

**THE FUTURE OF SMALL BUSINESSES IN THE
U.S. FEDERAL GOVERNMENT MARKETPLACE**

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ABSTRACT. The federal government purchased goods and services valued at approximately \$100 billion from small businesses in FY 2003, which was up from previous years. Moreover, in FY 2003, the federal government exceeded its small business contracting goal of 23 percent. Despite such achievements, implementation of the acquisition reforms enacted in the 1990s has limited small businesses' access to the federal procurement market. Federal agencies have, for instance, not met their goals for women, minorities, or veterans, and contract bundling and purchase cards may restrict small business opportunities. Meanwhile, both judicial actions and a reduction in the number of acquisition workers complicate matters. This paper discusses each of these issues and offers five recommendations that, if fully implemented, should ensure a brighter future for small businesses in the federal government marketplace.

INTRODUCTION

According to the United States Federal Procurement Data System (FPDS), the federal government purchased goods and services valued at \$307.5 billion in fiscal year (FY) 2003. Contracts worth approximately \$100 billion flowed to small businesses in the form of prime contracts or subcontracts from prime contractors.² The number of contracts to small firms has been growing, but obtaining federal contracts

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is often a struggle for small businesses. They often find hurdles in their way. Substantive reforms in the procurement process, often implemented with the best of intentions, are another obstacle for small businesses in their quest for a fair share of federal dollars.

This paper will explore some of the impacts the acquisition reforms of the 1990s have had on the small business community in the United States. This examination will utilize several research studies conducted for the Office of Advocacy of the U.S. Small Business Administration (SBA) and will discuss the impact of three specific changes in how the government now conducts its procurement business. These are the SBA Certificate of Competency Program, the acquisition work force re-allocation, and the judicial/administrative redistribution of contract law. Finally, this article will provide five recommendations that, if fully implemented, should ensure a continuing future for small businesses in the federal government marketplace.

SMALL BUSINESS IMPORTANCE

In 1953, Congress stated in the Small Business Act:

The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government...be placed with small business enterprises... (Public Law 83-163 § 202).

Nearly 50 years later, President George W. Bush determined that, while much progress had been made in fulfilling the policy articulated in the Small Business Act, small firms were still encountering barriers to full participation in the federal acquisition marketplace. Thus, on March

19, 2002, President Bush announced a strong and clear small business agenda, stating that “Small businesses are the backbone of the American economy. Small businesses are the path to success for many Americans. Small businesses embody the American values of hard work, risk-taking, and independence. Government contracting must be more open and fairer to small businesses.”

The Office of Advocacy regularly documents the important contributions of small businesses to the U.S. economy. Under the SBA’s small business size standards, nearly all employer firms are considered small, and these small firms employ half of the private sector nonfarm work force.³ Small firms also produce half of private, nonfarm real output (Joel Popkin and Company, 2001). Moreover, over the last decade, small businesses have been the source of 60 to 80 percent of the net new jobs in the economy.⁴ Most of these net new jobs, according to Acs and Armington (2003), stem from new start-ups in their first two years of operation.

Small firms are also the innovators in the U.S. economy. A report by CHI Research, Inc., (2003) finds that small businesses produce 13 to 14 times more patents per employee than their larger counterparts, and that these patents are more likely to be cited in other patenting applications. Smaller businesses are generating cutting edge inventions. Many of these patents are applied for after research and development has been conducted at a college or university. Many new firms are formed in areas surrounding institutions that devote larger budgets to research and development (R&D) (BJK Associates 2002). Many experts look toward technology and innovation as the source of new economic growth; therefore, small firms will continue to be a source of new employment and opportunities.⁵

GOVERNMENT REFORMS OF THE 1990s

Three significant acquisition reforms enacted in the 1990s continue to affect small businesses in the government procurement marketplace. These are the Federal Acquisition Streamlining Act of 1994 (FASA), the Federal Acquisition Reform Act (FARA) or the Clinger-Cohen Act of 1996, and the Small Business Reauthorization Act of 1997.⁶ Table 1 summarizes the highlights and impacts of these legislative actions for small businesses.

TABLE 1
Acquisition Reforms of the 1990s

Legislation	Highlights	Impact on Small Business
Federal Acquisition Streamlining Act of 1994 (FASA)	<ul style="list-style-type: none"> - Authorized multiple-award contracts. - Created new procurement category for micro-purchases up to \$2,500. - Exempted micro-purchases from the Buy American Act. 	<ul style="list-style-type: none"> - Multiple-award contracts hurt 8(a) companies. - The dollar volume and size of multiple-award contracts are beyond the reach of many small businesses. - No competition is required for micro-purchase contracts.
National Defense Authorization Act of 1994	Authorized use of “other transactions.” This term refers to transactions other than contracts, grants or cooperative agreements, which are entered into under the authority of 10 U.S.C. 2371.	These are not governed by FAR and the Small Business Act requirements for small business participation. A recent example would include the Army’s Future Combat Systems overhaul, where Boeing has signed a \$14.78 billion “other transactions” agreement and serves as the general contractor.
Clinger-Cohen Act of 1996	<ul style="list-style-type: none"> - Authorized credit cards for use by more employees for purchases up to \$2,500. - Authorized use of multi-agency contracts for information technology. - Repealed GSA’s central acquisition authority for information technology. 	The Act specified no small business requirement for credit card purchases.
Administrative Dispute Resolution Act of 1996	District court jurisdictions on bid protest cases were sunset on January 1, 2001.	There are a limited number of places where small businesses can file a claim.
Small Business Reauthorization Act of 1997	Increased annual goal of small business procurements by federal agencies from 20 to 23 percent.	This increases the number of opportunities for small businesses to do business with the federal government.

The Clinger-Cohen Act, among other things, authorized the Office of Management and Budget to designate executive agents for government-wide acquisitions of information technology (GWACs). In addition, FARA authorized the use of multi-agency contracts for acquisition of information technology. Many of these acquisition vehicles either totally excluded small businesses or included them but never or seldom were used to award small businesses task order contracts. The U.S. Department of Commerce attempted to respond to this with its own vehicle exclusive to small businesses, the COMMITS information technology acquisition vehicle—the first of its kind used by any federal agency.

According to FPDS, FASA allowed for direct micro-purchases of items valued at less than \$2,500 without competitive quotations and with an exemption from the small purchase set-aside requirement. More than half of the government's purchase actions are for less than \$25,000, and most are for less than \$2,500 (the micro-purchase level). FASA also authorized agencies to permit buyers other than the contracting officer to make micro-purchases, and this is done without the full reporting and accountability procedures outlined in the Federal Acquisition Regulation (FAR) for regular acquisitions. These changes encouraged more use of the purchase card. Agencies increased the value of their credit card purchases from about \$5 billion in FY 1997 to more than \$16 billion in FY 2003. For the same period, the number of credit card actions more than doubled, from 11 million to over 25 million. Unfortunately, according to a research study funded by the Office of Advocacy, agencies have not been collecting data on the number of small businesses that have been awarded contracts through credit cards. Procurement reform may mean that small businesses benefit less than they did in the past from small purchase orders (Eagle Eye Publishers, 2003).

In the broad brush picture, federal procurement laws and policies are working. For example, the 1997 Small Business Reauthorization Act increased the federal goal for the small business share of procurement dollars from 20 percent to 23 percent. In FY 2002, SBA reports that small businesses were awarded 22.62 percent of direct federal contracts.⁷ This amounted to \$53.6 billion being awarded to small businesses. In FY 2003, federal agencies exceeded the 23 percent small business contracting goal by awarding 23.6 percent, or \$65.5 billion, of federal contracting dollars to small businesses. This is a significant achievement for the small business community.

The federal procurement sector offers valuable opportunities for small firms to enter the marketplace and grow, and where small firms have been in a position to take advantage of the opportunities, they have made many important contributions. Ensuring that the federal contracting market remains open to small firms is an ongoing challenge.

Since enactment of the FASA of 1994, small businesses now account for 78 percent of the business on the General Services Administration (GSA) schedules, and they are awarded about 34 percent of the contract dollars. Thus, the acquisition reforms of the 1990s may not in themselves have a negative effect on small businesses. However, the uneven implementation of these reforms across federal agencies has created results that are not in the best interests of small businesses. For example, within the 23 percent goal, the 5 percent goal for women-owned small businesses and the 3 percent goal for service-disabled veteran-owned and HUBZone businesses have not been achieved.⁸

Several statistics from recent years illustrate the struggle for these subgroups in the procurement arena. For instance, FASA established a 5 percent government-wide procurement goal for federal prime contracts and subcontracts awarded to women-owned businesses, but federal agencies have never achieved this goal. In FY 2001 and 2002, women-owned businesses were awarded just 2.90 percent of government contracts (\$6.8 billion and \$7.1 billion, respectively). On the other hand, the FY 2002 share for minority-owned firms increased to 6.75 percent or \$15.8 billion from a FY 2001 level of 6.1 percent or \$14.0 billion. Service-disabled veterans have also had a mixed experience in obtaining federal contracts since their 3-percent goal was established in 1999 by Public Law 106-50. Goal achievement numbers from all federal agencies for veteran-owned businesses were first available in FY 2001. In FY 2002, these firms were awarded 0.23 percent of the total federal procurement budget, and in FY 2001, they received 0.25 percent of the dollars.⁹ HUBZone small businesses experienced a slight dollar increase in FY 2002 with 0.71 percent or \$1.6 billion in contracts, compared with \$1.5 billion or 0.72 percent in FY 2001.

Moreover, small businesses have been adversely affected by contract bundling. The goal of reducing administrative costs has meant that the bundling of contracts has become more pervasive. A recent Advocacy study highlighted this issue. Eagle Eye Publishers (2002) found that the number of bundled contracts increased 19 percent between FY 1992 and FY 2001. In addition, contracts being renewed were more likely to be

bundled, and unfortunately, small firms were not receiving a large portion of these awards. The authors estimated that “for every increase of 100 bundled contracts there is a decrease of 60 contracts to small business.” Given that 44.5 percent of all prime contracts were bundled over this period, the loss to small businesses was sizable.

As a result of these experiences, the three major legislative acquisition reforms of the 1990s are undergoing a natural legislative and regulatory retooling process. For example, changes have been made stipulating how agencies can streamline contracts by putting two or more contracts into one contract vehicle. These final bundling regulations went into effect in October 2003. In 2002, Congress instructed DOD contracting officers to solicit offers from all contractors offering the required services under the multiple-award contracts. The intent was to improve the process of making awards under multiple-award schedule contracts. Also, regulations now have finally eliminated duplicative database systems that take precious time away from small businesses. As a result, the merger of Pro-Net and Central Contractor Registration (CCR) is now complete, and the SBA has implemented an aggressive matchmaking program. All of these new procurement developments are designed to find better ways to make the procurement process more open and fair for small business.

SBA CERTIFICATE OF COMPETENCY PROGRAM

Long before the Small Business Administration was created, the Congress recognized the need to help small businesses compete for federal contracts. The Certificate of Competency (COC) program had its beginning during World War II as part of the Small Business Mobilization Act of 1942 (PL 77-603). This legislation established, among other things, the War Production Board, with authority to review and certify the competency of a small business to perform a specific government contract. After the war ended in 1945, the COC program was transferred among several agencies. In 1951, the program was placed in the Small Defense Plants Administration (SDPA), the precursor to the Small Business Administration. Two years later, the SDPA was recast into the SBA by the Small Business Act of 1953.

The purpose of the COC program is to ensure that small businesses, especially those newly entering the federal marketplace, receive a fair share of government contracts. This, in turn, helps the government to

supplement and diversify its sources of supplies and services. The COC program is authorized under section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b)(7)). It affords a small business the right to appeal a contracting officer's "non-responsibility" determination. Where SBA issues a COC, the Small Business Act directs contracting officers to accept the certification as conclusive and precludes the contracting officer from directing the firm to meet any other requirements of responsibility.

At its inception, the COC program was limited to only those areas of 'responsibility' dealing with capacity and credit. Capacity is a term of art in government procurement and has been defined as the overall ability to meet quantity, quality, and delivery requirements of a contract. Capacity also encompasses the company's ability to perform, its management and organization, technical experience and expertise, knowledge and skills, and equipment and facilities. Credit is defined as the financial capability to perform a contract, plus other commitments.

In 1977, Congress significantly enhanced the COC program by authorizing SBA to issue COCs with respect to all elements of responsibility, including perseverance, integrity, and tenacity. These additional elements of responsibility were distinct from the original issues involving capacity and credit. In 1984, Congress further refined the COC program by requiring government contracting officers to refer and SBA to accept COC referrals regardless of the dollar value. Prior to 1984, COC referrals were not required for procurements below \$10,000.

A COC is a written instrument issued by SBA to a government contracting officer, certifying that one or more named small business concerns possess the 'responsibility' to perform a specific federal contract. The COC is conclusive, and the contracting officer is prohibited from denying award of a contract on the basis of non-responsibility. Until the acquisition reforms of the 1990s, the COC, an *ad hoc* wartime initiative, was a cornerstone of the government's specialized programs to assist small businesses.

SBA receives and processes COC referrals based on non-responsibility determinations where a small business is unable to meet regulatory requirements imposed by other agencies. For example, there is a service requirement that pertains to the transportation of materials over land by truck. The Department of Transportation requires that a truck driver take a break after so many hours of driving. If the small business

cannot meet this requirement, SBA can take no action to waive it. However, SBA tries to determine whether the small business understands the requirement and what action the small business is taking to comply. Again, SBA looks at all the circumstances involved in reaching its decision. Where a small business demonstrates prior to award of a contract that it has taken action to correct and prevent recurrence of the non-responsibility issues, SBA is inclined to issue a COC. According to an unofficial report from the SBA, more than 95 percent of all SBA-certified contractors perform successfully and on time.

SBA uses the term 'COC referral' to mean appeals received from contracting officers relating to non-responsibility of small businesses, according to its unofficial annual report. From FY 1996 to FY 1998, SBA received 1,257, 796, and 531 COC referrals, respectively. This represents an insignificant portion (0.006 percent) of all contract actions reported in the Federal Procurement Data System. SBA typically issues COCs on 25 percent of all COC referrals it receives. Of the 1,257 COC referrals in FY 1996, SBA received 606 COC applications and issued 258 COCs. Of the 796 COC referrals in FY 1997, SBA received 404 COC applications and issued 203 COCs. Of the 531 COC referrals in FY 1998, SBA received 241 COC applications and issued 134 COCs.

Data obtained from the General Services Administration, Federal Procurement Data System, reveal that approximately 45,000 individual small businesses received contracts valued at more than \$25,000 in fiscal year 1998.

Prior to the acquisition reform movement that started in the early 1990s, contracting officers were referring COC applications to SBA on an average of about 3,000 per year with an annual contract value ranging between \$100,000 and \$300,000. The program was working and the playing field was being leveled for these businesses.

Since acquisition reform, SBA's COC program averages about 300 referrals a year for a contract dollar value of about \$140,000, with only about 11 direct awards being made to small businesses. Perhaps this is an indication that some contracting officers simply do not try to use the COC program because of acquisition reform tools such as schedules and GWACs and credit cards.

RELATIONSHIP BETWEEN JUDICIAL AND ACQUISITION REFORM AND THE IMPACT ON SMALL BUSINESS

The acquisition reforms of the 1990s affected not only how the federal acquisition community awarded contracts, but also who had rights to challenge contracting actions and in which courts the contractor was required to initiate these challenges. Three examples follow:

Federal Acquisition Streamlining Act

The Federal Acquisition Streamlining Act (FASA), as codified at 10 U.S.C. §2304c (d), generally precludes protests in connection with the issuance or proposed issuance of a task order. The acquisition reform legislation does, however, allow for protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued. The significance of this change is that agencies are given tremendous latitude through the use of task orders to acquire goods and services that may have been broadly defined in the request for proposals (RFP). In other words, when an agency uses this type of contracting procedure, it does not have to be letter-specific in the statement of work. Also, this contracting vehicle provides the acquisition agency with some flexibility to acquire goods and services that may be cutting-edge technology that is not available at the time the RFP for the contract is published.

Generally, a protest of a task order is filed with the General Accounting Office (GAO). In support of the authority provided by FASA, GAO in the matter of *Computers Universal, Inc.*, April 9, 2004, ruled that where a delivery order was issued with a broad statement of objectives that reasonably encompassed the services at issue, the agency did not obtain the services outside of the scope of the contract. The protest was denied and the small business did not get the contract. In an attempt to provide some balance in this protest arena, GAO has, however, ruled in *Flora and Associates*, B-285451.3; B-285451.4, October 25, 2000, that if a task order is beyond the scope of the original contract, then it is improper and thus cannot be awarded under the task order. Most task orders, as evidenced in *Computers Universal, Inc.*, are not beyond the scope of the original contract, and therefore the ability of a small business to protest and win in a conflict in which an agency has decided to incorporate functions into an existing multiple-award, indefinite-delivery contract is extremely slim.

FASA not only allowed for the creation of new contracting vehicles called multiple-award schedules, but also restricted the ability to challenge the task orders under the contract vehicle. Some may argue that this is not bad; contracting officers need this type of flexibility. On the other hand, as recently alleged in the award of contracts for the Iraq War, flexibility without appropriate oversight can lead to abusive power. It is alleged in a July 14, 2004, BNA article, *Government Contracts: GSA Unveils Own 'Get It Right' Campaign; Agency Reviewing All Major Services Awards*, that a Department of Defense (DOD) task order was awarded for interrogation services under a GSA Schedule 70 contract, which is for information technology and telecommunications. The BNA article also reported that Deidre Lee, DOD Director of Procurement and Acquisition Policy, and David Drabkin, Deputy Associate Administrator of GSA's Office of Acquisition Policy, are now trying to ensure that task orders are not awarded unless they are within the scope of the initial contract. GSA is launching a 'Get It Right,' campaign and DOD, according to Deidre Lee, "will soon introduce a new interim rule asking whether the requirements are within the scope of the intended vehicle."

Scanwell Labs., Inc. v. Shaffer and Administrative Dispute Resolution Act

Scanwell Labs., Inc. v. Shaffer, 424 F.2d 859 (D.C. Cir. 1970) and the Administrative Dispute Resolution Act (ADRA) of 1996 helped to further refine the judicial landscape for the federal contracting community. Scanwell gave bid protestors the opportunity to bring action in federal district courts (Schooner, 2000; Fried, Harris & Jacobson LLP, 2000). Under ADRA, district court jurisdiction for bid protest cases expired January 1, 2001. Prior to this, a person or business could file a protest challenging a federal contract award or the procedure by which the offers were solicited. Under ADRA of 1996, the U.S. district courts and the U.S. Court of Federal Claims (COFC) had the same jurisdiction to decide bid protest cases.

As is evident in ADRA, Congress was concerned with the impact on small businesses of sunsetting the district court bid protest jurisdiction. The ADRA required GAO to conduct a study to determine, among other things, the "effect of any proposed change on the ability of small businesses." Unfortunately, GAO, in its report to Congress, GAO/GGD/OGC-00-72, *Bid Protests: Characteristics of Cases Filed in Federal Court*, reached an implied conclusion that small businesses

would not be affected by eliminating bid protest filings in the federal district courts. The data and methods used to reach this decision might have been better structured.

A more thorough research methodology might have allowed GAO to reach a decision that would have been more supportive of small business. For example, while the GAO report tries to show that its methodology included small businesses by reporting contacts with SBA, the U.S. Chamber of Commerce, and several other small business trade organizations, and by using SBA's ProNet database, the report does not provide any insight as to the information gleaned from these groups. Moreover, it would appear from the report that GAO did not involve the Small Business Committees of the U.S. House of Representatives and the U.S. Senate. Beyond these shortcomings, the report does an inadequate analysis of the data it collected. For example, it interviewed more than 70 lawyers who tried the cases cited in the report and more than half were in favor of keeping the bid protest jurisdiction in the district courts.

Greater Use of Arbitration to Resolve Contract Disputes

FASA encouraged the greater use of arbitration to resolve contract disputes. While this has the potential to be less expensive than a court filing and provides an easier way for the small business owner to resolve a contract dispute, arbitration is not a totally fail-safe process for small business. There are several areas of concern. For example, is the arbitration decision binding on the agency? What rights are waived by the small business owner in the name of cost savings? Is the small business owner truly empowered in the selection of an arbitrator and the location for the arbitration? From the vantage point of the student of small business entrepreneurship, the greatest unanswered question is what will become of the future of a body of legal proceedings that provides future small business owners with no benchmarks on contract law. Arbitration decisions are not required to be recorded as district court decisions or other federal court decisions; thus, while individual small businesses may benefit from the decision of an arbitrator, the broader small business community cannot benefit from the private attorney general action. In short, arbitration does not provide a basis for 'legal precedence' to be maintained. In the name of acquisition reform and reinventing government, small businesses have been deprived of yet another process to level the playing field.

ACQUISITION WORK FORCE

The Reinventing Government initiatives of the Clinton administration resulted in the selective reduction of the federal work force. According to an article by Paul Light (2003), “the federal work force fell almost 1.5 million between 1990 and 1999.” In a report by GAO, GAO-01-119, *Trends in Federal Procurement in the 1990s*, “the acquisition work force was reduced from 165,739 in fiscal year 1990 to 128,649 in fiscal year 1998, or approximately 22 percent.” According to agency officials, contracting officials have sought ways to streamline procurement practices within the applicable statutes and regulations partly as a result of these work force reductions. This includes the use of previously authorized contracting vehicles such as blanket purchase agreements, indefinite-delivery, indefinite-quantity contracts, and GSA federal supply schedule contracts. The GAO report goes on to state that the “decline was driven almost entirely by a reduction of...civilian jobs from Defense, Energy, and the National Aeronautics and Space Administration.” Under pressure to do more with less, it is conceivable that achieving small business goals became less focused during the acquisition reform of the 1990s. If goal measurement is a benchmark for the well-being of the small business community, then the attainment of the 23 percent small business contract goal established in 1997 by Public Law 105-135 would indicate that small businesses, until fiscal year 2003, were in need of resuscitation. Fiscal Year 2003 was the first year federal agencies achieved the 23 percent goal for small business direct contract awards.¹⁰

A QUICK REVIEW

The decade of the 1990s should be recorded by historians as one in which the landscape for small businesses in the federal marketplace was redesigned by the passage of FASA, FARA and other legislative initiatives. Reinventing Government was hailed as an historic revolution in public policy making. Much has been made of the procurement reforms that retooled the big machine of government reinvention. What is extremely interesting is that the reinventing of government excluded certain necessary components of the acquisition system, such as large defense systems and mandatory buys.

What is even more interesting is that the top 100 large companies doing business with the federal government changed very little because

of reform. Notwithstanding the hue and cry from some in the business community for regulatory and statutory relief and the battle cry for the federal government to become more commercial in how it acquires goods and services, the top 100 large businesses seem to have been able to survive as strong as or stronger than before reform. Ironically, in 1998, according to a *Washington Post* editorial, representatives from the White House and the Department of Defense met with some of these top 100 companies and informed them that they would lose their seat of power and wealth if they did not start reforming their business practices.

No such meeting was held with small business owners. At the expense of small businesses, bundling and other tactics to enlarge contracts became the order of the day. The reforms of the 1990s did drastically change the way in which small businesses performed work for the federal government. As has been pointed out, these changes, whether intended or not, did have negative impacts on the small business community. Thus, one must ask whether reform was really a wolf in sheep's clothing.

The decade of the 1980s witnessed Congress taking bold steps with legislation like the Equal Access to Justice Act, the Small Business Innovation Development Act, the Prompt Payment Act, and the minority business set-aside in the Surface Transportation Act. However, the decade of the 1990s saw the diminution of small businesses' ability to seek certificates of competency from SBA, greater use of a process called contract bundling that benefited large businesses, less reliance on the court system to resolve conflicts, and more dependency on the use of arbitration panels. In addition, the creation of supposedly innovative contracting tools for large businesses, like 'other transactions' that are beyond the jurisdiction of the Federal Acquisition Regulations but consume large volumes of contract dollars, further eroded the small business position. As divisive as these acquisition reforms have been, there has also been an overarching belief that rules and regulations could be 'interpreted and bent,' as long as the actions were not explicitly prohibited. This became the drumbeat of the 1990s.

THE ROAD AHEAD

The answer to this question is clear. President Bush set forth a far-reaching small business agenda in 2002. This agenda called for a leveling of the playing field for small businesses. As outlined above, the playing

field is not just a numbers game of whether the 23-percent annual small business procurement goal can be sustained by federal agencies. This is certainly a worthy goal. But this goal should also include maintaining a viable and strong small business sector. How is this goal achieved?

First, the new acquisition work force must be trained and re-trained on the latest acquisition tools. According to David Drabkin (2001), Deputy Associate Administrator, General Services Administration, the new work force “faces a variety of challenges in acquiring the goods, services, construction and research their government customers need to perform their mission.” Whether through performance-based contracting, cost-sharing contracts, or best-value contracting, the new acquisition work force must incorporate small business utilization in their management mosaic.

Second, some of the acquisition reforms of the 1990s are now suffering from the age-old problem of human intervention. DOD and GSA have recently embarked upon a campaign to make sure that task orders issued under multi-award contracts are within the scope of the contract. If this is implemented with vigor, it will be a big element in helping level the federal procurement playing field for small businesses.

Third, in the current acquisition environment, contracts are still becoming larger and longer in duration. As an example, GSA is proposing a new telecommunications multiple-award contract to Alliant that may last as long as 10 years, which GSA says could equal approximately \$125 billion. If properly structured, the RFP should accommodate several small businesses as prime contractors. However, the larger participation by small businesses will come at the subcontracting level. GSA must resolve to stay firm and require that each successful large prime contractor implement a serious subcontracting plan. In fact, the time has come for federal subcontracting policies and programs to receive all the full rights and privileges of other federal laws, regulations and policies. To date, how many prime contractors have been prosecuted by the Justice Department for violating Public Law 95-507, section 8(d)? How many prime contractors have been assessed liquidated penalties for violating their subcontracting plans? How many large prime contractors have been given poor past performance ratings for failure to pay small subcontractors in a timely manner? The answer is very few, if any. The time has come for large prime contractors to be held fully accountable for the manner in which they comply with the

federal government's subcontracting laws. If the subcontracting opportunities for small businesses are to be meaningful, small businesses and the agencies must be given the full range of tools to demand full compliance from large prime contractors.

Fourth, it is not enough to say that the playing field must be level for small businesses. Since 1990, small businesses have undergone a tremendous change. Many of the basic foundations of this nation that helped to make small businesses the economic backbone of this nation are suffering from decay and neglect. For example, according to a 2001 study done at the request of the Committee on Ways and Means of the U.S. House of Representatives, entitled *Tools, Dies, and Industrial Molds: Competitive Conditions in the United States and Selected Foreign Markets*, the U.S. tool and die industry has about 7,000 firms, with more than 9 percent employing fewer than 50 persons, and is primarily a small business industry. Adverse conditions in recent years have resulted in the exit of many firms, at least 200 in the 1997-2000 period. As Congresswoman Marcy Kaptur noted in the *Congressional Record* for the FY 2003 DOD appropriations bill, the problem continues to be:

... many of America's small businesses that offer...capability to our defense infrastructure are closing their doors.... The National Tooling and Machining Association has stated that over 400 companies have closed since January of [2002]. We often find that prime contractors are subcontracting with foreign firms rather than American businesses. If we do not take steps immediately, our country will lose the capability to produce the parts that are needed to protect our country.

We must find ways to reinvigorate and fortify our small business manufacturing sector. One way to do this is to create a government-sponsored entity geared to this nation's industrial defense base. Congress in the early 1980s created the successful Small Business Innovation Research program. These initiatives, coupled with a clear federal mandate to develop long-term sustaining small business enterprises, should be a central objective of any administration.

Fifth, the time has come for SBA and the federal government to reevaluate the definition of a small business. SBA recently attempted to change some of the size standards for determining which companies are small,¹¹ but this process did not go far enough. If small businesses are the

economic backbone of this nation, then it is time we begin to structure programs for this invaluable segment of our economic system. For example, the SBA has the authority to determine which businesses are small and thus eligible for certain types of federal assistance. SBA in its regulations defines a small business as one that is not dominant in its industry, but the shortcoming is in the failure to define this in economic terms. Clearly, if SBA and other experts can agree on a format for determining dominance in the field, then size standards can be developed that are more realistic to the industry. Only after this is done will we be able to create a small business program that encourages small businesses to graduate and not hover around the edges of staying small. Many are fearful of graduating because they become too large for the small business programs, while remaining too small to compete with the giants in their industry. This was not the intent of the 1953 Small Business Act, and is not the intent of President Bush's 2002 small business agenda.

CONCLUSION

Small businesses in the federal marketplace are at a crossroads. If 60 to 80 percent of all new net jobs are created by small businesses and if small businesses produce 13 to 14 times more patents per employee than large companies, then it is time to redirect our national policies to reflect the vital importance of this segment of the business community.

Efforts by federal acquisition reformers have produced results, some of them positive, for small business owners. Yet it is clear that more needs to be done. The five recommendations made in this paper, if adopted, should alter the landscape for small firms. In so doing, they should also continue to strengthen the U.S. economy by creating opportunities for new businesses to enter the federal marketplace.

NOTES

1. The views expressed in this article are those of the authors and do not necessarily reflect the views of the Office of Advocacy, the SBA, or the U.S. Government.
2. The Office of Advocacy contracts with Eagle Eye Publishers to prepare tabulations from the Federal Procurement Data Center, on which the figures reported here are based. In FY 2003, small firms won \$65.5 billion in direct contracts. Subcontracting figures for FY

2003 are currently not available, but in FY 2002, small firms received \$34.3 billion in subcontracting awards.

3. The Office of Advocacy receives annual tabulations from the U.S. Census Bureau's Statistics of U.S. Business (SUSB) division. The most recent static data are from 2001. For more information, see http://www.sba.gov/advo/stats/us_tot.pdf.
4. This finding is based on SUSB dynamic tabulations. The most recent data are for March 2000 to March 2001, when small firms with fewer than 500 employees created all of the net new jobs. However, that could be a function of the business cycle. The 1990-1991 economic downturn produced a similar finding. In the file, http://www.sba.gov/advo/stats/dyn_b_d8901.pdf, one can see that the net new jobs figure for small businesses has hovered between 60 and 80 percent for most years.
5. The Office of Advocacy partially funded a conference at Case Western Reserve University in April 2004 on this topic. The papers from this conference will be published by Edward Elgar Publishing in a forthcoming book (2005) entitled, *Government-University Partnerships to Enhance Economic Development Through Entrepreneurship*.
6. A U.S. General Accounting Office study from January 2001 summarizes each of these legislative reforms and their impact on small businesses. See General Accounting Office (2001).
7. The U.S. Small Business Administration's Office of Government Contracting excludes certain categories of contract awards because it is believed that small firms do not have a reasonable opportunity to compete for them. As a result, the SBA goaling figures presented here are different than the figures published elsewhere in this paper from Eagle Eye Publishers. The Office of Advocacy, through the tabulations of Eagle Eye, does not exclude any contracts from their analysis.
8. Refer to the Federal Procurement Data System for past data. Another source would be previous editions of *The State of Small Business: A Report of the President*, which were prepared by the Office of Advocacy and available on its website <http://www.sba.gov/advo/stats>. Advocacy's current equivalent report

is *The Small Business Economy*, available for the years 2001, 2002-2003, and, in late September 2004.

9. A recent study by the Office of Advocacy, though, suggests that more contracting to veterans and service-disabled veterans might be taking place. Errors in the coding of such contracts and/or omissions in reporting on the part of such businesses themselves are to blame. With the additional veteran-owned and service-disabled veteran-owned contractors, the figures increase to 1.7 percent of all federal prime contracts in FY 2002 and 1.6 percent in FY 2001. For more information, see Eagle Eye Publishers (2004).
10. The SBA Office of Government Contracting reports for 1998 and 1999 showed agencies exceeding the 23 percent goal, but calculations for these years included subcontract dollars awarded by the Department of Energy, which have subsequently been disallowed in the prime contract share calculation.
11. SBA's proposed to modify its size standard regulations were published in 69 Fed. Reg. 13130, March 19, 2004. For more information, refer to: <http://www.sba.gov/size/restructurePR.pdf>. The Office of Advocacy commented on the proposed rule on June 29, 2004. This letter can be found at: http://www.sba.gov/advo/laws/comments/sba04_0629.pdf. The proposed rule was withdrawn on July 1, 2004.

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