



Office of Inspector General

Report of Audit

EPA'S 8(A) CONTRACTING PROGRAM

Report No. E1BMF3-05-0018-4100452

July 22, 1994

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Office of Small and Disadvantaged
Business Utilization

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 22, 1994

OFFICE OF
THE INSPECTOR GENERAL

MEMORANDUM

SUBJECT: Audit Report Number E1BMF3-05-0018-4100452
EPA's 8(a) Contracting Program.

FROM: Elissa R. Karpf *Elissa R. Karpf*
Associate Assistant Inspector General
for Acquisition and Assistance Audits

TO: Jonathan Z. Cannon
Assistant Administrator for Administration
and Resources Management

Leon H. Hampton, Director
Office of Small and Disadvantaged
Business Utilization

Attached is the final audit report titled EPA's 8(a) Contracting Program. Our objectives were to determine if EPA: (1) complied with the applicable laws, regulations, and directives in awarding and amending 8(a) contracts; (2) ensured that initial contract estimates fairly represented the expected maximum value of the contract; and (3) adequately directed efforts to meet the Agency's 8(a) contracting goals.

This report contains findings that describe the results of our audit of EPA's 8(a) Contract Program. This report represents the opinion of the Office of the Inspector General (OIG). Final determinations on matters in the report will be made by EPA managers in accordance with established EPA audit resolution procedures. Accordingly, the findings described in this report do not necessarily represent the final EPA position.

The issues in this report regarding 8(a) contracts awarded to firms just prior to their graduation from the 8(a) program (See Chapter 3) are not matters of statutory or regulatory compliance. EPA's current practice is within the existing legal parameters. Our concerns are based on interpretation of Congressional intent, appearances of favoritism, and differing views of organizational responsibilities. None of these provide



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a firm foundation for resolving the differences of opinion between the Agency and the OIG. As a result, we believe Congress should consider (1) the appropriateness of awarding sole source contracts to 8(a) firms immediately prior to expiration of program eligibility and (2) the role awarding agencies have in monitoring development of 8(a) firms with whom they do business. To encourage attention to these issues, we will distribute this audit report to Congressional members and committees responsible for overseeing and directing the Government's small and minority business legislation.

Your responses to our draft report are included as Appendices I and II. Based on those responses and discussions at the exit conference, we made appropriate changes to this final report, including deleting and revising text and recommendations made in the draft report.

Action Required

In accordance with EPA Order 2750, we have designated the Assistant Administrator for Administration and Resources Management as the Action Official for this report. The Action Official is required to provide this office with a written response to the audit report within 90 days of the final audit report date. For corrective actions planned, reference to specific milestones dates will assist this office in deciding whether to close this report. In addition please track all action plans and milestone dates in the Management Audit Tracking System.

We have no objections to further release of this report to the public. Should you or your staff have any questions regarding this report, please contact Charles Allberry, Audit Manager, Northern Audit Division at (312) 353-4222.

Attachment

EXECUTIVE SUMMARYPURPOSE

The Environmental Protection Agency's (EPA) Office of Inspector General (OIG) has issued audit reports during the past two years which examined specific Agency procurement practices. These reports questioned the appropriateness of several awards made to small and disadvantaged firms within the 8(a) program. As a result, we conducted an audit focused on EPA's 8(a) contracting activities. The objectives of our audit were to determine if EPA: (1) complied with the applicable laws, regulations, and directives in awarding and amending 8(a) contracts; (2) ensured that initial contract estimates fairly represented the expected maximum value of the contract; and (3) adequately directed efforts to meet the Agency's 8(a) contracting goals.

BACKGROUND

The Federal Government's commitment to improving the opportunities of small and disadvantaged businesses has evolved through several individual pieces of legislation.

- [1958] Public Law 85-536 (Small Business Act) - established statutory mandates for Federal assistance to small businesses.
- [1978] Public Law 95-507 - required portions of Federal procurements to be set-aside for small businesses; established the Minority Capital Ownership Program (commonly referred to as the 8(a) business development program); and required each Federal agency to establish an Office of Small and Disadvantaged Business Utilization (OSDBU).
- [1988] Public Law 100-656 (Business Opportunity Development Reform Act of 1988) - redefined period of 8(a) program participation to nine years; divided participation period into a developmental stage (4 years) and a transitional stage (5 years); and required competition for contracts above certain dollar limits.

The 8(a) program, as a subset of the Government's small business strategy, is designed to assist small, disadvantaged

businesses in becoming financially competitive through increased access to Government contracts. In general, contracts awarded under the 8(a) program are exempt from the requirements for full and open competition. Therefore, within the 8(a) program, EPA can award sole source contracts to eligible firms.

The Small Business Administration (SBA) is responsible for determining the eligibility of firms to participate in the 8(a) program. In 8(a) contracts, SBA serves as the prime contractor to EPA and, in turn, subcontracts the work to firms in the program. For non-competitive contracts, SBA usually delegates the responsibility for negotiating with the 8(a) firm directly to EPA.

In 1979, EPA established its OSDBU under the Office of the Administrator. OSDBU is responsible for: (1) establishing small business program priorities, (2) setting and monitoring EPA goals for preferential programs, and (3) analyzing the extent of small and disadvantaged business participation in EPA acquisition activities.

Each Federal agency has an annual goal to provide a specific percentage of its contract dollars to 8(a) firms. In fiscal 1992 and 1993, EPA's goal was 8 percent. During each of these fiscal years, EPA awarded about 5 percent of its total contract dollars to 8(a) firms.

RESULTS-IN-BRIEF

EPA complied with applicable laws and regulations in awarding and amending 8(a) contracts during fiscal 1993. The Agency's 8(a) contract awards during fiscal 1993 showed an increased emphasis on detecting and correcting contracting problems reported in past OIG audits, including developing appropriate contract estimates. These improvements helped EPA's 8(a) program assist small disadvantaged businesses in a more equitable manner. However, the practice of awarding contracts to 8(a) firms just days before the firms' program eligibility expired was not consistent with the program's legislative intent and did not serve the overall objectives of the 8(a) program.

EPA did not meet its fiscal 1992 or 1993 goals for levels of 8(a) contracting. OSDBU, the Agency's advocate for 8(a) contractors, was hindered in its efforts to meet these annual goals by (1) insufficient and untimely contract information, (2) a lack of Agency-wide accountability for meeting 8(a)

contracting goals, and (3) an inefficient organizational structure.

PRINCIPAL FINDINGS

Increased Attention To Contracting Procedures Improves Recent 8(a) Awards

EPA's 8(a) contract awards during fiscal 1993 showed (1) a broader distribution of 8(a) contract awards among eligible contractors and (2) an increased emphasis on detecting and correcting contracting problems reported in past OIG audits. These improvements helped EPA's 8(a) program assist small disadvantaged businesses in an equitable manner.

The General Accounting Office has consistently reported on the problem of Federal agencies awarding a large portion of their 8(a) contract dollars to a relatively small number of firms. Although contract data showed that EPA's 8(a) awards had followed this pattern in the past, fiscal 1992 and 1993 awards evidenced a significantly improved distribution of awards.

In addition, several 8(a) contracts awarded during fiscal 1991 and 1992 contained examples of contract splitting, under-valuation, or conflicts of interest. Each of these problem areas was addressed in past OIG reports. In reviewing fiscal 1993 8(a) awards, we found examples in which contracting officials identified potential problems in these areas and took steps to correct them prior to finalizing the procurements.

Awards Made In Anticipation Of A Firm's 8(a) Graduation Hinder Program Goals

EPA and other Federal agencies have often awarded contracts to 8(a) firms just days before expiration of the firms' program eligibility. SBA has encouraged this practice. Although such awards meet the legal requirements of the 8(a) program, the practice: (1) permits firms to benefit from sole-source awards for several years after the conclusion of their statutory 8(a) program eligibility, (2) does not encourage 8(a) firms to compete in the open marketplace, and (3) creates a perception that EPA favors selected contractors. Thus, while legal, awarding sole source contracts to 8(a) firms near the completion of their program

eligibility does not serve the overall objectives of the 8(a) program.

EPA Must Strengthen OSDBU's Advocacy Role If The Agency Is To Achieve Its 8(a) Contracting Goal

OSDBU has battled several obstacles in its role as the Agency's advocate for 8(a) contractors. These include: (1) insufficient and untimely contract information, (2) a lack of Agency-wide accountability for meeting 8(a) contracting goals, and (3) an inefficient organizational structure. As a result, EPA did not meet its goal for 8(a) contracting in either fiscal 1992 or 1993. If EPA is to meet its established goals in future fiscal years, it needs to: (1) gather more timely and comprehensive information on current and future 8(a) contracting opportunities, (2) increase management accountability for 8(a) goals at all levels, and (3) improve coordination between OSDBU and the Office of Administration and Resources Management (OARM) in directing and supervising the Small and Disadvantaged Business Specialists (SDBSs).

RECOMMENDATIONS

We recommend that:

1. The Assistant Administrator, OARM, and the Director, OSDBU, establish a policy requiring their offices to concur and provide a written justification for awarding 8(a) contracts whose base or option periods extend beyond the established Program Term of the recipient 8(a) firm.
2. OSDBU review the mix of 8(a) and non-8(a) revenues of transitional firms while evaluating potential contractors or remove this standard from its existing guidance.
3. OSDBU develop a multi-year plan which identifies current 8(a) contract levels and presents a strategy for obtaining sufficient future contracts to meet the Agency's projected goals.
4. The Assistant Administrator, OARM, and the Director, OSDBU, develop a method of setting 8(a) program goals for Assistant Administrators, Regional Administrators, and Office and Division Directors, as appropriate.

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Also, a mechanism for timely tracking of actual achievements needs to be developed and implemented.

5. The Assistant Administrator, OARM, and the Director, OSDBU, implement procedures that improve the coordination between OSDBU and OAM in directing and supervising the SDBSs. This should, at a minimum, include input from the OSDBU Director to the SDBSs annual performance standards and evaluation.

AGENCY COMMENTS

The Agency generally agreed with the findings and recommendations related to (1) improved planning and information gathering within OSDBU, (2) increased accountability within program offices, and (3) improved coordination in directing and supervising SDBSs. The Agency did not agree with our finding or recommendations concerning sole source contracts awarded to 8(a) firms near the completion of their program eligibility.

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CHAPTER 1

INTRODUCTION

PURPOSE

The Environmental Protection Agency's (EPA) Office of Inspector General (OIG) has issued audit reports during the past two years which examined specific Agency procurement practices.¹ These reports questioned the appropriateness of several awards made to small and disadvantaged firms within the 8(a) program. As a result, we conducted an audit focused on EPA's 8(a) contracting activities. The objectives of our audit were to determine if EPA: (1) complied with the applicable laws, regulations, and directives in awarding and amending 8(a) contracts; (2) ensured that initial contract estimates fairly represented the expected maximum value of the contract; and (3) adequately directed efforts to meet the Agency's 8(a) contracting goals.

BACKGROUND

The Federal Government has been committed to improving the opportunities of small and disadvantaged businesses for many years. The methods of meeting this objective have evolved through several individual pieces of legislation.

- [1958] Public Law 85-536 (Small Business Act) - established statutory mandates for Federal assistance to small businesses.
- [1978] Public Law 95-507 - required portions of Federal procurements to be set-aside for small businesses; established the Minority Capital Ownership Program (commonly referred to as the 8(a) business development program); and required each Federal agency to establish an Office of Small and Disadvantaged Business Utilization (OSDBU).
- [1980] Public Law 96-481 - required the establishment of program completion dates for all 8(a) firms

¹ Contracting Activities at Environmental Research Laboratory - Duluth, MN Report No. 2100443 (July 7, 1992)

Contracting Activities at Environmental Research Laboratory - Athens, GA Report No. 3100156 (March 31, 1993, revised)

(implementing regulations limited a firm's participation to a maximum of seven years).

- [1988] Public Law 100-656 (Business Opportunity Development Reform Act of 1988) - redefined period of 8(a) program participation to nine years; divided participation period into a developmental stage (4 years) and a transitional stage (5 years); and required competition for contracts above certain dollar limits.

The 8(a) program is a subset of the Government's small business strategy. The 8(a) program is designed to assist small, disadvantaged businesses in becoming financially competitive in the open market. This assistance is provided through increased access to Government contracts. In general, contracts awarded under the 8(a) program are exempt from the full and open competition requirement of the Competition in Contracting Act (Public Law 98-369, July 18, 1984).² Therefore, within the 8(a) program, EPA can award sole source contracts to eligible firms.

The Small Business Administration (SBA) is responsible for determining the eligibility of firms to participate in the 8(a) program. When EPA awards an 8(a) contract, SBA acts as the prime contractor and enters into a contract with EPA. SBA, in turn, subcontracts the work to firms in the program. If the proposed contract is below the threshold for competition, SBA can, and usually does, delegate the responsibility for negotiating with the 8(a) firm directly to EPA.

In 1979, EPA established its OSDBU under the Office of the Administrator. OSDBU is responsible for: (1) establishing small business program priorities, (2) setting and monitoring EPA goals for preferential programs, and (3) analyzing the extent of small and disadvantaged business participation in EPA acquisition activities.

Each Federal agency has an annual goal to provide a specific percentage of its contract dollars to 8(a) firms. In fiscal 1992 and 1993, EPA's goal was 8 percent. During each of these fiscal years, EPA awarded about 5 percent of its total contract dollars to 8(a) firms.

² 8(a) contracts for manufacturing services valued at more than \$5 million and other services valued at more than \$3 million must be competed among eligible 8(a) firms.

In 1992 the OIG issued a report (Report No. 2100443) critical of EPA's contracting practices related to awards made to an 8(a) contractor at an Office of Research and Development laboratory. In response to this audit report, EPA's Office of Acquisition Management (OAM)³ conducted a review of EPA's 8(a) contracts. The resulting report explored three areas of concern: (1) awards to former EPA employees during fiscal 1988 to 1992, (2) sole source contracts which were underestimated or split to avoid competition, and (3) the appropriateness of all contracts awarded to the 8(a) firm cited in the OIG audit report. OAM's report concluded that other than the contracts awarded to one firm, EPA did not appear to be vulnerable in the selection and award of its 8(a) contracts.

SCOPE AND METHODOLOGY

Our audit focused on EPA's 8(a) contracting activities between October 1, 1990, and September 30, 1993. We were specifically interested in whether contracting problems which had been reported in previous OIG audits were common and continuing within the 8(a) program. To test EPA's compliance with applicable 8(a) laws and regulations, we obtained, reviewed, and analyzed data on current and past 8(a) contract awards from EPA's Contract Information System (CIS). We also reviewed contract files for a judgmental sample of 8(a) contract awards made by OAM during our audit period. We examined procurement requests, contractor proposals, award documents, and related correspondence.

To ensure that initial contract estimates fairly represented the expected maximum value of the contract, we calculated the maximum potential contract value and compared it to the initial Government estimate.

To determine whether EPA adequately directed efforts to meet 8(a) contracting goals, we reviewed the process for awarding 8(a) contracts, including OSDBU's procedures to monitor and attain the Agency's 8(a) program goal. We interviewed EPA employees involved in the development of specific procurement requests and the subsequent procurement actions, OSDBU staff, and small business specialists in the contracting offices. We also reviewed SBA reports regarding OSDBU's monitoring of the small business program.

³ Formerly the Procurement and Contracts Management Division

We reviewed OSDBU and OAM Annual Reports on Management Controls. OSDBU's report did not identify any material weaknesses in the 8(a) program. In 1992, OAM reported that procurement and contract management was a material weakness. OAM also reported that during fiscal 1992 its personnel had spent many hours supporting the efforts of the Standing Committee on Contracts Management in analyzing contract management shortcomings.

We performed our audit in accordance with the Government Auditing Standards issued by the Comptroller General (1988 Revision). We obtained our statistical data from EPA's CIS, but the data were not an integral part of this audit and its reliability was not crucial to accomplishing the objectives of the audit. Accordingly, we did not test or evaluate the adequacy of manual or automated controls for CIS or the validity of the data maintained in the system. Therefore, we cannot and do not attest to the accuracy or integrity of CIS data used in this report.

We conducted our audit between July 1, 1993, and April 18, 1994. We discussed our position papers with OSDBU and OAM officials in Washington on April 6, 1994, and April 7, 1994, respectively. On May 12, 1994, we issued our draft report to the Assistant Administrator, Office of Acquisition and Resources Management (OARM), and the Director, OSDBU. OSDBU responded on May 31, 1994, and OARM on June 23, 1994, (see Appendices I and II). We held an exit conference with OSDBU and OAM officials on July 6, 1994. Based on their responses and discussions at the exit conference, we made appropriate changes for this final report, including deleting and revising text and recommendations made in the draft report (see Appendix III).

PRIOR AUDIT REPORTS

Over the past three years, the OIG has issued reports regarding EPA's contract procurement practices related to various Office of Research and Development laboratories. Several of the reports identified similar problems in awarding and managing 8(a) contracts. For example, in 1992 the OIG reported (Report No. 2100143) that an 8(a) contract was inappropriately split to avoid the competitive requirements of the Business Opportunity Development Reform Act of 1988. In 1993, the OIG reported (Report Nos. 31000156 and 3100236) similar problems at other EPA facilities.

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In 1992, the General Accounting Office (GAO) issued a report to SBA addressing problems in restructuring the Minority Business Development Program, including the 8(a) program. The report showed that distribution of 8(a) contract awards has been a long-standing problem in the program. GAO reported that 2 percent of the firms in the program received 40 percent of the contracts awarded in fiscal 1990.

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CHAPTER 2

INCREASED ATTENTION TO CONTRACTING PROCEDURES
IMPROVES RECENT 8(A) AWARDS

EPA's 8(a) contract awards during fiscal 1993 showed (1) a broader distribution of 8(a) contract awards among eligible contractors and (2) an increased emphasis on detecting and correcting contracting problems reported in past OIG audits. These improvements helped EPA's 8(a) program assist small disadvantaged businesses in an equitable manner.

GAO has consistently reported on the problem of Federal agencies awarding a large portion of their 8(a) contract dollars to a relatively small number of firms. Although contract data showed that EPA's 8(a) awards had followed this pattern in the past, fiscal 1992 and 1993 awards evidenced a significantly improved distribution of awards.

In addition, several 8(a) contracts awarded during fiscal 1991 and 1992 contained examples of contract splitting, under-valuation, or conflicts of interest. Each of these problem areas was addressed in past OIG reports. In reviewing fiscal 1993 8(a) awards, we found examples in which contracting officials identified potential problems in these areas and took steps to correct them prior to finalizing the procurements.

IMPROVED DISTRIBUTION OF 8(A) CONTRACT AWARDS

In fiscal 1992 and 1993, EPA showed a significant improvement in distributing its 8(a) awards to a large number of eligible contractors. This trend furthered the 8(a) program goal of providing the maximum number of eligible contractors with access to Agency contracts.

One of the primary goals of the 8(a) program is to develop a large number of small disadvantaged businesses. Historically, however, the Federal Government has focused its 8(a) contract awards in a small group of firms. GAO has described this practice as "a long standing phenomenon." According to a 1981 GAO report, on average, the top 50 8(a) firms annually received about 31 percent of all contract awards over a previous 12-year period. In 1987, the top 50 firms received about \$1.1 billion, or about 35 percent of the 8(a) contract awards. In 1990, the top 50 firms received

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\$1.5 billion, or about 40 percent of the total 8(a) contracts awarded.

EPA's 8(a) program showed the same historical pattern as other Federal agencies. From fiscal 1986 through 1990, EPA awarded 267 8(a) contracts to a total of 138 contractors. However, 109 of these awards, or almost 41 percent, were awarded to only 12 contractors. These 12 contractors received \$333,193,878, or 45 percent, of the total contract value awarded during this 5-year period. Each of these contractors received from 5 to 19 separate 8(a) contracts during this five year period.

Over each of the last three fiscal years, EPA has steadily increased the portion of its 8(a) contract dollars awarded to first time recipients and reduced the percentage of contract dollars awarded to companies with prior 8(a) awards.

Analysis of Sole Source 8(a) Contract Recipients Grouped by # of Prior EPA 8(a) Contracts Received Within Fiscal Year

Contracts Received by Recipient in Prior FYs	FY 91			FY 92			FY 93		
	# of Contractors	Total Value of Contracts	% of Total Value	# of Contractors	Total Value of Contracts	% of Total Value	# of Contractors	Total Value of Contracts	% of Total Value
0	19	\$15,984,019	32%	9	\$14,684,203	54%	21	\$28,571,813	63%
1	8	16,006,820	32%	7	5,546,836	20%	4	7,820,866	17%
2	0	0	0%	1	2,097,268	8%	1	143,856	0%
3	0	0	0%	0	0	0%	2	3,702,347	8%
4 or more	4	18,261,344	36%	3	4,917,365	18%	2	5,041,882	11%
	31	\$50,252,183	100%	20	\$27,245,672	100%	30	\$45,280,764	99%

Note: Competitive 8(a) awards were excluded from this analysis since EPA does not exert direct influence over the selection of an award recipient.

In fiscal 1991, EPA awarded 36 percent of its 8(a) contract dollars to contractors who already had received four or more 8(a) awards from EPA. This figure improved to 18 percent in fiscal 1992 and to 11 percent in fiscal 1993. At the same time, EPA has increased the value of 8(a) awards it has made to contractors with no prior EPA 8(a) contracts from 32 percent in fiscal 1991 to 54 percent in fiscal 1992 and to 61 percent in fiscal 1993.

OSDBU recently stressed the importance of continuing this improvement. The OSDBU Director wrote, in a memorandum to

the Director of the Contract Management Division (CMD) at Research Triangle Park (RTP),

...we must accelerate our efforts to ensure that the maximum number of prospective small disadvantaged firms...have equal access to business opportunities in the Agency...the Agency is fully committed to expanding the number of 8(a) firms to receive contract work from the Agency.

This broader distribution of 8(a) contractor dollars was in line with the program's objective of assisting the maximum number of eligible firms. In addition, it reduced the possibility that EPA would be perceived as favoring selected contractors.

POTENTIAL CONTRACT UNDERESTIMATION
DETECTED AND CORRECTED

In fiscal 1993, EPA contracting officials examined and, when appropriate, challenged the program office's contract valuation. This ensured that the competitive requirements of the 8(a) program were not improperly avoided.

Public Law 100-656, The Business Opportunity Development Reform Act of 1988, established a dollar threshold for competition within 8(a) procurements. When the estimated value for service contracts exceeds \$3 million, the procurement must be competed among qualified 8(a) firms. Contracts valued at less than the statutory threshold can be awarded on a sole source basis to 8(a) program participants.

In the past, EPA had side-stepped the competitive provisions of the 8(a) program by inappropriately valuing procurements below the \$3 million competitive limit. Recent OIG audits of EPA laboratory facilities reported this problem on contracts awarded for the Office of Research and Development.⁴ Our review of a sample of 8(a) awards during fiscal 1991 and 1992

⁴ Contracting Activities at Environmental Research
Laboratory - Duluth, MN, Report No. 2100443 (July 7, 1992)

Management of Extramural Resources at the Environmental Research
Laboratory - Athens, GA, Report No. 3100156 (March 31, 1993)

Management of Extramural Resources at the Environmental Research
Laboratory - Narragansett, RI, Report No. 3100236 (June 16, 1993)

found examples of this practice across other EPA program offices as well. For example, in 1991 EPA asked an 8(a) company to submit a proposal for services required by the Office of Pesticide Programs (RFP No. D100392L1). The resulting cost proposal totalled \$3,151,458, thus exceeding the competitive limit. According to EPA's pre-negotiation plan,

The total amount proposed...is greater than the amount which requires that an 8(a) action be competed...In order to reduce the amount of the contract below the \$3,000,000 limit, the prenegotiation position is to reduce the total level of effort by 1,000 hours each year...

Our review of several fiscal 1993 8(a) awards showed that contracting officials were more vigilant in reviewing and questioning the contract valuations provided by program offices. For example, in one case at EPA's CMD at RTP, a contracting official questioned a program office's initial Government estimate because it was "exactly" \$3 million. The contracting official questioned the labor rates used by the program office in computing the estimate as being unreasonably low. The official also observed that the "odd number of hours" projected for this level of effort contract appeared to be computed by dividing the labor rate into the competitive ceiling of \$3 million rather than being based on an analysis of actual need. Using a more appropriate cost factor for labor and the program office's projected hours, the contracting officer concluded that the procurement should be valued between \$3.5 million and \$3.8 million. Program officials were instructed to revise or justify the labor rate used and the number of hours required.

Program officials concurred with the contracting office's assessment. As a result, program officials adjusted the hourly rate and re-estimated the requirements based on the statement of work. The revised procurement request was valued at \$2.75 million. The contracting office accepted this estimate. In September 1993, EPA negotiated and awarded a sole source contract (68-D3-0087) to an 8(a) company for \$2.6 million.

As shown in this example, the contracting office provides a critical independent control over the valuation of procurement requests. This control, in turn, helps ensure that competitive requirements of the 8(a) program are not inappropriately avoided.

TIMELY IDENTIFICATION AND RESOLUTION
OF POTENTIAL CONFLICTS OF INTEREST

In an 8(a) contract awarded during fiscal 1993, EPA timely investigated and resolved a reported conflict of interest between the proposed contractor and an EPA employee. In a prior OIG audit⁵, we reported that contracting officials did not resolve potential conflict of interest issues raised prior to awarding a sole-source contract to an 8(a) firm. In response to the audit, EPA provided additional training to contract staff emphasizing conflict of interest issues.

In April 1993, an EPA Contracting Specialist at RTP received information that the project officer for a proposed 8(a) contract (68-D3-0088) had a potential conflict of interest with the selected firm. A memorandum to the file stated that the project officer had selected the 8(a) firm and would administer the resultant contract. According to the firm's Vice-President, the project officer had previously been an employee of his firm.

Contracting officials followed-up on the information regarding this potential conflict of interest. They notified the OIG and obtained information from the program office before finalizing the contract award. The subsequent investigation determined that no conflict existed, and the contract award was finalized as planned. EPA's actions to resolve this issue ensures the integrity of the contracting process.

CONCLUSION

EPA's 8(a) contract awards in fiscal 1992 and 1993 demonstrated an effort to distribute contracting opportunities to a broader spectrum of eligible firms. This reduced EPA's reliance on a small number of 8(a) contractors and contributed to the program's goal of maximizing the number of contractors receiving developmental assistance.

In addition, our review of fiscal 1993 8(a) awards demonstrated a positive change from previous contracting practices. The pattern of contracting problems which existed in 8(a) awards during fiscal 1991 and 1992 was not in

⁵ Contracting Activities at Environmental Research Laboratory - Duluth, MN, Report No. 2100443 (July 7, 1992)

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evidence in fiscal 1993 awards. EPA contracting officials were more alert in fiscal 1993 to potential problems regarding splitting contracts, underestimating the value of 8(a) contracts, and situations involving potential conflicts of interest. Contracting officials actions helped safeguard the integrity of the 8(a) selection process.

AGENCY COMMENTS

OARM expressed appreciation that our report acknowledged (1) the broader distribution of EPA's 8(a) contract awards during recent fiscal years and (2) an increased emphasis on detecting and correcting the contracting problems reported in past OIG audits.

CHAPTER 3

AWARDS MADE IN ANTICIPATION OF A FIRM'S 8(A)
GRADUATION HINDER PROGRAM GOALS

EPA and other Federal agencies have often awarded contracts to 8(a) firms just days before expiration of the firms' program eligibility. SBA has encouraged this practice. Although such awards meet the legal requirements of the 8(a) program, the practice: (1) permits firms to benefit from sole-source awards for several years after the conclusion of their statutory 8(a) program eligibility, (2) does not encourage 8(a) firms to compete in the open marketplace, and (3) creates a perception that EPA favors selected contractors. Thus, while legal, awarding sole source contracts to 8(a) firms near the completion of their program eligibility does not serve the overall objectives of the 8(a) program.

In May 1988, GAO reported⁶ that this practice

...can result in the removal of future contracts for goods and services from the 8(a) program for several years...It could also impact upon the program's capacity for meeting the developmental needs of other firms in the program...

The GAO suggested that if companies develop non-8(a) business in accordance with the program's objectives, then a policy to not award contracts with options to graduating firms is appropriate.

LEGISLATIVE HISTORY

Congress has amended the Small Business Act several times since its original enactment in 1953. The original focus of the 8(a) program was to award as many contracts as possible to eligible firms. However, SBA's data showed that between 1968 and 1978, only four percent (149 of 3,726) of participating firms had ever "graduated" into the free enterprise system to compete for non-8(a) business.

⁶ Status, Operations, and Views on the 8(a) Procurement Program (GAO/RCED-88-148BR, May 1988)

Public Law 95-507 (October 24, 1978) shifted the intent of the 8(a) program's focus from that of contract assistance to business development. Underlying this change was a premise that after a period of assistance firms would "graduate" from the program. The law did not establish a fixed period of program eligibility. However, it was expected that firms leaving the program would have developed enough independence to survive in the private marketplace.

In 1980, Public Law 96-481 required SBA to define a specific period of program participation for all 8(a) firms. SBA instituted regulations which established a Fixed Program Participation Term (Program Term). Under these regulations, each eligible firm was allowed to participate in the 8(a) program for a term of five years. SBA could grant a one time extension of two years. Thus, the maximum period of participation was seven years.

In June 1988, Congress expressed continued concerns that the 8(a) program was mainly a contracts program and not a business development vehicle. A Congressional survey showed that 8(a) firms often felt they did not have enough time in the 8(a) program. Many survey respondents also stated that they were "dropped" from the program at the conclusion of their eligibility without adequate transitional assistance to enter the competitive marketplace.

As a result, in 1988, Public Law 100-656: (1) redefined the Program Term to nine years, (2) prohibited SBA from extending the Program Term beyond the established expiration date, and (3) divided the nine year Program Term into a developmental stage (first four years) and a transitional stage (last five years). The developmental stage allows 8(a) firms to access markets and learn management skills. The transitional stage is designed to gradually reduce a firm's reliance on the 8(a) program for its revenue and survival.

In 1990, SBA established specific targets for "non-8(a) business activity" for firms in the transitional stage of their Program Term⁷. These targets require a firm to demonstrate that as it progresses through the transitional stage of the 8(a) program, an increasing percentage of its total revenues come from non-8(a) sources. Firms scheduled to graduate on or before August 15, 1992, were not subject to these specific targets. They were, however, expected to

⁷ Minority Small Business and Capital Ownership Development Program, SOP 80 05 2, pp. 196-197.

"make substantial and sustained efforts to attain the targeted dollar levels of non-8(a) revenue approved in its business plan." If a firm did not meet these target levels, it could lose sole source contract support.

EPA's guidance, Preferential Procurement Program Handbook For Project Officers, Contract Officers, and Small Business Specialists (August 1992), acknowledges that

During this [transitional stage], firms are permitted to continue to receive sole source and competitive 8(a) contract support, however, concerns must achieve certain non 8(a) business activity targets.

This same document states that the measure of success in the 8(a) program is "the number of competitive firms that exit the program without being unreasonably reliant on Section 8(a) contracts..."

AWARDS AVOIDED LEGISLATIVE INTENT AND
DID NOT ENCOURAGE OPEN MARKET COMPETITION

Awarding contracts to 8(a) firms immediately prior to the expiration of their eligible Program Term was not consistent with the program's legislative intent and did not encourage firms to compete in the open market. Instead, the practice primarily benefitted EPA by permitting selection of a specific contractor and reducing the time and effort required to award a contract.

We identified several examples in which EPA awarded large, multi-year contracts or extended existing contracts to 8(a) firms immediately prior to the expiration of the firms' Program Term. We found no evidence that EPA evaluated the non-8(a) revenues of transitional firms or obtained such an evaluation from SBA prior to awarding these contracts.

Viking Systems International

In October 1990, EPA awarded two sole source contracts to Viking Systems International (VSI) just days before the firm's graduation from the 8(a) program. The two contracts had a combined value of \$5.6 million. Each contract became effective on October 21, 1990, the same date that VSI graduated from the 8(a) program. EPA documents related to each of these contracts express the importance of making

final awards prior to VSI's scheduled graduation from the 8(a) program.

On the first contract (68-W1-0001), EPA reasoned that if it did not award a contract prior to VSI's graduation date it would "lose its ability to use Viking Systems" and "would expend additional resources in starting the procurement process over." On the second contract (68-W1-0002), an EPA project manager's memorandum stated that it was desirable to contract with VSI to "help assure continuity in the project." VSI was the contractor on a prior phase of the project. The project officer also stated in the memorandum that VSI was graduating from the 8(a) program soon and "we are most interested in completing this contract before this crucial deadline." We found no evidence that EPA evaluated VSI's mix of 8(a) and non-8(a) revenues at the time of these sole source awards. These contracts provided VSI with revenues through the 8(a) program for almost five years beyond its statutory Program Term.

Mitchell Systems

On June 8, 1992, EPA awarded a significant sole source modification to an existing 8(a) contract (68-D9-0040) with Mitchell Systems. This was six days prior to Mitchell Systems graduating from the 8(a) program. The modification increased the available labor hours in each of option periods III and IV by 9,152 hours or 59 percent (9,152/15,600).

EPA also modified contract 68-D1-0124, another Mitchell Systems contract, just two days before the firm's graduation. EPA signed the original contract in August 1991. The contract provided for a three year term that expired in September 1994. Nine months after the initial award, and immediately before Mitchell Systems' 8(a) Program Term expired, EPA extended the period of performance by two years to September 1996. Documents in the contract file cited (1) unanticipated austerity of funds and (2) a need to balance work requirements with the availability of funds as reasons for the extension.

We found no evidence that EPA considered Mitchell Systems' mix of 8(a) and non-8(a) revenues at the time of either of these modifications.

Labat-Anderson International

EPA curtailed the final year of an existing contract with Labat-Anderson International (LAI) and issued a new, long-term, sole source contract to LAI in order to retain its services beyond completion of its Program Term. LAI was the incumbent on EPA's contract (68-01-7352) for library services and records management. The dollar ceiling in this initial three year contract was exhausted several months before its scheduled expiration on September 30, 1989. To prevent a lapse in service and to retain LAI as the contractor for these services, EPA awarded LAI a 5 year, \$82 million contract in May 1989 (68-W9-0052) under provisions of the 8(a) program. LAI's 8(a) Program Term was to expire in October 1989.

The Acquisition Plan for this contract stated:

The Program Office wishes to take advantage of the 8(a) program by contracting with LAI for the maximum period allowable prior to their graduation...[the requirement] will have to be transitioned to another contractor once LAI graduates. At the end of this new contract, the EPA will no longer be able to utilize this company or their expertise for any future effort in this area.

EPA's Office of General Counsel completed a pre-award review of this procurement. The reviewing attorney questioned awarding LAI the 5 year contract just prior to the firm's exit from the 8(a) program. In review notes documented in the contract file, the attorney stated:

I am not convinced that a 5 year POP [period of performance] is needed. It seems that the reason is to keep LAI as the contractor.

The attorney also raised concerns about EPA exercising contract options after LAI had graduated from the 8(a) program. The attorney stated:

[It] seems strange to award an 8(a) contract for a total possible 5 years just 4 months before [the] firm graduates from the 8(a) program.

Despite these concerns, EPA awarded the sole source contract to LAI for a base year plus four option years.

Vigyan Inc

Since 1988, EPA has awarded Vigyan eleven sole source 8(a) contracts valued at \$17 million. In August 1993, EPA awarded two of these contracts (68-D3-0061 and 68-D3-0063) to Vigyan within days of the firm's graduation from the 8(a) program. The two contracts combined had a potential maximum value of \$2.9 million.

In March 1993, Office of Prevention, Pesticides and Toxic Substances officials interviewed five 8(a) firms, including Vigyan, about performing work for its 33/50 program (68-D3-0063). These officials determined that Vigyan would be the most effective in performing the tasks required. EPA officials were aware that Vigyan would graduate the 8(a) program near the end of August 1993. Therefore, EPA accelerated its original award date (September 30, 1993) for this contract to satisfy the SBA requirement that the contract be signed before the firm's graduation date. EPA's project officer explained that if EPA missed Vigyan's 8(a) graduation date, the program would be left without contract support. This, in turn, would adversely affect the program's ability to meet its highly visible national goals. On August 25, 1993, just 4 days before the end of the firm's 8(a) program eligibility, EPA awarded Vigyan a sole source, three year contract with a potential value of \$2.3 million.

On August 18, 1993, 11 days before Vigyan's graduation from the 8(a) program, EPA awarded it another sole source, five year contract valued at \$576,000 (68-D3-0061). This contract was a follow-on to a prior 3 year contract also held by Vigyan. Again, we found no evidence that EPA evaluated Vigyan's mix of 8(a) and non-8(a) revenues before awarding these contracts.

Awarding new 8(a) contracts and modifying existing 8(a) contracts immediately before the expiration of a firm's Program Term is done primarily to benefit EPA, not to further the competitive development of the recipient firm. Thus, the practice does not further the objective of the 8(a) program. EPA's existing guidance recognizes the importance of 8(a) firms reducing their dependence on 8(a) awards over their Program Term. EPA's practice, however, has not ensured this objective.

PERCEPTIONS OF FAVORITISM TOWARD
INCUMBENT 8(A) CONTRACTORS

Awarding contracts to 8(a) firms immediately prior to the expiration of their program eligibility creates a perception of favoritism. Although statutes governing the 8(a) program give contracting officers greater latitude in selecting award recipients, the primary objective of the program is to develop small and economically disadvantaged businesses. In amending the Small Business Act in 1988, Congress found that insufficient attention had been given to this business development goal. Congress concluded that many participants had developed an unhealthy dependency on sole source contracts by the time they were required to leave the program. To address these issues, Congress amended the existing statute to (1) provide a maximum period of program participation and (2) define a transitional period during which a participant's reliance on sole source contracts should steadily decrease.

In spite of these legislative changes, there is a continuing view that new, developing 8(a) firms are excluded from the available contracting activity because of a preference for older, incumbent 8(a) firms. This creates an unfavorable view of both the 8(a) program and the specific Government agency involved. Throughout 1993, the National Aeronautics and Space Administration (NASA) was the focus of several articles in the Federal Computer Week criticizing its 8(a) contracting practices. An editorial cartoon clearly illustrated a perception that NASA favors 8(a) firms who are close to graduating from the program. The effect of this favoritism was that new 8(a) firms were not given opportunities to develop. This perception, and the unfavorable image that it creates, can be applied to EPA's practices.

CONCLUSION

Awarding contracts to firms immediately before their 8(a) Program Term expires is legal, but does not contribute to the objective of developing minority and disadvantaged businesses. Congress has amended the statutory provisions of the 8(a) program to define a finite period of participation. EPA's practice of awarding contracts with renewable options during the final days of a firm's Program Term effectively voids this provision. In addition, although EPA guidance specifies that transitional firms must achieve certain non-8(a) business activity levels, EPA did not evaluate

prospective 8(a) contractor performance in this area. These practices foster a perception that incumbent contractors receive preferential consideration in obtaining EPA contracts.

RECOMMENDATIONS

We recommend that:

1. The Assistant Administrator, OARM, and the Director, OSDBU, establish a policy requiring their offices to concur, and provide a written justification for, awarding 8(a) contracts whose base or option periods extend beyond the established Program Term of the recipient 8(a) firm.
2. OSDBU review the mix of 8(a) and non-8(a) revenues of transitional firms while evaluating potential contractors or remove this standard from its existing guidance.

AGENCY COMMENTS

The Assistant Administrator, OARM, and the Director, OSDBU, disagreed with our findings and recommendation 1. OARM's response emphasizes that awarding contracts to 8(a) firms anytime prior to the expiration of their program eligibility is legal and encouraged by the SBA. OARM disagrees with our conclusion that this practice is contrary to the legislative intent of the 8(a) program. OARM states that to deny firms access to these awards would unfairly deprive firms of their complete eligibility period. In addition, OARM states that these awards aid 8(a) firms in transitioning into the competitive marketplace.

OARM also disagrees that EPA has a responsibility to review or monitor the mix of 8(a) and non-8(a) revenues generated by potential award recipients. According to OARM, this obligation rests solely with the SBA. In addition, OARM states that the Agency does not have the authority nor access to this type of contractor information.

Finally, OARM states that our recommendation to create a new documentation standard is contrary to current National Performance Review initiatives to streamline and reduce such requirements.

OSDBU states that it is presumptuous to assume that 8(a) firms who received contracts before graduation are not pursuing other competitive opportunities. The OSDBU response concluded that "the rationale offered by the OIG...does not provide a strong justification for changing the current practice...." OSDBU proposes, as an alternative, that SBA and OAM join it in a pilot project to orient graduating 8(a) firms toward other EPA business opportunities through grants and cooperative agreements with state and local governments.

OIG EVALUATION OF AGENCY COMMENTS

As stated earlier in this chapter, we recognize that EPA's current practice is both legal and encouraged by SBA. We accept that the practice may, on occasion, be in the best interest of both EPA and the overall development of the 8(a) firm. We also agree that SBA holds primary responsibility for monitoring the eligibility and progress of firms within the 8(a) program. However, EPA's discussion of non-8(a) revenue levels within its internal guidance materials implies a responsibility on the Agency's part to review a firm's progress against this standard.

SBA's Associate Deputy Administrator for Government Contracting and Minority Enterprise Development recently stated that SBA wants to discourage firms from becoming dependent on 8(a) contracts to stay afloat. EPA's guidance supports this concept by stating that the 8(a) program's success is measured by "the number of competitive firms that exit the program without being unreasonably reliant on Section 8(a) contracts". It is, therefore, fair to conclude that EPA would routinely assess the level of contractor reliance, particularly as a firm approaches completion of its program eligibility. Evaluating a firm's mix of 8(a) and non-8(a) revenue is a strong indicator of reliance. Based on OARM's response and discussions at the exit conference, we have added recommendation 2 which was not contained in the draft report.

We agree that the current trend in Government operations, as supported by the National Performance Review, is toward reducing unnecessary controls and procedural requirements. However, the National Performance Review does not envision eliminating, or prohibit establishing, reasonable controls. Given the history of Congressional concern over the use of the 8(a) program as a contracting mechanism rather than a business development strategy, it is reasonable to request

documentation of EPA's rationale in awarding contracts that may give the appearance of contractor favoritism.

We do not believe that the ability to award contracts to 8(a) firms prior to graduation should be prohibited. Our recommendations are aimed at ensuring (1) an affirmative management decision in these cases and (2) that this practice is used to further develop participating firms.

MATTERS FOR CONGRESSIONAL CONSIDERATION

The issues raised in this chapter are not matters of statutory or regulatory compliance. As acknowledged, EPA's current practice is within the existing legal parameters. Instead, our concerns are based on interpretation of Congressional intent, appearances of favoritism, and differing views of organizational responsibilities. None of these provide a firm foundation for resolving the differences of opinion between the Agency and the OIG. As a result, we believe Congress should consider (1) the appropriateness of awarding sole source contracts to 8(a) firms immediately prior to expiration of program eligibility and (2) the role awarding agencies have in monitoring development of 8(a) firms with whom they do business. To encourage attention to these issues, we will distribute this audit report to Congressional members and committees responsible for overseeing and directing the government's small and minority business legislation.

CHAPTER 4EPA MUST STRENGTHEN OSDBU'S ADVOCACY ROLE
IF THE AGENCY IS TO ACHIEVE ITS 8(A) CONTRACTING GOALS

OSDBU has battled several obstacles in its role as the Agency's advocate for 8(a) contractors. These include: (1) insufficient and untimely contract information, (2) a lack of Agency-wide accountability for meeting 8(a) contracting goals, and (3) an inefficient organizational structure. As a result, EPA did not meet its goal for 8(a) contracting in either fiscal 1992 or 1993. If EPA is to meet its established goals in future fiscal years, it needs to: (1) gather more timely and comprehensive information on current and future 8(a) contracting opportunities, (2) increase management accountability for 8(a) goals at all levels, and (3) improve coordination between OSDBU and OARM in directing and supervising the Small and Disadvantaged Business Specialists (SDBSs).

Public Law 95-507⁸ required each Federal agency having procurement authority to establish an OSDBU. The law also prescribed that the OSDBU Director report directly to the head of the Agency, or its deputy. In July 1979, EPA established its OSDBU under the Office of the Administrator.

Public Law 100-656⁹ required EPA to establish small business and 8(a) goals each year. To set these goals, each EPA program office and region provides OSDBU with its individual procurement goals for the upcoming year. OSDBU summarizes the goals, obtains the EPA Administrator's approval, and submits the information to SBA. For fiscal 1989 through 1991, EPA exceeded its annual 8(a) goal of 6 percent. In fiscal 1992, EPA's goal increased to 8 percent; it achieved a level of 5 percent. For fiscal 1993, EPA's goal was again 8 percent. Actual 8(a) contracting in fiscal 1993 totalled 5 percent.

⁸ Amendments to the Small Business Act and the Business Investment Act of 1958, October 24, 1978.

⁹ Business Opportunity Development Reform Act of 1988.

CURRENT OSDBU ADVOCACY ACTIVITIES

OSDBU currently performs several functions in an effort to promote use of the 8(a) contracting program. These include attending seminars and job fairs, compiling a forecast of contract opportunities for small or small disadvantaged firms, and providing information to project officers and large prime contractors about small and disadvantaged businesses. These activities are designed to ensure that small and disadvantaged businesses, including 8(a) firms, are provided the opportunity to compete for and receive a fair proportion of the Agency's total acquisition dollars.

OSDBU takes part in trade fairs, seminars, and various conferences to promote the Agency's small and disadvantaged business goals for direct procurement. In cooperation with OAM, OSDBU conducts briefings to inform prospective small and disadvantaged businesses about new contracting opportunities. Within the Agency, OSDBU provides information on available small and disadvantaged businesses to project officers and large prime contractors for consideration in their upcoming activities.

Each year, OSDBU polls EPA program offices for information on planned procurements. Using this information, OSDBU develops a forecast of small business and 8(a) contracts that it expects EPA to issue for the upcoming fiscal year. OSDBU distributes the forecast to: (1) small and disadvantaged businesses, (2) SBA, and (3) the Department of Commerce to alert them to potential EPA contracting opportunities.

OSDBU or a SDBS receive selected solicitation packages from contracting officers. OSDBU or SDBSs review all solicitations valued at more than \$25,000 for possible 8(a) contracting opportunities. If the solicitation is judged to provide 8(a) contracting options, either OSDBU or the SDBS may refer three to five eligible firms for the program office to consider.

All of these actions increase the visibility of the 8(a) program. In turn, visibility increases the likelihood that more contracting opportunities will be made available to 8(a) firms.

ADDITIONAL ADVOCACY ACTIVITIES NEEDED TO
INCREASE 8(A) CONTRACTING OPPORTUNITIES

Contracting results from the last two years indicate that more must be done to encourage EPA program offices to participate in the 8(a) program. EPA's advocacy of the 8(a) program can be strengthened through: (1) improved information on future contracting opportunities and (2) better monitoring of program progress.

Improved Information on Contracting Opportunities

Both the quality and quantity of contracting information available to OSDBU hindered its ability to adequately plan 8(a) activity. The information in OSDBU's annual procurement forecast was neither timely nor complete. Improvements in this information would increase the ability of OSDBU to intervene early in the contracting process on behalf of 8(a) companies.

Identifying procurements that can be satisfied by 8(a) eligible companies is a major function of OSDBU. OSDBU's annual contracting forecast is published in October and contains only planned activities identified by EPA program offices. According to the OSDBU Director, contracting plans provided by the program offices have often been incomplete. That is, the plans did not identify all anticipated contracting actions. Efforts by OSDBU, to independently identify contracting opportunities in combination with program office input, will increase the universe of contract awards available to qualified 8(a) contractors.

EPA's CIS contains extensive information on active contracts. Reviewing this data would aid OSDBU in forecasting 8(a) contract opportunities. For example, by reviewing CIS, we identified a contractor who had completed its 8(a) program participation term and held two contracts that would expire in fiscal 1994. The project officers stated that these contracts were to be offered as 8(a) contracts in fiscal 1994. However, they were not included in the program's submission to OSDBU. Thus, they were not in OSDBU's fiscal 1994 forecast. As a result, neither OSDBU nor 8(a) firms were aware that these opportunities existed. If OSDBU staff routinely monitored expiring 8(a) contracts, they would have identified these two contracts for the fiscal 1994 forecast. There may be similar contracts that OSDBU, and the 8(a) community, are also unaware of.

The Agency's acquisition plans for full and open competition contracts also provide an additional opportunity for OSDBU to identify 8(a) contract opportunities. According to EPA's Contract Management Manual, OSDBU should receive a copy of the acquisition plans from each program office. While OSDBU had received acquisition plans in the past, it no longer does. An OSDBU official agreed that it is critical for 8(a) contract opportunities to be considered early in the acquisition planning process. By the time the actual procurement request is submitted, it is often too late to obtain 8(a) participation. Therefore, OSDBU should request that it again receive the Agency's advance acquisition plans.

Better Monitoring of Program Progress

OSDBU has insufficient information to monitor the Agency's progress toward its 8(a) procurement goals. As a result, OSDBU was not able to effectively adjust its efforts during the year to ensure that the goals were met. For example, in November 1993, the Director could not determine whether EPA had met its 8(a) goal for fiscal 1993. He also did not have sufficient information to forecast how or whether the Agency would meet its goal for fiscal 1994.

The SBA had reported problems with OSDBU's monitoring of the small business programs in the past. In its 1991 Surveillance Review Report, SBA said that EPA's Small Business Office at RTP lacked an organized system for record keeping, tracking, and follow-up on the small business programs. During the SBA's review, information on many categories under the Small Business Award Goals could not be supplied by EPA. As a result, the SBA recommended that EPA establish a data tracking system for the small business programs. To date, RTP has not developed an information system to track small business goals. According to the SDBS at RTP, OSDBU sets the goals for the Agency. Since RTP does not have any specific small business goals, the SDBS believes that tracking this information would not provide meaningful statistical data.

OSDBU can take steps to improve its system for monitoring progress toward meeting the 8(a) procurement goals. These actions include periodically comparing each program's actual procurements against the annual forecast and utilizing information already available in EPA's management information systems to monitor procurements. By taking these actions, OSDBU would be able to continually track contract awards versus the established 8(a) goals.

If OSDBU periodically compared its annual forecast with each program's actual procurement activity, OSDBU would timely identify variances. Doing this could prevent contracts targeted for 8(a) firms from going to full and open competition. This would permit OSDBU to work with program offices to follow through with 8(a) procurement plans or recognize the need to identify other potential 8(a) opportunities.

LACK OF MANAGEMENT ACCOUNTABILITY FOR MEETING
AGENCY 8(A) CONTRACTING GOALS

EPA program officials were not held accountable for assisting the Agency in meeting its annual 8(a) program goal. Each year program offices and regions set their individual 8(a) procurement goals for the upcoming year. When consolidated, these individual goals may not be adequate to satisfy EPA's overall goal. Program offices were not, however, measured on whether they contributed their "fair share" toward meeting the Agency's overall objective.

In addition, according to the OSDBU Director, the Agency's goal was generally not addressed through existing performance agreements. The OSDBU Director stated that only his annual performance standards contain specific language aimed at meeting this objective. Thus, there was no effect on individual contracting staff and program managers if the 8(a) goal was not met. Establishing individual goals for each EPA program office and holding program and contracting managers accountable for meeting these goals would provide an incentive to identify and execute 8(a) contracts.

EPA's 8(A) ADVOCACY STAFF WERE NOT CENTRALLY ORGANIZED

EPA staff responsible for advocating the use of 8(a) contracting were not organized in a manner which insures a unified effort or provides independence from the overall contracting function. The EPA Acquisition Regulation (EPAAR) requires that the Director of each Contracting Office appoint a SDBS. EPA guidance¹⁰ states that the SDBSs are responsible for carrying out the day-to-day responsibility for operating the Small and Disadvantaged Business

¹⁰ Preferential Procurement Program Handbook for Project Officers, Contract Officers, and Small Business Specialists (August 1992).

Utilization Program within their CMD. According to the SDBSs in Cincinnati and RTP, they devote 100 percent of their efforts to the Agency's small business programs. The SDBS receives technical direction from the OSDBU Director. However, the SDBS is administratively responsible to the Contracting Office Director.

EPA's OSDBU Director did not believe the EPAAR gave him authority over the SDBSs. As a result, he had not monitored their activities nor required them to report their activities to him. For example, the Director told us the SDBSs should be conducting outreach activities to potential 8(a) contractors, but he did not know if they actually did. To effectively manage EPA's 8(a) contracting program, the OSDBU Director needs to exercise supervisory authority over the SDBSs and direct their activity within the Agency's overall 8(a) objectives.

The current organization creates a potential, if not actual, conflict of responsibilities. The SDBSs are advocates for EPA's 8(a) and other small business programs. Contracting divisions, in turn, work to obtain the highest quality contractual support for EPA program offices. Since 8(a) contractors are generally less experienced at competing for Government contracts than non-8(a) contractors, these objectives may conflict. Improved coordination between OARM and OSDBU in directing and supervising the SDBSs is needed to reduce this potential conflict.

CONCLUSION

Despite the efforts of EPA's OSDBU, the Agency did not reach its established goals for 8(a) contracting during fiscal 1992 or 1993. OSDBU's advocacy role was hindered by: (1) insufficient and untimely contract information, (2) a lack of Agency-wide accountability for meeting 8(a) goals, and (3) an inefficient organizational structure.

RECOMMENDATIONS

We recommend that:

1. OSDBU develop a multi-year plan which identifies current 8(a) contract levels and presents a strategy for obtaining sufficient future contracts to meet the Agency's projected goals.

2. OSDBU develop and implement a plan to regularly (a) update its annual procurement forecast throughout the year and (b) monitor the progress of Agency program offices in meeting their 8(a) obligation.
3. The Assistant Administrator, OARM, require the Director, OAM, to obtain timely annual acquisition plans (including anticipated small business awards) from each Assistant and Associate Administrator and provide this information to OSDBU.
4. The Assistant Administrator, OARM, and the Director, OSDBU, develop a method of setting 8(a) program goals for Assistant Administrators, Regional Administrators, and Office and Division Directors, as appropriate. Also, a mechanism for timely tracking of actual achievements needs to be developed and implemented.
5. The Assistant Administrator, OARM, and the Director, OSDBU, implement procedures that improve the coordination between OSDBU and OAM in directing and supervising the SDBSs. This should, at a minimum, include input from the OSDBU Director to the SDBSs annual performance standards and evaluation.

AGENCY COMMENTS

The OSDBU Director agreed with recommendations 1 and 2. He did not comment on recommendation 3 and 4. The OARM Assistant Administrator did not comment on recommendations 1 through 3 and agreed with the purpose of recommendation 4. Both OSDBU and OARM agreed with the objective of improved coordination between their offices in directing and supervising the work of the SDBSs (recommendation 5). However, OARM disagreed with our conclusion that there was an inherent conflict of responsibilities between the SDBSs and the Contract Management Divisions. Both OSDBU and OARM disagreed with the recommendation in the draft report (which has since been revised) that the positions should be transferred to direct OSDBU control. Instead, OARM stated that there were various ways of accomplishing improvement in this area.

OIG EVALUATION OF AGENCY COMMENTS

We continue to view the current organization of SDBSs reporting to the Directors of CMD at Cincinnati and RTP as a

potential conflict of responsibilities. However, it is appropriate for OARM and OSDBU to suggest alternative methods of addressing the objective of improved coordination and supervision. As a result, we revised recommendation 5 to provide this opportunity. The Agency should provide a specific plan and milestones for achieving this improved oversight.

Since neither OSDBU nor OARM disagreed with recommendations 1 through 4, the Agency should provide specific tasks and milestones for addressing these recommendations.

OSDBU'S RESPONSE TO OIG DRAFT REPORT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 31 1994

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: OSDBU Response to the Draft Audit Report No. E1BMF3-05-0018, EPA's 8(a) Contracting Program

FROM: Leon H. Hampton, Jr., Director
Office of Small & Disadvantaged
Business Utilization (1230C)

TO: Elissa R. Karpf
Associate Assistant Inspector General
for Acquisition and Assistance Audits (2421)

As per the administrative instructions issued in your May 12, 1994 memorandum, the Office of Small and Disadvantaged Business Utilization (OSDBU) responds to the aforementioned draft audit report.

Overall, I am pleased with the in-depth review and the analyses of the 8(a) Program undertaken by the OIG, and I see it having beneficial effects on the program. The thought provoking comments have allowed me and my staff an opportunity to thoroughly reflect on the program and to take steps for its improvement.

Having reviewed the subject report, I concur with three of the four recommendations for improving and advancing the 8(a) program within the Agency. The one exception is the recommendation that:

1. The Agency establish a policy requiring the Directors of OAM and OSDBU to concur and provide written justification for awarding 8(a) contracts whose base or option periods extend beyond the established program term of the recipient 8(a) firm.

It is important again to note that the Small Business Administration (SBA) has developed policies and guidelines for awarding contracts to 8(a) firms before expiration of the firms' program eligibility. The award of such contracts, including options, are intended to help 8(a) firms through the transitional period to better assure long range viability which ultimately result in employment opportunities for those communities where these firms are located.

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From this perspective, it is presumptuous to assume that 8(a) firms who received such contracts before graduation are not actively pursuing competitive opportunities. Data reported by the SBA indicates that a fair number of graduated 8(a) firms are winning competitive contracts. We must be mindful that the 8(a) program is a socioeconomic program designed to provide assistance to the fullest extent practical.

It is also important to point out that federal agencies, including the EPA, have a responsibility and obligation to help bridge these firms to assure that both the intent and spirit of applicable statutes and regulations are adhered to. Thus, the rationale offered by the OIG, respecting the above-cited recommendation, in my opinion does not provide a strong justification for changing the current practices of awarding 8(a) contracts which include options prior to the firm's graduation. We can further strengthen the 8(a) program within EPA by having each major program seriously begin structuring their procurement packages to make them suitable for more 8(a) firms to win contracts in a competitive manner.

Alternately, I am asking the Small Business Administration, the Commerce Department's Minority Business Development Agency, and EPA's Office of Acquisition Management to join me in a demonstration project to orient graduating participating 8(a) firms toward business opportunities generated through EPA's financial assistance programs viz. grants and cooperative agreements with states and local municipalities.

OARM'S RESPONSE TO OIG DRAFT REPORT

This appendix contains the Assistant Administrator for OARM's response to our draft report in its entirety. After considering these comments, we made revisions to the final audit report. These changes are described in Appendix III. We have placed reference numbers in the left margin of this appendix to correspond to the notes in Appendix III.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 23 1994

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

MEMORANDUM

SUBJECT: Draft Audit Report No. E1BMF3-05-0018
EPA's 8(a) Contracting Problem

FROM: *Jonathan Cannon*
Assistant Administrator

TO: Eliasa R. Karpf
Associate Assistant Inspector General
For Acquisition and Assistance Audits

Thank you for the opportunity to comment on the draft audit findings on EPA's 8(a) program. Attached are our written comments.

We appreciate your recognition of improvements in our procedures, and agree that additional emphasis must be placed on meeting our goals for 8(a) contracting. We do not concur, however, with some of your specific findings and recommendations.

EPA remains committed to the Small Business Administration's (SBA) 8(a) program and will continue to work with program offices to meet our established goals. As you know, we have initiated an effort to break up our "umbrella" contracts. As we break-up large, level-of-effort requirements, we are making a concerted effort to create more opportunities for 8(a) firms.

We would be happy to discuss the findings with you at your convenience.

Attachment



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ATTACHMENT

CHAPTER 2

INCREASED ATTENTION TO CONTRACTING PROCEDURES
IMPROVES RECENT 8(A) AWARDS

We appreciate the acknowledgement that EPA's 8(a) contract awards during fiscal year 1993 showed a broader distribution of 8(a) contract awards among eligible contractors and an increased emphasis on detecting and correcting contracting problems reported in past Office of Inspector General (OIG) audits.

We do not concur, however, in the broad conclusions of this chapter that if we stopped making awards of contracts to firms close to their graduation date, we would improve our distribution of 8(a) contracting dollars. While changing this practice would shift awards to other firms, those other firms could also be the recipients of other EPA 8(a) awards. The actual distribution of awards could still remain with a small number of firms.

Note 1

The OIG relates an instance where the Agency estimated a procurement at \$2.5 million, the proposal was greater than \$12 million, and after revisions to the SOW and negotiations, the award was just under \$3 million. By way of clarification, it should be noted that, as long as the contracting officer (CO) receives reasonable/believable independent government cost estimates for less than \$3 million, the regulations do not prohibit the CO from negotiating and awarding a sole source 8(a) contract in excess of \$3 million. Nor is it prohibited to revise the statement of work during negotiations if the program office indicates that its requirements have changed or were originally stated in error. Nonetheless, we will remain vigilant in our efforts to ensure that we are not manipulating our requirements just to get below \$3 million.

Note 2

CHAPTER 3

AWARDS MADE IN ANTICIPATION OF A FIRM'S
8(A) GRADUATION HINDER PROGRAM GOALS

The OIG contends throughout this chapter that the award of sole source 8(a) contracts to a firm near the end of its program eligibility, while not technically illegal, is contrary to the intent of the 8(a) Program. The OIG also believes that it is EPA's responsibility to evaluate the 8(a) firm's mix of 8(a) and non-8(a) revenues to ensure that sole source 8(a) awards do not cause the firm to exceed the appropriate mix. We disagree with both of these contentions.

To assist firms transitioning into the competitive Federal marketplace, SBA created business mix targets for each of the transitional phase years of the 8(a) program. Pursuant to 13 CFR 124.312, the responsibility rests with SBA to monitor that mix and take action if a firm fails to attain the minimum required business activity targets (13 CFR 124.312 (c) (12)). EPA does not have the authority nor access to the information required to perform this function.

As long as a firm is otherwise eligible to receive 8(a) awards (has the appropriate Standard Industrial Code approval, the capability to perform, etc.) and SBA accepts an offer for that firm, we may award contracts right up to the date the firm becomes ineligible/graduates. To do otherwise would, in effect, be treating a firm as if the graduation date was actually earlier than the date specified.

SBA's regulations allow sole source awards to be made up to the date of program termination (13 CFR 124.208(d)) and specifically state that awards may contain options which may be exercised after the firm's 8(a) program term has ended. (13 CFR 124.208(d) and 13 CFR 124.318(b).) We feel that such a practice actually aids an 8(a) firm in transitioning into a 100% competitive marketplace, since it will have some on-going work to sustain its business while it is competing for new contracts.

It is our understanding that SBA is currently amending its regulations to specify that in cases of 8(a) competitions, the firm need only be eligible under the 8(a) program to receive the award as of the date of its priced offer, rather than as of the date of contract award. This means that contract awards could be made well after a firm actually graduates from the program and that the entire performance of the contract could occur after the graduation date.

RECOMMENDATION

Establish a policy requiring the Directors of the Office of Acquisition Management (OAM) and the Office of Small and Disadvantaged Business Utilization (OSDBU) to concur and provide a written justification for awarding 8(a) contracts whose base or option periods extend beyond the established program term of the recipient 8(a) firm.

We oppose the OIG's recommendation that the Agency establish policy which requires the Directors of OAM & OSDBU to concur and justify in writing the award of any 8(a) contract with a period of performance beyond an 8(a) firm's graduation date.

Such a policy is contrary to streamlining, re-engineering, and Vice-President Gore's National Performance initiatives, and would create a requirement for new written justifications and approvals to accomplish something which is legal and encouraged under existing regulations.

CHAPTER 4

**EPA MUST STRENGTHEN OSDBU'S ADVOCACY ROLE
IF THE AGENCY IS TO ACHIEVE ITS 8(A) CONTRACTING GOALS**

Note 3

By way of clarification, please note that the Agency's Small Business Specialists (SBSs) rather than the OSDBU review all solicitations over \$25,000. Either the SBSs or the OSDBU may refer 8(a) firms to the program offices for consideration.

In addition, please note that the Contracts Management Division in Research Triangle Park, N.C. (CMD-RTP) does not maintain "an automated database to track the status of its contracts." Nor is true that the section chiefs update the database bi-weekly. The Chief, Contract Placement Branch, has created a Lotus spreadsheet to track acquisitions in process and contract awards made. Information provided by the section chiefs and specialists is used to update the spreadsheet at least once a month.

Thus, the OIG's contention that "OSDBU could use information from this system to identify potential contracts for the 8(a) program and monitor the status of awarded contracts" is misleading. There is not really enough information on the spreadsheet to enable anyone to identify procurements for the 8(a) program. Once requirements are included on the spreadsheet, they are too far in the acquisition process for this to be a productive mechanism for identification of 8(a) candidates.

Note 4

The spreadsheet is used by CMD-RTP to track the status of a procurement in the pre-award process. If helpful, the OSDBU could gather data from the spreadsheet regarding the number and estimated dollar value of on-going 8(a) acquisitions for each program office and subsequent award information.

EPA's 8(A) ADVOCACY STAFF ARE NOT CENTRALLY ORGANIZED

The OIG contends that centralized tracking and coordination of the activities of the Agency's SBSs is necessary. The OIG also believes that having the SBSs administratively responsible to the CMD division directors creates an appearance, if not an actual, conflict of interest.

The OIG notes that,

"The SBSs are advocates for EPA's 8(a) and other small business programs. Contracting divisions, in turn, work to obtain high quality, low cost contractual support for EPA program offices. Since 8(a) contractors are acknowledged to be less competitive (i.e., higher price and/or lower

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quality) than non-8(a) contractors, these objectives conflict."

The OIG's statement regarding the "higher price and/or lower quality" of 8(a) contractors is an inappropriate and inaccurate generalization. It would be more accurate to say that 8(a) contractors are generally inexperienced at competing for Government contracts.

Note 5

Moreover, while we agree that centralized tracking and coordination makes sense, we do not agree that the SBS functions conflict with the duties of COs. COs are charged with awarding contracts which meet program needs within applicable regulations and policies. Those regulations require COs to utilize the 8(a) Program when certain conditions are met. OAM has a high stake in seeing the 8(a) program succeed, and the SBSs are working to help accomplish this. While we agree that more centralized coordination of the Agency's small business program is needed, we believe there are various ways to achieve this short of direct OSDBU supervision of the SBSs.

RECOMMENDATIONS

Of the six recommendations made by the OIG, we offer comment on three:

4. The Agency develop policy requiring written justification for removing a requirement from the 8(a) Program.

The procedures in place are sufficient to address this concern, and we do not believe additional policy guidance is necessary. In accordance with Federal Acquisition Regulation subpart 19.5, Set-Asides for Small Business, and EPA Acquisition Regulation subpart 1519.501, Set Asides for Small Business, EPA form 1900-37, "Record of Procurement Request Review" must be completed and approved for each acquisition exceeding the small purchase limitation (\$25,000). The form requires the CO to document the history of a procurement and fully justify his/her determination to set aside the procurement for small businesses, offer it to SBA for the 8(a) program, or openly compete the requirement. This includes the determination to remove a requirement from the 8(a) program. The SBS and a representative from SBA must concur with the CO's determination.

Please note that there are valid reasons for moving acquisitions out of the 8(a) program. An example is the SBA provision for cases where a firm graduated from the program, but because a particular contract constitutes a major percentage of the firm's business, the firm should not be precluded from

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- Note 6 competing. There are other instances where the incumbent has graduated, but no new qualified 8(a) firm can be identified.
5. The Agency include measurable 8(a) contracting goals within the individual performance standards for all Assistant Administrators, Office Directors, and Division Directors.
- Note 7 We do not object to the requirement that performance standards include 8(a) goals as long as a reasonable method for setting goals is established and an accurate mechanism for timely tracking of achievements versus goals is implemented.
6. The Agency transfer the Small and Disadvantaged Business Specialist positions from OAM to the OSDBU.
- Note 8 We do not feel that transferring the SBSs from OAM to OSDBU is necessary since we believe that the current organizational structure does not inhibit the achievement of the goals of the OSDBU.

OIG REVISIONS TO THE FINAL REPORT IN RESPONSE TO
OARM'S COMMENTS TO THE DRAFT REPORT

The Assistant Administrator for OARM's response to our draft report is contained in Appendix II. After considering these comments, we made revisions to the final audit report. The following notes correspond to specific sections of OARM's response as indicated by the reference numbers which we placed in the left margin of Appendix II.

- Note 1 We eliminated this conclusion from the final report.
- Note 2 We eliminated this example from the final report.
- Note 3 We clarified the text in the final report to indicate that OSDBU and SDBSs have responsibility for reviewing solicitations over \$25,000.
- Note 4 After further discussions with the Contract Management Division in RTP, we eliminated the referenced paragraph from the final report.
- Note 5 We eliminated the referenced phrase from the final report and revised the paragraph to reflect OARM's suggested wording.
- Note 6 We eliminated this recommendation and the related issue from the final report.
- Note 7 We modified our original recommendation that increased accountability be obtained through performance standards. The final report contains a more general recommendation based on OARM's comments.
- Note 8 We modified our original recommendation that the SDBSs be transferred from OARM to OSDBU. The final report contains a recommendation that OARM identify appropriate ways of improving coordination with OSDBU in directing and supervising the SDBSs. comments.

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ABBREVIATIONS

CIS	Contract Information System
CMD	Contract Management Division
EPA	Environmental Protection Agency
EPAAR	EPA Acquisition Regulations
GAO	Government Accounting Office
LAI	Labat-Anderson
NASA	National Aeronautics and Space Administration
OARM	Office of Administration and Resources Management
OAM	Office of Acquisition Management
OIG	Office of Inspector General
OSDBU	Office of Small and Disadvantaged Business Utilization
Program Term	Fixed Program Participation Term
RTP	Research Triangle Park, NC
SBA	Small Business Administration
SDBS	Small and Disadvantaged Business Specialist
VSI	Viking Systems International

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RELATED REPORTS

Report Title	Report Date	Source (Number)
Small Business Administration: Status, Operations, and View on the 8(a) Program	05/24/88	GAO (RCED-88-148BR)
Special Review of Allegations of Improprieties and Management of Interim Computer Workstation Contract	03/30/91	EPA OIG (1400060)
Small Business: Problems in Restructuring SBA's Minority Business Development Program	01/31/92	GAO (RCED-92-68)
Contracting Activities at Environmental Research Laboratory - Duluth, MN	07/07/92	EPA OIG (2100443)
Survey Report ORD Environmental Research Laboratory - Gulf Breeze	09/29/92	EPA OIG (2300093)
Survey Report on Contracting Activities at the Atmospheric Research and Exposure Assessment Laboratory	09/30/92	EPA OIG (2300100)
Survey Report on Contracting Activities at the Health Effects Research Laboratory	09/30/92	EPA OIG (2700016)
Survey Report on Contracting Activities at the Environmental Research Laboratory - Corvallis, OR	02/03/93	EPA OIG (3400019)
Survey of Contracting Activities at the Air and Energy Engineering Research Laboratory	02/26/93	EPA OIG (3400025)
Management of Extramural Resources at the Environmental Research Laboratory - Athens, GA	03/31/93	EPA OIG (3100156)
Management of Extramural Resources at the Environmental Research Laboratory - Narragansett, RI	06/16/93	EPA OIG (3100236)

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