaling initiative, 84% of all portfolio firms were reviewed during FY 1995, as compared to 57% in FY 1994. This goal is being carried forward for FY 1996, and it is fully expected that reviews will be completed for all 8(a) firms. To make this process more efficient and the resulting data more accurate, the form used to complete the review has been redesigned and will be incorporated into the information system for automatic generation. During FY 1996, SBA expects to implement more objective criteria for graduation and/or termination of firms from the program.

Termination of Ineligible Firms

To maintain program integrity, and pursue realistic business development objectives with limited resources and limited contracting opportunities, it is important that companies determined to be ineligible for continued program participation be expeditiously removed from the program. The SBA has moved aggressively toward accomplishing this objective. In the past eighteen months, SBA processed over 334 termination actions. It should be noted that during this period, SBA processed more termination actions than it had processed in all prior years, cumulatively. In total, 484 firms have been removed from the program for reasons of non-compliance since October 1, 1988.

CONCLUSION

Over the many years, SBA's 8(a) Program has done much to assist disadvantaged entrepreneurs, and to bring the benefits of diversity -- creativity and innovation -- to the American economy. For this reason, the 8(a) Program has enjoyed bipartisan support and as previously noted,

every President from Lyndon Johnson to William Clinton have supported the Program. It has spurred creation of businesses in all industrial sectors, fostered formation of capital, and increased access to credit. Further, it has provided increased employment opportunities in communities throughout the Nation. Yet, we are sensitive to the need for change. Therefore, we are committed to managing the 8(a) Program in a manner that will ensure that its benefits are available on a truly equitable basis, and that confidence in the integrity of program is warranted.

This concludes my testimony. I will be happy to answer any questions you may have.

Testimony of
Karen S. Lee
Deputy Inspector General
U.S. Small Business Administration



Before
The Committee on Small Business
United States House of Representatives

December 13, 1995

Good morning, Madam Chair and Members of the Committee. I am Karen S. Lee, Deputy Inspector General of the Small Business Administration. Mr. Peter McClintock, Assistant Inspector General for Auditing, and Mr. Stephen Marica, Assistant Inspector General for Investigations, are with me this morning.

As requested, I will discuss audit and investigative work undertaken by the Office of Inspector General (OIG) and a recent related General Accounting Office (GAO) report, concerning SBA's Minority Enterprise Development Program (otherwise known as the 8(a) program), especially as they relate to documented problems in the 8(a) program. I will also address the specific points and questions included in your letter of invitation to testify.

I am pleased to have the opportunity to address needed improvements to the 8(a) program. While the OIG has increased its auditing of the 8(a) program in the past five years, our limited coverage of the program reflects our lack of resources. Our detailed knowledge of the 8(a) program's operations is not as extensive as we would like it to be and there are certain aspects and operations of the program that have never been audited, so our experience is constrained in that respect. We are, however, familiar with the overall goals of the program, and also have a fairly good base of knowledge of past and present 8(a) program fraud and abuse derived from the criminal

investigation activities of the OIG. My testimony is based on the accumulated knowledge of the office, as derived from both our audit and investigative activities. I will also draw on certain statistics obtained from the Agency's 8(a) information system. Given these caveats, I will discuss what I believe to be some of the major current issues facing the 8(a) program.

Before discussing the results of our audit work, I would like to point out that the amount of time spent in investigations of 8(a) program fraud has dropped approximately 40% in the past three years. This reduction is due primarily to a significant reduction in OIG agents resulting from budgetary constraints and a significant increase in the number of cases in the disaster and business loan programs, a priority of the Inspector General. Other reasons for the decline in 8(a) program fraud include the heightened level of deterrence generated by media coverage of our successful prosecution of 8(a) cases, the success of our fraud awareness training provided to SBA employees and program participants and, in some measure, to the reforms that were incorporated in the 1988 amendments.

Fraud has not been eliminated and still remains a problem, however. Despite our reduced resource commitment to the 8(a) program over the previous three years, we have still closed 40 criminal investigations which have resulted in 26 indictments, 25 convictions, and approximately \$60 million in financial recoveries through court-ordered restitution, fines, and other savings. Our current inventory includes 19 active cases involving 63 subjects and over \$126 million in potential loss to the government or

illegally obtained contracts. Due to resources shortages, we have also referred 31 cases to other Federal law enforcement agencies.

Employee corruption has been a serious problem in the 8(a) program. Since 1987, 8 employees have been convicted of felonies stemming from their abuse of the public trust. The most notable cases included two Assistant District Directors who accepted gratuities for awarding contracts. These cases received extensive publicity. Because both individuals were convicted and sentenced to substantial prison terms, we believe their experience provided an object lesson for other employees and has deterred such activity over the past two years.

Another reason for corruption is a breakdown in management control of the program by Agency employees and managers. In most employee corruption cases, higher level officials were lax in their oversight of 8(a) program employees empowered to make decisions involving millions of dollars in Federal contracts. Likewise, in cases of participant fraud, due diligence on the part of the responsible SBA employee would frequently have prevented the fraud, or would have contributed to discovery sooner. We have also found, in many instances, SBA employees were informed of activity contrary to existing policies and regulations, yet, the activity was approved or allowed to continue. Unfortunately, this abuse of discretionary authority has resulted in fraud referrals being declined by the Department of Justice because the Agency knowingly permitted violations of its own policies and regulations.

The September 1995 GAO report on I-NET and TAMSCO, "8(a) Is Vulnerable to Program and Contractor Abuse," expanded on some work performed by the OIG on

the 8(a) company, I-NET. The OIG has not audited TAMSCO, therefore, I cannot address the issues raised by the GAO concerning that company.

Over a decade, SBA mismanaged various aspects of I-NET's participation in the 8(a) program. The veracity of I-NET's assertions at entry have been appropriately questioned both by the OIG's auditors and GAO personnel. Faulty monitoring was apparent in allowing at least 11 contracts with a related value exceeding \$16 million to be awarded to I-NET when I-NET was too large to qualify as a small business for those contracts, and I-NET's graduation from the program was unreasonably drawn out. Actions by SBA employees were also inappropriate and slow. It took the Agency almost nine months to send out the initial letter of intent to graduate I-NET after the OIG raised the graduation issue. During the 17 months it took SBA to graduate I-NET from the 8(a) program, I-NET was awarded 19 8(a) contracts exceeding \$12 million in value. The OIG referred the possible false claims issues to the Department of Justice which was very interested until it learned that SBA incorrectly certified that I-NET qualified for contracts.

I will now discuss the major systemic issues (eligibility, competition, and brokering) that I believe should be addressed to reduce abuse and improve the effectiveness of the 8(a) program.

* Eligibility. The 8(a) program is designed to assist individuals who are both socially and economically disadvantaged. For purposes of the 8(a) program, economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished

capital and credit opportunities, as compared to others in the same or similar line of business who are not socially disadvantaged. These diminished opportunities must have precluded, or have likely precluded, opportunities for successful competition in the open market.

The Office of Minority Enterprise Development (MED) is supposed to measure economic disadvantage in one of three ways: (1) the individual's net worth, (2) the financial condition of the individual's company, and (3) its access to credit. Individuals who exceed certain net worth thresholds are not considered economically disadvantaged. For entry into the program, personal adjusted net worth cannot exceed \$250,000; once in the 8(a) program, it cannot exceed \$750,000. These limits exclude a spouse's assets, and by law, the individual's equity in his or her house and any equity he or she may have in the business.

The MED analysis of a business' financial condition is supposed to be based on a comparison of the 8(a) company with other concerns in the same or similar lines of business. MED is supposed to consider, among others, the following factors: business assets, revenues, pre-tax profit, working capital, and net worth.

When assessing access to credit and capital, MED is supposed to consider access to long-term financing; access to working capital financing and equipment trade credit, and access to raw materials, supplier trade credit, and bonding capability. While MED employees are supposed to determine whether the firm has sufficient working capital and access to capital and to credit during the Annual Review of 8(a) firms, no

guidance is given as to what dollar amounts of each would make a company no longer economically disadvantaged.

The OIG has conducted several audits that focus on eligibility issues. We have audited individual companies and concluded that the participant had overcome his/her economic disadvantage and recommended termination or graduation from the program. While MED has taken actions on these cases, the termination and graduation processes are complex and time-consuming. I-NET is one case which illustrates this problem. In another situation, we recommended graduation or termination proceedings on May 31, 1994, because the company had grown to the point that it was larger and more profitable than other similar companies and the owner had withdrawn over \$6 million in a two-year period. While MED has initiated appropriate actions, as of a few days ago, the company was still in the program pending an appeal.

We also audited MED's continuing eligibility review process and evaluated the adequacy of procedures for assuring 8(a) program participants meet continuing eligibility requirements. Fifty larger companies were reviewed that were serviced by five SBA District Offices in Washington, DC; Los Angeles, CA; Richmond, VA; Columbus, OH, and Albuquerque, NM. The audit concluded that participants remained in the program even though they had accumulated substantial wealth or had overcome impediments to obtaining access to financing, markets, and resources. Specific findings of the audit included the following:

- Six individuals who had overcome their economic disadvantage retained 8(a) eligibility because they understated their personal net worth or SBA's

Business Opportunity Specialists (BOS) made errors in calculating the individuals' personal net worth.

- Participants with substantial income remained in the program because personal annual income was not considered when economic disadvantage assessments were made. Of the 50 participants reviewed, 17 had compensation ranging between \$500,000 to \$2.5 million for a two-year period. SBA has no definitive criteria on the maximum amount of annual compensation that would overcome economic disadvantage.
- Continuing eligibility reviews did not include comparisons of 8(a) concerns to others in the same or similar lines of businesses that were not owned and controlled by disadvantaged individuals. This failure allowed participants to continue in the 8(a) program although the strong financial condition of their companies should no longer have qualified them as economically disadvantaged. Of the 50 companies in our sample, 32 companies exceeded the average business assets, revenue, gross profit, working capital, and net worth of other companies in a similar line of business.
- Wealthy individuals continued to be eligible for the 8(a) program because the equity in their companies and primary residences and the net worth of their spouses were not considered in determining whether they remained economically disadvantaged due to statutory exclusions. In our sample, 35 of the 50 participants were millionaires but remained classified as

disadvantaged when their excluded assets were deducted from personal net worth. Of our sample of 50, 13 had more than \$1,000,000 equity in the 8(a) company and 5 lived in houses valued between \$800,000 and \$1.4 million.

In response to this audit, MED officials agreed with the majority of recommendations and has begun to take some steps to analyze continuing eligibility. For example, effective May 16, 1995, BOSs are required to compare annually five financial performance factors for 8(a) companies with the industry average for companies in the same line of business, and if the 8(a) firm meets or exceeds three of the averages, "graduation should be considered." While we have not reviewed the implementation of this requirement, we consider it a positive step forward. Unfortunately, the economic disadvantage aspect of eligibility is extremely complex, time-consuming to administer properly, and relies on self-certification by the participant. Therefore, simplified procedures must be instituted. I am in favor of using objective criteria because it is much easier to administer and more difficult to circumvent. I would like to see objective criteria established to ease the review process and to limit the need for extensive accounting knowledge and financial analysis experience. While I am not prepared to recommend specific net worth levels or other appropriate criteria, I find it difficult to rationalize the notion that anyone who is a millionaire can be considered economically disadvantaged when the median value of all American households is significantly less than \$100,000. In 1991, the median value of selected nonfinancial assets, which includes spousal wealth, equity in the business and the personal

residence, was \$36,623 for all households and \$44,408 for Caucasian households. In 1991, the median value of households owning selected financial assets was an additional \$38,330. I believe the appropriate criteria for judging economic disadvantage should be based on comparisons with the overall population, rigorous research on appropriate levels of capital necessary to sustain a successful business, and strict adherence to the mandated goals of the 8(a) program.

In establishing simple, objective criteria, Congress could eliminate the exclusions in determining net worth. SBA could establish other definitive thresholds, e.g., the amount of maximum annual compensation, that would make it easier to judge whether a participant had exceeded a reasonable threshold. The current analytical construct relies, however, on a self-certification and requires extensive financial analysis to arrive at a net worth figure. The MED program has neither the numbers of staff nor the expertise to conduct this function. Moreover, the OIG also lacks sufficient staff to conduct detailed audits of participants' eligibility.

There is a corollary issue related to the lack of enforcement of the economic disadvantage criteria. I believe that SBA's inability (or unwillingness) to identify and graduate those 8(a) companies that are successful is a contributing factor to the concentration in the award of contracts. There are approximately 5,700 companies in the 8(a) program; 2,735 of these companies had active 8(a) contracts at December 4, 1995. Of those that receive contracts, the majority are awarded to a small number of 8(a) companies, thereby limiting opportunity for Federal contracting by other 8(a) companies. Based on a computer run of 8(a) companies with active contracts as of

December 1995, the largest 200 companies commanded 50.4 percent of the contracts in terms of dollar value. These contracts total over \$14 billion, or an average of \$70 million in active contracts for each of the top 200 companies. It should be noted that these figures only include active contracts; these companies may have had other contracts that have been closed out, or they may still hold options for future contracts that have yet to be exercised.

Because the most successful companies obtain contracts amounting to hundreds of millions of dollars, they accumulate substantial wealth and overcome their economic disadvantage. Given their expanded resources, success in recruiting personnel with excellent technical knowledge, ability to acquire expert 8(a) procedural advice from attorneys and consultants who specialize in 8(a) procurement procedure, and growing experience, they are able to dominate both the sole source and competitive 8(a) markets. I cannot believe that this was the original intent of the Congress. In fact, Senate Report No. 100-394 relating to the Business Opportunity Development Reform Act of 1988 stated:

The important public purpose of the 8(a) program is severely undermined when individuals who are not socially and economically disadvantaged are permitted to participate. Such participation by non-disadvantaged individuals reduces the amount of benefits available to those who are disadvantaged, diverts the energy and efforts of the SBA, and undermines support for the program.

I fully concur with the Senate report's conclusion.

Any change to the 8(a) program should also address the issue of concentration. There are measures that could both reduce concentration and simplify the continuing eligibility process. The OIG has recommended that MED establish a ceiling on the dollar amount of sole source contracts that a participating company could receive. This recommendation, as well as others, is currently under consideration by MED.

* Competition of 8(a) Awards. One of the requirements of the 1988 amendments was to establish dollar thresholds for competitive procurement. Service contracts over \$3 million and manufacturing contracts exceeding \$5 million are supposed to be competed among all eligible 8(a) companies. Congress believed dollar thresholds would reduce the temptation to resort to bribery attempts to obtain large dollar value contracts, as occurred in the WEDTECH case. These thresholds would also help prepare 8(a) participants for the market competition that they will face upon graduation from the program.

Since January 1, 1989, there have been 696 competitive 8(a) awards resulting in contracts totaling about \$2.4 billion. In contrast, there have been approximately 32,000 sole source awards resulting in contracts totaling about \$19 billion. In other words, only 2 percent of the 8(a) contracts have been competed, and being high dollar awards, they represent 11 percent of all 8(a) contract dollars. One reason there have been so few competitive awards is that there was a major loophole that allowed Federal departments and agencies and 8(a) companies to circumvent the competitive thresholds. This loophole was the use of the indefinite delivery/indefinite quantity

contract, otherwise known as an ID/IQ contract. Under an ID/IQ contract, there is a range of goods or services that can be provided, with a guaranteed minimum. The mandated thresholds were applied against the minimum value, not the maximum value. It was not uncommon to see minimum values established at \$2.9 million and maximum values at \$10 million or more.

The Department of Defense OIG issued a report dated November 25, 1992, describing the abuse of the ID/IQ type contract at the Defense Department. On January 19, 1993, we issued a report that also addressed this issue. On August 7, 1995, SBA amended the regulation closing the ID/IQ loophole.

Another loophole permitted splitting of one proposed \$9 million contract into three contracts, each with a value under the \$3 million threshold. In a May 16, 1994, audit report, we recommended that the 8(a) program office implement procedures to preclude such contract splitting in these awards. While the 8(a) program office agrees with the recommendation and stated that they have initiated action to implement the recommendation, as of a few days ago, the procedure has not been implemented.

The 1988 8(a) amendments also required 8(a) companies to obtain certain levels of non-8(a) business to learn how to survive in a truly competitive business environment. This requirement is known as competitive mix. While this requirement resulted in competitive mix targets for companies in the transitional stage of the program, MED has not effectively enforced competitive mix requirements and many companies are not in compliance with these requirements. In a September 29, 1995, audit report, we noted that over one-third of 8(a) companies (in the transitional stage

with 8(a) revenue) were out of compliance with the program's competitive mix requirements. More significantly, 63 percent of the 8(a) revenues awarded to transitional stage companies (in the last financial period reported) went to companies that were not in compliance. We believe this situation has developed because MED has attempted to enforce this requirement largely through voluntary methods. The OIG recommended that mandatory limits be placed on the dollar value of 8(a) contracts awarded when 8(a) companies do not meet their competitive mix requirement. In response to the recommendation, MED agreed. We have recently consulted with MED officials on an appropriate formula for use in calculating the mandatory limits.

* Excessive Subcontracting/Brokering. A major concern throughout the 8(a) program has been that the benefits would not accrue to the disadvantaged participants. In extreme cases, this would occur where a minority "fronts" for a non-minority owner. Other situations that allow significant pass-throughs of benefits would be through excessive subcontracting and brokering or packaging arrangements. Consequently, SBA's regulations have strict standards relating to ownership and the simple, classic "fronts" do not seem to be a problem. The more complex arrangements involving joint ownership and control issues, such as those pointed out in the GAO report, will, however, always be elusive. SBA also has regulations on the allowable levels of subcontracting; a requirement that supplies furnished through an 8(a) contract be manufactured by either the 8(a) company or a small business, if a small manufacturer exists (known as the non-manufacturer rule); and a prohibition on brokering and packaging. These regulations, however, have not been effective in preventing

substantial percentages of 8(a) funding from ending up in the hands of large businesses.

Audits performed by the OIG and other Federal agencies have disclosed a number of instances in which 8(a) contractors provided significant amounts (more than 50 per cent of the total contract value) of equipment on contracts awarded under Standard Industrial Classification codes for services. These 8(a) contractors, however, were not manufacturers or regular dealers in the equipment, as required by SBA's regulations.

These same audits also disclosed that much of the equipment was obtained from large manufacturers, a violation of SBA's non-manufacturer regulations. This improper subcontracting occurred because SBA did not apply the subcontracting, brokering or non-manufacturer requirements to contracts which are classified as services type contracts. MED officials initially disagreed with our audit on this subject, stating that subcontracting, brokering or non-manufacturer requirements did not apply to contracts classified as service type contracts. After much negotiation, the former Associate Administrator for MED agreed to study this situation and take appropriate actions. To date, nothing has been done on this important issue.

Other subcontracting problems noted include the lack of notification to SBA for increasing subcontracting subsequent to contract award, the lack of monitoring of excessive subcontracting, and the difficulty in measuring whether a company has subcontracted too much. These are important considerations that preclude fronting or brokering, help ensure that 8(a) participants receive their fair share of business, and

contribute to 8(a) companies' development through their experience in fulfilling contract requirements. Again, no new actions have been initiated by SBA to address these issues.

To correct these problems, there needs to be enhanced control over the subcontracting activities of 8(a) companies. This will require careful consideration of the concept of delegating 8(a) contract administration to other agencies, which has been discussed frequently as a way to streamline the 8(a) program. In my judgement, such a broad delegation will only result in increased problems. Unfortunately, we believe some abuse in subcontracting occurs with the full knowledge of the Federal procuring entity. Under current procedures, the SBA has some opportunity to monitor subcontracting because all subcontracting arrangements have to be approved by the Agency. Under the delegation proposal, SBA would be removed entirely from the contract award and administration process; consequently, SBA will have little opportunity for determining whether abuse is occurring.

Lastly, SBA referred to the Walsh-Healey Act for definitions of "manufacturer" and "regular dealer" to prevent brokering, the prevention of brokering in federal contracting was one of the purposes of the Walsh-Healey Act. Now that the relevant portion of the Walsh-Healey Act has been repealed, SBA may have difficulty with the definitions by which to judge 8(a) firms because the references to these definitions will be removed from the Federal Acquisition Regulations and case decisions relating to interpretations of Walsh-Healey will be obsolete.

In conclusion, I would like to respond to the four questions posed in your letter requesting me to testify:

1. What explanations for these abuses were offered by either the SBA program staff or the 8(a) participants involved? Given the wide-spread problems and number of different situations, this question has many answers. In general, however, SBA program officials stated that many of the problems pointed out were not really problems and the OIG was off-base. In addition, MED officials believed that resources to administer this program were insufficient, both in terms of numbers of staff and resident expertise. I would like to emphasize, however, current management recognizes that these are problems and appears committed to changing the program.

The most common response from 8(a) participants is that they were unaware that they were doing anything improper. SBA and the procuring agencies rarely pointed out any problems, therefore the participants believed they were operating properly.

2. Was there evidence of further abuse of the eligibility standards of the 8(a) program or were these isolated incidents? As pointed out, there is potential for substantial abuse in the continuing eligibility area, especially relating to the more successful companies. Because of both the statutory exclusions and the complexities of the law and regulations, continuing eligibility is difficult to administer and, therefore, subject to abuse. The OIG has not reviewed the initial eligibility process in detail, therefore, I cannot comment on its operation.

3. Do these abuses stem from poor management practices or is there an inherent flaw in the makeup of the 8(a) program? The abuses stem from both. In theory, the

current legal and regulatory structure, if properly administered, could preclude much of the abuse. As I have mentioned, the laws and regulations are too complex for both the level and technical sophistication of the SBA staff.

There also has been an institutional mind set in the MED program that led to weak enforcement of regulations and approvals of questionable practices. This stems from SBA's legitimate advocacy role for 8(a) companies and a history of lax management of the program. I have seen, however, a change in attitude over the past two years. Based on discussions with the current program managers, I believe the program can be reformed significantly.

The greatest inherent flaw in the program is that there are almost no boundaries on the amount of contracting a company can do and remain disadvantaged. When any Federal program allows a company to receive a half-billion dollars in contracts, while others receive none, some blame must be placed on the program's policy and procedures. The 8(a) program could be restructured to provide assistance to a much larger universe of disadvantaged companies, be easier to administer, and reduce the attraction of abuse by establishing a cap on the amount of assistance any one participant could receive.

4 What explanations were offered by the various contracting officials for their actions, as detailed in the reports, and have any significant actions been taken to prevent further violations? While most of our audits did not encompass contacting contracting officers at other agencies, those we did contact generally were not aware that their actions were incorrect. In one audit, we recommended that the District Office

counsel the contracting officers at an offending procuring agency, and the District Office reported to us they did so. Procuring agencies' contracting officers are required to be aware of the 8(a) regulations and the Federal Procurement Regulations which contain the procedures they must follow.

Madam Chair that concludes my formal remarks. My colleagues and I will be happy to entertain any questions you and the Committee members may have.

United States General Accounting Office

GAO

Testimony

Before the Committee on Small Business, House of
Representatives

For Release on
Delivery Expected
at 9:30 a.m., EST
Wednesday
December 13, 1995

SMALL BUSINESS
ADMINISTRATION

Case Studies Illustrate 8(a)
Program and Contractor Abuse

Statement of
Donald J. Wheeler, Acting Director
Office of Special Investigations



Madam Chair and Members of the Committee:

We are pleased to be here today to discuss our September 1995 report¹ concerning case studies of two firms that participated in the Small Business Administration's (SBA) 8(a) business development program. The program is designed to promote the development of small businesses that are owned and controlled by socially and economically disadvantaged individuals. Our September report built on earlier work on SBA/8(a) weaknesses.² These included the high concentration of contract dollars among a very small percentage of participating 8(a) firms and a large percentage of 8(a) firms that received no contracts at all. Our report focused, through case studies, on whether individuals or firms had exploited these and other program weaknesses to participate in and benefit from the program. Today we will discuss program and contractor abuses involving 2 of the top 25 8(a) contractors in terms of total dollars awarded in fiscal year 1992.

In summary, our investigation revealed 8(a) program abuse and ineffective SBA oversight of the two firms. During the application process, both firms provided information that gave rise to

¹Small Business Administration: 8(a) Is Vulnerable to Program and Contractor Abuse (GAO/OSI-95-15, Sept. 7, 1995).

²Small Business: Status of SBA's 8(a) Minority Business Development Program (GAO/T-RCED-95-149, Apr. 4, 1995); Small Business: Status of SBA's 8(a) Minority Business Development Program (GAO/T-RCED-95-122, Mar. 6, 1995); and Small Business: Problems Continue With SBA's Minority Business Development Program (GAO/RCED-93-145, Sept. 17, 1993).

questions about their eligibility to participate in the 8(a) program, but SBA did not fully resolve those questions before admitting the firms to the program. Further, one firm misrepresented its qualifications to enter and remain in the program. However, SBA's 8(a) program office did not act to suspend the firm's contracts or remove it from the program after learning of the misrepresentations. With regard to the second firm, we questioned the practices of the contracting agency--the Coast Guard. In a contract with the second firm, Coast Guard officials changed the contract's original classification code to one for which the firm qualified and altered the contract's minimum value to direct an Indefinite Delivery Indefinite Quantity (IDIQ)³ contract to the firm, avoiding federal competition requirements.

The two high technology firms that were the focus of our investigation were I-NET, Inc. of Bethesda, Maryland, and TAMSCO of Calverton, Maryland. They were the third and ninth largest 8(a) firms, respectively, in terms of total dollars awarded for fiscal year 1992, a year when the top 25 of over 4,400 active 8(a) program

³IDIQ contracts are used when agencies do not know the precise quantity of supplies or services to be provided and consequently are able only to estimate a minimum value. For purposes of IDIQ contracts, SBA regulations previously required competition whenever the guaranteed minimum value exceeded \$3 million. SBA recently amended its 8(a) regulations to eliminate the potential abuse of IDIQ contracts to avoid competition. 13 C.F.R. § 124.311(a)(2) (1995) requires agencies to competitively award any contract whose total value exceeds \$3 million for service contracts and \$5 million for manufacturing contracts. Effective Aug. 7, 1995, the applicable threshold amount is the agency's estimate of the contract's total value, including all options. The minimum value of the contract is no longer used.

participants received about 22 percent of the total 8(a) contract dollars. For the almost 10 years that both were in the 8(a) program, they were awarded over \$864 million in 8(a) contracts for computer systems and support services.⁴

SBA QUESTIONED 8(a) PROGRAM ELIGIBILITY ON ISSUE OF CONTROL

SBA regulations state that an 8(a) program applicant must unconditionally own at least 51 percent of the firm and control its operations. In 1984, SBA officials recommended that both I-NET and TAMSCO be denied acceptance into the 8(a) program because of eligibility issues regarding who controlled the firms. However, although SBA never fully resolved the questions about control of the firms, both were allowed entry into and remained in the program. In addition, both continue to benefit from contracts they received in the 8(a) program. Based on our review of SBA documentation and our interviews with SBA and other officials, we questioned SBA's justification for accepting I-NET and TAMSCO into the program.

⁴For fiscal year 1992, I-NET received over \$65 million in 8(a) contract awards. During its nearly 10-year (Sept. 20, 1984, to June 16, 1994) program participation, I-NET obtained 145 8(a) contracts totaling at least \$508 million. At least 126 of the 145 contracts were awarded noncompetitively.

For fiscal year 1992, TAMSCO was awarded over \$30 million in 8(a) contracts. During its program participation from May 14, 1984, until Sept. 18, 1993, TAMSCO obtained 108 8(a) contracts totaling at least \$356 million. At least 82 of the 108 contracts were awarded noncompetitively.

SBA district officials four times recommended that I-NET not be admitted to the 8(a) program. However, a regional SBA official overturned district officials' objections and recommended I-NET's acceptance. He did so in a memorandum described by other SBA senior officials as using "circular reasoning" and "double talk."

SBA district officials had determined that I-NET's owner and president, Mrs. Kavelle Bajaj, lacked the knowledge and experience to run a high technology computer firm. They had further determined that Kuljit (Ken) Bajaj, Mrs. Bajaj's husband and a recognized expert in the field, would actually control and run the firm's operations. SBA had determined that Mr. Bajaj did not qualify for the 8(a) program because of his employment at a large computer firm. Furthermore, a former I-NET vice president told us that Mrs. Bajaj lacked the technical and managerial skills needed to run a computer company and that Mr. Bajaj had hired him in January 1985 to help start and run the firm and to "teach" Mrs. Bajaj how to run a business. Further, in 1988, Mr. Bajaj was appointed I-NET's Executive Vice President, replacing the previously mentioned vice president. Mr. Bajaj formally became I-NET's president after its 1994 exit from the 8(a) program. In addition, on the résumé he submitted to SBA's Office of Inspector General (OIG) during its 1992 I-NET audit, Mr. Bajaj stated that he was "responsible for day-to-day operations" of I-NET. Mrs. Bajaj was adamant with us that she unconditionally owned and controlled the firm. However, she provided us no explanation when asked how she controlled I-NET while, at the same time, her husband

represented that he had the day-to-day responsibilities for the firm's operations.

With regard to TAMSCO, SBA district officials twice recommended that the firm's application for admittance to the 8(a) program be denied but were overruled. They were concerned that TAMSCO's nondisadvantaged vice president and 49-percent owner, William Bilawa, would improperly benefit from the 8(a) program. SBA officials knew that Mr. Bilawa had previously held supervisory positions over Mr. Innerbichler, Mr. Bilawa had had a higher salary than did Mr. Innerbichler, and the firm was initially based in Mr. Bilawa's residence. In addition, contrary to SBA regulations, TAMSCO's board of directors was initially structured so that its only two members, Mr. Innerbichler and Mr. Bilawa, had equal voting power.

Further, a former TAMSCO official told us that the two owners were "codependent" and functioned as equals. On his part, Mr. Innerbichler told us that (1) despite his previous relationship with Mr. Bilawa, TAMSCO's ownership was structured so that it would be eligible for 8(a) contracts and (2) it was agreed that he (Mr. Innerbichler) would maintain control of the firm's operations. The senior SBA official who overturned the two recommended denials had no explanation as to why he had done so.

I-NET MISREPRESENTED ITS OWNERSHIP AND QUALIFICATIONS

Although SBA, under its regulations, could have terminated I-NET's 8(a) participation or suspended its contracts when it learned of misrepresentations by I-NET, SBA took no such action. I-NET had misrepresented its ownership status and qualifications to enter and remain in the 8(a) program: Mrs. Bajaj had submitted false and misleading information about the true equity ownership in I-NET, her educational credentials, and her citizenship status. Further, by the time that SBA learned of the misrepresentations, it knew that I-NET had exceeded 8(a)-program size restrictions for certain contracts. SBA could have terminated I-NET's participation or suspended these contracts for exceeding size restrictions but did neither.

Mrs. Bajaj failed to disclose to SBA, as required, that she had provided 24.5-percent ownership interests to each of two persons. Subsequently, Mrs. Bajaj submitted false statements to SBA that did not reflect these transactions: In 1986 and 1988, she falsely reported to SBA that 49 percent of I-NET's stock was unissued when a 24.5-percent ownership was still outstanding with one of the persons.

Mrs. Bajaj falsely certified on a résumé submitted to SBA with her 8(a) application that she held an Associate of Arts degree in computer science and technology. SBA did not suspend I-NET's contracts or terminate its participation in the 8(a) program after

learning that Mrs. Bajaj had provided false information about her educational credentials. Mrs. Bajaj also misrepresented her U.S. citizenship status on her initial application, stating she was a citizen when at the time she was a resident alien.

SBA FAILED TO RECOGNIZE I-NET'S MISLEADING FINANCIAL INFORMATION

SBA regulations require it to verify that an 8(a) firm is a small business for each contract it receives. However, for several years SBA did not recognize or react to misleading financial statements from I-NET that served to misrepresent I-NET's size. I-NET submitted financial statements to SBA from 1988 through 1990 that excluded certain revenues from its total sales. I-NET explained the exclusion in notes to the audited financial statements; but SBA did not notice or act on the information in these notes until 1992. These exclusions enabled I-NET to obtain at least 11 contracts for which it was otherwise ineligible. However, I-NET included those revenues in its yearly total sales figures submitted to an investment firm when it was seeking private investors.

After determining that the excluded revenue should be included in assessing I-NET's size, in early 1993 SBA considered terminating certain I-NET contracts. I-NET responded that the firm had difficulty maintaining adequate capital and credit and was "at risk." However, SBA determined, among other financial indicators, that I-NET had a \$25-million line of credit with its bank and was not at risk. Mrs. Bajaj told us, in defense of this apparent

contradiction, that in her view \$25 million was not sufficient credit. However, in another apparent contradiction, during the same period when I-NET was seeking outside investment, I-NET described itself as having a backlog of over \$580 million in contracts and projected income through 1997 of about \$1.3 billion. Yet, in a written response to us concerning the risk issue, I-NET stated that at the time it was seeking outside investment, I-NET ". . . had severe cash flow problems and was having difficulty securing credit."

Further, SBA allowed I-NET to stay in the 8(a) program for almost 2 additional years after I-NET had exceeded its size limits and SBA officials had first recommended its early "graduation" from the program. Indeed, in January 1993, the SBA-OIG provided a draft audit report to the SBA office responsible for I-NET, recommending that no further contracts be awarded to I-NET because it had exceeded its size standards and had provided incorrect information to SBA for its annual size-standard determinations. However, until I-NET left the program in June 1994, SBA awarded I-NET additional contracts totaling at least \$62 million.

U.S. COAST GUARD USED IDIQ CONTRACT, AVOIDING COMPETITION REQUIREMENTS

As to the U.S. Coast Guard contract with TAMSCO, we determined that Coast Guard contracting officials had directed a noncompetitive 8(a) contract to TAMSCO, using the IDIQ contracting option and

avoiding competition. They awarded the contract, with a potential maximum value of \$14 million, 1 day before TAMSCO's term in the 8(a) program expired in September 1993. The notes of one Coast Guard contracting official referred to this contract as a "graduation present" to TAMSCO. Coast Guard officials told us that the Coast Guard viewed competition of contracts as a hindrance to its mission and that it was always their intention to award the contract to TAMSCO. Thus, Coast Guard officials (1) changed the contract's original Standard Industrial Classification code, which TAMSCO had outgrown, to one for which TAMSCO qualified and (2) lowered the contract's original labor hours by 46 percent, to avoid the \$3-million threshold required for competitive IDIQ service contracts. This allowed the Coast Guard to award a noncompetitive IDIQ contract to TAMSCO.

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This concludes my prepared statement. I would be happy to respond to any questions that you may have.

United States General Accounting Office

GAO

Report to the Ranking Minority Member,
Permanent Subcommittee on
Investigations, Committee on
Governmental Affairs, U.S. Senate

September 1995

SMALL BUSINESS ADMINISTRATION

8(a) Is Vulnerable to Program and Contractor Abuse





United States
General Accounting Office
Washington, D.C. 20548

Office of Special Investigations

B-261485

September 7, 1995

The Honorable Sam Nunn
Ranking Minority Member
Permanent Subcommittee on Investigations
Committee on Governmental Affairs
United States Senate

Dear Senator Nunn:

On October 5, 1994, you requested that we determine whether the Small Business Administration's (SBA) 8(a) program is being exploited by individuals or corporations that have used illegal or improper means to participate in and benefit from the program. SBA's 8(a) program is designed to develop and promote businesses that are owned and controlled by socially and economically disadvantaged individuals. You were concerned that weaknesses in program management and administration identified in our September 1993¹ report may make the 8(a) program vulnerable to abusive activities.

You asked us to determine, within the context of case studies, whether abuses such as the following have occurred in the 8(a) program.

- Has the improper participation of 8(a) firms resulted in their being awarded contracts for which they were otherwise ineligible, and have 8(a) firms misrepresented themselves to enter and/or stay in the program?
- Have any 8(a) contracts been inappropriately awarded to firms that were ineligible because they exceeded size standard restrictions? Has SBA allowed firms to remain in the program after their increased size indicated that they should be graduated?
- Have federal contracting authorities improperly used the Indefinite Delivery Indefinite Quantity (IDIQ)² contracting option to noncompetitively steer 8(a) contracts that should have been competitive?

¹Small Business Problems Continue With SBA's Minority Business Development Program (GAORCED-93-145, Sept. 17, 1993)

²IDIQ contracts are used when agencies do not know the precise quantity of supplies or services to be provided and consequently are able only to estimate a minimum value. For purposes of IDIQ contracts, the guaranteed minimum value was \$3 million for service contracts and \$5 million for manufacturing contracts. SBA recently amended its 8(a) regulations to eliminate the potential abuse of IDIQ contracts to avoid competition. 13 C.F.R. § 124.311(a)(2) (1995) requires agencies to competitively award any contract whose total value exceeds \$3 million for service contracts and \$5 million for manufacturing contracts. Effective August 7, 1995, the applicable threshold amount will be applied to the agency's estimate of the contract's total value, including all options. The minimum value of the contract will no longer be used.

To develop our case studies, we reviewed SBA application, eligibility, and participation documents of the top 25 8(a) contractors in terms of total dollars awarded for fiscal year 1992. (See app. II.) We looked for indicators, or red flags, of potential regulatory violations and criminal misconduct. We initially selected four firms for investigation based on the strength of the indicators we found. Due to time constraints and the destruction of records compiled for one firm as a result of the Oklahoma City bombing tragedy, we narrowed our investigation to two firms—I-NET, Inc. of Bethesda, Maryland, and Technical and Management Services Corporation (TAMSCO) of Calverton, Maryland—for further investigation.

I-NET and TAMSCO: An Overview

I-NET, Inc. is a high technology corporation that provides federal agencies with computer systems and support services. For fiscal year 1992, it was the third largest recipient of 8(a) contract awards, which totaled over \$65 million. During its nearly 10-year (Sept. 20, 1984, to June 16, 1994) program participation, I-NET obtained 145 8(a) contracts totaling at least \$508 million. At least 126 of the 145 contracts were awarded noncompetitively.

TAMSCO is a high technology corporation that provides computer systems and support services to federal agencies and large Department of Defense contractors. For fiscal year 1992, it was the ninth largest recipient of 8(a) contract awards, totaling over \$30 million. During its program participation from May 14, 1984, until September 18, 1993, TAMSCO obtained 108 8(a) contracts totaling at least \$356 million. At least 82 of the 108 contracts were awarded noncompetitively.

Results in Brief

I-NET and TAMSCO were among the firms that were initially recommended for nonacceptance into the 8(a) program because of eligibility questions concerning who actually controlled each firm. SBA had questions that were never fully answered about whether I-NET and TAMSCO were owned and controlled by socially and economically disadvantaged individuals, as defined by 8(a) program regulations. Based on our review of SBA documentation and our interviews with SBA officials, we questioned SBA's justification to accept I-NET and TAMSCO into the program.

On at least two occasions after entry into the program, I-NET's owner did not inform SBA about the true equity ownership in the firm, in violation of

B-261485

SBA regulations. I-NET also misrepresented information to SBA about its owner's personal qualifications: I-NET's owner falsely certified on a resume submitted to SBA with her 8(a) application that she held an Associate of Arts (AA) degree in computer science and technology. SBA took no action when it learned of these misrepresentations.

I-NET received 8(a) contracts totaling millions of dollars after it had grown too large for continued 8(a) program participation. To remain eligible for contracts, I-NET excluded items from its financial statements, understating its total revenue; and it represented itself as a company at financial risk, although SBA found that I-NET's access to credit was considerable. Further, SBA allowed I-NET to stay in the program and obtain contracts after it determined that I-NET had achieved the program goals.

In our investigation of TAMSCO, we determined that U.S. Coast Guard officials had directed a sole source contract to TAMSCO, thus avoiding federal competition requirements. Coast Guard officials changed the contract's classification code to one for which TAMSCO qualified and altered the minimum value of the contract from the original solicitation by lowering the total number of labor hours by 46 percent. Such changes allowed the Coast Guard to award a sole source IDIQ contract to TAMSCO and offer the company, according to a Coast Guard official's written notes, a "graduation present."

Background

Previous GAO Findings

In March and April 1995, as a part of our continuing work on the 8(a) program, we testified¹ that the program has continued to experience problems in achieving its objectives. As the value and number of 8(a) contracts continue to grow, the distribution of those contracts remains concentrated among a very small percentage of participating 8(a) firms, while a large percentage get no awards at all. This is a long-standing problem. For example, in fiscal year 1990, 50 firms representing fewer than 2 percent of all program participants obtained about 40 percent, or \$1.5 billion, of the total \$4 billion awarded. Of additional concern is that, of the approximately 8,300 8(a) contracts awarded in fiscal 1990 and 1991 combined, 67 contracts were awarded competitively. In fiscal year 1994,

¹Small Business, Status of SBA's 8(a) Minority Business Development Program (GAO/RCED-95-149, Apr. 4, 1995) and Small Business, Status of SBA's 8(a) Minority Business Development Program (GAO/RCED-95-122, Mar. 6, 1995).

B-261485

the top 50 firms represented 1 percent of the program participants and obtained 25 percent, or \$1.1 billion, of the \$4.37 billion awarded, while 56 percent of the firms got no awards. In fiscal year 1994, \$383 million in contracts were awarded competitively.

SBA Award and Eligibility Data for Fiscal Year 1992

The eligibility and participation files for the top 25 8(a) contract award recipients for fiscal year 1992, from which we selected I-NET and TAMSCO, showed that approximately \$816 million, or about 22 percent of the total 8(a) contract dollars awarded that year,⁴ went to the top 25 firms. These firms had obtained, as of May 1995, a total of \$4.9 billion in 8(a) contracts. Of these firms, three were Black-owned; eight were Hispanic-owned; six were Asian-owned; and five were Native American-owned.⁵

SBA had initially recommended that 15 of these 25 firms not be accepted into the program because the applicants did not meet eligibility standards for one or more of the following reasons:

- The ownership or control of the firms resided in individuals other than those who were applying (8 firms).
- The owners were not economically disadvantaged (2 firms).
- The firm was acting as a broker/dealer in violation of the Walsh-Healy Act (1 firm).
- The firms lacked the financial capability to perform on the contracts they wished to bid on (5 firms).
- SBA could not provide adequate contract support for the firms to succeed (3 firms).⁶

These recommendations were overruled, in some cases by high-level SBA officials, despite the fact that some of the firms had not been recommended for acceptance up to three times previously for the same reasons. As of May 1995, 18 of these 25 firms had exited from the program; yet at least 17 are still performing on contracts awarded while they were in the program. According to SBA, the total dollar value of contracts awarded

⁴These data, the most current available when we initiated our investigation, were compiled from the Federal Procurement Database System, operated by the General Services Administration. We did not attempt to verify the data.

⁵SBA could not provide the eligibility files for 3 of the 25 firms.

⁶The cited numbers exceed 15 because some firms were not recommended for acceptance for multiple reasons.

B-261485

to the firms initially not recommended for participation in the program is at least \$2.9 billion.

An SBA Office of Inspector General (OIG) audit report (Sept. 1994) also questioned the continued eligibility of large 8(a) firms in the program and identified some of the same causes. In its report, it cited findings wherein

- individuals in the program had overcome their economic disadvantage but remained in the program by understating their net worth;
- SBA officials had miscalculated the net worth;
- high personal income was also not considered in the evaluation of net worth; and
- individuals remained in the program because either the firm's equity, the owner's personal residence, and/or the spouse's net worth were not considered factors in determining the owners' net worth. Consequently, individuals could remove equity from the firms and use it to purchase expensive personal residences exempt from net worth evaluations.

SBA Admitted I-NET and TAMSCO to the 8(a) Program Although It Questioned the Firms' Negative Control

According to SBA 8(a) regulations, negative control is the lack of power by a program participant to control a firm's operations. For the 8(a) program, SBA regulations state that a program applicant must unconditionally own at least 51 percent of the firm and control its operations.⁷ Control is further defined as a condition that would not allow a noneligible person to benefit from the program or subjugate the control of the firm's operations. SBA had concerns about negative control issues at both I-NET and TAMSCO, but it ultimately admitted both firms to the 8(a) program.

I-NET—Negative Control Issues

SBA officials recommended denying I-NET acceptance into the program in four separate instances, but other SBA officials overruled these recommendations. SBA officials had determined that I-NET's owner and president, Mrs. Kavelle Bajaj, lacked the technical and managerial experience to run a high technology computer firm. They also determined that, rather than Mrs. Bajaj, Mr. Bajaj, a recognized expert in the field, would actually control and run the firm's operations.

A former I-NET Vice President for Marketing and Operations told us that Mrs. Bajaj lacked the technical and managerial skills needed to run a computer company and that he was hired by Mr. Bajaj in January 1985 to help start and run the firm and to "teach" Mrs. Bajaj how to run a business.

⁷SBA regulations provide that the program applicant shall control the 8(a) firm's board of directors either in actual numbers of voting directors or through weighted voting. 13 C.F.R. §124.104 (1995)

For this, Mrs. Bajaj gave the former vice president 24.5 percent of the company. Shortly after leaving the company in 1988, this individual was replaced by Mr. Bajaj, who was appointed Executive Vice President. Mr. Bajaj formally became I-NET's president after I-NET exited from the 8(a) program in 1994. On the resume he submitted to SBA-OIG during its 1992 audit, Mr. Bajaj stated that he was "responsible for day-to-day operations" of I-NET. Mrs. Bajaj was adamant with us that she unconditionally owned and controlled the firm. However, Mrs. Bajaj provided no explanation when we asked her how she maintained control over I-NET while, at the same time, her husband represented that he had the day-to-day responsibilities for I-NET operations.

Further, a senior SBA official told us that the memorandum prepared by an SBA regional staff member recommending acceptance into the program used "circular reasoning" in overruling the District Office's objections to this firm. Other SBA officials who relied on the first official's analysis agreed that it was "double talk" that inadequately addressed the reason to overrule the recommended refusal. One stated that I-NET's admission to the 8(a) program was "questionable." Nevertheless, these officials stood by their decision to recommend accepting I-NET.

TAMSCO—Negative Control Issues

From the outset, SBA questioned the control that TAMSCO's nondisadvantaged (Caucasian) owner exercised over the disadvantaged (Hispanic) owner due to the structure of the board of directors, the owners' prior relationship, and their compensation. However, SBA allowed TAMSCO to participate fully in the 8(a) program.

SBA identified the ownership and negative control issue at TAMSCO during the application process and twice recommended that the firm's application be denied. SBA determined that the firm was owned by two persons, with the Hispanic owner having 51 percent and the Caucasian owner, 49 percent. SBA compared their resumes and other documentation in the 8(a) application and found that the Caucasian owner had previously held supervisory positions over the Hispanic owner and that the two-man board of directors, on which both served, allowed the Caucasian owner to have negative control over the Hispanic owner. SBA officials concluded that the firm should be rejected because the Caucasian owner would improperly benefit from the program.

We also found that the personal financial statements and other documentation showed that the Caucasian owner had a higher salary than

B-261485

the Hispanic owner and that the firm was located at the Caucasian owner's residence. A former official of the firm told us that the two owners were "co-dependent" and functioned as equals. TAMSCO's president (the Hispanic owner) told us that (1) despite his previous relationship with the Caucasian owner, ownership was structured so that TAMSCO would be eligible for Small and Disadvantaged Business contracts and (2) it was agreed that he would maintain total control over the firm's operations.

The SBA official who overturned the two recommendations for denial had no answers or explanations as to why he had accepted TAMSCO into the 8(a) program over the prior objections of SBA officials concerning negative control. He also denied meeting or discussing the matter with TAMSCO's owners. However, the TAMSCO owners told us that they had had substantive discussions and meetings with him on the issue of negative control.

SBA Misled by I-NET Misrepresentations and Took no Action to Remove It From the Program

I-NET provided false and misleading information to SBA regarding its equity ownership in the firm, the owner's educational credentials, and the owner's citizenship status. Despite these misrepresentations, SBA did not terminate I-NET from the program or suspend its contracts.

I-NET Submitted False Statements About Equity Ownership

I-NET submitted false statements to SBA about its equity ownership. Documents, interviews, and a federal court case revealed that I-NET had entered into partnership agreements with two individuals in January 1985 for a total of 49-percent ownership interest (each with a 24.5-percent share) without disclosing these transactions to SBA, as required by SBA regulations.⁸

One of the 24.5-percent equity owners also owned another computer services company. At the time, SBA regulations prohibited a business concern in a related field from owning any equity in an 8(a) firm.⁹

⁸At the time, 13 C.F.R. § 124.1-1(e)(vii) (1985) stated that withholding information about changes in ownership could result in termination from the program. Mrs. Bajaj had also signed a program participation agreement in which she had agreed to notify SBA within 30 days of any changes in ownership. Current regulation 13 C.F.R. § 124.103(i) (1995) requires written approval from SBA to change ownership equity interests exceeding 10 percent.

⁹SBA SOP 80-05 ch. 2, § 7(b)(5) (1982) and revised at SOP 80-05 ch. 2, § 7(b)(4). Current regulation 13 C.F.R. § 124.103(h) (1995) prohibits more than 10-percent ownership in an 8(a) firm by a related concern.

B-261485

Although I-NET repurchased this ownership interest within a year of its issuance, Mrs. Bajaj never informed SBA about this transaction.

Mrs. Bajaj submitted a false statement about I-NET's ownership status to SBA in January 1986, when I-NET notified SBA that 49 percent of the company's stock was unissued. However, 24.5 percent was still outstanding with the one remaining partner. Believing that SBA would approve only a 15-percent transfer of ownership, Mrs. Bajaj attempted to reduce the remaining partner's interest to 15 percent and privately negotiate away the remaining difference.

In 1988, Mrs. Bajaj submitted a second document to SBA, stating that 49 percent of the stock was "unissued," despite the outstanding 24.5-percent equity ownership by the remaining partner. She told us that she considered the stock unissued until a dispute with this partner over his ownership was resolved.

In August 1994, 2 weeks after agreeing to withdraw from the program, I-NET notified SBA that it intended to sell 20 to 25 percent of the firm's stock through a private placement offered through a large investment company. When SBA officials learned of the impending sale, SBA attorneys recommended against approving it because its terms would have relinquished control of the firm to the outside private investors.¹⁰ The terms of the transactions, according to the SBA attorneys who reviewed the documents, enabled the investors to have negative control over the firm's operations. SBA has not issued a decision, but I-NET completed the sale without a waiver from SBA, thus potentially jeopardizing its current 8(a) program contracts. The SBA Associate Administrator for Minority and Enterprise Development told us that the matter was being handled immediately; but, as of August 14, 1995, no final decision had been rendered.

I-NET Misrepresented Credentials to the SBA

Mrs. Bajaj provided false information about her educational credentials, which SBA relied upon, in part, for admittance to the 8(a) program. She certified on the resume accompanying her 8(a) application to SBA in January 1983 that she had obtained an AA degree in Computer Science and Technology from Montgomery College in Rockville, Maryland. Transcripts

¹⁰13 C.F.R. § 124.317 (1995) requires that firms no longer in the program but still performing on 8(a) contracts immediately notify SBA upon entering into an agreement to transfer any ownership to another party. If SBA determines that the transfer would relinquish the ownership or control from the person upon whom program eligibility is based, a waiver from the SBA Administrator is required. Absent a waiver, the firm's contracts can be terminated.

from Montgomery College show that she never earned the stated degree. SBA denied I-NET's application for the 8(a) program in October 1983 because of lack of technical and managerial experience. Mrs. Bajaj again submitted a resume with the same false information in a reconsideration appeal application later that month. According to a former I-NET senior executive, Mrs. Bajaj attached a resume that contained the same false information to contract proposals submitted to agencies. In 1992, when the SBA-OIG audited I-NET, I-NET provided the OIG another resume claiming she held the same nonexistent AA degree. Mrs. Bajaj admitted to us not having the degree and stated that she "naively" thought that the credits she had earned to obtain her Bachelor of Science degree in Home Economics from the University of Delhi, India, counted toward an AA degree in computer science and technology.

SBA documents show that SBA relied in part on Mrs. Bajaj's false information about the AA degree at the time when it was certifying I-NET for program participation. In an October 1993 document, the SBA Regional Counsel stated that the "original recommendation for I-NET's approval was based, at least in part, on false information submitted by the applicant regarding Mrs. Bajaj's degree." Although SBA officials acknowledged this fact in October 1993, I-NET remained in the program for another 9 months and obtained additional contract awards totaling at least \$13.5 million. When asked about this document, the Regional Counsel stated that the falsification was not itself sufficient to terminate the firm, despite SBA regulations that providing false information to SBA is grounds for termination from the program.¹¹

Mrs. Bajaj also misrepresented her citizenship on her first application on January 11, 1983. She said that she was a U.S. citizen, but she did not obtain her citizenship until May 13, 1983. (U.S. citizenship is a requirement for acceptance into the 8(a) program.) She told us that she thought she would be a citizen by the time the application was processed. She also said that although SBA had told her that she need not be a citizen at the time of application, she was concerned that her pending citizenship status would have held up her 8(a) application. I-NET was accepted into the program on September 20, 1984.

¹¹13 C.F.R. § 124.206(a)(19) (1995).

SBA Failed to Recognize in a Timely Manner That I-NET Had Exceeded Size Standards

SBA did not recognize that I-NET had provided misleading financial statements concerning its total revenues. Furthermore, I-NET misstated its financial condition as being at risk in efforts to continue 8(a) program contracts.

I-NET submitted financial statements to SBA that misrepresented its size by excluding certain revenues from the total sales, which allowed it to meet size standards for contracts in 1991 and 1992. I-NET explained the exclusion of this revenue in footnotes to its audited 1988 through 1990 financial statements, claiming that it was entitled to exclude these revenues because I-NET had earned no income on the revenues. SBA did not recognize or react to the information in the 1988 through 1990 financial statement footnotes until 1992.¹² These exclusions permitted I-NET to obtain at least 11 contracts for which it was not eligible.

However, I-NET included these revenues in its yearly total sales figures in submissions to an outside investment firm when it was seeking private outside investment. Our review of I-NET's 1989 and 1990 corporate tax returns, submitted to SBA, shows that I-NET's gross receipts as reported to the Internal Revenue Service were also substantially greater than those reported to SBA. In 1992, SBA found that the excluded revenue should have been counted for 8(a) size purposes.

Therefore, in early 1993, SBA considered terminating certain contracts on the grounds that I-NET was not eligible because it had exceeded its size standards. In response, I-NET submitted an Impact Analysis Statement to SBA in April 1993. The statement said, in part, "... (t)he banking industry continues to label I-NET and Kavelle [Bajaj] in a negative way ... and maintaining adequate capital and credit are a constant challenge which leaves the company at risk."¹³ However, in reviewing the matter and determining if I-NET met early graduation criteria, SBA found that I-NET had a \$25-million line of credit with its bank, had obtained loans and financings exceeding \$2 million, and had sales approaching \$100 million per year. Based on its review, SBA did not find that I-NET was at risk. When asked about this apparent contradiction, Mrs. Bajaj told us that it was her view that \$25 million was not sufficient credit.

¹²SBA regulations require that an 8(a) firm certify that it is a small business for each contract that it receives. SBA is responsible for verifying the certification. 13 C.F.R. § 124.102(d) (1995) and 13 C.F.R. § 121.1102(a)(2) (1995).

¹³Even if it were true that I-NET was a "company at risk," this is not relevant to the issue of whether I-NET was a small business and therefore eligible to receive 8(a) contracts under SBA regulations.

B-261485

During this same time period, however, I-NET did not portray itself as a company at risk when it sought outside investors. A written private placement memorandum about I-NET states that as of June 1993, I-NET had a backlog of over \$580 million in contracts and projected revenues through 1997 of about \$1.3 billion. Subsequent to our interview of Mrs. Bajaj, I-NET provided us a written response to the risk issue. It stated that, at the time the memorandum was written, I-NET "... had severe cash flow problems and was having difficulty securing credit."

Furthermore, in December 1993, SBA determined that I-NET again had claimed erroneously that it lacked access to credit when it was appealing SBA's October 1993 proposed early graduation action. In its review, SBA also determined that I-NET appeared to be misleading SBA by using inappropriate time periods to calculate earnings.

SBA Allowed I-NET to Remain in the 8(a) Program After It Exceeded Size Limits

Although SBA officials responsible for monitoring I-NET's progress had become aware that I-NET had grown too large for continued program participation, SBA allowed the company to remain enrolled for almost 2 additional years. During this time, I-NET continued to obtain large contract awards.

In fact, 6 days prior to I-NET's initially being recommended for early graduation in September 1992, it was awarded a \$134-million contract. The SBA official who approved the contract award was also responsible for initially recommending I-NET's early graduation. When we interviewed him, he explained that, under SBA regulations, until a firm is officially out of the program, it can still obtain contract awards for which it is eligible. Although he wanted I-NET out of the program, he felt he could not deny contract awards until I-NET had either graduated or been terminated.

However, SBA regulations¹⁴ and a 1982 federal court decision,¹⁵ in conjunction with a Comptroller General decision¹⁶ on the same issue, concluded differently. Both the court and the Comptroller General determined that an 8(a) firm that has exceeded size limitations must have its 8(a) contracts suspended. The regulations also state that contracts can be suspended pending a termination action by SBA. When asked about this contradiction, responsible SBA officials responded by stating that SBA

¹⁴13 C.F.R. § 124.211(a) (1995)

¹⁵*Systems and Applied Sciences Corp. v. Sanders*, 544 F. Supp. 576 (D.D.C. 1982)

¹⁶*Matter of Computer Data Systems, Inc.* 61 Comp. Gen. 545 (1982)

B-267485

lacked the proof required to terminate I-NET, despite regulations regarding actionable offenses for termination, which include providing false information to SBA—something that SBA concedes occurred.

In January 1993, the SBA-OIG provided a draft audit report to the SBA office responsible for I-NET, recommending that no further contracts be awarded to I-NET because it had exceeded its size standards and had provided incorrect information to SBA for its annual size-standard determinations. However, until I-NET left the program in June 1994, SBA awarded I-NET additional contracts totaling at least \$62 million.

U.S. Coast Guard Officials Directed a Noncompetitive IDIQ Contract to TAMSCO

In 1993, the U.S. Coast Guard directed a noncompetitive IDIQ contract with a maximum value of \$14 million to TAMSCO. During the preaward phase of the contract, Coast Guard contracting officials, who told us that it was always their intention to award the contract to TAMSCO, met with TAMSCO representatives and discussed the contract, competition thresholds, and Standard Industrial Classification (SIC) codes.¹⁷ The Coast Guard changed the original SIC code so that TAMSCO would be eligible for the award; used the IDIQ contracting option; and lowered the labor hours to avoid competition. Further, one Coast Guard official's notes referred to this IDIQ contract to TAMSCO as a "graduation present" from the 8(a) program.

Coast Guard Officials Changed SIC Code, Contract Type, and Labor Hours to Avoid Competition Requirements

Coast Guard officials changed the SIC code assignment and minimum contract value. Following these changes, TAMSCO was awarded a large noncompetitive IDIQ contract 1 day before its term was to expire in the 8(a) program in September 1993. Had the Coast Guard contracting officer's originally assigned SIC code been used, TAMSCO would not have been eligible for the contract because the company had exceeded the size standard for the originally assigned SIC code.

Based on notes that the Contracting Officer's Technical Representative (COTR) wrote during meetings between Coast Guard officials and TAMSCO, it appears that the Coast Guard officials and TAMSCO had concerns about the competition thresholds. In essence, we believe that they wished to avoid the \$3-million threshold required for competitive 8(a) service contracts. The Coast Guard lowered the labor hours, thus being able to award an IDIQ noncompetitive contract.

¹⁷SBA has established size standards for industries, which are defined in the classification categories of the Standard Industrial Classification (SIC) Manual.

Our analysis of labor costs determined that Coast Guard officials lowered the total number of labor hours in the contract by 46 percent from what was specified in the contract solicitation. Thus, the minimum contract value dropped below the \$3-million competition threshold, from \$4.6 million to \$2.1 million. We interviewed a Coast Guard officer involved in the contract award who also developed the original minimum contract value. When we asked him about a Coast Guard finding that if fully loaded labor rates had been used in the contract, the minimum value of the contract would have exceeded competitive thresholds, he had no answer. However, he stated that the Coast Guard officials had done everything possible to get TAMSCO the contract, including changing the sic codes and using the IDIQ contracting option.

Coast Guard Officials Viewed Competition as Hindrance to Mission

The COTR also told us that the sic code was intentionally changed to meet TAMSCO's eligibility and that the Coast Guard viewed competition of contract awards as a hindrance to furthering the mission. A draft of an internal Coast Guard memorandum, written to justify the contract award to TAMSCO, sheds light on Coast Guard attitudes about the use of competition and 8(a) sole source contracts. The COTR sent the memorandum—in electronic mail (e-mail) format—to another Coast Guard official for comment. The commenting Coast Guard official responded to the COTR's memorandum—also by e-mail—by interspersing his remarks in all capital letters. (See fig. 1.)

Figure 1: Draft E-Mail Memorandum Between the COTR and a Coast Guard Official

Other factors favoring TAMSCO include: (1) TAMSCO's sole source eligibility under 8(a). This eligibility extends until Sept 93. Only the IDIQ contract has to be in place by Sept 93. New tasks can be awarded until the contract expires, in 5 to 10 years. The advantages of sole source 8(a) contracts are many. Being sole source allows much quicker contract award than competitive contracts MAJOR FAUX PAS. G-A WILL EAT YOU ALIVE FOR EVEN THINKING THIS - MUCH LESS SAYING IT OUT LOUD. YOU MUST MAKE THE KO THINK OF THIS HIMSELF and is non-protestable. The CG does not have time to utilize the competitive contract process even if they cared to ABSOLUTE SUICIDE. ERASE IT. DESTROY THE DISK. DESTROY ANY COPIES. DON'T EVEN HAVE THESE WORDS IN YOUR MIND WHEN YOU TALK TO THESE PEOPLE (EVEN THOUGH THEY'RE ABSOLUTELY TRUE).

According to two former TAMSCO officials involved in the award, the COTR had provided them with a later draft of the internal memorandum to review before he submitted it to higher-level Coast Guard officials. One of the TAMSCO officials told us that providing TAMSCO the memorandum to review was inappropriate; the other felt uncomfortable with receiving the document because the Coast Guard was always careful not to release internal documents.

According to these two former TAMSCO officials and TAMSCO's president, while they did not think it improper for TAMSCO to provide information on the 8(a) program and other contracting procedures to the Coast Guard, they agreed that the Coast Guard should have been using its own contracting officials to obtain the information.

IDIQ Contract to TAMSCO Was Referred to as a "Graduation Present"

Notes that the COTR took during Coast Guard/TAMSCO discussions also referred to suggestions that the contract be awarded to TAMSCO as a "graduation present" before the end of TAMSCO's 8(a) program participation. For example, one note stated, in part, "[re]sented. -eligible until grad from program Sept 18, '93." In other words, TAMSCO could get a sole source IDIQ contract as a graduation present until its graduation date of September 18, 1993. (See fig. 2.)

Figure 2: Excerpt From the COTR's Notes

* (4) IDIQ: grad pt. - eligible until grad from program
Sept 18, '93

In addition to the Coast Guard contract, TAMSCO obtained at least 22 other 8(a) awards within 2 weeks of its "graduation"¹⁸ from the program totaling at least \$63 million. Thirteen of the awards were IDIQ contracts from a number of government agencies, including the Coast Guard award.

Methodology

We began our investigation by reviewing the application, eligibility, and participation files for the top 25 8(a) contract award recipients for fiscal year 1992, as compiled in our 1993 report. These records were located in 10 SBA District Offices nationwide. The files for two firms were unavailable for review. A third file did not contain eligibility documents. We looked for indicators of potential regulatory violations and criminal misconduct.

We initially selected four of the firms for further investigation. However, the records we compiled for one firm were destroyed in the Oklahoma City bombing tragedy on April 19, 1995, and our investigation of another firm was not complete at the time of this publication. We then narrowed our investigation to two firms—I-NET, Inc. of Bethesda, Maryland, and Technical and Management Services Corporation (TAMSCO) of Calverton, Maryland.

We interviewed officials and reviewed documents from the SBA, Office of Inspector General; various SBA district and regional offices; SBA's Central Office; U.S. Department of Transportation, Office of Inspector General; U.S. Coast Guard; Resolution Trust Corporation, Office of Inspector General; Defense Contract Audit Agency; Department of Justice; and the Federal Bureau of Investigation. We also interviewed current and former employees of the firms, subcontractors, representatives of financial institutions, and others.

¹⁸TAMSCO completed its program term on Sept. 18, 1993.

B-261485

As requested, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies of this report to the Administrator of SBA and to others upon request. If you have any questions concerning this report, please call me at (202) 512-6722 or Robert H. Hast, Assistant Director for Investigations, New York Regional Office, at (212) 264-0982. Major contributors to this report are listed in appendix III.

Sincerely yours,



Richard C. Stiner
Director

Contents

Letter	1
Appendix I The 8(a) Program	20
Appendix II Top 25 8(a) Firms Matrix	22
Appendix III Major Contributors to This Report	23
Figures	
Figure 1: Draft E-mail Memorandum Between the COTR and a Coast Guard Official	14
Figure 2: Excerpt From the COTR's Notes	15

Abbreviations

AA	Associate of Arts
COTR	Contracting Officer's Technical Representative
e-mail	electronic mail
GAO	General Accounting Office
IDIQ	Indefinite Delivery Indefinite Quantity
OIG	Office of Inspector General
OSI	Office of Special Investigations
RCED	Resources, Community, and Economic Development Division
SBA	Small Business Administration
SIC	Standard Industrial Classification

The 8(a) Program

Section 8(a) of the Small Business Act, as amended, established the Minority Small Business and Capital Ownership Development Program, or 8(a) program, to promote the development of small businesses owned by socially and economically disadvantaged individuals so that they could develop into viable competitors in the commercial marketplace. To be eligible for the program, a small business must be 51 percent unconditionally owned and controlled by one or more socially and economically disadvantaged individuals. The company must also meet the small business size standards established by SBA for the firm's industry as defined in the classification categories prescribed by the Standard Industrial Classification (SIC) Manual.¹⁹ SBA approves applicable SIC codes for participating firms. Participating 8(a) firms may have one or more SICs assigned to them by SBA. To be considered a small business and remain eligible for the program, participating firms must not have outgrown all their SBA-approved SIC codes. Size standards for each SIC code are generally defined by the firm's number of employees or its average annual gross sales.²⁰

Under the program, SBA acts as a prime contractor, entering into contracts with other federal agencies and then subcontracting work to firms in the 8(a) program. Firms in the program are also eligible for financial, technical, and management assistance from SBA to aid their development. Participating firms can stay in the program for up to 9 years.

The Small Business Act, as amended, and federal regulations define "socially disadvantaged" as those persons who have been subjected to racial, ethnic, or cultural bias because of their identities as members of groups, without regard to their individual qualities. Certain racial and ethnic groups such as Black Americans, Hispanic Americans, Subcontinental Asian Americans, and Native Americans are presumed to be socially disadvantaged. However, individuals in groups not cited in the act, who can demonstrate that they are socially disadvantaged, may also be eligible. SBA regulations define "economically disadvantaged" as socially disadvantaged individuals who are unable to compete in the free enterprise system because their opportunities to obtain credit and capital have been more limited than those of others in similar businesses. Further, program applicants must demonstrate a personal net worth that does not exceed certain limits so as to meet and maintain the criteria for an economic disadvantage.

¹⁹This manual is published by the Office of Management and Budget and assigns a numerical identifier for each industry.

²⁰13 C.F.R. § 121.601 (1995).

Appendix I
The 8(a) Program

Each 8(a) firm under SBA's regulations is subject to a program term of 9 years.²¹ However, SBA may also, under its regulations, "graduate" an 8(a) firm prior to the expiration of its 9-year program term if that 8(a) firm substantially achieves the target objectives and goals set forth in its business plan. To date, according to SBA, no 8(a) firm has graduated

²¹The 1988 Amendments to the act created this limit. 13 C.F.R. § 124.903(b) (1995) grandfathered firms that participated prior to 1988 so that firms with fewer than 5 years' participation would obtain 5 more years.

Top 25 8(a) Firms Matrix

Rank	Company Name	8(a) Contracts	
		Fiscal Year 92	Total Value of 8(a) Contracts Awarded
1	Colsa Inc	\$91,593,712	\$497,821,732
2	Yancy Minerals Inc	81,931,200	210,750,390
3	I-NET Inc	65,338,088	508,284,206
4	Metters Industries Inc	43,921,758	156,314,914
5	Weeminuche Construction Authority	39,611,263	65,706,219
6	NYMA Inc	37,526,951	234,569,348
7	Systems Engineering & Management Co	35,182,607	185,816,251
8	R J O Enterprise Inc	30,532,192	385,034,793
9	TAMSCO	30,369,392	356,439,719
10	National Systems and Research Corp	29,175,097	291,198,853
11	Sherkon Inc	29,166,605	77,431,185
12	Advance Sciences Inc ^a	28,279,092	54,479,536
13	Turtle Mountain Manufacturing Co	27,894,845	200,786,724
14	Systematic Management Services Inc	25,669,502	145,241,079
15	Modern Technologies Corp	24,146,726	225,118,715
16	Tresp Associates Inc ^b	23,555,918	93,907,403
17	Frontier Engineering Inc	20,969,268	275,253,836
18	Maden Tech Consulting	20,775,446	78,951,336
19	Piquini Management Corp	19,775,820	128,934,788
20	Galaxy Scientific Corp	18,876,444	118,071,790
21	Metrica Inc	18,826,263	82,476,450
22	Shadrock Petroleum Products	18,502,664	48,405,291
23	Hernandez Engineering Inc	18,265,616	106,104,461
24	Washington Consulting Group ^a	17,972,076	140,839,773
25	Applied Technology Associates Inc	17,901,795	278,756,205
TOTAL 8(a) AWARDS		\$815,780,340	\$4,946,694,997

^aSBA was unable to provide the files for these firms

^bThe eligibility documents were missing from this firm's file

Appendix III

Major Contributors to This Report

Office of Special Investigations, Washington, D.C.	Donald J. Wheeler, Deputy Director for Investigations M. Jane Hunt, Senior Communications Analyst Barbara W. Alsip, Communications Analyst
Boston/New York Field Office	Robert H. Hast, Assistant Director for Investigations William D. Hamel, Special Agent Anne Kornblum, Senior Evaluator
Dallas Regional Office	Jeannie B. Davis, Senior Evaluator
Denver Regional Office	Jennifer L. Duncan, Senior Evaluator
Atlanta Regional Office	Octavia Parks, Senior Evaluator Johnnie E. Barnes, Senior Evaluator
San Francisco Regional Office	Steve Myerson, Assistant Director for Investigations
Kansas City Regional Office	Richard Clough, Senior Evaluator Steve Pruitt, Evaluator
Cincinnati Regional Office	Daniel L. McCafferty, Senior Evaluator
Office of the General Counsel, Washington, D.C.	Barry L. Shillito, Senior Attorney Leslie Krasner, Attorney Adviser

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JOHN J. LAFALCE, NEW YORK

Congress of the United States
House of Representatives
104th Congress
Committee on Small Business
2301 Rayburn House Office Building
Washington, DC 20515-4315

January 29, 1996

Mr. Donald Wheeler
Director, Office of Special Investigations
U.S. General Accounting Office
820 First Street, NE
Washington, DC 20548

Dear Mr. Wheeler:

Thank you for appearing before the Committee on Small Business during our hearing on December 13, 1995. Now that the holidays are behind us and the budget debate has subsided I would appreciate your response to a few written questions prior to the closing of the hearing record. The questions will help round out the hearing record and your cooperation is greatly appreciated.

I hope that the Committee can have your responses to the enclosed questions within the next two weeks. I sincerely appreciate your cooperation with the Committee's oversight efforts and, of course, I know you are quite busy. Therefore, if you have any problems in responding within two weeks please contact Charles Rowe, Committee Counsel, at (202) 226 - 2227.

Thank you again for your assistance in this matter. I look forward to reading your responses.

Sincerely,



Jan Meyers

encl

Questions for the Record - GAO

1. During the hearing, the utility of the GAO's review, conducted for the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs, was dismissed by some Members of the House Committee on Small Business because your report finally focused on only two 8(a) contractors. In fact, GAO has conducted a long series of critical assessments regarding the implementation of various elements of the Small Business Administration's Minority Small Business and Capital Ownership Development (MSB/COD) Program, focusing on the preferential contracting authority provided by Section 8(a) of the Small Business Act.

Q.A. Would you please furnish for the record a listing of the reports issued and testimony provided by GAO regarding the MSB/COD Program since 1979? It would be helpful if a brief summary could be provided for each of the listed items.

Q.B. Wasn't the company-specific "case study" approach requested by the Permanent Subcommittee on Investigations to provide concrete examples of the persistent systemic problems that had been previously identified by GAO, and others, with regard to eligibility for participation in the MSB/COD Program and for the award of 8(a) contracts?

2. During the hearing, several Members of the Committee questioned you regarding whether your report found that any statutes, regulations, or even SBA policies had been violated in the two case studies presented. You answered in the negative, which is factually correct, since your investigation did not continue to the point of actually making a determination regarding malfeasance, abuse, or even misfeasance. Unfortunately, this may have left the impression in the minds of some Members that proven misrepresentations of one's eligibility for initial or on-going participation in the MSB/COD Program or for award of a particular contracting opportunity under the authority of Section 8(a) are not actions that would subject a person making such misrepresentations to an array of criminal, civil, or administrative remedies under various statutes, including Section 16(d) of the Small Business Act.

Q Could you please try to amplify your answer and dispel this misimpression regarding misrepresentations of status, size, or eligibility for contract award?

GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of Special Investigations

March 11, 1996

The Honorable Jan Meyers
Chair, Committee on Small Business
U.S. House of Representatives

Dear Madam:

Reference is made to your letter dated January 29, 1996, in which you requested that we respond to questions for the hearing record of December 13, 1995. Thank you for the opportunity to clarify several issues about our investigation and testimony.

Enclosed are our responses. Should you have any questions or problems, please contact me or Assistant Director Donald Fulwider at (202) 512-6722.

Sincerely,



Donald J. Wheeler
Acting Director

Enclosures

Questions for the Record - House Committee on Small Business

1. During the hearing, the utility of the GAO's review, conducted for the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs, was dismissed by some members of the House Committee on Small Business because your report finally focused on only two 8(a) contractors. In fact, GAO has conducted a long series of critical assessments regarding the implementation of various elements of the Small Business Administration's Minority Small Business and Capital Ownership Development (MSB/COD) Program, focusing on the preferential contracting authority provided by Section 8(a) of the Small Business Act.

Q.A. Would you please furnish for the record a listing of the reports issued and testimony provided by GAO regarding the MSB/COD Program since 1979? It would be helpful if a brief summary could be provided for each of the listed items.

Response:

Enclosures II and III to this statement list and briefly summarize reports issued and testimony provided by GAO regarding the MSB/COD, or 8(a), program. The listed were published from August 1980 (the earliest available report) to the present.

Q.B. Wasn't the company-specific "case study" approach requested by the Permanent Subcommittee on Investigations to provide concrete examples of the persistent systemic problems that had been previously identified by GAO, and others, with regard to eligibility for participation in the MSB/COD Program and for the award of 8(a) contracts?

Response:

As we stated in Small Business Administration: 8(a) is Vulnerable to Program and Contractor Abuse, (GAO/OSI-95-15, Sept. 7, 1995), the Permanent Subcommittee on Investigations requested that we determine, within the context of case studies, whether:

- The improper participation of 8(a) firms resulted in their being awarded contracts for which they were otherwise ineligible;
- 8(a) firms misrepresented themselves to enter and/or stay in the program;
- Any 8(a) contracts have been inappropriately awarded to firms that were ineligible because they exceeded size standard restrictions; and,

- SBA allowed firms to remain in the program after their increased size indicated that they should be graduated.

2. During the hearing, several Members of the Committee questioned you regarding whether your report found that any statutes, regulations, or even SBA policies had been violated in the two case studies presented. You answered in the negative, which is factually correct, since your investigation did not continue to the point of actually making a determination regarding malfeasance, abuse, or even misfeasance. Unfortunately, this may have left the impression in the minds of some Members that proven misrepresentations of one's eligibility for initial or ongoing participation in the MSB/COD Program or for award of a particular contracting opportunity under the authority of section 8(a) are not actions that would subject a person making such misrepresentations to an array of criminal, civil, or administrative remedies under various statutes, including Section 16(d) of the Small Business Act.

Q. Could you please try to amplify your answer and dispel this misimpression regarding misrepresentations of status, size, or eligibility for contract award?

Response:

First, our response that we did not develop evidence to conclude that laws, rules, or regulations, had been broken was in reply to a question concerning TAMSCO's actions.

As stated in our report and testimony, we concluded that U.S. Coast Guard officials did abuse the IDIQ contracting option when it awarded the contract to TAMSCO. Although the IDIQ contracting option is an acceptable method of awarding contracts, Coast Guard officials changed Standard Industrial Classification codes, lowered labor hours, and reduced the minimum contract value to make it possible to direct the contract to TAMSCO without competition.

Regarding I-NET, we determined a pattern of misrepresentation in that I-NET officials provided false and misleading information to SBA regarding the equity ownership in the firm, the owner's education credentials, and the owner's citizenship status. As a result, I-NET improperly benefited from the 8(a) program. The SBA Office of Inspector General (OIG) presented the facts in this matter to the Department of Justice for consideration of civil sanctions. However, according to SBA officials, civil action would have been precluded because SBA was aware of the misrepresentations prior to the award of the first contract. Negative control was also an issue in the admittance of I-NET to the program. The issue was not satisfactorily resolved before I-NET was allowed to participate in the 8(a) program.

The second point I would like to make is when misrepresentation of eligibility, status, and size are proven, persons making such representations may be subject to criminal, civil, and administrative remedies under various statutes. Section 16 of the Small Business Act (15 U.S.C. 645) sets forth penalties for false statements and misrepresentations made to influence the actions of the Small Business Administration. The Business Opportunity Development Reform Act of 1988 (Pub. L. 100-656) increased the penalties for intentional misrepresentation of small disadvantaged business status. Penalties include

- 1) suspension and debarment;
- 2) ineligibility for participation for a set period;
- 3) various administrative remedies; and
- 4) fines and/or imprisonment.

List of SBA 8(a) Program-Related GAO Documents

The following GAO documents on SBA 8(a) Program topics were issued between January 1981 and December 1995 and point out problems in the 8(a) Program. Brief summaries of these documents follow the listing.

1. GAO/T-OSI-96-1 (12/13/95) Small Business Administration: Case Studies Illustrate 8(a) Program and Contractor Abuse (Testimony)
2. GAO/OSI-95-15 (9/7/95) Small Business Administration: 8(a) Is Vulnerable to Program and Contractor Abuse (Letter Report)
3. GAO/T-RCED-95-149 (4/4/95) Small Business: Status of SBA's 8(a) Minority Business Development Program (Testimony)
4. GAO/T-RCED-95-122 (3/6/95) Small Business: Status of SBA's 8(a) Minority Business Development Program (Testimony)
5. GAO/T-RCED-94-273 (7/27/94) Small Business: SBA Cannot Assess the Success of Its Minority Business Development Program (Testimony)
6. GAO/RCED-94-28 (2/23/94) Energy Management: DOE Can Improve Distribution of Dollars Awarded Under SBA's 8(a) Program (Letter Report)
7. GAO/T-RCED-93-56 (9/22/93) Small Business: The Small Business Administration's Progress in Restructuring Its Business Development Program (Testimony)
8. GAO/RCED-93-145 (9/17/93) Small Business: Problems Continue With SBA's Minority Business Development Program (Letter Report)
9. GAO/T-RCED-92-35 (3/4/92) Small Business: The Small Business Administration's Progress in Restructuring Its 8(a) Business Development Program (Testimony)
10. GAO/RCED-92-68 (1/31/92) Small Business: Problems in Restructuring SBA's Minority Business Development Program (Letter Report)
11. GAO/RCED-91-173 (6/11/91) Small Business: Participation in SBA's 8(a) Business Development Program (Letter Report)
12. GAO/RCED-88-148BR (5/24/88) Small Business Administration: Status, Operations, and Views on the 8(a) Procurement Program (Briefing Report)

13. GAO/AFMD-82-9 (10/16/81) Misuse of SBA's 8(a) Program Increased Cost for Many ADP Equipment Acquisitions (Chapter Report)
14. GAO/CED-81-55 (4/8/81) The SBA 8(a) Procurement Program--A Promise Unfulfilled (Chapter Report)
15. GAO/CED-81-22 (1/23/81) The 8(a) Pilot Program for Disadvantaged Small Businesses Has Not Been Effective (Chapter Report)

Summary of SBA 8(a) Program-related GAO Documents

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1. TITLE: Small Business Administration: Case Studies Illustrate 8(a) Program and Contractor Abuse
 ACCESSION NUMBER: 155786 RPTNO: T-OSI-96-1
 DOCUMENT DATE: 12/13/95 DOCUMENT TYPE: Testimony

BACKGROUND:

GAO discussed program and contractor abuses involving two firms that participated in the Small Business Administration's (SBA) 8(a) program. GAO noted that: (1) although the firms provided questionable information regarding their eligibility for the 8(a) program, SBA did not fully resolve the issues before it admitted the firms to the program; (2) one of the firm's misrepresented its qualifications to SBA, but both firms continue to benefit from contracts they received in the 8(a) program; (3) SBA did not recognize misleading financial statements that misrepresented the firm's size; (4) SBA also allowed the firm to continue in the 8(a) program for almost 2 years after it exceeded its size limit; and (5) the Coast Guard changed one of the firm's original industrial classification code to direct an indefinite delivery indefinite quantity contract to the firm and avoid competition.

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2. TITLE: Small Business Administration: 8(a) Is Vulnerable to Program and Contractor Abuse
 ACCESSION NUMBER: 155357 RPTNO: OSI-96-15
 DOCUMENT DATE: 09/07/95 DOCUMENT TYPE: Letter Report

ABSTRACT:

The Small Business Administration's (SBA) 8(a) program is intended to develop and promote businesses that are owned and controlled by socially and economically disadvantaged persons. Members of Congress have raised concerns that weaknesses in program management and administration may make the 8(a) program vulnerable to exploitation by individuals or corporations that have used illegal or improper means to participate in and benefit from the program. To develop case studies, GAO initially selected four firms for investigation on the basis of indicators, or "red flags," of potential regulatory violations and criminal misconduct. Due to time constraints and the destruction of records resulting from the Oklahoma City bombing, this report focuses on the following two firms: I-NET, Inc. of Bethesda, Maryland, and Technical and Management Services Corporation of Calverton, Maryland.

BACKGROUND:

Pursuant to a congressional request, GAO reviewed the Small Business Administration's (SBA) 8(a) program, focusing on whether: (1) ineligible 8(a) firms have received contracts through their improper participation in the program; (2) 8(a) firms have misrepresented themselves to enter and stay in the program; (3) firms exceeding the size standard have inappropriately received 8(a) awards; (4) SBA has allowed ineligible firms to remain in the program after they exceeded the size limitations; and (5) federal contracting authorities have improperly used indefinite delivery, indefinite quantity (IDIQ) contracts to avoid competition.

FINDINGS:

GAO found that: (1) the two firms studied were initially recommended for nonacceptance into the 8(a) program because of eligibility questions about who actually controlled the firms; (2) SBA justification for accepting the firms was questionable, since the questions about the firms' ownership were never fully answered; (3) one firm's owner misrepresented her personal qualifications, her equity in the firm, and ownership changes, but SBA took no action when it found out about the misrepresentations; (4) the firm received millions of dollars worth of 8(a) contracts after it had grown too large to participate in the program; (5) although the firm hid its size by excluding items from its financial statements, understating its total revenue, and representing itself as a company at financial risk, it had considerable access to credit; (6) SBA allowed the firm to remain in the program and receive new 8(a) contracts even after it had determined that the firm had grown too large for continued program participation; (7) the Coast Guard awarded a sole-source IDIQ contract to the second firm by changing the contract's classification code to one for which the firm was eligible and altering the contract's original minimum value below the minimum threshold for mandatory 8(a) competitive procurements; and (8) the Coast Guard believed that competitive 8(a) procurements hindered its mission and viewed the contract as a graduation present to the firm.

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3. TITLE: Small Business: Status of SBA's 8(a) Minority Business Development Program

ACCESSION NUMBER: 153914

RPTNO: T-RCED-95-149

DOCUMENT DATE: 04/04/95

DOCUMENT TYPE: Testimony

ABSTRACT:

The 8(a) business development program undoubtedly has helped some firms owned by socially and economically disadvantaged persons to compete in the commercial marketplace. This testimony focuses on several program weaknesses that are preventing firms from obtaining experiences essential to their development. The total dollar value of new contracts awarded

competitively grew during fiscal year 1994, but federal procuring agencies limit firms' opportunities for competition under the 8(a) program. The concentration of contract dollars in a few firms continued in 1994, limiting the developmental opportunities available to many firms. And although the Small Business Administration has approved business plans for most firms, it has not devoted to same attention to annually reviewing these plans to ensure that they accurately reflect the firms' development goals and contract needs. Moreover, many firms nearing the end of their program terms still depend on 8(a) contracts, raising doubts about their chances for success in the commercial marketplace.

BACKGROUND:

GAO discussed the status of the Small Business Administration's (SBA) 8(a) business development program and the Department of Defense's (DOD) small disadvantaged business program, focusing on key changes designed to make the 8(a) program more effective. GAO noted that: (1) although the total dollar value of new contracts awarded competitively grew during fiscal year 1994, federal procuring agencies limited firms' competition under the 8(a) program; (2) the concentration of contract dollars in a few firms continued in 1994, limiting many firms' opportunities for development; (3) although SBA has given adequate attention to ensuring that firms have new or revised business plans, it has not annually reviewed these plans to ensure that they accurately reflect the firms' goals and needs; (4) many firms nearing the end of their program terms are still dependent on 8(a) contracts, limiting their chance for future livelihood in the commercial marketplace; and (5) while concentration under the DOD small business program is similar to the 8(a) program, contract dollars awarded through price preference are much more concentrated.

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4. **TITLE:** Small Business: Status of SBA's 8(a) Minority Business Development Program

ACCESSION NUMBER: 153665

RPTNO: T-RCED-95-122

DOCUMENT DATE: 03/06/95

DOCUMENT TYPE: Testimony

ABSTRACT:

Although the Small Business Administration (SBA) has improved some aspects of the 8(a) business development program, which provides federal contracts to small businesses owned by socially and economically disadvantaged persons, it has not yet achieved key changes mandated by Congress. Although the total dollar value of new contracts awarded competitively grew during fiscal year 1994, federal procuring agencies limit firms' opportunities for competition under the 8(a) program. The concentration of contract dollars in a few firms continued in 1994, limiting the developmental opportunities of many firms. And although SBA has approved

business plans for most firms, it has not given the same attention to annually reviewing these plans to guarantee that they accurately reflect the firms' developmental goals and contract needs. Moreover, many firms nearing the end of their program terms still depend on 8(a) contracts, raising doubts about the firms' ability to succeed in the commercial marketplace.

BACKGROUND:

Pursuant to a congressional request, GAO discussed the Small Business Administration's (SBA) 8(a) business development program and the Department of Defense's (DOD) small disadvantaged business program. GAO noted that: (1) while SBA has improved certain aspects of the 8(a) program and increased the total value of new 8(a) contracts awarded, it has not yet implemented key changes mandated by Congress; (2) SBA contract dollars are still concentrated among a small percentage of firms; (3) of the 5,155 firms in the SBA program at the end of fiscal year (FY) 1994, about 56 percent did not receive any contracts during the year; (4) federal agencies direct sole-source contracts to firms they are familiar with to avoid competition thresholds; (5) SBA is requiring each of its district offices to develop specific initiatives to increase contracting opportunities for more 8(a) firms; and (6) SBA field offices are not conducting annual business plan reviews to ensure that they accurately reflect the firms' business development goals and non-8(a) contract needs. GAO also noted that DOD: (1) awarded \$6.1 billion in prime contracts to small disadvantaged businesses in FY 1994 and about 18 percent of these contract dollars through small business set-asides; and (2) contracting officials prefer the 8(a) program because it allows them to select contractors they are familiar with.

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5. TITLE: Small Business: SBA Cannot Assess the Success of Its Minority Business Development Program
 ACCESSION NUMBER: 152212 RPTNO: T-RCED-94-278
 DOCUMENT DATE: 07/27/94 DOCUMENT TYPE: Testimony

ABSTRACT:

Although the Small Business Administration (SBA) has improved some aspects of its 8(a) business development program, which provides federal contracts to small businesses owned by social and economically disadvantaged persons, SBA is still not in a position to evaluate the program's overall success in enabling minority businesses to compete in the commercial marketplace after they leave the program. The value of 8(a) contracts awarded competitively during fiscal year 1992 was higher than the value of contracts awarded during the preceding year, but the distribution of contracts continued to be concentrated among a very small percentage of firms. Also, SBA could not

say whether its revised business plans for 8(a) firms are being reviewed annually, as required by law, or whether the firms are meeting the non-8(a) contract goals to reduce the firms' reliance on program contracts. Finally, the information SBA provided GAO shows that its failure to properly plan the redesign of the program's management information system continues to hamper the implementation of a system of providing SBA managers with basic 8(a) program information.

BACKGROUND:

GAO discussed the Small Business Administration's (SBA) progress in implementing changes to its 8(a) business development program as required by the Business Opportunity Development Reform Act of 1988. GAO noted that: (1) SBA cannot evaluate the program's overall success in developing competitive minority businesses because of the lack of program information; (2) although SBA awarded more 8(a) contracts competitively during fiscal year (FY) 1992, the awards continue to be concentrated among a few 8(a) firms; (3) about one-half of the 8(a) firms have not received contract awards since FY 1990; (4) SBA cannot determine if the 8(a) firms' new or revised business plans are being reviewed annually or if the firms are achieving their non-8(a) contracting goals; and (5) SBA has not properly planned the redesign of the program's management information system which delays its ability to provide Congress and program managers with fundamental 8(a) program information.

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6. TITLE: Energy Management: DOE Can Improve Distribution of Dollars Awarded Under SBA's 8(a) Program
 ACCESSION NUMBER: 151129 RPTNO: RCED-94-28
 DOCUMENT DATE: 02/23/94 DOCUMENT TYPE: Letter Report

ABSTRACT:

Contract dollars awarded by the Energy Department (DOE) under the Small Business Administration's 8(a) program are concentrated among a small number of firms. Nearly 60 percent of DOE's \$1 billion worth of active contracts in April 1992 went to 13 firms. This concentration is due, in part, to the fact that DOE, like other federal agencies, is authorized to direct noncompetitive 8(a) awards to firms that it specifies. In addition, DOE's Oak Ridge office has contributed to the concentration of awards by combining several procurements into a single larger procurement, resulting in the award of only one contract rather than several. Although these practices are not prohibited, DOE is missing an opportunity to have a positive impact on a large number of firms. Agencies are required to award 8(a) contracts competitively if the estimated prices of the contracts exceed certain thresholds. DOE, however, has kept price estimates for contracts artificially low and structured contracts so that their estimated

prices fall below the thresholds specified for competition. This practice has further contributed to the concentration of 8(a) contract dollars among a small number of firms.

BACKGROUND:

Pursuant to a congressional request, GAO reviewed the distribution of Department of Energy (DOE) contract awards to firms participating in the Small Business Administration's 8(a) program, focusing on whether DOE: (1) distributes its 8(a) contract funding equitably; and (2) has complied with noncompetitive contract award requirements.

FINDINGS:

GAO found that: (1) DOE awarded 58 percent of its 8(a) contracts to 13 firms and 42 percent of its remaining contracts to 112 firms as of April 1992; (2) DOE has concentrated its 8(a) awards among a small number of firms by combining several smaller contracts into single larger contracts; (3) DOE and other federal agencies have awarded over 90 percent of their 8(a) contracts noncompetitively; (4) DOE could increase its small business assistance by better distribution of its noncompetitive awards; (5) although DOE is required to award competitive contracts if the estimated contract cost exceeds certain thresholds, DOE has structured its procurements so that estimated prices fall below the competition thresholds; (6) DOE has avoided the competition requirements to facilitate the procurement process; and (7) DOE should discontinue its avoidance of the competition requirements to demonstrate its commitment to the 8(a) program and to further assist small businesses.

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7. TITLE: Small Business: The Small Business Administration's Progress in Restructuring Its Business Development Program
 ACCESSION NUMBER: 149968 RPTNO: T-RCED-93-56
 DOCUMENT DATE: 09/22/93 DOCUMENT TYPE: Testimony

ABSTRACT:

Concerned that gaining access to the 8(a) business development program was a lengthy and burdensome process, that the program's administration was inefficient, and that few firms were able to compete successfully in the open market, Congress mandated wholesale changes to the program in 1988. Although the Small Business Administration (SBA) has made some changes to the program, which promotes the development of small businesses owned by socially and economically disadvantaged persons, the program still falls short in several areas. SBA's latest estimate for completing the redesign work is late 1995, five years later than originally projected. The program lacks a management information system, developed in accordance with federal guidelines, that yields complete and accurate information. As a result, Congress and program managers are in the dark about what assistance is

being provided to 8(a) firms and whether the program is effective. In addition, access to the program still needs improving. Although SBA must provide 8(a) program applicants with timely feedback on their eligibility to participate in the program, it continues to operate without an application-tracking system that provides timely information on where and why application-processing problems are occurring. Finally, SBA needs to periodically review the business plan of each 8(a) firm. Without such a review, SBA cannot be sure that each plan is up-to-date, that the 8(a) firms' business development goals are realistic, and that the firms are making progress toward these goals.

BACKGROUND:

GAO discussed the Small Business Administration's (SBA) progress in implementing legislatively-mandated changes to its 8(a) business development program. GAO found that: (1) SBA has made limited progress in implementing some 8(a) program changes; (2) SBA redesign of its 8(a) program management information system is behind schedule, and does not meet federal regulations and guidelines; (3) SBA has not developed an estimate of the system's total redesign cost; (4) without a management information system, Congress and SBA program managers cannot determine the amount of assistance being provided to 8(a) firms and assess its effectiveness in developing 8(a) firms; (5) in 1992, SBA certification of 8(a) program participants averaged 170 days, which exceeds the 90-day legislative requirement; (6) although most 8(a) firms have new or revised SBA approved business plans, SBA does not annually review each approved business plan as required; (7) SBA needs to continue to improve its tracking of management and technical assistance and develop criteria to measure the effectiveness of 8(a) assistance; and (8) although SBA tracks the principal programs that provide 8(a) financial assistance, it does not know the full extent of 8(a) financial assistance being provided by all SBA programs.

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8. TITLE: Small Business: Problems Continue With SBA's Minority Business Development Program

ACCESSION NUMBER: 149988

RPTNO: RCED-93-145

DOCUMENT DATE: 09/17/93

DOCUMENT TYPE: Letter Report

ABSTRACT:

Concerned that gaining access to the 8(a) business development program was a lengthy and burdensome process, that the program's administration was inefficient, and that few firms were able to compete successfully in the open market, Congress mandated wholesale changes to the program in 1988. Although the Small Business Administration (SBA) has made some changes to the program, which promotes the development of small businesses owned by socially and economically disadvantaged persons, the program still falls short in several areas. SBA's latest estimate for completing the redesign work is late 1995, 5 years later than originally projected. The program lacks a management information system, developed in accordance with federal guidelines, that yields complete and accurate information. As a result, Congress and program managers are in the dark about what assistance is being provided to 8(a) firms and whether the program is effective. In addition, access to the program still needs improving. Although SBA must provide 8(a) program applicants with timely feedback on their eligibility to participate in the program, it continues to operate without an application-tracking system that provides timely information on where and why application-processing problems are occurring. Finally, SBA needs to periodically review the business plan of each 8(a) firm. Without such a review, SBA cannot be sure that each plan is up-to-date, that the 8(a) firms' business development goals are realistic, and that the firms are making progress toward these goals. GAO summarized this report in testimony before Congress; see: Small Business: The Small Business Administration's Progress in Restructuring Its Business Development Program.

BACKGROUND:

Pursuant to a congressional request, GAO reviewed the Small Business Administration's (SBA) ability to implement changes to the 8(a) business development program relating to the: (1) collection and management of 8(a) program data; (2) certification of 8(a) program participants; (3) development and maintenance of 8(a) firms' business plans; (4) competitive award of 8(a) program contracts; and (5) distribution of 8(a) contracts among 8(a) firms. GAO also reviewed SBA efforts to determine the amount and type of financial, technical, and management assistance provided to 8(a) firms as well as the effectiveness of such assistance.

FINDINGS:

GAO found that: (1) the 8(a) program still lacks a management information system that provides complete and accurate information on all 8(a) program aspects, including data on the type and amount of financial, management, and technical assistance provided to 8(a) firms; (2) SBA also lacks an application tracking system that can provide it with timely information on processing problems; (3) SBA does not effectively review the business plan of each 8(a) firm to ensure that it is up-to-date, the firm's business development goals are realistic, or that the firm is progressing toward achieving its goals; (4) SBA certification time for 8(a) program participants continues to exceed the mandated 90-day period; and (5) SBA has made improvements in tracking management and technical assistance, but the extent of financial assistance provided to 8(a) firms is not fully known.

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9. TITLE: Small Business: The Small Business Administration's Progress in Restructuring Its 8(a) Business Development Program
 ACCESSION NUMBER: 146071 RPTNO: T-RCED-92-35
 DOCUMENT DATE: 03/04/92 DOCUMENT TYPE: Testimony

BACKGROUND:

GAO discussed the Small Business Administration's (SBA) progress in implementing legislatively required changes to its 8(a) program, intended to promote the development of small businesses owned and controlled by socially and economically disadvantaged individuals. GAO noted that: (1) SBA met the 90-day maximum for determining participant eligibility for only 24 percent of the 268 applications it approved or declined between January and November 1990; (2) many of the participating firms lack required business plans, and SBA has not reviewed all of the plans it has received; (3) it is difficult for SBA to promote the equitable geographic distribution of noncompetitive 8(a) contracts, since procuring agencies recommend specific firms for about 95 percent of the contracts offered through the program; (4) of about 8,300 new 8(a) contracts, valued at about \$3 billion, awarded in fiscal years 1990 and 1991, only 67 contracts, with a total value of \$136 million, were competitive awards; (5) the SBA primary 8(a) management information system does not include the data necessary to meet reporting requirements; (6) SBA did not require participating firms to report semiannually on their use of personnel who help them to obtain federal contracts until 28 months after the legislative mandate; (7) SBA does not track and does not know the actual amount of 8(a) assistance provided and lacks objective criteria for measuring the effectiveness of assistance; and (8) SBA does not actually know but estimates that there have been few challenges to 8(a) contract awards.

10. TITLE: Small Business: Problems in Restructuring SBA's Minority Business
Development Program
ACCESSION NUMBER: 146010 RPTNO: RCED-92-68
DOCUMENT DATE: 01/31/92 DOCUMENT TYPE: Letter Report

ABSTRACT:

The 8(a) program was created to improve the viability of small businesses owned by socially and economically disadvantaged individuals. Under the program, the Small Business Administration (SBA) enters into contracts with other federal agencies and subcontracts the work to firms in the program. Firms in the program are also eligible for financial, technical, and management assistance from SBA to aid their development. Concerned that obtaining access to the program was lengthy and burdensome, program administration was inefficient, and few firms were able to compete upon leaving the program, Congress passed the Business Opportunity Development Reform Act of 1988. This legislation requires that (1) applications be processed within 90 days, (2) 8(a) firms submit revised business plans so SBA can better monitor the firms' development, and (3) firms compete for certain contracts. SBA has had problems implementing many of these changes, and its lack of valid data on program activities has hindered effective program management. GAO summarized this report in testimony before Congress; see: Small Business: The Small Business Administration's Progress in Restructuring Its 8(a) Business Development Program, by Judy A. England-Joseph, Director of Housing and Community Development Issues, before the House Committee on Small Business. GAO/T- RCED-92-35, Mar. 4, 1992 (17 pages).

BACKGROUND:

Pursuant to a legislative requirement, GAO provided information on the Small Business Administration's (SBA) progress in implementing provisions of the Business Opportunity Development Reform Act of 1988, designed to remedy the problems which prevented the SBA 8(a) Program from developing firms owned by socially and economically disadvantaged individuals into viable businesses.

FINDINGS:

GAO held that: (1) during the first 11 months of fiscal year (FY) 1990, about 76 percent of all new applications that SBA approved or declined did not meet the act's requirement to process applications within 90 days, and the average processing time for those applications was 117 days; (2) as of October 1, 1991, SBA had approved or revised the required business plans of about 57 percent of the 3,922 firms in the program; (3) SBA has limited control over the equitable geographical distribution of 8(a) contracts because the act also directs SBA to award contracts to 8(a) firms

recommended by procuring agencies, and such recommendations occur for about 95 percent of the 8(a) contracts offered; (4) of approximately 8,300 new 8(a) contracts awarded in FY 1990 and FY 1991, SBA awarded only 67 competitively; (5) missing and inaccurate data render the SBA Financial Information System inadequate, but SBA has been in the process of developing specific plans for correcting system weaknesses; (6) since SBA did not track the various forms of assistance provided by contractors and others, SBA did not know the full extent of management and technical assistance provided to 8(a) firms; (7) due to higher-priority work and the turnover of key staff, SBA did not issue until more than 2 years after the requirement took effect an approved form for 8(a) firms to report their use of paid consultants to obtain contracts; (8) SBA did not know the amount of financial assistance it provided to 8(a) firms, since it did not collect such information; and (9) SBA did not routinely gather information on contract or bid protests involving 8(a) firms or challenges of firms' eligibility to continue participating in the 8(a) program, since there appeared to be few such protests or challenges.

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11. TITLE: Small Business: Participation in SBA's 8(a) Business Development Program

ACCESSION NUMBER: 144368

RPTNO: RCED-91-173

DOCUMENT DATE: 06/11/91

DOCUMENT TYPE: Letter Report

BACKGROUND:

Pursuant to a congressional request, GAO provided information on the extent to which nonminority women participated in the Small Business Administration's (SBA) 8(a) program, focusing on: (1) the number of Caucasian women in the program; (2) the number of women who sued SBA to gain entry; and (3) the criteria SBA uses to determine whether Caucasian women and others are socially disadvantaged.

FINDINGS:

GAO found that: (1) 16 Caucasian women had participated in the program since 1973; (2) as of February 1991, only 9 of the 3,665 active participants in the 8(a) program were Caucasian women; (3) of the 16 women, 12 entered the program without suing SBA, while the 4 remaining women brought 3 lawsuits against SBA to gain or regain entry into the program; (4) each lawsuit alleged that SBA discriminated against each woman on the basis of her sex, race or marital status; (5) as of April 1991, suits by 2 Caucasian women seeking entry into the 8(a) program were pending; (6) SBA did not designate women to be socially disadvantaged for purposes of participating in the program, and required those seeking entry into the program to provide clear convincing evidence that they suffered racial or ethnic prejudice or cultural bias; and (7) the 5 criteria for demonstrating

evidence of social disadvantage included showing that the women's disadvantage stemmed from her color, ethnic origin, or other similar causes not common to persons not socially disadvantaged, was rooted in the treatment experienced in American society, was chronic and substantial, was personally experienced, and negatively affected the applicant's entry into and advancement in the business world.

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12. TITLE: Small Business Administration: Status, Operations, and Views on the 8(a) Procurement Program
 ACCESSION NUMBER: 136131 RPTNO: RCED-88-148BR
 DOCUMENT DATE: 05/24/88 DOCUMENT TYPE: Briefing Report

BACKGROUND:

In response to a congressional request, GAO reviewed the Small Business Administration's (SBA) 8(a) Procurement Program to: (1) provide a statistical overview of the program's participants; (2) assess the extent of concentration of 8(a) activity; (3) determine whether SBA prepared graduating firms for the competitive market; (4) determine the adequacy of SBA program administration and monitoring; (5) ascertain whether program participants consistently met contract terms and conditions; and (6) determine the impact of the program on other small businesses.

FINDINGS:

GAO found that: (1) from 1968 through 1987, about 1,287 firms graduated from the SBA 8(a) program; (2) 72 percent of the firms were in the program 5 years or less; (3) 50 firms received about \$1.1 billion, or 35 percent, of the 8(a) contracts awarded in 1987; (4) the program has not been effective in assisting firms to be self-sufficient, since most firms were heavily dependent on 8(a) sales; (5) SBA did not fully comply with its requirements for helping firms to develop their non-8(a) business because of inadequate staff; (6) most 8(a) contractors met contract delivery dates and delivered services or products that exceeded quality specifications; (7) the \$3 billion annual expenditure on 8(a) procurements represented less than 2 percent of the federal government's total procurement; and (8) it was unable to determine the impact of the program on non-8(a) firms.

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13. TITLE: Misuse of SBA's 8(a) Program Increased Cost for Many ADP Equipment Acquisitions
 ACCESSION NUMBER: 116861 RPTNO: AFMD-82-9
 DOCUMENT DATE: 10/16/81 DOCUMENT TYPE: Chapter Report

BACKGROUND:

GAO reviewed the use of contracts under Section 8(a) of the Small Business Act by various federal agencies as a means of acquiring automatic data processing (ADP) equipment. GAO sought to determine whether government

computer acquisition opportunities are being made available to as many small and disadvantaged businesses as possible under the 8(a) program and if federal procurement policies and regulations are being violated by the Small Business Administration (SBA), federal agencies, or contractors when ADP equipment is acquired under Section 8(a) contracts.

FINDINGS:

GAO believes that SBA management of the ADP resource acquisition portion of the 8(a) program has been deficient. GAO found that: (1) only a limited number of minority-owned firms capable of supplying ADP equipment had been recruited into the 8(a) program; (2) the 8(a) firms supplying ADP equipment were functioning as brokers, not as regular dealers; (3) SBA failed to follow its own procedures, which contributed to the brokering and increased the cost of the ADP equipment; (4) federal agencies were able to acquire specific items of ADP equipment through the 8(a) program which they had not justified for acquisition without competition; (5) requirements concerning cost and pricing data and preaward audits were not met; and (6) SBA frequently ignored the small business regulations and SBA procedures concerning size requirements. GAO believes that awarding these contracts is not achieving the program goals of helping firms to gain the experience and financial viability necessary to prosper in the competitive market place. Agencies and SBA are paying the firms to perform a function for which there is no competitive market, and this has unnecessarily cost the government substantial sums of money. GAO believes that the program objectives would best be served if individual 8(a) contract opportunities in computer sciences were limited to annual awards not exceeding 50 percent of an appropriately defined size standard for such services. Such a limitation would allow 8(a) firms to acquire ADP contracts while minimizing the impact on other small and minority businesses.

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14. TITLE: The SBA 8(a) Procurement Program—A Promise Unfulfilled
 ACCESSION NUMBER: 114863 RPTNO: CED-81-55
 DOCUMENT DATE: 04/08/81 DOCUMENT TYPE: Chapter Report

BACKGROUND:

The 8(a) Procurement Program of the Small Business Administration (SBA) is designed to channel noncompetitive federal contracts to disadvantaged small businesses to help them to become self-sufficient. The program also provides management, technical, marketing, and financial aid. A review was made of the program's implementation.

FINDINGS:

The program has had some benefits: the formation of many disadvantaged firms, continued operation of these firms, providing experience in business management, and assistance in getting commercial and non-8(a) government

work. But the program has fallen short of its intended goal. Only 166 of the participating firms have graduated from the program as competitive businesses. A large volume of 8(a) contracts went to 50 firms which continue to be active participants. Over three-fifths of the firms have been in the program between 7 and 11 years. More than half of the participants that GAO interviewed were dissatisfied with or did not need the provided management, technical, and marketing aid. Removing inappropriate 8(a) firms from the program would give other disadvantaged firms an opportunity to participate. Often assessments of whether 8(a) contract awards will have an impact on other small businesses were not always made or were superficial. Several interrelated factors have limited the program's effectiveness: the President's yearly 8(a) contract goal imposed on SBA, vague program graduation criteria, missing business plan and financial statement data, and limited staff resources. Redirecting the program could free the limited staff to better serve program participants, provide an opportunity for other disadvantaged firms to participate, and enhance the program's credibility within the business community.

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15. TITLE: The 8(a) Pilot Program for Disadvantaged Small Businesses Has Not Been Effective

ACCESSION NUMBER: 114212

RPTNO: CED-81-22

DOCUMENT DATE: 01/23/81

DOCUMENT TYPE: Chapter Report

BACKGROUND:

The implementation of the 8(a) pilot contracting program of the Small Business Administration (SBA) is discussed. SBA awards procurement contracts under this program to socially and economically disadvantaged small businesses for the purpose of helping them become competitive. When SBA uses the pilot program, it has the exclusive authority to designate procurement requirements. The Department of the Army was selected as the pilot agency in 1979; however, the Army and SBA disagreed over the manner in which this program can be most effective. In 1980, the President designated three other agencies to participate in the pilot program. GAO sees no basis for these designations.

FINDINGS:

The stated objective of the pilot program was to seek procurement opportunities which were not currently offered by the Army under the regular 8(a) program. The pilot program has not met this objective. The three initial contracts awarded under the pilot program could have been handled under the regular 8(a) program, and GAO questioned the contribution the contracts would make for the firms that received them. In an attempt to upgrade the quality of procurements available to participants in the program, SBA issued criteria that firms must meet before they can be

selected for the 8(a) program. It also issued criteria for contracts selected for the pilot program. Better program controls are needed in order for SBA to properly assess and match 8(a) firms' capabilities with procurement opportunities. Additional program testing is necessary in an agency that has not yet demonstrated its complete support for the 8(a) program. The Army has had a history of fully supporting the program.

List of SBA Program Related Documents

The following GAO documents on SBA 8(a) and other disadvantaged business program topics were issued between August 1980 and August 1994, and discuss various procurement issues relative to the programs.

1. GAO/RCED-94-168 (8/17/94) Highway Contracting: Disadvantaged Business Program Meets Contract Goal, but Refinements Are Needed (Chapter Report)
2. GAO/NSIAD-93-167 (7/27/93) Minority Contracting: DOD's Reporting Does Not Address Legislative Goal (Letter Report)
3. GAO/RCED-93-89R (1/19/93) Disadvantaged Business Enterprise Program (Correspondence)
4. GAO/RCED-92-166 (7/7/92) Small Business: Use of the Surety Bond Waiver Has Been Limited (Letter Report)
5. GAO/NSIAD-92-130 (3/19/92) Small Business Program: Efforts to Increase Participation in State Department Contracts (Letter Report)
6. GAO/CGD-91-58BR (4/26/91) GSA Travel Services: Small Disadvantaged Businesses Seldom Receive Contracts (Briefing Report)
7. GAO/T-RCED-88-18 (2/18/88) [Review of SBA's 8(a) Procurement Program] (Testimony)
8. GAO/T-OGC-87-1 (5/20/87) [Legal Opinion Concerning the Exercise of Options in Section 8(a) Contracts and Comments on a Pertinent Provision in H.R. 1807 Amending the Small Business Act] (Testimony)
9. GAO/AFMD-83-40 (6/9/83) [NASA-Ames Research Center Should Not Have Awarded Computational Services Contract to SBA and Technology Development of California] (Letter Report)
10. GAO/PLRD-83-14 (11/12/82) [Division of Responsibilities Between SBA and Procuring Agencies in Evaluating Proposals and Negotiating Section 8(a) Contracts Over \$100,000] (Letter Report)
11. GAO/PLRD-83-4 (10/12/82) Proposals for Minimizing the Impact of the 8(a) Program on Defense Procurement (Chapter Report)

12. GAO/CED-81-149 (9/29/81) SBA's 7(j) Management Assistance Program--Changes Needed To Improve Efficiency and Effectiveness (Chapter Report)
13. (9/22/81) [SBA's Progress in Implementing the Public Law 95-507 Surety Bond Waiver Provision and the 8(a) Pilot Program] (Testimony)
14. (9/21/81) [The Small Business Administration's 8(a) Pilot Program] (Testimony)
15. GAO/CED-81-151 (9/18/81) SBA's Progress in Implementing the Public Law 95-507 Subcontracting and Surety Bond Waiver Provisions Has Been Limited (Chapter Report)
16. (4/7/81) [Award of Contracts to Arcata Associates, Inc.] (Testimony)
17. GAO/AFMD-81-33 (3/23/81) [Reservation and Award of Section 8(a) Small Business Act Contracts to Arcata Associates] (Chapter Report)
18. (1/23/81) [The Small Business Administration's 8(a) Pilot Program] (Testimony)
19. GAO/CED-80-130 (8/20/80) [Status Report on Small and Small Minority Business Subcontracting and Waiver of Surety Bonding for 8(a) Firms] (Chapter Report)

Congress of the United States
House of Representatives
104th Congress
Committee on Small Business
2501 Rayburn House Office Building
Washington, DC 20515-0515

January 29, 1996

Mr. Calvin Jenkins
Associate Administrator
Minority Small Business & Capital Ownership
U.S. Small Business Administration
409 Third Street, SW
Washington, DC 20416

Dear Mr. Jenkins:

Thank you for appearing before the Committee on Small Business during our hearing on December 13, 1995. Now that the holidays are behind us and the budget debate has subsided I would appreciate your response to a few written questions prior to the closing of the hearing record. The questions will help round out the hearing record and your cooperation is greatly appreciated.

I hope that the Committee can have your responses to the enclosed questions within the next two weeks. I sincerely appreciate your cooperation with the Committee's oversight efforts and, of course, I know you are quite busy. Therefore, if you have any problems in responding within two weeks please contact Charles Rowe, Committee Counsel, at (202) 226 - 2227.

Thank you again for your assistance in this matter. I look forward to reading your responses.

Sincerely,


Jan Meyers

encl

Further Questions for Mr. Calvin Jenkins, AA-MSB/COD

- 1) Mr. Jenkins, as you stated during the hearing Business Opportunity Specialists are reviewed in part based on their success at getting 8(a) contracts for their client 8(a) firms and, therefore, you would consider an Opportunity Specialist deciding on a SIC code designation to have a conflict of interest. Do Business Opportunity Specialists receive any special training in contracting? Any training that would enable them to make SIC code decisions?
- 2) Why then would the Coast Guard's or any agency's contracting professionals defer to their judgment on an SIC code question?
- 3) Please furnish the Committee with a list of other contracts in which an SBA BOS made an SIC code determination on behalf of an agency contracting official.
- 4) Only participants in good standing in the MSB/COD program are eligible for contract awards under the Section 8(a) preferential procedures. Eligibility includes: (a) small business status according to the applicable SIC code, (b) ownership by a socially and economically disadvantaged individual, and (c) compliance with statutory and regulatory requirements. How is such compliance verified and which SBA official makes such determination for each contract award?
- 5) When an 8(a) contract is competed among program participants, who certifies that all the competitors are eligible and who approves the award?
- 6) The BOS for TAMSCO (Charita Albright) certified that the firm was making its business plan mix, yet a financial report for the firm shows that 76 percent of their contracts were sole-source. Is that the correct business mix for an 8(a) firm in that stage of participation?
- 7) If it was incorrect, then why did the BOS allow the contract to go forward?

8) Please furnish the Committee with a list of 8(a) Program Participants who were determined to be ineligible for award of an 8(a) contract due to the firm's failure to make its "business activity targets" during fiscal years 1989- 1995, identifying if possible whether the proposed contract was to be awarded on a sole source basis or as the result of an 8(a) competition, and the circumstances warranting the denial of award.

9) The offer letter from the Coast Guard to the SBA revealed no evidence of self-marketing by TAMSCO, as required, nor did it reveal any other contact with other 8(a) firms. In such a situation shouldn't the BOS question the award of the contract, or suggest competitive procedures? Why wasn't there any evidence that the BOS attempted to clarify this situation or ask any basic questions about how this contract was steered to TAMSCO?

10) In your testimony regarding the termination of ineligible firms from program participation you stated that the SBA had terminated 334 firms in the last 18 months. Please provide the Committee with a list of all firms terminated from the program since 1989 and please indicate whether these firms were terminated for: (a) exceeding applicable size standards, (b) control or ownership by ineligible individuals, (c) overcoming the "economic or social disadvantage" by the individuals upon whom the firm's eligibility is based, (d) business success of the participant firm compared to other small businesses, (e) failure of the firm to comply with "business activity targets" for non-8(a) contracts, (f) failure to comply with statutory or regulatory requirements relating to program administration, (g) debarment or suspension of the firm or its owners, (h) administrative termination due to cessation of the firm's business activities. Please also include the date of the last approved business plan for these firms, the date of the last contract award, and the total number of contracts awarded to each firm.

11) The SBA is required to conduct eligibility reviews of program participants whenever it receives specific and credible information concerning a firm's eligibility. Please provide the Committee with information regarding the numbers of eligibility reviews conducted since 1989 under those circumstances as a result of (a) referrals from other agencies, (b) referrals from the Inspector General, (c) referrals from SBA field offices, (d) referrals from the private sector. Please also provide information on the number of referrals that were declined because their information was not deemed credible, and the number of termination or remedial actions taken as a result of credible referrals.

12) The Committee has received information that the SBA has drafted regulations that would eliminate SIC code restrictions for eligibility for contract awards in the 8(a) program. Is this correct? If so, how does the SBA justify this departure from current practice.



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

MAR 19 1996

The Honorable Jan Meyers
Chairman
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515-1603

Dear Madam Chairman:

I am pleased to respond to the questions raised in your letter of January 29, 1996.

Question #1: Mr. Jenkins, as you stated during the hearing Business Opportunity Specialists are reviewed in part based on their success at getting 8(a) contracts for their client 8(a) firms and, therefore, you would consider an Opportunity Specialist deciding on a SIC code designation to have a conflict of interest. Do Business Opportunity Specialists receive any special training in contracting? Any training that would enable them to make SIC code decisions?

Response: The Business Opportunity Specialists (BOSs) do receive training in Government contracting procedures. The level and extent of such training varies by individual. However, as a minimum all BOSs are required to complete the Management of Defense Acquisition Contracts (ALMAC), which is considered to be the primer course for Federal Government procurement personnel.

We are not aware of any formal training programs that prepare or enable contracting officials or BOSs to make decisions regarding the appropriateness of assigned SIC codes. The SBA's Office of Minority Enterprise Development has developed a comprehensive training curriculum for its BOS staff. In the curriculum the ability to evaluate the appropriateness of assigned SIC codes is identified as a skill required by BOSs. This skill is generally acquired on the job through interaction with agency contracting and program personnel.

Question #2: Why then would the Coast Guard's or any agency's contracting professionals defer to their judgement on an SIC code question?

Response: The responsibility to assign a proper SIC code to a specific contracting action rests with the procuring agency contracting officer, because only the contracting officer knows the specifics of the procurement. There may be an occasion when a contracting officer requests a BOSs opinion concerning a particular SIC code selection. However, even in such a case, the SBA suggestion of a SIC code to the contracting officer is only advisory because the ultimate decision regarding SIC code designation remains with the contracting officer.

Question #3: Please furnish the Committee with a list of other contracts in which an SBA BOS made an SIC determination on behalf of an agency contracting official.

Response: We do not have such a list. BOSs do not have the authority to make SIC code determinations. As stated in section 19.303 of the Federal Acquisition Regulations (FAR) the Contracting Officer "shall" determine the appropriate SIC and related small business size standard. However, as a result of our canvassing our district offices, it was reported that four such advisory determinations were made by our SBA San Francisco District Office, when requested by the agency contracting officers.

Question #4: Only participants in good standing in the MSB/COD program are eligible for contract awards under the Section 8(a) preferential procedures. Eligibility includes: (a) small business status according to the applicable SIC code, (b) ownership by a socially and economically disadvantaged individual, and (c) compliance with statutory and regulatory requirements. How is such compliance verified and which SBA official makes such determination for each contract award.

Response: Compliance is verified by the BOS at the district office level through the use of a "contractor selection memo". This memo is used by the BOS to: (a) verify the eligibility of the 8(a) firm and (b) confirm the suitability of a proposed contract offered for a specific 8(a) firm. The selection memo was developed to facilitate the BOS's review and assure compliance with agency requirements prior to each 8(a) contract award. Also, program participants must certify their continued eligibility prior to award of each 8(a) contract. This self certification is reviewed by the BOS, SBA contracting officials and District Counsel prior to award.

Continuing program eligibility is evaluated on a yearly basis through the annual review. This review includes an assessment of the firm's business plan as well as verification of the firm's continuing eligibility to participate in the 8(a) Program.

Question #5: When an 8(a) contract is competed among program participants, who certifies that all the competitors are eligible and who approves the award?

Response: Under competitive contracting procedures, firms that contend for 8(a) competitive awards must self-certify they are in compliance with program criteria and are eligible to compete. The SBA Office that services an apparent successful offeror verifies the firm's self-certification prior to award, and approves the award.

In processing competitive requirements, the following steps are taken: (1) Upon receipt of a requirement, SBA evaluates and if appropriate, accepts the offer as competitive requirement, and instructs the procuring agency to synopsize the requirement. (2) 8(a) firms interested in bidding contact and obtain a copy of the solicitation from the procuring agency. (3) 8(a) firms submit their offers directly to the procuring agency. (4) The procuring agency evaluates the offers and determines the apparent successful offeror, and advises SBA of the apparent successful offeror. (5) SBA

verifies that the apparent successful offeror is eligible to receive the award. (6) SBA notifies the agency of its determination and the contract documents are sent to the servicing district office for award.

Question #6: The BOS for TAMSCO (Charita Albright) certified that the firm was making its business plan mix, yet a financial report for the firm shows that 76 percent of their contracts were sole-source. Is that the correct business mix for an 8(a) firm in that stage of participation?

Response: TAMSCO was "grandfathered" into the new regulations requiring business mix. The target business mix of 20-30% was determined based on the firm's remaining program term eligibility.

Because TAMSCO did not meet the target (it fell short by 4%) the firm was under a remedial plan approved by SBA's Philadelphia Regional office which allowed the firm to continue to receive contract awards as long as it met the conditions of the remedial plan. The remedial plan was approved prior to award of the Coast Guard contract. Therefore, TAMSCO was eligible to receive the award.

Question #7: If it was incorrect, then why did the BOS allow the contract to go forward?

Response: Based upon the firm's compliance with its remedial plan, it was eligible to receive the contract award.

Question #8: Please furnish the Committee with a list of 8(a) Program Participants who were determined to be ineligible for award of an 8(a) contract due to the firm's failure to make its "business activity targets" during fiscal years 1989 - 1995, identifying if possible whether the proposed contract was to be awarded on a sole source basis or as a result of an 8(a) competition, and the circumstances warranting the denial of award.

Response: There were 13 program participants determined by district offices to be ineligible for awards due to the firms' failure to achieve their "business activity targets." In 12 of the 13 cases the proposed contract was to be awarded on a sole source basis, the remaining one was competitive. These firms are listed as follows:

1. Gill Construction Co. - sole source contract - Kansas City District Office
2. Bachman & Associates - sole source contract - Denver District Office
3. Systems Technology Associates, Inc. - sole source contract - Denver District Office
4. Speedy Food Service - competitive contract - Lower Rio Grande Valley District Office
5. KIRA, Inc. - sole source contract - Miami District Office

6. Kohly Construction, Inc. - sole source contract - Miami District Office
7. Aegis Associates, Inc. - sole source contract - New York District Office
8. CTJ - sole source contract - San Francisco District Office
9. Yourok - sole source contract - San Francisco District Office
10. Dependable Janitorial - sole source contract - San Francisco District Office
11. Ponderosa - sole source contract - San Francisco District Office
12. Environmental Contraction - sole source contract - San Francisco District Office
13. W.C. Parish - sole source contract - San Francisco District Office

Question # 9: The offer letter from the Coast Guard to the SBA revealed no evidence of self-marketing by TAMSCO, as required, nor did it reveal any other contact with other 8(a) firms. In such a situation shouldn't the BOS question the award of the contract, or suggest competitive procedures? Why wasn't there any evidence that the BOS attempted to clarify this situation or ask any basic questions about how this contract was steered to TAMSCO?

Response: This contract offering by the Coast Guard named TAMSCO as the proposed contractor. This was not unusual and did not warrant the BOS questioning the Coast Guard's rationale for nominating the firm. This was an Indefinite Delivery, Indefinite Quantity (IDIQ) contract, with a minimum value below the competitive threshold and therefore acceptable for sole source negotiation under the applicable regulations at that time.

There is no agency regulation that requires procuring agencies to state specifically that a sole source offering is the result of self-marketing. It has been our experience that when an agency nominates an 8(a) firm for a specific 8(a) contract opportunity, this nomination is based upon the agency's acceptance of the company's self marketing efforts. In the case of TAMSCO, the firm had successfully performed contracts for the Coast Guard and the agency's technical and contracting personnel were well aware of the firm's capability.

Question #10: In your testimony regarding the termination of ineligible firms from program participation you stated that the SBA had terminated 334 firms in the last 18 months. Please provide the Committee with a list of all firms terminated from the program since 1989 and please indicate whether these firms were terminated for: (a) exceeding applicable size standards, (b) control or ownership by ineligible individuals, (c) overcoming the "economic or social disadvantage" by the individuals upon whom the firm's eligibility is based, (d) business success of the participant firm compared to other small businesses, (e) failure of the firm to comply with "business activity targets" for non-8(a) contracts, (f) failure to comply with statutory or regulatory requirements relating to program administration, (g) debarment or suspension of the firm or its owners, (h) administrative termination due to cessation from the firm's business activities. Please also include the date of the last approved business plan for these firms, the date of the last contract award, and the total number of contracts awarded to each firm.

Response: Enclosed, you will find a report entitled Firms Terminated and Graduated Since the Beginning of FY 1989 reflecting Case Number, Firm Name, Last Contract Awarded, Total Contract Awards, Program Status, and Status Date. The SBA is now in the process of entering historical termination and graduation data into its official data base, the Servicing and Contracts System/Minority Enterprise Development Central Office Repository (SACS/MEDCOR). Prior to establishment of this data base, program termination and graduation information was captured in a variety of *ad hoc* logs, and was limited substantially to tracking data. We have migrated skeletal termination and graduation data (e.g., action, and date of action) from these logs into SACS/MEDCOR. For this reason, it is not possible at this time for us to associate a specific reason for termination or graduation with each of the cases processed since 1989. For the same reason, we currently lack capability to report last business plan approval for these firms.

Question #11: The SBA is required to conduct eligibility reviews of program participants whenever it receives specific and credible information concerning a firm's eligibility. Please provide the Committee with information regarding the number of eligibility reviews conducted since 1989 under those circumstances as a result of (a) referrals from other agencies, (b) referrals from the Inspector General, (c) referrals from SBA field offices, (d) referrals from the private sector. Please also provide information on the number of referrals that were declined because their information was not deemed credible, and the number of termination or remedial actions taken as a result of credible referrals.

Response: Our District Offices conducted 13 annual reviews since 1989 based upon referrals questioning company eligibility. Of these 13 annual reviews, 11 resulted in recommendations for termination.

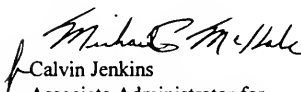
There have been 32 referrals from the Inspector General's Office since 1989 which questioned the continued program eligibility of program participants. Of these 32 referrals, 8 firms completed their program term prior to any action being taken, 23 firms were found to be in compliance, and one firm is currently being processed for termination. It should be noted that our field offices annually review their respective portfolios in order to ensure continuing program eligibility and assess company business plans. As I indicated in my testimony of December 13, 1995, SBA has made completion of annual reviews a goal for all district offices in FY 1994/1995.

Question #12: The Committee has received information that the SBA has drafted regulations that would eliminate SIC code restrictions for contract awards in the 8(a) program. Is this correct? If so, how does the SBA justify this departure from current practice.

Response: Yes, it is correct that SBA drafted a proposed regulatory change that would eliminate approved SIC codes as a prerequisite for contract awards. The elimination of this requirement to approve SIC codes was suggested as a proposal to reduce burdensome administrative requirements and streamline the 8(a) acquisition process.

The inclusion of an approved SIC code is not necessarily an indication of a firm's capability and capacity to perform. A technical evaluation or pre-award survey is a better measure of performance potential. This proposed administrative change would not change the requirement that a firm demonstrate its capability and capacity to perform prior to SBA's acceptance of a contract offering for the firm. SIC codes will continue to be used to evaluate a firm's small business size status for individual contract awards.

If you or your staff have further questions, or require clarification of these responses, do not hesitate in contacting me on 202-205-6412.


Calvin Jenkins
Associate Administrator for
Minority Enterprise Development

Enclosure

ENCLOSURE
FIRMS TERMINATED AND GRADUATED SINCE THE BEGINNING OF FY 1989

Case	Firm Name	Last BP Appr	Last Award	Total Awards	Status	Status Date
32318	I-Net Inc.	/ /	01/13/95	127	Graduated	07/28/94
32445	MVM Inc	/ /	01/29/91	12	Graduated	04/21/95
32479	Systems Engineering & Mgt. Associates, I	/ /	07/13/95	30	Graduated	05/01/95
37003	C.H. James & Company, Inc.	/ /	07/01/93	35	Graduated	06/23/95
29053	International Compressor Co. Inc.	/ /	/ /	0	Terminated	10/03/88
00384	Laduke Construction Company	/ /	12/06/84	9	Terminated	10/05/88
00394	Nate Hartley Fuel Oil Company	/ /	/ /	0	Terminated	10/05/88
37105	Rtv Enterprises Inc.	/ /	/ /	0	Terminated	10/18/88
40696	U S Construction Inc	/ /	09/14/81	1	Terminated	10/18/88
20540	Metropolitan Dil & Chemical Of Pr Inc	/ /	/ /	0	Terminated	11/04/88
60760	Harper-Bend Company	/ /	03/26/85	16	Terminated	11/15/88
60779	Andrews Brothers Lines Inc	/ /	/ /	0	Terminated	11/15/88
60961	Msa General Contractors, Inc.	/ /	/ /	0	Terminated	11/15/88
60988	Garza Advertising Inc.	/ /	/ /	0	Terminated	11/15/88
00274	Up&D Uphaw Painting & Decorating Company	/ /	09/30/85	14	Terminated	11/16/88
00376	David E Lopeman Company	/ /	05/09/85	5	Terminated	11/16/88
00469	Crazy Rock Company	/ /	/ /	0	Terminated	11/16/88
80357	J&R Development	/ /	/ /	0	Terminated	11/20/88
90980	Bilco Construction, Inc.	/ /	02/12/87	1	Terminated	11/20/88
29063	Yipkon Corp.	/ /	12/29/86	7	Terminated	11/21/88
10569	Northeastern Corridor Construction Co In	/ /	/ /	0	Terminated	11/24/88
36062	Libra Enterprises Of Virginia Inc.	/ /	/ /	0	Terminated	12/05/88
36093	Automated Business Service Of Virginia	/ /	03/20/86	5	Terminated	12/05/88
50943	Analytical Photogrammetrics Inc	/ /	/ /	0	Terminated	12/07/88
35016	Rms Technologies Inc	/ /	09/21/87	69	Terminated	12/30/88
35029	Instrutek Corporation	/ /	05/01/84	12	Terminated	12/30/88
35066	Mara Specialty Chemicals Supplies	/ /	/ /	0	Terminated	12/30/88
29050	Northhampton Construction Co , Inc.	/ /	/ /	0	Terminated	01/27/89
36103	Paper & Office Products Inc	/ /	06/05/87	7	Terminated	01/27/89
00390	R & R Construction	/ /	07/24/87	2	Terminated	02/09/89
60991	New Associated Dredging Company, Inc.	/ /	07/29/87	4	Terminated	02/09/89
20349	Charles D Gomez Cpa	/ /	05/16/79	2	Terminated	02/24/89
20374	Duroyd Manufacturing Co Inc	/ /	08/29/84	17	Terminated	02/24/89
20445	M&J Sausage Corporation	/ /	/ /	0	Terminated	02/24/89
20477	Unimac Motor Freight, Inc.	/ /	/ /	0	Terminated	02/24/89
29035	Deron Industrial Textiles Inc	/ /	/ /	0	Terminated	03/01/89
36132	Maga Sales Inc	/ /	/ /	0	Terminated	03/10/89
61103	R M Balli Enterprises,inc.	/ /	/ /	0	Terminated	03/14/89
80342	Crabtree Corporation	/ /	09/30/85	1	Terminated	03/21/89
50977	Aztec Energy & Power Transmission, Inc.	/ /	/ /	0	Terminated	04/20/89
80355	All West Tel Com, Inc.	/ /	07/10/86	1	Terminated	04/20/89
00449	Via Geo Resources, Inc.	/ /	11/18/87	4	Terminated	05/21/89
00453	Gonzales Tree Service	/ /	08/07/87	7	Terminated	05/21/89
51016	Kinross Manufacturing Corporation	/ /	06/30/87	4	Terminated	07/11/89
90957	Chippawa Tool & Manufacturing Co.	/ /	/ /	0	Terminated	07/14/89
40875	Millers Wood Pallets	/ /	/ /	0	Terminated	08/18/89
00459	Khan Machine Tools Company	/ /	/ /	0	Terminated	09/17/89
90807	Dhillon Construction Company	/ /	08/14/86	10	Terminated	09/17/89
40695	Allied Management Services Inc	/ /	/ /	0	Terminated	09/18/89
40881	J M Business Svc Inc	/ /	/ /	0	Terminated	09/27/89
90818	Quality Products	/ /	/ /	0	Terminated	09/27/89
00414	Hill Enterprises	/ /	05/22/85	3	Terminated	10/03/89
90846	R.M.S Travel Service	/ /	/ /	0	Terminated	10/04/89
91033	The D.A. Miller Agency	/ /	/ /	0	Terminated	10/04/89
20525	Tropical Fruits Products Co. Inc.	/ /	/ /	0	Terminated	12/02/89
20553	J & D Cleaning Services	/ /	/ /	0	Terminated	12/02/89
36117	A. R. Wood & Son, Inc.	/ /	/ /	0	Terminated	12/02/89
80265	Untex	/ /	05/26/89	21	Terminated	12/02/89
40856	Bill Wilson Productions Inc	/ /	/ /	0	Terminated	12/06/89
80348	Misaco Eng & Mfg.	/ /	08/05/86	1	Terminated	12/06/89

40882	L F Dickerson Contracting Inc	/ /	06/29/87	7	Terminated	12/18/89
51022	C. T. Lighting Company, Inc.	/ /	/ /	0	Terminated	03/19/90
36146	White Bus Rental Inc.	/ /	/ /	0	Terminated	04/10/90
51008	Windham Medical Supplies & Services, Inc	/ /	/ /	0	Terminated	04/13/90
51075	Flamingo Industries Usa Ltd	/ /	/ /	0	Terminated	04/13/90
51087	Ashford Industries Inc.	/ /	/ /	0	Terminated	05/10/90
90850	R.E. Winters Company	/ /	08/27/85	3	Terminated	05/10/90
80407	E. L. Mitchell Construction Corporation	/ /	09/28/88	1	Terminated	06/14/90
20610	Specialty Food Corporation	/ /	01/21/87	1	Terminated	07/24/90
20466	R And W Knitting Mills	/ /	/ /	0	Terminated	08/21/90
50886	Morris Paint & Varnish Co. Inc.	/ /	06/27/85	1	Terminated	09/28/90
51077	J & R Manufacturing Co.	/ /	/ /	0	Terminated	09/28/90
51129	Csjc International Inc.	/ /	/ /	0	Terminated	09/28/90
61152	Cantu-Speedy Services, Inc.	/ /	09/30/87	1	Terminated	10/07/90
32265	Automated Data Management, Inc.	/ /	07/02/87	14	Terminated	10/30/90
90954	Greenleaf Industries, Inc.	/ /	/ /	0	Terminated	04/19/91
91023	Amber Constnuction	/ /	/ /	0	Terminated	04/19/91
90649	Chess And Associates Inc	/ /	02/11/86	4	Terminated	04/21/91
32292	American Foods Corporation	/ /	/ /	0	Terminated	07/19/91
40649	Minact Inc	/ /	/ /	0	Terminated	09/23/91
60946	Harris/eagle Joint Venture	/ /	09/28/84	1	Terminated	09/30/91
90761	Rcr General Contractors, Inc.	/ /	09/18/87	10	Terminated	09/30/91
60942	A-1 Plumbing	/ /	09/18/85	1	Terminated	10/08/91
40869	Carolina Welding Constr & Maint	/ /	/ /	0	Terminated	11/08/91
32489	Hue, Inc.	/ /	/ /	0	Terminated	11/15/91
10610	Bbvm Electrical Corp	/ /	/ /	0	Terminated	12/19/91
40938	Gulf Coast Safety Products Inc	/ /	09/10/87	1	Terminated	12/19/91
40895	Anchor Marine Inc.	/ /	04/06/87	4	Terminated	01/21/92
40831	Tsali Construction Co	/ /	06/26/87	7	Terminated	01/23/92
80253	Vigil And Son Construction Company	/ /	09/28/87	13	Terminated	06/16/92
90867	Lecher Construction	/ /	04/29/88	22	Terminated	08/04/92
41371	Novel Pharmaceutical Inc	/ /	/ /	0	Terminated	10/26/92
10589	Ami, Inc.	/ /	03/04/88	4	Terminated	11/10/92
10595	S. R. Roofing Company	/ /	08/07/91	5	Terminated	11/30/92
30953	Trans-Ed, Inc.	/ /	/ /	1	Terminated	12/09/92
80382	Crb Enterprises, Inc.	/ /	/ /	0	Terminated	12/31/92
32449	Equal Lock And Upholstery Company, Inc.	/ /	02/23/90	2	Terminated	02/26/93
00448	Square Deal Concrete	/ /	08/26/87	4	Terminated	03/26/93
00479	Conmx, Inc.	/ /	10/05/88	5	Terminated	03/26/93
10573	H&L Tool Co., Inc.	/ /	/ /	0	Terminated	03/26/93
20603	Toni Y Lewis Cpa	/ /	/ /	0	Terminated	03/26/93
29038	Robro General Machine Inc	/ /	02/02/87	4	Terminated	03/26/93
29068	American Systematics Inc.	/ /	/ /	0	Terminated	03/26/93
40823	Moore & Artis Ltd	/ /	01/05/88	9	Terminated	03/26/93
40835	Harvey Oil Co Inc	/ /	/ /	0	Terminated	03/26/93
40900	Kentucky Star Coal Co Inc	/ /	04/06/89	6	Terminated	03/26/93
40941	Fitt General Contractors Inc	/ /	09/30/90	3	Terminated	03/26/93
40984	5 Star Electronics Inc	/ /	09/27/89	6	Terminated	03/26/93
41093	United Maintenance Systems Inc	/ /	/ /	0	Terminated	03/26/93
60860	Cavern City Construction	/ /	09/28/89	23	Terminated	03/26/93
61011	Orange and Associates, Inc.	/ /	10/27/88	4	Terminated	03/26/93
70325	L. J. Cutwright, Inc.	/ /	09/30/87	8	Terminated	03/26/93
20473	Flagg Brothers Trucking Service Inc	/ /	09/08/87	3	Terminated	03/31/93
51140	Ewa, Inc.	/ /	09/12/88	1	Terminated	03/31/93
90895	Quality Electronic Associates	/ /	11/16/88	5	Terminated	03/31/93
29024	Electronic Data Management	/ /	06/25/86	1	Terminated	04/08/93
70340	Action Manufacturing, Inc.	/ /	/ /	0	Terminated	04/08/93
00413	Plant Man, Inc.	/ /	01/20/89	5	Terminated	04/29/93
29043	Hck Inc.	/ /	/ /	0	Terminated	04/29/93
36156	Rogers Corporation	/ /	/ /	0	Terminated	04/29/93
40976	Wire America Dhs Inc	/ /	/ /	0	Terminated	04/29/93
60904	Linroae Electronics Corporation	/ /	/ /	0	Terminated	04/29/93
70311	Albert J. Moore Construction Company, In	/ /	03/20/85	1	Terminated	04/29/93
70351	The Lazer Corporation	/ /	/ /	0	Terminated	04/29/93
90962	Jackmar Engineering Company	/ /	/ /	0	Terminated	04/29/93

41137	B J L Construction Company	/ /	/ /	0	Terminated	05/05/93
29137	Star Housekeeping, Inc	/ /	03/31/92	1	Terminated	05/07/93
51329	Battle Company	/ /	/ /	0	Terminated	05/18/93
60959	Veterans Electric, Inc.	/ /	02/06/86	1	Terminated	05/18/93
61074	S & J Contractors, Inc	/ /	/ /	0	Terminated	05/18/93
61079	Computer Technologies	/ /	/ /	0	Terminated	05/18/93
61278	Carrillo Builders Inc	/ /	/ /	0	Terminated	05/18/93
70310	City Roofing & Remodeling	/ /	/ /	0	Terminated	05/18/93
70336	The Brooke Company	/ /	10/18/88	6	Terminated	05/18/93
90848	J.H. Lee Accountancy Corporation	/ /	/ /	0	Terminated	05/18/93
91043	California Western Fibre Co., Inc.	/ /	/ /	0	Terminated	05/18/93
61144	U. Gaines Electric Co., Inc.	/ /	12/14/88	1	Terminated	05/24/93
90810	Tecumseh Construction Company Inc.	/ /	09/29/89	11	Terminated	06/12/93
29051	Del Interior Construction Inc.	/ /	12/30/86	7	Terminated	06/27/93
41195	Gonzales General Contractor	/ /	/ /	0	Terminated	07/19/93
61374	Isthmus International	/ /	/ /	0	Terminated	07/27/93
91091	Interface Connectors, Inc	/ /	/ /	0	Terminated	07/27/93
90817	Rocket Maintenance Service	/ /	06/19/85	1	Terminated	07/30/93
90857	Tiff Culture Inc	/ /	09/28/84	2	Terminated	08/02/93
41183	W B Kirkwood & Son Construction Co	/ /	/ /	0	Terminated	08/04/93
90986	No. California Universal Enterprises Co.	/ /	/ /	0	Terminated	08/04/93
40793	Weeks Painting & Construction Co	/ /	06/19/89	14	Terminated	08/10/93
61118	Archi-Holli International Contractors, I	/ /	08/29/88	2	Terminated	08/10/93
00457	Meza Construction, Inc.	/ /	09/28/89	8	Terminated	08/16/93
40931	ATS-Ancar Company	/ /	/ /	0	Terminated	08/16/93
41029	New Bern Wood Processing Inc	/ /	/ /	0	Terminated	08/16/93
40918	Velvet Sod Company	/ /	/ /	0	Terminated	08/18/93
60914	Woodrow W Howard Jr	/ /	/ /	0	Terminated	08/19/93
40800	Sam Jones Electrical Contracting Inc	/ /	09/30/87	7	Terminated	08/24/93
60996	Gilbert Maintenance Service	/ /	01/16/87	2	Terminated	08/24/93
91275	Aunt Shaggy's Maintenance Svc	/ /	/ /	0	Terminated	08/24/93
29079	Safe International Inc.	/ /	/ /	0	Terminated	09/02/93
40920	Dixons Inc	/ /	/ /	0	Terminated	09/02/93
60957	Service Circuits, Inc.	/ /	/ /	0	Terminated	09/02/93
61267	High Quality Machine Shop	/ /	/ /	0	Terminated	09/02/93
90978	Excel Security Services, Inc	/ /	01/24/90	5	Terminated	09/02/93
20619	Operating Scientist Inc.	/ /	/ /	0	Terminated	09/08/93
41152	Reality World Communication Enterprises	/ /	/ /	0	Terminated	09/08/93
50966	Youngstown Dental&Medical Supply Co. Inc	/ /	10/17/85	1	Terminated	09/08/93
61078	Peacock General Contractors	/ /	08/29/86	1	Terminated	09/08/93
29113	Winfield Mills, Inc.	/ /	/ /	0	Terminated	09/29/93
61059	Project Group Ltd	/ /	/ /	0	Terminated	09/29/93
30820	Eccles Security Guards Inc	/ /	09/14/90	35	Terminated	10/01/93
10821	Amaf Industries Inc	/ /	04/21/88	95	Terminated	10/01/93
30845	Digna Manufacturing Company	/ /	09/18/85	11	Terminated	10/01/93
61120	T.J. Jordan & Associates, Inc.	/ /	/ /	0	Terminated	10/04/93
29065	Vng Associates Inc.	/ /	/ /	0	Terminated	10/27/93
50893	C & H Machine Co., Inc	/ /	04/15/87	1	Terminated	10/27/93
90875	Trend Construction And Development Compa	/ /	/ /	0	Terminated	10/28/93
40923	Cleveland Fruit Market	/ /	/ /	0	Terminated	11/03/93
90853	Pat's Decorating Service, Inc.	/ /	/ /	0	Terminated	12/03/93
90902	Ray & Ross Transport Inc.	/ /	12/16/85	1	Terminated	12/27/93
51127	Summit Precision Industries, Inc.	/ /	01/21/92	7	Terminated	12/30/93
90816	A Answer Inc	/ /	/ /	0	Terminated	12/30/93
90825	Jose F Campos	/ /	/ /	0	Terminated	12/30/93
90960	G & J Daughters Landscaping	/ /	09/24/87	1	Terminated	12/30/93
90967	Innotec Industries Inc	/ /	/ /	0	Terminated	12/30/93
91110	Puga Engineering, Inc.	/ /	11/16/89	1	Terminated	12/30/93
91226	Boraq Systems International	/ /	/ /	0	Terminated	12/30/93
80388	Chang's Food Service Company	/ /	/ /	0	Terminated	12/31/93
60659	Moseley Woodcraft Inc	/ /	09/30/87	1	Terminated	01/13/94
61088	Ava, Inc.	/ /	09/30/91	6	Terminated	01/13/94
61246	Compel Services, Inc.	/ /	01/11/91	2	Terminated	01/13/94
41095	O B C Incorporated	/ /	/ /	0	Terminated	01/18/94
00487	Myriad Systems and Services Inc	/ /	02/22/89	1	Terminated	01/19/94

80389	Denver Gasket And Packing Company	/ /	/ /	0	Terminated	01/24/94
70320	J. M. Perez Construction Company, Inc.	/ /	09/30/93	10	Terminated	01/26/94
91162	A. E. Lopez Enterprises, Ltd.	/ /	07/28/92	3	Terminated	06/20/94
20460	Duroyd Gasket Mfg Co Inc	/ /	05/30/85	1	Terminated	06/27/94
29143	Apc/Qpc	/ /	01/15/92	1	Terminated	06/27/94
32387	Enterprise Associates	/ /	/ /	0	Terminated	06/27/94
35096	Advance Restoration Services	/ /	06/17/91	6	Terminated	06/27/94
41242	American Defense Products Inc	/ /	/ /	0	Terminated	06/27/94
61281	National Medical Supply Company of No. 1	/ /	/ /	0	Terminated	06/27/94
90775	Smitty S Precision	/ /	04/21/87	6	Terminated	06/27/94
09988	Computer-Matic International Inc	/ /	/ /	0	Terminated	06/27/94
40791	Sunbelt Agribusiness Industries Inc	/ /	07/01/85	1	Terminated	07/01/94
10547	Cpw	/ /	09/30/87	3	Terminated	07/12/94
61100	Thomas Contractors	/ /	/ /	0	Terminated	07/14/94
61070	Garland Manning Trucking Company, Inc.	/ /	09/21/87	3	Terminated	07/15/94
61309	Phoenix Paver's Inc.	/ /	/ /	0	Terminated	07/15/94
90950	Cruz, Napili	/ /	/ /	0	Terminated	07/15/94
51089	Highland Corporation	/ /	09/28/89	14	Terminated	07/22/94
29106	The Alden Corporation	/ /	04/30/93	8	Terminated	08/03/94
60962	Planners & Builders West, Inc	/ /	12/11/87	8	Terminated	08/03/94
61073	Quality Technical Services	/ /	/ /	0	Terminated	08/03/94
61121	Sunrise Security Inc	/ /	10/07/88	4	Terminated	08/03/94
32311	Tazel & Tazel, Inc.	/ /	/ /	0	Terminated	08/04/94
32326	Anita F Allen Associates Inc	/ /	09/30/87	2	Terminated	08/04/94
32350	K. N. Webb, Incorporated	/ /	09/30/89	3	Terminated	08/04/94
36145	Benalton Chemical Inc.	/ /	/ /	0	Terminated	08/04/94
40870	Gtm Systems Development Corp	/ /	09/30/90	1	Terminated	08/04/94
41059	Allen's Dependable Contractors Inc	/ /	08/11/89	3	Terminated	08/04/94
41105	Banks Builders, Inc.	/ /	/ /	0	Terminated	08/04/94
51015	Phifer-Edwards Signs, Inc.	/ /	09/15/86	1	Terminated	08/04/94
51170	El-Amin Rehabing & Development Inc.	/ /	/ /	0	Terminated	08/04/94
51223	Aqua Mechanical Cont., Inc.	/ /	/ /	0	Terminated	08/04/94
60975	Lone Star Security Guard Service	/ /	/ /	0	Terminated	08/04/94
61016	Cornelious Construction Company	/ /	06/01/87	1	Terminated	08/04/94
61115	Trevino Inc	/ /	05/29/90	9	Terminated	08/04/94
61301	Cherokee Canvas Co.	/ /	03/29/91	1	Terminated	08/04/94
91174	Ray's Landscape & Sprinkler	/ /	04/30/90	1	Terminated	08/04/94
91189	King John's Fencing	/ /	/ /	0	Terminated	08/04/94
29075	Computer & Information Management Inc.	/ /	08/22/89	5	Terminated	08/05/94
29090	V. P. Installers, Inc.	/ /	12/12/90	2	Terminated	08/05/94
40803	Glas Fabricators Inc	/ /	/ /	0	Terminated	08/05/94
41050	Derrick Electric Inc	/ /	/ /	0	Terminated	08/05/94
41076	Murray Insulation	/ /	03/06/89	2	Terminated	08/05/94
51098	Stewart-Peterson Industries, Inc.	/ /	/ /	0	Terminated	08/05/94
51224	A.D. Crump & Associates	/ /	/ /	0	Terminated	08/05/94
60863	Western Construction And Site Dev., Inc.	/ /	/ /	0	Terminated	08/05/94
61038	Cole Electronic Systems, Inc.	/ /	12/14/88	1	Terminated	08/05/94
61407	Write Right Technical Publications, Inc.	/ /	/ /	0	Terminated	08/05/94
90756	Royal Industries, Inc.	/ /	/ /	0	Terminated	08/05/94
10600	Jade Manufacturing & Construction Co Inc	/ /	/ /	0	Terminated	08/11/94
20476	Dash Metal Products Co Inc	/ /	/ /	0	Terminated	08/11/94
20493	Appletown Food & Mgmt Company	/ /	04/04/89	1	Terminated	08/11/94
20641	Walker's Awning Manufacturing Company, I	/ /	09/25/90	1	Terminated	08/11/94
29054	Gutten and Sprinkie Ent. Inc.	/ /	06/29/90	19	Terminated	08/11/94
29087	Guardian Drug Company Inc.	/ /	/ /	0	Terminated	08/11/94
32058	Hope Associates Inc	/ /	09/22/89	33	Terminated	08/11/94
34035	National Computer Products, Inc.	/ /	/ /	0	Terminated	08/11/94
40675	Williams Foundry & Fabrications	/ /	07/13/90	3	Terminated	08/11/94
40799	Foodsamerica Enterprises Inc	/ /	03/23/88	7	Terminated	08/11/94
40825	Frap International Inc	/ /	02/28/89	5	Terminated	08/11/94
40843	Mara Svc Co	/ /	02/07/86	1	Terminated	08/11/94
40896	Andrew Wells, Cpa	/ /	/ /	0	Terminated	08/11/94
40954	Paul Duval and Sons Inc	/ /	/ /	0	Terminated	08/11/94
41135	Viaplex Systems Company, Inc.	/ /	/ /	0	Terminated	08/11/94
41210	Finley and Associates Inc	/ /	/ /	0	Terminated	08/11/94

41260	Tekey's Peat Control	/ /	/ /	0	Terminated	08/11/94
50826	Sia Plastics, Inc.	/ /	/ /	0	Terminated	08/11/94
50901	Paragon Industries, Inc.	/ /	10/05/89	7	Terminated	08/11/94
51059	R-N-R Consulting Company	/ /	08/20/91	3	Terminated	08/11/94
51095	Ford's At Your Service	/ /	/ /	0	Terminated	08/11/94
51131	Gee's Mechanical Contractors, Inc.	/ /	09/30/89	7	Terminated	08/11/94
51211	Garcia Construction, Inc.	/ /	/ /	0	Terminated	08/11/94
51232	Garrett & Associates	/ /	/ /	0	Terminated	08/11/94
51318	Continental Industrial Supply Company	/ /	/ /	0	Terminated	08/11/94
60986	Tan Tex Tile Company	/ /	09/26/86	1	Terminated	08/11/94
61010	The New Dixie Holiday Limited, Inc.	/ /	/ /	0	Terminated	08/11/94
61024	R.M. Walker Construction Co., Inc.	/ /	09/13/90	22	Terminated	08/11/94
61029	Stephen A. Martin, Cpa	/ /	/ /	0	Terminated	08/11/94
61091	Astro Industrial Sandblasting & Painting	/ /	/ /	0	Terminated	08/11/94
61102	Metro-Tec Engineering, Inc.	/ /	06/29/87	1	Terminated	08/11/94
61133	Gold Line Services, Inc.	/ /	/ /	0	Terminated	08/11/94
61142	Torres Industries, Inc.	/ /	/ /	0	Terminated	08/11/94
61199	J.I. Ramirez Construction Inc.	/ /	08/29/89	1	Terminated	08/11/94
61235	Alan K. Minor Cpa	/ /	/ /	0	Terminated	08/11/94
61253	Clearpond Sand and Truck Company	/ /	/ /	0	Terminated	08/11/94
61265	Florencio Pulido Ochocho Cpa	/ /	/ /	0	Terminated	08/11/94
61274	Rodriguez Electric, Inc.	/ /	06/03/91	2	Terminated	08/11/94
61298	Alba/Montemayor Services	/ /	/ /	0	Terminated	08/11/94
61350	John Abel Construction	/ /	/ /	0	Terminated	08/11/94
61354	Advantage Data Services Inc.	/ /	/ /	0	Terminated	08/11/94
61433	Sovereign Construction	/ /	/ /	0	Terminated	08/11/94
61499	International Business Consumables Corp	/ /	/ /	0	Terminated	08/11/94
80312	Eagle 2000 Engineering & Design, Inc.	/ /	09/28/90	3	Terminated	08/11/94
80371	Martinez Business Center	/ /	06/01/87	1	Terminated	08/11/94
80409	Hi-Tek Graphics	/ /	/ /	0	Terminated	08/11/94
90802	Hugh M. McCullough Plumbing Company	/ /	09/28/88	1	Terminated	08/11/94
90920	Bobadilla Cases, Inc.	/ /	/ /	0	Terminated	08/11/94
90942	Peaches Produce	/ /	/ /	0	Terminated	08/11/94
91153	Harris Recycling, Inc	/ /	/ /	0	Terminated	08/11/94
91309	Chavez Enterprises	/ /	09/30/92	5	Terminated	08/11/94
91318	Wagco Security Systems C/O.Nat'l Securit	/ /	/ /	0	Terminated	08/11/94
32384	Professional Travels Inc	/ /	/ /	0	Terminated	08/16/94
36114	Rehabilitation Services Of Tidewater Inc	/ /	/ /	0	Terminated	08/16/94
40957	Nationwide International	/ /	/ /	0	Terminated	08/16/94
51094	Dikita Enterprises Limited	/ /	01/28/89	1	Terminated	08/16/94
51130	Fdl Technologies Inc	/ /	08/10/89	9	Terminated	08/16/94
51192	Preferred Structures Inc.	/ /	/ /	0	Terminated	08/16/94
51198	Kelley's Cleaning Service, Inc.	/ /	06/09/89	1	Terminated	08/16/94
61467	Lacon Construction, Inc	/ /	/ /	0	Terminated	08/16/94
61481	Nuclear Assay & Environmental Services, Inc	/ /	/ /	0	Terminated	08/16/94
90918	Stm Inc	/ /	/ /	0	Terminated	08/16/94
20471	Tunyung Fuel Oil Corporation	/ /	/ /	0	Terminated	08/19/94
20823	Welch's Energy, Inc.	/ /	/ /	0	Terminated	08/19/94
29135	Revision International	/ /	/ /	0	Terminated	08/19/94
36100	Harris Paint Company	/ /	11/02/93	1	Terminated	08/19/94
36121	C&D Of Tidewater Inc	/ /	09/28/94	4	Terminated	08/19/94
36136	Engineering & Science Consultants	/ /	/ /	0	Terminated	08/19/94
40833	Petro Ltd	/ /	/ /	0	Terminated	08/19/94
40898	Robeson Farm Services, Inc.	/ /	04/13/89	18	Terminated	08/19/94
40931	Seals Tree Service Inc	/ /	12/29/87	10	Terminated	08/19/94
41042	Vintucky Inc	/ /	07/31/90	1	Terminated	08/19/94
51205	C. Acey Concrete Construction, Inc.	/ /	/ /	0	Terminated	08/19/94
51245	Durrah Corporation	/ /	/ /	0	Terminated	08/19/94
60918	Terryco Builders, Inc.	/ /	07/25/90	12	Terminated	08/19/94
61023	Jackson Construction Company	/ /	04/04/89	3	Terminated	08/19/94
61056	Power Systems Diesel, Inc.	/ /	03/05/90	3	Terminated	08/19/94
61076	Lara Roofing, Inc Dbu Universal Roofers	/ /	/ /	0	Terminated	08/19/94
61209	R&N Construction Co., Inc.	/ /	07/26/89	1	Terminated	08/19/94
61249	Diaz Inc. Dbu Source Four	/ /	/ /	0	Terminated	08/19/94
70345	Sequoyah, Inc.	/ /	11/29/89	5	Terminated	08/19/94

90823	Cys-X Corporation	/ /	/ /	0	Terminated	08/19/94
90959	Thomas Janitorial Services	/ /	05/18/87	2	Terminated	08/19/94
90975	Pinewood Construction Company Inc	/ /	04/25/89	2	Terminated	08/19/94
90981	Tubing Pipe and Metal Shapes	/ /	/ /	0	Terminated	08/19/94
36135	Bull Run Mountain Honey Company	/ /	/ /	0	Terminated	08/19/94
00494	Martin Chacon Construction	/ /	08/20/90	5	Terminated	08/20/94
41296	North/south Meat Packers Co	/ /	/ /	0	Terminated	08/22/94
61097	Falcon Excavating Company, Inc.	/ /	11/18/92	5	Terminated	08/23/94
00572	Crystal Pine, Inc.	/ /	09/06/88	3	Terminated	10/19/94
10587	Sagamore Group Inc	/ /	07/30/93	1	Terminated	10/25/94
10599	Mitchell Plumbing And Heating Co., Inc.	/ /	09/30/86	3	Terminated	10/25/94
10632	Cobbs Electrical Service, Inc.	/ /	/ /	0	Terminated	10/25/94
20517	Lasanta Sportswear Inc.	/ /	/ /	0	Terminated	10/25/94
20526	Huyke Colon & Associates	/ /	/ /	0	Terminated	10/25/94
20605	McDuffey & Reddick General Contractors	/ /	05/22/90	11	Terminated	10/25/94
20631	Professional Spraying Systems Inc.	/ /	/ /	0	Terminated	10/25/94
20648	Comedica Corporation	/ /	/ /	0	Terminated	10/25/94
29023	Meeker Management Associates Inc	/ /	/ /	0	Terminated	10/25/94
29042	High Beam Business Systems Inc	/ /	/ /	0	Terminated	10/25/94
32169	Athens Group/social Technology Corporati	/ /	/ /	0	Terminated	10/25/94
32356	Tiller Research, Inc.	/ /	/ /	0	Terminated	10/25/94
32388	Onyx Foods International Inc	/ /	/ /	0	Terminated	10/25/94
32407	K-Com Micrographics	/ /	01/09/90	10	Terminated	10/25/94
32418	Balboa, Incorporated	/ /	/ /	0	Terminated	10/25/94
32462	Capitol Policy and Resource Group	/ /	/ /	0	Terminated	10/25/94
34036	B. Datta Research	/ /	/ /	0	Terminated	10/25/94
34037	White-Roberts, Inc.\Griffith-Custer Stee	/ /	/ /	0	Terminated	10/25/94
35090	Radd Chemical Co.	/ /	04/20/89	1	Terminated	10/25/94
35094	Vance Security Service	/ /	/ /	0	Terminated	10/25/94
35113	Carolyn R Mensah	/ /	01/02/92	4	Terminated	10/25/94
35166	T.H.Hunter,inc	/ /	/ /	0	Terminated	10/25/94
36082	National General Contracting	/ /	/ /	0	Terminated	10/25/94
36098	Louie Construction Co Inc	/ /	/ /	0	Terminated	10/25/94
36123	Computron, Inc.	/ /	04/07/89	8	Terminated	10/25/94
36141	P&L Artis Electrical Inc.	/ /	09/20/88	4	Terminated	10/25/94
36143	H.S. Mason & Company, Inc.	/ /	/ /	0	Terminated	10/25/94
36176	Jimmie's Signs & Commercial Art, Inc.	/ /	11/07/91	27	Terminated	10/25/94
40713	Morrow-Dixon Construction Inc	/ /	/ /	0	Terminated	10/25/94
40822	Hong T Tai Cpa	/ /	/ /	0	Terminated	10/25/94
40868	Doug Moore Industries Inc (dmi Inc)	/ /	/ /	0	Terminated	10/25/94
40877	M Baccate Disposables Inc	/ /	09/14/87	1	Terminated	10/25/94
40892	Randall-Stewart Construction Co Inc	/ /	/ /	0	Terminated	10/25/94
40903	N C Ancrum, Inc	/ /	09/30/88	6	Terminated	10/25/94
40911	CJC Services Inc	/ /	07/24/89	2	Terminated	10/25/94
40929	Superior Furniture Mfg Corp	/ /	/ /	0	Terminated	10/25/94
40967	Pasmac Ltd	/ /	/ /	0	Terminated	10/25/94
41025	Bio-D-Chemicals Inc	/ /	/ /	0	Terminated	10/25/94
41084	Salas Concessions Inc	/ /	09/28/92	7	Terminated	10/25/94
41114	Computerized Information Mgmt Services	/ /	/ /	0	Terminated	10/25/94
41232	Century 21 Architect Planners & Engineer	/ /	02/21/92	3	Terminated	10/25/94
50905	B.J. Express, Inc.	/ /	/ /	0	Terminated	10/25/94
50927	Snyder and Sons Construction Co., Inc.	/ /	09/29/89	11	Terminated	10/25/94
51007	Unified Services Incorporated	/ /	/ /	0	Terminated	10/25/94
51042	Ron's Fish & Seafood Co., Inc.	/ /	/ /	0	Terminated	10/25/94
51048	Pernell Electric Service, Inc.	/ /	07/21/86	1	Terminated	10/25/94
51109	Euclid Machine Company, Inc.	/ /	/ /	0	Terminated	10/25/94
51121	Ojibwa Forest Products Inc.	/ /	03/01/88	1	Terminated	10/25/94
51122	Syed M. Nehal & Associates, Inc.	/ /	/ /	0	Terminated	10/25/94
51167	Industrial, Commercial Properties, Inc.	/ /	/ /	0	Terminated	10/25/94
51187	Beta Electronic Service (bes) Inc.	/ /	/ /	0	Terminated	10/25/94
51207	Cybo Construction Company	/ /	08/14/89	1	Terminated	10/25/94
51231	Changes Unlimited	/ /	/ /	0	Terminated	10/25/94
51235	Smith & Company, Cpas	/ /	/ /	0	Terminated	10/25/94
51287	Ottaws Signs & Design, Inc.	/ /	/ /	0	Terminated	10/25/94
60859	Vas Construction Inc	/ /	12/14/87	4	Terminated	10/25/94

60948	Aastro City Office Supply Inc	/ /	/ /	0	Terminated	10/25/94
60950	Sauceda's Precision Grinding & Gen Machi	/ /	/ /	0	Terminated	10/25/94
60983	Vassel & Company, Cpa's	/ /	/ /	0	Terminated	10/25/94
61045	Izzy Electrical Contractors, Inc.	/ /	/ /	0	Terminated	10/25/94
61116	Carlos Blanco Inc Dba Blanco Construction	/ /	/ /	0	Terminated	10/25/94
61130	Territorial Landscape Co., Inc.	/ /	05/13/92	3	Terminated	10/25/94
61200	Navar Meat Co. N-Pac	/ /	/ /	0	Terminated	10/25/94
61210	Sal's Plumbing, heating & Air Conditionin	/ /	/ /	0	Terminated	10/25/94
61222	T & H Landscaping	/ /	03/13/90	1	Terminated	10/25/94
61228	Deleon Master Framing Construction Compa	/ /	/ /	0	Terminated	10/25/94
61256	Premier Business Service Corporation	/ /	/ /	0	Terminated	10/25/94
61315	W.G.D. International	/ /	/ /	0	Terminated	10/25/94
61385	J & O Construction Company, Inc	/ /	06/23/93	1	Terminated	10/25/94
61413	F & L Construction	/ /	/ /	0	Terminated	10/25/94
61416	Carberry Sanchez Co., Inc	/ /	/ /	0	Terminated	10/25/94
61431	Cch Contractors, Inc.	/ /	/ /	0	Terminated	10/25/94
61437	Jim Garcia Travel Agency, Inc.	/ /	/ /	0	Terminated	10/25/94
61444	Infosol Inc.	/ /	/ /	0	Terminated	10/25/94
61484	Alpha Protective Services, Inc.	/ /	/ /	0	Terminated	10/25/94
61525	Double J Construction	/ /	/ /	0	Terminated	10/25/94
70308	Richard H. Franklin Dba Franklin Assoc.	/ /	/ /	0	Terminated	10/25/94
70335	Wellington Construction Co., Inc.	/ /	/ /	0	Terminated	10/25/94
90774	Airplot	/ /	01/05/84	1	Terminated	10/25/94
90790	Md & N Electronics	/ /	/ /	0	Terminated	10/25/94
90819	Exhibits of California, Inc.	/ /	/ /	0	Terminated	10/25/94
90829	Trionics Manufacturing, Inc.	/ /	03/30/90	11	Terminated	10/25/94
90831	Energy Recovery Engineering, Inc.	/ /	01/23/87	2	Terminated	10/25/94
90833	Gabriel Machining	/ /	/ /	0	Terminated	10/25/94
90842	Minority Carpet Contractors	/ /	09/18/91	1	Terminated	10/25/94
90843	Marvel Electric Company, Inc.	/ /	09/27/88	7	Terminated	10/25/94
90866	Sunbelt Oil Corporation	/ /	/ /	0	Terminated	10/25/94
90955	Future Packaging Inc	/ /	08/07/92	6	Terminated	10/25/94
91017	Western Bay Sheet Metal & Marine, Inc.	/ /	09/30/88	2	Terminated	10/25/94
91055	Yellowhair Tool And Manufacturing Inc	/ /	/ /	0	Terminated	10/25/94
91100	Tron Precision Machine, Inc.	/ /	/ /	0	Terminated	10/25/94
91169	Cal Tech Maintenance	/ /	/ /	0	Terminated	10/25/94
91195	Amerind Construction Inc	/ /	03/16/90	1	Terminated	10/25/94
91224	Fernando Ortega Construction, Inc.	/ /	/ /	0	Terminated	10/25/94
91271	Call Response Automation	/ /	/ /	0	Terminated	10/25/94
91327	Kleen Squeeze	/ /	/ /	0	Terminated	10/25/94
91377	Ergonomics Unlimited, Inc.	/ /	/ /	0	Terminated	10/25/94
91402	Aero Systems	/ /	/ /	0	Terminated	10/25/94
91410	Adkins Cabling Systems	/ /	/ /	0	Terminated	10/25/94
61527	Hasty Contractor Service, Inc.	05/28/92	09/30/93	2	Terminated	10/26/94
70330	Tri Star Transportation, Inc.	/ /	11/27/85	1	Terminated	10/26/94
37001	Aridhi Associates Inc	/ /	/ /	0	Terminated	10/27/94
40926	Peoples Pharmacy Inc	/ /	/ /	0	Terminated	10/27/94
61337	Tarin Meat Company	/ /	04/11/91	2	Terminated	10/27/94
61466	Asbestos Con.rol Team	/ /	07/28/93	3	Terminated	10/27/94
60992	Roy's Propeller & Machine Works	/ /	/ /	0	Terminated	11/25/94
61089	Pioneer Sheet Metal Works, Inc.	/ /	/ /	0	Terminated	11/25/94
20519	David Lebron Lopez	/ /	/ /	0	Terminated	11/30/94
35086	Eke Company Inc	/ /	/ /	0	Terminated	11/30/94
90907	Stay Cold Mfg. Inc.	/ /	/ /	0	Terminated	11/30/94
35056	Sunatco Corporation	/ /	09/25/89	8	Terminated	12/16/94
51030	Chancellor Detective Agency	/ /	/ /	0	Terminated	02/07/95
30876	Bomar Industries Inc	/ /	/ /	0	Terminated	02/14/95
29108	A J Perez Roofing Company Inc.	/ /	/ /	0	Terminated	02/15/95
29112	Environmental Health Protection Consulta	/ /	/ /	0	Terminated	02/15/95
30889	Maraba Engineering Inc	/ /	/ /	0	Terminated	02/15/95
32478	Spectra Research Corporation	/ /	/ /	0	Terminated	02/15/95
34033	Lektronix Industries, Inc.	/ /	/ /	0	Terminated	02/15/95
61046	W P Blanket Steel Erectors, Inc	/ /	/ /	0	Terminated	02/15/95
61304	Lasker, McKinney, and Winston, Inc.	/ /	/ /	0	Terminated	02/15/95
90930	Distributors Of Electrical Supplies Inc.	/ /	03/28/86	1	Terminated	02/15/95

61248	Shankle's Engineering and Consulting	/ /	/ /	0	Terminated	02/16/95
61507	Expressions	/ /	/ /	0	Terminated	02/16/95
10581	Braxton Electronics Corporation	/ /	/ /	0	Terminated	02/27/95
20551	Island Developers & Assoc. Inc	/ /	02/04/87	1	Terminated	02/27/95
32343	Bomite Inc	/ /	/ /	0	Terminated	02/27/95
35123	Multi Sea Maritime, Inc.	/ /	/ /	0	Terminated	02/27/95
36107	Calloway & Company	/ /	09/30/88	1	Terminated	02/27/95
50917	Jease's Transfer, Inc.	/ /	/ /	0	Terminated	02/27/95
61092	Desco Steel Products Inc	/ /	/ /	0	Terminated	02/27/95
61344	Houston Express Reprographics Inc.	/ /	/ /	0	Terminated	02/27/95
90936	Omega Manufacturing Company	/ /	08/12/91	2	Terminated	02/27/95
91139	Balantines South Bay Caterers, Inc.	/ /	07/28/92	7	Terminated	02/27/95
91161	Environmental & Textile Service	/ /	/ /	0	Terminated	03/01/95
00521	Newaukum Valley Tree Company Ltd	/ /	08/31/92	8	Terminated	03/20/95
34025	Neasmith Cleaning Company	/ /	09/14/92	18	Terminated	03/28/95
32521	Roofex, Inc.	/ /	03/01/91	16	Terminated	03/30/95
32566	Kinh, Inc.	/ /	/ /	0	Terminated	03/30/95
90961	Jerry Lockhart, Chartered Cpa	/ /	/ /	0	Terminated	03/30/95
91119	Arcal Precision Components Inc	/ /	/ /	0	Terminated	03/30/95
00383	Walker Technology Group, Inc.	/ /	/ /	0	Terminated	03/30/95
10624	Passamaquoddy Towing Services, Inc.	/ /	09/24/90	2	Terminated	04/04/95
36170	E&W Cleaning Service	/ /	09/28/90	1	Terminated	04/18/95
70397	Fatigue Concepts	/ /	/ /	0	Terminated	04/18/95
10534	Coverdale Associates Inc.	/ /	/ /	0	Terminated	08/01/95
51305	Crabtree Construction Inc.	03/14/91	05/07/91	1	Terminated	08/01/95
70375	Blue's Window Cleaning Service & Bldg Ma	/ /	01/01/89	2	Terminated	08/01/95
91330	Barco & Associates	/ /	09/02/93	2	Terminated	08/09/95
32287	Tri-Continental Industries, Inc.	/ /	04/24/87	2	Terminated	08/17/95
32469	Diversified Ventures Management Corp	/ /	/ /	0	Terminated	08/17/95
90951	Innova Corporation	/ /	/ /	0	Terminated	08/17/95
91146	Can-Do Inc. Db a Can-Do Construction	/ /	09/30/91	6	Terminated	08/17/95
80373	Eaglestaff Electric, Inc.	/ /	09/20/89	3	Terminated	08/21/95
91173	Western Coach Service Inc.	/ /	04/30/93	14	Terminated	08/22/95
10590	Omni Reporting Service	/ /	/ /	0	Terminated	08/23/95
36172	Public Relations Operations, Inc.	/ /	09/28/92	2	Terminated	10/25/95
32688	Innovative Technology Systems, Inc (ITS)	/ /	09/30/92	3	Terminated	10/31/95
91084	Monroe Technical Engineering Corp.	/ /	/ /	0	Terminated	12/08/95
41061	Banks Contract Janitorial Services	/ /	09/30/90	3	Terminated	01/08/96
32772	RAJ International, Inc.	/ /	/ /	0	Terminated	01/26/96

Congress of the United States
House of Representatives
104th Congress
Committee on Small Business
2301 Rappahannock House Office Building
Washington, DC 20515-0315

February 6, 1996

Mr. William H. Campbell
Chief Financial Officer
U.S. Coast Guard
2100 Second Street, SW
Washington, DC 20593

Dear Mr. Campbell:

Thank you for appearing before the Committee on Small Business during our hearing on December 13, 1995. Now that the holidays are behind us and the budget debate has subsided I would appreciate your response to a few written questions prior to the closing of the hearing record. The questions will help round out the hearing record and your cooperation is greatly appreciated.

I hope that the Committee can have your responses to the enclosed questions within the next two weeks. I sincerely appreciate your cooperation with the Committee's oversight efforts and, of course, I know you are quite busy. Therefore, if you have any problems in responding within two weeks please contact Charles Rowe, Committee Counsel, at (202) 226 - 2227.

Thank you again for your assistance in this matter. I look forward to reading your responses.

Sincerely,


Jan Meyers

encl

Further questions for Mr. Campbell, US Coast Guard

- 1) Why did your two contracting professionals, who both thought that the appropriate SIC code was 7373, ask an untrained SBA 8(a) opportunity specialist her opinion of the appropriate SIC code classification?
- 2) Has a Coast Guard contracting official ever deferred to an SBA BOS in this fashion before? If so, please provide the Committee with the award dates, descriptions, and value of any contracts between 1989-1995 which involved such a determination by an SBA Business Opportunity Specialist.
 - a) Is this an appropriate procurement practice?
- 3) Why didn't the Coast Guard's offer letter to SBA state that other 8(a) firms had been contacted or that TAMSCO had self-marketed the contract?
- 4) Was the integration project so unique that only TAMSCO could have performed it?
- 5) Why did Coast Guard contracting personnel insist that TAMSCO be involved in this project, even if a teaming arrangement had to be set up?
- 6) (a) What are advantages/shortcuts of the 8(a) compared to contracts offered under "normal" procurement rules? (b) Do such advantages exist under any other type of procurement, or are they unique to the 8(a) program? (c) Could these advantages allow some contracting officers or firms to abuse this program?
- 7) Why didn't the Coast Guard use fully burdened labor rates when determining the value of this contract? The current Commandant of the Coast Guard asked that question prior to the issuance of the investigative report. He wanted it clarified in the report. Would please explain why those rates were not fully burdened?

8) Prior to the acceptance of this contract by SBA as a sole source contract for TAMSCO, the Coast Guard sent drafts of the Statement of Work to TAMSCO. If the SBA had decided the contract was to be competed wouldn't this have been a violation of the Procurement Integrity Act? How did Coast Guard personnel know that this contract would not be competed?

10) Please provide a copy of the Dept. of Transportation Form 5080 that was completed for this contract.

U.S. Department
of Transportation

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second St. S.W.
Washington, DC 20593-0001
Staff Symbol: G-CC
Phone: (202) 366-4280

5730

The Honorable Jan Meyers
House of Representatives
Washington, DC 20515-0315

Dear Mrs. Meyers:

This is in response to your letter of February 6, 1996, requesting the U.S. Coast Guard's response to written questions from the Committee on Small Business. Enclosed please find the list of your questions and our corresponding answers as well as other supporting documents.

We would like to thank you for the opportunity to assist the Committee on Small Business and trust that the information provided herein will help round out the hearing record. If we can be of further assistance, please do not hesitate to contact me.

Sincerely,

J. MICHAEL CRYE
CAPTAIN, U.S. COAST GUARD
CHIEF, CONGRESSIONAL AND
PUBLIC AFFAIRS

- Encl: (1) Questions and Corresponding Answers
(2) SIC 4813 Clarification
(3) Guidelines for Determining Appropriate SIC Code for 8(a) Requirement Offerings
(4) Legal Opinion Sheet
(5) Statement of Work Release to 8(a) Firms
(6) Small and Small Disadvantaged Business Labor Surplus Form

ANSWERS TO QUESTIONS

1. Why did your two contracting professionals, who both thought that the appropriate SIC code was 7373, ask an untrained SBA 8(a) opportunity specialist her opinion of the appropriate SIC code classification?

Initially, the Coast Guard Contracting Officer and Contract Specialist were of the opinion that 7373 was a proper SIC code for the integration project. This was prior to receipt of the final Statement of Work (SOW). After further analysis, including consultation with SBA (as described in detail in the answer to Question 2), and review of SBA Notice No. 8000-2356, entitled "SIC 4813 Clarification" (Enclosure (2)), effective 7/5/89, the Contracting Officer determined 4813 to be the appropriate SIC code for this acquisition. Note that previous and ongoing confusion with SIC code 4813 is what prompted the SBA to clarify use of this code in an SBA Notice.

2. Has a Coast Guard contracting official ever deferred to an SBA BOS in this fashion before? If so, please provide the Committee with the award dates, descriptions, and value of any contracts between 1989-1995 which involved such a determination by an SBA Business Opportunity Specialist. a) Is this an appropriate procurement practice?

The Coast Guard considers the Small Business Administration to be a partner in this unique contracting process. While there is no doubt that the Contracting Officer has the responsibility for identifying the SIC Code, the SBA (our partner), prior to accepting a requirement into the 8(a) program, must verify the appropriateness of the SIC code. This is outlined in SBA Notice 8000-293, 10/12/89, entitled "Determining the Appropriate SIC Code for 8(a) Requirement Offerings" (Enclosure (3)) which is an appendix to the Transportation Acquisition Manual Part 1219.

Given this guidance, while we do not defer decision making to the SBA, it is our policy to do everything possible to work with the SBA in advance and plan our 8(a) requirements in such a manner that there are no surprises or lengthy delays in the acquisition process. For example, the enclosed SBA guidance states, "An 8(a) offering should be reviewed as soon as received to determine the appropriateness of the SIC Code so that the procurement process will not be delayed in case of a disagreement." We take this guidance seriously and take it one step further by making it our policy to contact the SBA's Business Opportunity Specialist before the offering letter is sent. In this manner, we have been able to anticipate any problems, not just SIC Code issues, with the potential 8(a) requirement and solve them prior to offering the requirement.

Ms. Dani Wildason, the Small and Disadvantaged Business Utilization Specialist (SADBUS) appointed to the Contract Support Division at Coast Guard Headquarters states that, during her

tenure (since May 1992), virtually all 8(a) offerings have taken place only after she has contacted the SBA BOS and discussed the potential offering. The nature of this communication varies depending on the requirement and the SBA office's workload. Such upfront communications with the SBA fosters our partnership and is considered an appropriate and necessary practice. Not only is the recommended 8(a) firm discussed, but the SIC code identity is agreed upon, along with any potential timeline problems. The fact that, in this particular instance, the assigned Contract Specialist elected to forward a draft Statement of Work to the SBA BOS for an opinion is in concert with this policy.

3. Why didn't the Coast Guard's offer to SBA state that other 8(a) firms had been contacted or that TAMSCO had self-marketed the contract?

At Coast Guard Headquarters, the SADBUS is responsible for preparation of the offering letter based on the information given to her by the Contract Specialist. Although Ms. Wildason had given the capability statements of Advanced Information Technology Systems (AINS) and PROSOFT to the technical office months earlier to review, she was not aware of any actual contacts made to the firms regarding this requirement. If these or any other firms had expressly marketed this requirement, it should have been annotated on the offering letter; however, this information was not made available. It should be noted that identifying other firms is informational only and has had, in our experience, no bearing on the selection of the recommended firm.

In addition, it should be noted that TAMSCO did not self-market this requirement. In accordance with 13 CFR 124.100 (Definitions), self marketing of a requirement occurs when an 8(a) firm identifies a requirement that has not been committed to the 8(a) program and, through its marketing efforts causes the procuring agency to offer that specific requirement to the 8(a) program on its behalf. This requirement had already been identified by the Coast Guard as an acquisition targeted specifically for the 8(a) program; therefore, while TAMSCO may have marketed a requirement known to be planned for the 8(a) program, self-marketing did not occur.

4. Was the integration project so unique that only TAMSCO could have performed it?

The integration project was not so unique that only TAMSCO could have performed it. However, given that the minimum guaranteed value of the project was estimated to be under the threshold for competitive 8(a) procurement, there was no statutory or internal requirement to consider other contractors. Based on their extensive experience with the Coast Guard's Aviation Computerized Maintenance System (ACMS), selection of TAMSCO was determined to be in the best interest of the government based on technical and cost considerations.

5. Why did Coast Guard contracting personnel insist that TAMSCO be involved in this project, even if a teaming arrangement had to be set up?

Coast Guard contracting personnel (Contracting Officer and Contract Specialist) did not insist that TAMSCO be involved in this project. However, it is incumbent on the Contracting Officer and technical office to ensure that the best contractor is selected considering both technical and cost factors. Given TAMSCO's solid past performance on other requirements for the Coast Guard aeronautical engineering office and their intimate knowledge of ACMS, they were determined to be the best contractor for the integration project.

A teaming arrangement between TAMSCO and another 8(a) company was initially discussed with the Coast Guard technical office when 7373 was thought to be the proper SIC code for the integration project. TAMSCO had already graduated from SIC code 7373, and one way to ensure their expertise was not lost for the integration project was for them to team with another 8(a) contractor still eligible under SIC code 7373. Subsequently, the final SOW was provided by the technical office to the Contract Specialist and 4813 was determined to be the appropriate SIC code. Therefore, the issue of a teaming arrangement became moot.

6. (a) What are advantages/shortcuts of the 8(a) compared to contracts offered under "normal" procurement rules? (b) Do such advantages exist under any other type of procurement, or are they unique to the 8(a) program? (c) Could these advantages allow some contracting officers or firms to abuse this program?

(a) First, for 8(a) competitive procurements, there are no "advantages" compared to other contracts. The total lead time is the same, if not longer, than any other type of competition. However, for 8(a) sole sources (under the competitive threshold), the SBA markets this program's advantages as follows: Technical office may meet with prospective firms and talk in general terms about upcoming requirements, technical offices may conduct informal assessments of firm's capabilities to perform a specific requirement, and there is no requirement to synopsis in the Commerce Business Daily (savings of 15 days). The advantages realized are time savings and the opportunity to meet face to face with and select specific contractors.

(b) It is our belief that the 8(a) program advantages are unique. We are unaware of any other program like it.

(c) Potentially; however, Coast Guard Headquarters has established policies and procedures that precludes the contracting staff from abusing the 8(a) program. In addition, our SADBUS meets with and counsels firms as to our policies regarding marketing practices.

7. Why didn't the Coast Guard use fully burdened labor rates when determining the value of this contract? The current

Commandant of the Coast Guard asked that question prior to the issuance of the investigative report. He wanted it clarified in the report. Would [you] please explain why those rates were not fully burdened?

The independent government cost estimate was for a minimum guaranteed amount of \$2.7M and a maximum ceiling amount of \$12.8M. Both the minimum and maximum government estimates were predicated on the use of fully burdened (inclusive of G&A, overhead and profit/fee) labor rates. The final negotiated contract was awarded with a minimum guaranteed amount of \$2.2M and a maximum ceiling of \$14.1M. Both the minimum and maximum negotiated amounts included fully burdened (inclusive of G&A, overhead and profit/fee) labor rates. The contract file contains documentation that fully supports the above facts. It is, therefore, unclear where the information you relied upon to question the use of fully burdened labor rates originated.

8. Prior to the acceptance of this contract by SBA as a sole source contract for TAMSCO, the Coast Guard sent drafts of the Statement of Work to TAMSCO. If the SBA had decided the contract was to be competed wouldn't this have been a violation of the Procurement Integrity Act? How did Coast Guard personnel know that this contract would not be competed?

The following is specifically related to the issue of releasing draft/actual Statements of Work to 8(a) firms. This issue was brought up by the previous SADBUS, Ms. Ashley Lewis, in March, 1992. New to the position of SADBUS, she noted that Statements of Work were regularly given to 8(a) firms planned to be selected for particular requirements. While it is a practice commonly found at many agencies, Ms. Lewis wanted to clarify issues that concerned her. She requested and received a legal opinion from then Chief of Procurement Law, Mr. Thomas Mason, Jr. This written dialogue is provided as Enclosure (4). In short, Mr. Mason determined that this practice was not a violation of Procurement Integrity and could continue; however, several months later (September 1992), new information was provided to Mr. Mason that changed the initial guidance.

While reviewing an 8(a) search letter from the SBA's Richmond District Office, the new SADBUS, Ms. Wildason, noticed one sentence stating that the agency may not release the Statement of Work to any 8(a) firm participating in an informal assessment. Upon investigation, she was referred to 13 CFR 124.308(g) and an obscure sentence informing agencies that no 8(a) firms were to be given a Statement of Work in advance. Recognizing this as directly conflicting with current guidance, Mr. Mason rescinded his earlier guidance in a memorandum dated September 21, 1992 (Enclosure (5)). He also noted that the rescission was in an effort to comply with the SBA's regulations; however, it was still not considered to be an violation of Procurement Integrity.

While it was not the policy when the subject requirement was initiated, the current policy of Coast Guard Headquarters

prohibits releasing Statements of Work to 8(a) firms in advance. This information is provided in training sessions to both contracting and technical personnel.

Coast Guard contracting personnel rely on the fully developed Independent Government Cost Estimate (base period and options) in order to determine whether an 8(a) requirement is above or below the established competitive threshold. Under the guidance provided in 13 CFR 124.311 titled 8(a) Competition (effective until last summer), the guaranteed minimum for the subject requirement was under the competitive threshold; therefore, the requirement was eligible for a sole source 8(a).

9. Note: There was no question 9.

10. Please provide a copy of the Dept. of Transportation Form 5080 that was completed for this contract.

A copy of the DOT Form 5080 is provided as Enclosure (6).

SMALL BUSINESS ADMINISTRATION

SBA NOTICE

NOTICE NO.

8000-256

EFFECTIVE

7/5/89

TO: ARA's/MSB-000
ADD's/MSB-000
BRANCH MANAGERS

SUBJECT: SIC 4813 Clarification

Recently we have received a number of inquiries concerning the scope of SIC 4813, particularly its applicability to telecommunications services.

This Notice provides guidance for the application of SIC Code 4813, Telephone Communications, except Radio Telephone, for both procurement classification and 8(a) business plan purposes. Basic to this guidance is the recognition that telecommunications services contracts frequently comprise many disciplines classified in various SIC codes that are related to technologies that have been developed by firms typically classified in SIC 4813. Such contracts have included, in the scope of work, consulting on alternative telecommunication systems configurations, identifying and providing telecommunication equipment, developing or modifying communications software, hardware and software operation and maintenance, and other related activities. When a combination of these services is included in a Statement of Work evidencing that the intent of the procurement is to acquire a telecommunications system, SIC 4813 is appropriate.

In summary, when the telecommunications services solicited require in-depth knowledge of the technologies developed by firms typically classified in SIC 4813 the use of SIC 4813 is appropriate.

Firms that provide comprehensive telecommunications services should continue to be approved for this SIC Code for 8(a) business development purposes. Procurements calling for comprehensive telecommunications services that are classified under SIC 4813 are acceptable for 8(a) contracting.

This clarification is applicable immediately.



Erlene M. Patrick
Acting Associate Administrator
Minority Small Business and
Capital Development Division

SMALL BUSINESS ADMINISTRATION

SBA NOTICE

GUIDELINES FOR

NOTICE NO. 8000-273
EFFECTIVE: 10/12/89SUBJECT: Determining the Appropriate SIC Code
for 8(a) Requirement Offerings

The MSB&COD rules and regulations at 13 CFR 124.308(b) read as follows:

Requirement identification. (1) A requirement for possible award may be identified by SBA, a particular Program Participant or the procuring agency itself. Once a requirement that appears suitable for the B(a) program has been identified, SBA shall verify the appropriateness of the SIC code designation assigned to the requirement and request the procuring agency to offer the requirement to the 8(a) program.

So long as the SIC code assigned to the requirement by the procuring agency contracting officer is reasonable, it will be accepted by SBA.

(2) If SBA and the procuring agency are unable to agree as to the proper SIC code designation for the requirement, SBA may refuse to accept the requirement for the 8(a) program or appeal the contracting officer's determination to the head of the agency pursuant to 124.320, or the AA/MSB&COD may file a SIC code appeal to SBA's Office of Hearings and Appeals.

The following additional guidance is provided:

An 8(a) requirement offering should be reviewed as soon as received to determine the appropriateness of the assigned SIC Code so that the procurement process will not be delayed in case of a disagreement. The SIC Code Manual should be used as a reference. If the proper SIC code has been assigned, it should be accepted. In some cases it may be necessary to obtain the complete statement of work when the description in the offering letter is not sufficient. Acceptance of a requirement includes concurrence in the assigned SIC code. Therefore, SIC code finalization is necessary at time of offering.

When SBA has assigned questions regarding the appropriateness of an assigned SIC code, the BOS or other designated person should call the contracting officer or Office of Small & Disadvantaged Business Utilization to discuss why the particular SIC code was assigned. If the explanation is reasonable, SBA should accept the assigned SIC code. In other cases, SBA may convince the procuring agency that another SIC code is more appropriate. When the procuring agency & SBA mutually agree, the agreed upon SIC code should be assigned to the requirement. A change of SIC code may result in the recommended B(a) concern not receiving a match due to not being approved for the SIC code or being other than small business.

TAH

Transportation Acquisition Manual

1219-7

Every effort should be made to resolve disagreements over SIC codes at the District Office level. If the District Office is unable to resolve the matter, it should be referred to the ARA/MSB&COD. The ARA/MSB&COD may conduct further discussions with the procuring agency, discuss and obtain the views of the Office of Program Development in Central Office, and/or seek the advisory opinion of the ARA/PA. District and/or Regional Offices should strive to resolve SIC code disagreements within 5 days after receipt of the offering letter.

If the ARA/MSB&COD cannot resolve the SIC code disagreement, he/she has the following options:

- (1) send a letter of intent to appeal the contracting officer's SIC code determination to the head of the agency pursuant to I24.320 and SOP guidelines for such appeals;
- (2) request the AA/MSB&COD to file an appeal with the Office of Hearings & Appeals (OHA);
- (3) decline to accept the requirement.

If an appeal request is initiated, the ARA/MSB&COD shall provide all of the relevant information to the AA/MSB&COD. The AA/MSB&COD may engage in further discussion with the procuring agency resulting in an agreement on a SIC code, file an appeal with OHA, or recommend that the Administrator file an appeal with the Head of the procuring agency. It should be noted that 8(a) companies and other business concerns do not have the right to file SIC code appeals to OHA.

Determining the appropriateness of the assigned SIC code is an important function because of size implications. SBA has a responsibility to insure (SIC) that only companies determined to be small business for the assigned SIC code receive a specific 8(a) contract.

If you have any questions please contact Rodney Lewis, Deputy Director, Office of Program Development on (202) 205-6652.

(Original signed by)

Erlene M. Patrick
Associate Administrator
Minority Small Business and
Capital Ownership Development

U.S. Department
of Transportation

United States
Coast Guard



Memorandum

Subject: LEGAL OPINION SHEET

Date: 5 MAR 1992
4280

From: Chief, Procurement Law Division

Reply to: G-LPL/7-1544
Attn. of: T.A. Chenault

To: G-ACS-4, Ashley Lewis

1. This memorandum is in response to your inquiry of 3 March 1992 on a form entitled Legal Opinion Sheet which sought a legal opinion related to a draft standard operating procedure No. 0006.

2. As stated in FAR 3.104-4(k)(1)(i), the type of information which must be protected is that information whose disclosure "would jeopardize the integrity or successful completion of the procurement." While the specifications might be the "heart and soul" of the procurement, it is properly not listed in FAR 3.104-4(k)(2) as it is not data likely to yield an unfair advantage. Note the focus of FAR 9.505-2 is to avoid manipulation of specifications, not the knowledge of them. We safeguard the specifications and release to all competitors at once to avoid any appearance of favoritism. A release to targeted 8(a) firms is a full release and should not jeopardize a subsequent competitive action nor be a violation of procurement integrity. There is always the possibility of unique circumstances where release of the specifications could lead to an unfair advantage or of the inclusion of source selection or proprietary information. Such a unique circumstance might be where there is a sole source subcontractor and the firm secures a contract precluding competition. Use of a "strawman" would not solve such problems. An example of improper inclusion would be including technical evaluation criteria in the specifications. Rather than direct the useless creation of a "strawman", we recommend a reminder that the specifications should be reviewed prior to release to ensure that source selection information has not been improperly included.

A handwritten signature in cursive script, appearing to read "Thomas A. Mason, Jr.".

Thomas A. Mason, Jr.


LEGAL OPINION SHEET

Summary of facts: During the development of the SOP covering Small Business/Small Disadvantaged Business reviews for G-ACS, the issue of improper disclosure of source selection information arose as it relates to 8(a) capability demos. In the past, 8(a) firms have routinely been provided copies of statements of work to enable them to prepare capability statements or present capability demonstrations. These firms may have been identified as a result of in-house identification of potential offerors, or in the case of SBA intervention, may have resulted from unilateral requests through the SBA. In the majority of instances, an 8(a) firm is selected to receive the resultant contract under the auspices of the 8(a) program. However, there is always the chance that no qualified firms can be identified, and thus, the requirement may ultimately be pursued under full and open competition. In an attempt to preclude any improper disclosure, which in a worst case scenario may be a violation of Procurement Integrity, it was suggested in the draft SOP that only current contract statements of work be provided in the case of follow-on acquisitions, or for new requirements, a "strawman" be developed by the requiring activity. Either approach would enable a potential offeror to have sufficient information to develop an acceptable statement/brief, but would not result in disclosure of any source selection sensitive information. The draft SOP is provided as enclosure (1). The applicable area is highlighted for your convenience.

Legal Question: Does release of the statement of work to targeted 8(a) firms after identification of a specific action, but prior to public release, constitute a violation of Procurement Integrity, or in anyway result in premature disclosure of procurement sensitive information?

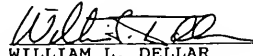
Recommended Action: FAR part 3 sets forth specific statutory prohibitions and restrictions related to Procurement Integrity. Clearly, in this instance, an 8(a) firm meets the definition of a "competing contractor" as defined at 3.104-4(b)(1). The timeframe for release of the statement of work to an 8(a) firm falls within the definition of Federal agency procurement conduct given at 3.104-4(c)(1). Although the statement of work is not clearly and expressly included in the list of items given as source selection information at 3.104-4(k)(1), it can reasonably be argued that as the "heart and soul" of any procurement action, it is source selection information. In any event, it is procurement sensitive and must be protected against premature disclosure and release. Thus, the recommended course of action which would preclude even the question of violation of Procurement Integrity statutes, is to provide current contract statements of work in the case of follow-on acquisitions, or for new requirements, to develop a "strawman" statement of work. Referenced regulatory citations are included as enclosure (2) for your convenience.

Alternative Action: Continue to provide statements of work should an affirmative opinion be given regarding legality.



Ashley J. Lewis
Procurement Analyst

3-3-92
Date



WILLIAM L. DELLAR
Chief, Policy &
Review Section

3/3/92
Date

Legal Response:

Reviewer

Date

U S Department
of Transportation

United States
Coast Guard



Memorandum

Subject STATEMENT OF WORK RELEASE TO 8(A) FIRMS Date 21 SEP 1992
4280

From Chief, Procurement Law Division Reply to G-LPL/7-1544
Attn of T.A. Chenault

To Chief, Policy Review Section

1. This memorandum confirms the meeting of 18 September 1992 in which it was decided that in the future statements of work will not be released to 8(a) firms for informal assessment. ^{LS} This change is to comply with SBA rules as set forth in ~~12~~ CFR § 124.308(g). It is noted that all participants agreed that this restriction is not currently in the FAR or our agency rules. Since we are participating in the ~~SBA~~ 8(a) program, we are now complying with their restriction having been placed on notice of that restriction. We also note that the release is not a violation of Procurement Integrity and we do not consider earlier release to have been statutory violations.

2. As was discussed, technical personnel will have to develop a summary of the requirements for purposes of the informal assessment. We wish to caution that evaluation criteria is of at least, if not greater, sensitivity than the statement of work so the evaluation criteria is not to be used as this summary of the requirements.

A handwritten signature in cursive script, appearing to read "T. A. Mason, Jr.", written in dark ink.

THOMAS A. MASON, JR.

DEPARTMENT OF TRANSPORTATION U S COAST GUARD CG-5080 (Rev 2-81)		SMALL AND SMALL DISADVANTAGED BUSINESS LABOR SURPLUS REVIEW FORM		DATE PREPARED 5/6/93
GENERAL INFORMATION				
This form is for Coast Guard use in support of established national policy for Small and Small Disadvantaged Business and Labor Surplus Area Programs				
Prescribed requirements for Small Business review (CGPP 12-1 704-51) Labor Surplus review (FPR 1-1 802 (b)) (SBA), Section 8 (a) and Subcontract Program of PL 95-507				
For resolution of disputes, see CG-407, 12B-1 750-3				
TO BE FILLED IN BY SMALL BUSINESS SPECIALIST				
PROCUREMENT REQUEST NO 2193233EA3030	TOTAL ESTIMATED VALUE \$ 13.9M (IDIQ)	SIC CODE 4813	SMALL BUSINESS SIZE STANDARD EMPLOYEE OR DOLLAR # 1,500 \$	
ITEM DESCRIPTION AND QUANTITY INTEGRATION OF EXISTING TELECOMMUNICATION AND COMPUTER SYSTEMS (AVIATION LOGISTIC MANAGEMENT INFORMATION SYSTEM) QUANTITY 1 JOB				
RECOMMENDATION				
YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>	SMALL BUSINESS AND LABOR SURPLUS SET-ASIDE (FPR 1-1 706-5(a))		HQ USE ONLY CG COMMODITY NO
<input type="checkbox"/>	<input checked="" type="checkbox"/>	SMALL BUSINESS SET-ASIDE (FPR 1-1 706-5(a)-G)		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	LABOR SURPLUS AREA SET-ASIDE (FPR 1-1 804)		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	SECTION 8 (a) OFFERING (FPR 1-1 713)		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	ADDITIONAL SOURCES ADDED		
SET-ASIDE NOT INITIATED BECAUSE		EXPLANATION/ADDITIONAL COMMENT		
<input type="checkbox"/> SOLE SOURCE/PROPRIETARY		TAMSCO 4041 POWDER MILL RD, STE 500 CALVERTON, MD 20705 HBCU: OPPORTUNITY EXISTS NISH NO OPPORTUNITY		
<input type="checkbox"/> NO REASONABLE EXPECTATION OF RECEIVING A SUFFICIENT NUMBER OF BIDS FROM SBA/S SOURCES TO ASSURE REASONABLE PRICES				
<input type="checkbox"/> COMPLEXITIES OF AND/OR COST TO MFR PRECLUDED COMPETITION				
<input type="checkbox"/> R & D PROCUREMENT WITH INSUFFICIENT SB COMPETITION TO PROVIDE HIGHEST COMPETENT TECHNICAL PROPOSAL				
<input type="checkbox"/> FIELD TEST PURPOSES FOLLOWING R&D				
<input type="checkbox"/> NOT ECONOMICALLY SEVERABLE				
<input type="checkbox"/> OTHER				
NOTE				
Change in the procurement plan described herein will require return for re-evaluation by the Small Business Specialist				
SIGNATURE OF THE SMALL BUSINESS SPECIALIST <i>S. C. [Signature]</i>	DATE 5/6/93	SIGNATURE OF SBA-PCR	DATE	
CONCURRENCE				
CONTRACTING OFFICER		SMALL BUSINESS SPECIALIST		
<input checked="" type="checkbox"/> CONCURS <input type="checkbox"/> REJECTS (basis for rejection attached)		<input type="checkbox"/> ACCEPTS <input type="checkbox"/> APPEALS (basis for appeal attached)		
SIGNATURE <i>Donald M. Peterson</i>	DATE 5-6-93	SIGNATURE	DATE	

JAN MEYERS, KANSAS
CHAIR

JOHN J. LAFALCE, NEW YORK

Congress of the United States
House of Representatives
104th Congress
Committee on Small Business
2301 Rayburn House Office Building
Washington, DC 20515-6115

February 7, 1996

Mr. Nicholas R. Innerbichler
TAMSCO Corporation
Suite 500
4041 Powder Mill Road
Calverton, MD 20705

Dear Mr. Innerbichler:

Thank you for appearing before the Committee on Small Business during our hearing on December 13, 1995. Now that the holidays are behind us and the budget debate has subsided I would appreciate your response to a few written questions prior to the closing of the hearing record. The questions will help round out the hearing record and your cooperation is greatly appreciated.

I hope that the Committee can have your responses to the enclosed questions within the next two weeks. I sincerely appreciate your cooperation with the Committee's oversight efforts. If you have any problems in responding within two weeks please contact Charles Rowe, Committee Counsel, at (202) 226 - 2227.

Thank you again for your assistance in this matter. I look forward to reading your responses.

Sincerely,


Jan Meyers

encl

Further Questions for Mr. Innerbichler

- 1) Was TAMSCO in compliance with its competitive business mix requirements during its last two years of 8(a) program participation?
- 2) If TAMSCO was not in compliance, why did your firm continue to aggressively seek more sole source contract awards rather than seek more competitive contract opportunities?
- 3) Do you believe the SBA should have allowed TAMSCO to receive so many sole source awards in its last year of program participation?
- 4) Do you agree that fully burdened labor rates should be charged to an IDIQ contract?
- 5) Why do you think the Coast Guard didn't use fully burdened labor rates to determine the guaranteed minimum of this contract?
- 6) Do you think it was appropriate for your employees to discuss "graduation presents" with Coast Guard personnel?
- 7) Your company's marketing brochure emphasized the speed of 8(a) sole source contracting, how it is exempt from protest, and how IDIQs are flexible. Do you consider this emphasis on sole source awards appropriate for a firm in the late stages of program participation?
- 8) Your brochure is a marketing tool and presumably it was used to emphasize the advantages of using your firm. Did your brochure reflect the attitudes of your customers in that contracting officials found the competitive process a disadvantage and sought to avoid competition by using the 8(a) program?
- 9) Do you believe one of the primary reasons contracting officials did business with your firm was because 8(a) sole sourcing was an easy way around competitive contracting requirements?

10) Given your good track record with the Coast Guard and your familiarity with their computer systems why didn't TAMSCO simply compete for the integration project? Wouldn't previous experience have placed TAMSCO at an advantage in such a competition?



February 22, 1996

Chairwoman Jan Meyers
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, D.C. 20515-6315

Dear Chairwoman Meyers:

Thank you for your February 7, 1996 letter regarding further questions relative to the committee hearing on December 13, 1995. TAMSCO appreciates the opportunity to ensure that the record is accurate.

Preliminary to responding to your specific questions, several observations are appropriate to clarify apparent misunderstanding of the standard industrial classification ("SIC") code 4813 which was assigned to the ALMIS procurement awarded by the Coast Guard to TAMSCO. Contrary to the implication of several questions asked during the hearing, there is nothing untoward about SBA involvement with SIC code determinations. As SBA Associate Administrator Jenkins explained to the committee, where contracting officers ask SBA for assistance or consultation in SIC code matters, SBA provides that assistance. In fact, SBA has long been the Government's formal arbiter in all such matters, with specific responsibility for "unclear" SIC code determinations. See 13 C.F.R. Section 121.901 *et seq.* Unfortunately, SIC code 4813 has frequently been the subject of confusion in industry and in Government so as to warrant formal and informal clarification by SBA, as the Coast Guard recognized in its Board of Investigation.

We are also concerned that the committee may be misinformed about the actual process that occurred at SBA for SIC code guidance on the subject procurement. Our concern is based on several other questions probing whether it was a conflict of interest for TAMSCO's business opportunity specialist at SBA to review and decide the SIC code for the ALMIS procurement. In fact, as the Coast Guard Board determined in its report, an SBA District Office Section Chief, not TAMSCO's SBA business opportunity specialist, actually concluded "based on his review of the [statement of work], SIC Code manual, and SBA documents expanding the 4813 definition, that 4813 was appropriate for this [statement of work]."

Importantly, there is also no genuine basis for concern on the part of the committee about whether SIC code 4813 in fact best described the primary purposes of the ALMIS procurement. After thorough and exhaustive evidence taking on this subject, the Coast Guard Board of

TECHNICAL AND MANAGEMENT SERVICES CORPORATION

4041 POWDER MILL ROAD SUITE 500 CALVERTON, MD 20705 (301) 595-0710 FAX (301) 937-5236

Investigation concluded that SIC code 4813 was both reasonable and appropriate. Further, GAO did not even suggest that SIC code 4813 failed to best describe the work in question.

In response to the specific questions submitted by the Committee, TAMSCO offers the following:

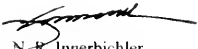
1. No. However, as Associate Administrator Calvin Jenkins testified before the committee on December 15, 1995, TAMSCO was in compliance with its SBA approved remedial action plan.
2. TAMSCO simply followed its business plan and aggressively pursued both competitive and sole source contract award opportunities. As a practical matter, TAMSCO may have favored sole source opportunities because during the final two years of program participation TAMSCO had experienced significant shortfalls in anticipated and planned revenue under its competitive contracts when Government customers failed to place orders anywhere near the levels solicited and bargained for. For example, one of our competitively awarded contracts with the U.S. Army CECOM, which required over 192,00 man-hours a year (roughly the equivalent of 100 people), failed to provide any of the expected revenue in fiscal year 1991, less than 20% of anticipated revenue in fiscal year 1992 and only 24% of the anticipated annual contract revenue in fiscal year 1993.
3. Yes.
4. Yes, unless there is an appropriate basis for allocation of discounted or adjusted rates.
5. TAMSCO has very limited knowledge of how the Coast Guard in fact determined the guaranteed minimum value of work under the ALMIS procurement. However, we understand that the Coast Guard Board of Investigation found "there was no evidence that anyone involved had made any agreement to distort the procurement process or commit other unlawful acts to understate the minimum guaranteed amount to be applied to the competitive threshold." The Board of Investigation also indicated that it "found no attempt to mislead in the determination of the Minimum Guaranteed Value of the contract. The various Coast Guard parties involved had a logical, untainted basis for their positions on the issue, and the final determination was made by contracting personnel who acted impartially..."
6. No.
7. In TAMSCO's opinion, sole source awards are important to 8(a) concerns at all stages in the program, including the final stage. For perspective, as the committee well knows, sole source awards remain a substantial component of the government business of all major defense contractors.
8. We have no doubt that our federal government customers understand and appreciate the importance of competition. Notwithstanding that, the 8(a) program, has long enjoyed certain limited exclusions or exemption from otherwise applicable full and open competition processes which are properly considered by our customers. There are, of course, a number of other congressionally mandated programs which provide comparable exclusions or exemptions from full and open competition that are effectively limited to large defense or civilian government contractors

9. No.

10. The questions misstate the problem and thus miss the point. TAMSCO interactions with the Coast Guard regarding the "integration project" were focused almost entirely on the extraordinarily difficult matter of the mission, principally definition, development, integration and operation of a large homogenous, telecommunication oriented system providing accurate management information to support aircraft maintenance and supply systems. The dynamic and imprecise nature of the requirements were simply and undeniably ill-suited to competitive procurement. It matters not then or now that TAMSCO's experience with Coast Guard aviation systems may position the company as a vigorous competitor. It is more relevant to note, as did the Coast Guard Board of Investigation after literally months of review, that "[b]oth the Coast Guard and TAMSCO were using the 8(a) program as it was envisioned to be used. No illegal or unethical conduct was found on either side."

In the event that the committee has any further questions or concerns, I would be pleased to address them.

Respectfully submitted,



N. R. Innerbichler
President

cc: Ranking Minority Member
Rep. John J. LaFalce

Congress of the United States
House of Representatives
104th Congress
Committee on Small Business
2501 Ragbom House Office Building
Washington, DC 20515-6515

March 5, 1996

Ms. Kavelle Bajaj, CEO
I-Net Corporation
6700 Rockledge Drive
Suite 100
Bethesda, MD 20817-1804

Dear Ms. Bajaj:

I am sorry you were unable to appear at the Committee on Small Business hearing on the 8(a) program on December 13, 1995. It was extremely informative, but we missed the added dimension your testimony would have provided. In that vein, I was hoping that you would be so kind as to respond to a few written questions. Your answers would help complete the hearing record, and provide the Committee with valuable information regarding the 8(a) program.

I would appreciate it if you could respond to the questions within the next two weeks. I sincerely appreciate your cooperation with the Committee's oversight efforts. If you have any difficulty in responding within two weeks please contact Charles Rowe, Committee Counsel, at (202) 226-55821.

Thank you again for your assistance in this matter. I look forward to reading your responses.

Sincerely,



Jan Meyers
Chair

encl

Questions for Ms. Bajaj

- 1) When was I-Net first started?
- 2) Who were your clients during your first year in business?
- 3) Was I-Net exceeding its 8(a) support levels at any time between 1991 and the end of its program participation?
- 4) When speaking with GAO you stated that you represented your citizenship as a naturalized US citizen in your 8(a) application because you felt that to do otherwise would hinder your application. Later your counsel, in a meeting with Committee staff, stated that SBA employees told you to do this. Is your counsel's statement correct? Do you recall which individual advised you to do this?
- 5) In a June 14, 1995 letter to GAO your attorneys cited demands and questions from NationsBank regarding a private placement as if NationsBank had imposed new conditions on I-Net in June of 1993. In fact weren't these conditions, regarding a private placement, preexisting conditions from the original \$25 million credit agreement negotiated by I-Net with NationsBank? Would you please provide the Committee with a copy of the original loan agreement.
- 6) In your letter to Betty Toulson of the SBA's Division of Program Certification and Eligibility dated November 18, 1993 you requested that that SBA not terminate I-Net's 8(a) support. You told Ms. Toulson: "Our current bank, NationsBank, has demanded that we have an improved debt/equity ratio, by means of an equity sale, in order to extend our line of credit." Wasn't that requirement an original term of the line of credit dating to the original lending agreement, and if so why didn't you inform Ms. Toulson of this fact?

7) The letter from NationsBank to I-Net on June 15, 1993 indicates that a private placement was an original condition of the credit agreement and that NationsBank was concerned by I-Net's apparent lack of effort in complying with this condition. Why wasn't I-Net more prepared to have a private placement in the works at that time? Isn't it fair to assume that I-Net's credit problems at that time were due to your failure to meet this specific condition of the credit agreement?

8) I-Net's adverse impact analysis notes a number of problems that would arise from I-Net's termination from the program. In particular, your letter states "I-Net must disagree with the statement in SBA's October 5, 1993 letter that non-8(a) sales in 1992 were 75 percent of sales. The correct figure for that period is 35.73%". Isn't that a very high level of dependence on 8(a) contracts for a firm in the late stage of program participation? How many years of options remained in each of these contracts?

9) Do you consider over-reliance on 8(a) sales to have been a contributing factor to your efforts to remain in the program? In other words, do you believe that if I-Net had been meeting its business-mix targets then early termination from the program would not have had a serious negative effect?



ENTERPRISE NETWORK SOLUTIONS

April 18, 1996

VIA HAND DELIVERY

The Honorable Jan Meyers
 Chair
 Committee on Small Business
 U.S. House of Representatives
 2361 Rayburn House Office Building
 Washington, D.C. 20004

Re: Committee Hearings of December 13, 1995

Dear Ms. Meyers:

On behalf of Kavelle Bajaj and I-NET, thank you for the opportunity to respond to your letter of March 5, 1996. We appreciate very much that your staff granted additional time to respond to your letter.

At the outset, we would like to point out that I-NET, Inc. voluntarily withdrew from the Section 8(a) Program twenty-two months ago in June of 1994. Additionally, much of the information requested concerns events that in some cases are over ten years old or for which some documentation is not readily available. With that in mind, we have attempted to answer your questions to the best of our ability.

1. I-NET, Inc. was first incorporated in 1985, although a predecessor-in-interest, Information Networks, a sole proprietorship established by Ms. Bajaj, existed earlier and was the subject of the 8(a) application.

2. I-NET, Inc.'s early customers included the Department of Transportation, the National Oceanographic and Atmospheric Administration and the Navy Department.

3. We have as of yet been unable to locate copies of SBA's letters to I-NET indicating approved support levels for the 91-94 period. We will continue to review our files and will provide this material as soon as possible.

4. Ms. Bajaj recollects having discussions with SBA personnel concerning her citizenship status during the

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Section 8(a) Application process which was over twelve years ago. She does not recollect the names of the personnel to whom she spoke.

5. It is important to put your questions #5-7 in context. In late August 1992, NationsBank required that I-NET obtain an equity investment by no later than June 1993. The June 1993 NationsBank "conditions" your question refers to are contained in a letter from NationsBank to I-NET of June 1993. The letter clearly references the antecedent August, 1992 credit agreement. (Copy of agreement attached). There was no intent to ignore or hide such a fact. The June 1993 NationsBank letter was cited to emphasize the additional pressure I-NET was placed under by NationsBank. Finding an equity investor, as is discussed further, is not easy and takes time; further, I-NET had to pay additional fees until it could successfully locate an investor and negotiate a private placement.

6. Whether the requirement of attracting equity capital existed prior to our November, 1993 letter to SBA doesn't negate the adverse effect premature Section 8(a) termination would have had on I-NET. I-NET was trying to attract equity as discussed above. Securing private placements are fairly exacting processes. Bankers, investment bankers and other consultants are often involved and the process is time consuming. For a minority woman owned business with no prior experience this is especially true. If SBA had prematurely terminated Program participation during that time, it would have had an adverse affect on our ability to attract such equity capital.

7. Question #7, again, suggests that securing a successful private placement is a quick and easy process. Let me assure you, that is not the case. The sale of a minority interest in a minority woman-owned government contractor in a highly competitive industry takes time. As correspondence we provided your staff indicates, during 1993 I-NET made numerous presentations to many potential investors but was unable to secure a private placement infusion of equity in 1993. As a result and as is consistent with banking procedures, NationsBank requested additional fees and personal guarantees. As the Committee is aware, after exhaustive efforts, I-NET was finally able to obtain an equity investment in 1994. It is neither surprising nor unusual that it took I-NET almost two years to complete successfully the private placement process.



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8. SBA's 1992 Section 8(a) regulations provided that a firm with a proposed 1994 graduation date (as was the case with I-NET) would, in 1992, be in year 3 of its transitional stage. The 1992 regulations further provide that in year 3 of an 8(a) firm's transitional stage, non-8(a) business activity targets should be 35-45%. Therefore I-NET's position, that it's non-8(a) sales in '92 were 35.73%, was regulatorily compliant. It is time consuming to go back to our 1992 8(a) contract list to see what option years then remained per contract. The vast majority of all then-extant '92 8(a) contracts (and options) have expired. We are, however, undertaking this task and will provide the documentation to you as soon as completed.

9. We do not believe I-NET was overly reliant on the 8(a) Program. Today, two years after voluntary withdrawal from the 8(a) Program, we are a successful commercial competitor amongst established network-based computer services/telecommunications companies such as Computer Services Corporation and EDS. Well over 70% of our business is work we won competitively. We believe this evidences the type of success that the Section 8(a) Program Office, SBA, and hopefully, your Committee would want to see.

We appreciate the opportunity to respond to your additional questions on this matter.

Sincerely,

Daniel A. Masur
Daniel A. Masur
Vice President and
General Counsel

Attachment

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