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Representatives

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# SMALL BUSINESS CONTRACTING

## Observations from Reviews of Contracting and Advocacy Activities of Federal Agencies

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Highlights of [GAO-07-1255T](#), a testimony before the Subcommittee on Government Management, Organization, and Procurement; Committee on Oversight and Government Reform; House of Representatives

## Why GAO Did This Study

The federal government's long-standing policy has been to use its buying power to maximize procurement opportunities for various types of small businesses.

GAO initiated work and completed a report in March 2007 under the Comptroller General's authority describing the extent to which small businesses participated in contracting opportunities related to Hurricane Katrina. This testimony discusses (1) results from the March 2007 GAO report, including the amounts that small and local businesses received directly from federal agencies from contracts related to Hurricane Katrina and the lack of required information in official procurement data systems on subcontracting plans, (2) information from two previous GAO reports regarding the small business advocacy responsibilities of SBA and federal agencies that award contracts, and (3) GAO work on SBA's efforts to advocate for small disadvantaged businesses, and similar efforts by entities within selected agencies.

In conducting the studies discussed in this testimony, GAO analyzed agency contract data, reviewed federal acquisition regulations, and interviewed agency procurement officials; we also sent a questionnaire to agency officials regarding OSDBU reporting relationships; reviewed organizational charts and other pertinent information; analyzed relevant laws, legislative history, and court cases; and, updated information on agency actions on our recommendations.

To view the full product, including the scope and methodology, click on [GAO-07-1255T](#). For more information, contact William B. Shear at (202) 512-8678 or [shearw@gao.gov](mailto:shearw@gao.gov).

## SMALL BUSINESS CONTRACTING

### Observations from Reviews of Contracting and Advocacy Activities of Federal Agencies

#### What GAO Found

Small businesses received 28 percent of the \$11 billion in contracts that DHS, GSA, DOD, and the Corps awarded directly for Katrina-related projects. Information on whether DHS and GSA required subcontracting plans was generally not available in the federal government's official procurement database for 70 percent or more of the contracting dollars each agency awarded for activities related to Hurricane Katrina. This database should have contained information on whether or not the agencies required subcontracting plans in these instances. The lack of transparency surrounding much of the agencies' subcontracting data may lead to unwarranted perceptions about how the federal procurement system is working, particularly in terms of the government's stated preference for contracting with small businesses. GAO recommended in its March 2007 report that DHS, GSA, and DOD take steps designed to ensure compliance with federal contracting regulations and more transparently disclose the extent to which subcontracting opportunities are available to small businesses. These agencies generally agreed with GAO's recommendations. GSA has implemented them while DOD and DHS indicate they are in the process of doing so.

SBA has governmentwide responsibilities for advocating that federal agencies use small businesses as prime contractors for federal contracts and set goals for and encourage the use of small businesses as subcontractors to large businesses receiving federal contracts. Similarly, within each federal agency there is an Office of Small and Disadvantaged Business Utilization (OSDBU) that plays an advocacy role by overseeing the agency's duties related to contracts and subcontracts with small and disadvantaged businesses. The Small Business Act requires that the OSDBU director be responsible to and report only to agency heads or their deputies. In 2003, GAO reported that 11 of 24 agencies reviewed did not comply with this provision. While most of the agencies disagreed with our conclusion, none of the legal arguments that they raised changed GAO's recommendations. Because the OSDBU directors at these agencies do not have a direct reporting relationship with their agencies' heads or deputies, the reporting relationships potentially limit their role as effective advocates for small and disadvantaged businesses.

GAO is presently evaluating SBA's and agency OSDBUs' advocacy efforts. This evaluation includes an assessment of the actions SBA takes to advocate that small disadvantaged businesses receive opportunities to participate as subcontractors under federal prime contracts and encourage that prime contracting goals for these businesses are met. Also, the evaluation addresses selected OSDBUs' actions to advocate for certain small business firms.

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our previous and ongoing work related to contracting opportunities for small businesses. The federal government's long-standing policy has been to use its buying power—the billions of dollars it spends through contracting each year—to maximize procurement opportunities for various types of small businesses. The Small Business Act creates responsibilities for both the Small Business Administration (SBA) and the federal agencies that award contracts to provide various types of small businesses with opportunities to receive federal contracts and subcontracts. Furthermore, the act sets goals for participation by specific types of small businesses, including small disadvantaged businesses. Given the importance of assessing the extent to which various types of small businesses participate in federal contracts and subcontracts, even in times of presidentially-declared disasters, as well as the important roles of both the SBA and federal agencies concerning small business participation, this is a timely hearing at which to consider our relevant previous and ongoing work.

My statement today is based primarily on a report we issued in March 2007, which discussed the amounts that small businesses received through prime contracts and subcontracts related to Hurricane Katrina; two earlier reports we issued on federal agencies' responsibilities for advocating for small and disadvantaged businesses; and work now underway at the request of this subcommittee dealing with SBA's efforts to advocate that federal agencies and contractors provide the maximum practicable opportunity for small disadvantaged businesses to participate in federal contracts.<sup>1</sup> Specifically, I will discuss (1) the amounts that small and local businesses received directly from federal agencies through contracts related to Hurricane Katrina and the lack of required information in official procurement data systems on subcontracting plans, (2) the small business advocacy responsibilities of SBA and federal agencies that award contracts and (3) work we are beginning at your request on SBA's and selected agencies' Offices of Small and Disadvantaged Business Utilization (OSDBU) efforts to advocate for small disadvantaged businesses.

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<sup>1</sup>GAO, *Hurricane Katrina: Agency Contracting Data Should Be More Complete Regarding Subcontracting Opportunities for Small Businesses*, [GAO-07-205](#) (Washington, D.C., March 1, 2007); GAO, *Small Disadvantaged Businesses: Most Agency Advocates View Their Roles Similarly*, [GAO-04-451](#), (Washington, D.C., March 22, 2004); GAO, *Small and Disadvantaged Businesses: Some Agencies' Advocates Do Not Report to the Required Management Level*, [GAO-03-863](#), (Washington, D.C., Sept. 4, 2003.)

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In assessing contracts related to Hurricane Katrina, we analyzed data on contracts awarded or used by the Departments of Homeland Security (DHS) and Defense (DOD) (including the U.S. Army Corps of Engineers), and the General Services Administration (GSA) for Katrina-related projects overall and specifically for projects in Alabama, Louisiana, and Mississippi from August 1, 2005, through June 30, 2006.<sup>2</sup> These agencies were responsible for over 85 percent of the federal funds awarded via contracting when we began our data analysis. We also identified contracts that were used for activities related to Hurricane Katrina and that required subcontracting plans, reviewed federal acquisition regulations, and interviewed agency procurement officials. We conducted our work under the Comptroller General's authority to initiate evaluations between March 2006 and February 2007 in accordance with generally accepted government auditing standards. To describe the small business advocacy responsibilities of SBA and federal agencies, we summarized our previous work on small disadvantaged businesses and updated information on agency responses to our recommendations. In this previous work, we sent a questionnaire to agency officials regarding OSDBU reporting relationships, reviewed organizational charts and other pertinent information, and analyzed relevant laws, legislative history, and court cases. Our final objective highlights ongoing work assessing the efforts of SBA and selected OSDBUs in advocating for small disadvantaged businesses.

In summary:

- Small businesses received 28 percent of the \$11 billion that DHS, GSA, DOD, and the Corps awarded directly for Katrina-related projects. DHS awarded the highest dollar amount to small businesses (about \$1.6 billion), and GSA awarded the highest percentage of its Katrina-related contracting dollars to small businesses (72 percent of about \$658 million). Information on whether DHS and GSA required subcontracting plans was generally not available in the federal government's official procurement database for 70 percent or more of the contracting dollars each agency awarded for activities related to Hurricane Katrina. This database should have contained information on

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<sup>2</sup>We reported on the U.S. Army Corps of Engineers (Corps) and the rest of DOD separately because, of the four supplemental appropriations measures for Department of Defense activities relating to Hurricane Katrina relief (Pub. L. Nos. 109-61, 109-62, 109-148, and 109-234), the latter three specifically directed certain funds to the Corps for its disaster relief activities.

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whether the agencies required subcontracting plans in these instances. The lack of transparency surrounding much of the agencies' subcontracting data may lead to unwarranted perceptions about how the federal procurement system is working, particularly in terms of the government's stated preference for contracting with small businesses.

- SBA has governmentwide responsibilities for advocating that federal agencies use small businesses as prime contractors, and that prime contractors give small businesses opportunities to participate as subcontractors in federal contracts awarded to large businesses. To meet its responsibilities, SBA negotiates annual procurement goals with each agency and reviews certain proposed contracts to encourage them to offer the maximum practicable opportunity for small businesses to participate. Similarly, each federal agency has an Office of Small and Disadvantaged Business Utilization (OSDBU) that plays an advocacy role by overseeing the agency's functions and duties related to the awarding of contracts and subcontracts to small and disadvantaged businesses. To advocate effectively for small and disadvantaged businesses, the Small Business Act requires that the OSDBU directors be responsible to and report only to agency heads (or their deputies) so that the directors have immediate access to their agency's top decision-makers. However, in 2003, we reported that 11 of the 24 agencies we reviewed did not comply with this provision and as of our most recent follow-up work, 9 agencies were out of compliance. Because the OSDBU directors at these agencies do not have a direct reporting relationship with their agencies' head or deputy, the reporting relationships potentially limit their role as an advocate for small and disadvantaged businesses.
- In response to a request from the Chairman of this subcommittee about the extent to which 8(a) firms are obtaining federal contracts, we initiated an evaluation of SBA's efforts to advocate for such businesses. This evaluation includes an assessment of the actions SBA takes to encourage agencies to meet their prime contracting goals for small disadvantaged businesses; the extent to which such goals have been met; and SBA's efforts to advocate that small disadvantaged businesses have the maximum practicable opportunity to participate as subcontractors for prime federal contracts. In our evaluation, we also will assess actions by selected agency OSDBUs in serving as advocates for 8(a) firms.

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## Background

Federal agencies' contracts with private businesses, whether made in the normal course of agency operations or specifically related to a natural

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disaster declaration, are used to meet certain goals to increase participation by various types of small businesses. The Small Business Act, as amended, defines a small business generally as one that is “independently owned and operated and that is not dominant in its field of operation.”<sup>3</sup> In addition, a business must meet the size standards published by SBA to be considered “small.” The act sets a governmentwide goal for small business participation of not less than 23 percent of the total value of all prime contract awards—contracts that are awarded directly by an agency—for each fiscal year.<sup>4</sup> The Small Business Act sets annual prime contract dollar goals for participation by specific types of small businesses: small disadvantaged businesses (5 percent); women-owned or service-disabled, veteran-owned, (5 and 3 percent, respectively); and businesses located in historically underutilized business zones (HUBZones, 3 percent).<sup>5</sup>

In August 2007, SBA issued its fiscal year 2006 Goaling Report. The Goaling Report includes data on the extent to which federal agencies met their goals for awarding contracts to various types of small businesses. According to this report, federal agencies awarded 22.8 percent of their prime contracting dollars to small businesses, just short of the 23 percent statutory goal. In addition, while federal agencies collectively exceeded the goals for awarding prime contracting dollars to small disadvantaged businesses, they did not meet the goals for awarding prime contracting dollars to women-owned, HUBZone, or service-disabled veteran-owned businesses. Of the agencies we reviewed in our March 2007 report, all exceeded their agency-specific goals for awarding prime contracting dollars to small disadvantaged businesses, a subset of which are Section 8(a) firms. Generally, in order to be certified under SBA’s 8(a) program, a firm must satisfy SBA’s applicable size standards, be owned and controlled by one or more socially and economically disadvantaged individuals who

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<sup>3</sup>Public Law 85-536, as amended, 15 U.S.C. § 632(a).

<sup>4</sup>15 U.S.C. § 644(g).

<sup>5</sup>HUBZones are economically distressed metropolitan or nonmetropolitan areas—that is, areas with low-income levels or high unemployment rates—and qualified Hubzone small businesses must employ some staff who live in those zones. See 15 U.S.C. § 632. A small disadvantaged business is a business that is owned and controlled by socially and economically disadvantaged individuals, or certain economically disadvantaged groups, such as Indian Tribes. These owners must have at least a 51 percent stake in the business. See 15 U.S.C. § 637(a).

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are citizens of the United States, and demonstrate potential for success.<sup>6</sup> Black Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans are presumptively socially disadvantaged for purposes of eligibility.<sup>7</sup> The personal net worth of an individual claiming economic disadvantage must be less than \$250,000 at the time of initial eligibility and less than \$750,000 thereafter.

The general rules governing procurement are set out in federal procurement statutes and in the Federal Acquisition Regulation (FAR). Among other things, these rules require that any business receiving a prime contract for more than the simplified acquisition threshold<sup>8</sup> must agree to give small business the “maximum practicable opportunity” to participate in the contract.<sup>9</sup> Additionally, for contracts (or modifications to contracts) that (1) are individually expected to exceed \$550,000 (\$1 million for construction contracts) and (2) have subcontracting possibilities, the prime contractor generally must have in place a subcontracting plan.<sup>10</sup> This plan must identify the types of work the prime contractor believes it is likely to award as subcontracts as well as the percentage of

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<sup>6</sup>Unless otherwise noted, ownership means having a stake of 51 percent or more in the business.

<sup>7</sup>13 C.F.R. §§124.103 and 124.104 (2006). Business owners who are not members of presumptive socially disadvantaged groups may petition the SBA to be classified as disadvantaged. To do so, business owners must provide narrative and supporting documentation that demonstrates social disadvantage. That evidence must include the following elements: (1) possession of at least one objective distinguishing feature that has contributed to the business owners’ social disadvantage — such as race, ethnic origin, gender, physical handicap, or long-term residence in an environment that is isolated from mainstream America; (2) personal experience of a substantial and chronic social disadvantage within American society; and (3) the negative impact of this disadvantage on the business owners’ entry into or advancement in the business world.

<sup>8</sup>FAR section 201.1 defines “simplified acquisition threshold” to mean \$100,000, except when the acquisition of supplies or services is used to support a contingency operation or facilitate defense against nuclear, biological, chemical, or radiological attack. In those instances, the term means \$250,000 for contracts to be awarded and performed inside the United States and \$1 million for contracts to be awarded and performed outside the United States.

<sup>9</sup>FAR §§ 19.702, 2.101. see, *e.g.*, 15 U.S.C. § 644(g)(1)

<sup>10</sup>*Id.* The dollar threshold was changed to \$550,000 on September 28, 2006. 71 *Fed. Reg.* (Sept. 28, 2006).

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subcontracting dollars it expects to direct to the specific categories of small businesses for which the Small Business Act sets specific goals.<sup>11</sup>

When they award contracts, federal agencies collect and store procurement data in their own internal systems—typically called contract writing systems. The FAR requires federal agencies to report the information about procurements directly to the Federal Procurement Data System–Next Generation (FPDS-NG), GSA’s governmentwide contracting database, which collects, processes, and disseminates official statistical data on all federal contracting activities of more than \$3,000.<sup>12</sup>

Congress has enacted several laws designed to foster small business participation in federal procurement. One of these laws, Public Law 95-507, enacted in 1978, amended section 15 of the Small Business Act (15 U.S.C. § 644) to require that all federal agencies with procurement authority establish an Office of Small and Disadvantaged Business Utilization. This office is responsible for helping oversee the agency’s functions and duties related to the awarding of contracts and subcontracts to small and disadvantaged businesses.

Finally, the Stafford Act sets forth requirements for the federal response to presidentially declared disasters. It requires federal agencies to give contracting preferences, to the extent feasible and practicable, to organizations, firms, and individuals residing or doing business primarily in the area affected by a major disaster or emergency.<sup>13</sup>

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<sup>11</sup>These and other aspects of the small business subcontracting plan requirement are set forth at FAR Part 19.7.

<sup>12</sup>The FPDS-NG reporting threshold in FAR 4.602(c) was raised from \$2,500 to \$3,000. 71 *Fed. Reg.* 57,364 (Sept. 28, 2006). U.S.C. § 644(g).

<sup>13</sup>42 U.S.C. § 5150. Our work did not assess agency compliance with Stafford Act requirements.



## Agencies Awarded Varied Amounts of Contracting Dollars to Small Businesses, but Information on Subcontracting Plans Was Incomplete

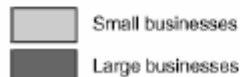
Our March 2007 report identified the extent to which DHS, GSA, DOD, and the Corps awarded contracts directly to small businesses; the extent to which different types of small businesses received contracts; and the extent to which small businesses located in Alabama, Mississippi, and Louisiana received contracts for Katrina-related projects.<sup>14</sup> Our report also noted that information on small business subcontracting plans was not consistently available for the four agencies.

## Small Businesses Received Varied Amounts of the Contracting Dollars That DHS, GSA, DOD, and the Corps Awarded

We found that small businesses received 28 percent of the \$11 billion that DHS, GSA, DOD, and the Corps awarded directly for Katrina-related projects, but the percentages varied among the four agencies (see fig. 1).<sup>15</sup> We assessed the agencies individually and found that DHS had awarded the highest dollar amount to small businesses—about \$1.6 billion dollars—and that GSA had awarded the highest percentage of its dollars to small businesses—72 percent of about \$658 million.

**Figure 1: Amount and Percentage of Katrina-Related Contract Dollars Awarded to Businesses by DHS, GSA, DOD, and the Corps**

	Dollars (in millions) by business size				
	Small		Large	Total	
DHS	\$1,559.9	24%	76%	\$4,858.6	\$6,418.5
GSA	474.7	72%	28%	183.0	657.8
DOD	332.7	34%	66%	653.9	986.6
Corps	728.2	23%	77%	2,381.7	3,109.9
Total	3,095.6	28%	72%	8,077.2	11,172.8



Source: GAO analysis of FPDS-NG and DD-350 data on contracting actions awarded from August 1, 2005, to June 30, 2006.

<sup>14</sup>GAO-07-205.

<sup>15</sup>Each of the agencies we reviewed establishes annual goals for small business participation. Among the agencies, these goals ranged from 23 percent for DOD and DHS to 45 percent for GSA in fiscal years 2005 and 2006.

Note: Dollars are rounded to the nearest hundred thousand and percentages were calculated from unrounded numbers.

Among categories of small businesses, small disadvantaged businesses received 7 percent of the approximately \$11 billion that the four agencies awarded to both large and small businesses. Other categories of small businesses, including women- and veteran-owned businesses and businesses located in HUBZones, received from 2 to 4 percent (see fig. 2). Contracting dollars awarded directly to businesses can be counted in more than one category, so the dollars awarded to various types of small businesses are not mutually exclusive.

**Figure 2: Dollar Amount of Katrina-Related Prime Contracts Awarded to Businesses by Socioeconomic Group**

	Total awarded to small and large businesses (dollars in millions)	Dollar amount (in millions) and percentage of total awarded to socioeconomic group									
		Veteran-owned				HubZone		Disadvantaged		Women-owned	
		All	Service-disabled <sup>a</sup>								
DHS	\$6,418.5	2%	\$127.9	\$1.0	3%	\$222.7	6%	\$409.0	4%	\$243.7	
GSA	657.8	1%	9.0	.6	2%	14.0	6%	37.7	9%	58.1	
DOD	986.6	1%	11.0	.8	4%	36.8	8%	76.9	5%	45.8	
Corps	3,109.9	2%	61.8	.8	3%	106.2	7%	207.6	3%	84.7	
Total	11,172.8	2%	209.7	3.2	3%	379.7	7%	731.3	4%	432.3	

Source: GAO analysis of FPDS-NG and DD-350 data on contracting actions awarded from August 1, 2005, to June 30, 2006.

Note: Percentages cannot be totaled across columns because under SBA Guidelines, contracting dollars awarded directly to businesses can be counted in more than one category—for example, a small disadvantaged business owned by a woman can be counted as both disadvantaged and women-owned. Dollars are rounded to the nearest hundred thousand and percentages were calculated from unrounded numbers.

<sup>a</sup>The service-disabled category is a subset of the veteran-owned business category.

Small businesses in Alabama, Mississippi, and Louisiana received 66 percent of the \$1.9 billion in Katrina-related contracting dollars awarded to local businesses by the four agencies we reviewed. Among the three states, the proportion of Katrina-related contracting dollars awarded to small businesses was largest in Mississippi (75 percent), followed by Alabama and Louisiana at 65 percent and 62 percent, respectively, of the dollars awarded (table 1). In general, these small local businesses received contracting dollars directly from the four agencies to provide trailers, administrative and service buildings, restoration activities, and other supportive services.

**Table 1: Small Businesses Received the Majority of Contracting Dollars Awarded Directly to Local Businesses**

Dollars in millions

Agency	Alabama			Louisiana			Mississippi		
	All businesses	Small businesses		All businesses	Small businesses		All businesses	Small businesses	
	Dollar amount	Dollar amount	Percent	Dollar amount	Dollar amount	Percent	Dollar amount	Dollar amount	Percent
DHS <sup>a</sup>	\$160	\$119	75%	\$460	\$345	75%	\$138	\$138	100%
GSA	77	72	92	48	26	54	210	194	92
DOD	10	10	98	7	6	89	45	9	20
Corps	84	16	19	609	320	53	114	42	36
Total	\$331	\$217	65%	\$1,124	\$697	62%	\$508	\$383	75%

Source: FPDS-NG and DD-350 data on contract actions awarded between August 1, 2005 and June 30, 2006.

Note: Dollars are rounded to the nearest million and percentages were calculated from unrounded numbers.

<sup>a</sup>DHS data are missing information on the contractor's state for 3.5 percent of its records. Where possible, GAO used available information on the contractor's city and place of performance to identify the state in which the contractor was located.

**Information on Subcontracting Plan Requirements Was Missing or Incomplete**

In two respects, key information on small business subcontracting plans was not consistently available in official procurement data systems for the four agencies. First, primarily with respect to DHS and GSA contract actions, the official procurement data system had no information at all on whether the agencies required subcontracting plans for 70 percent or more of their contracting funds. This database should have contained information on whether the agencies required subcontracting plans in these instances. For DOD and the Corps, their system lacked information on whether they required subcontracting plans for one percent of their contracting funds. Table 2 shows the total amounts each agency awarded to large businesses for contracts valued over \$500,000 (column 2) and the extent to which no information was available in the official procurement data system on whether the agencies required subcontracting plans for those contracts (column 6).

**Table 2: Subcontracting Plan Requirements by Dollar Amount Awarded**

Dollars in millions

Agency	Total amount awarded to large businesses over \$500,000*	Percent of total amount awarded and dollar amount requiring a subcontracting plan	Dollar amount requiring a subcontracting plan	Percent of total amount awarded and dollar amount with no subcontracting possibilities	Dollar amount with no subcontracting possibilities	Percent of total amount awarded and dollar amount reported as not requiring a subcontracting plan	Dollar amount reported as not requiring a subcontracting plan	Percent of total amount awarded and dollar amount with no information on subcontracting plan requirements	Dollar amount with no information on subcontracting plan requirements
DHS	\$4,866.2	1%	\$27.2	0%	\$16.3	29%	\$1,406.0	70%	\$3,416.7
GSA	127.1	7	8.9	4	4.7	12	15.1	77	98.4
DOD	631.2	22	141.4	0		77	483.6	1	6.2
Corps	\$2,468.7	76%	\$1,880.1	0%		23%	\$574.5	1%	\$14.1

Source: GAO analysis of FPDS-NG and DD-350 data for contract actions awarded between August 1, 2006, and June 30, 2006.

Note: Dollars are rounded to the nearest hundred thousand and percentages were calculated from unrounded numbers.

\*One million dollars for construction.

Second, the procurement data systems showed that the agencies had determined that subcontracting plans were not required for contracts representing 12 to 77 percent of the dollars they awarded to large businesses for Katrina-related projects. Agencies are required to document their reasons for these determinations. However, information on the four agencies' reasons for not requiring these plans, which should have been readily available, was incomplete.

Overall, procurement officials from the four agencies were able to explain some of the missing or incomplete information on subcontracting plans by, for example, identifying data entry errors or providing evidence of the agencies' reasons for not requiring the plans. For example, DHS officials determined that \$545 million of the DHS contracting funds the procurement data system showed as not requiring a plan had been miscoded and should have been entered in the procurement system under a different category that listed the contracts as having "no subcontracting possibilities." In another instance, GSA officials did not require a subcontracting plan for a \$26 million contract for ice because they believed that the urgency of the situation required buying and shipping the ice faster than normal procedures would allow. Nonetheless, at the time we issued our report contracting dollars remained for each agency with incomplete subcontracting plan information that agency officials had not been able to explain. These amounts ranged from \$3.3 million for DOD (excluding the Corps) to \$861 million for DHS.

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In our report, we concluded there was little doubt that Hurricane Katrina posed challenges to the agencies, which had to award contracts quickly while still following government procurement rules, especially those regarding subcontracting plans. Certain choices, such as documenting compliance with these requirements at a later date (something GSA and DOD officials indicated was the case), might have been understandable. Nonetheless, more than a year after the hurricane, we reported that a substantial amount of information about the four agencies' subcontracting requirements remained incomplete. Conclusively demonstrating compliance with the rules about subcontracting plans is important for reasons beyond just documentation. First, in requiring these plans agencies commit prime contractors to specific goals for providing opportunities to small businesses. Second, the agencies have tools— incentives as well as sanctions—that they can use to ensure that the contractors engage in good faith efforts to meet their small business subcontracting goals. In doing so, the agencies ensure compliance with federal procurement regulations and help guarantee that small businesses have all of the practical opportunities to participate in federal contracts that they are supposed to have. Because so much key information about subcontracting plans was incomplete in federal procurement data systems and, at the conclusion of our review, remained unresolved, we cannot tell the extent to which the agencies are complying with the regulations. Furthermore, the lack of transparency surrounding much of the agencies' subcontracting data—missing information on plans when contracts appear to meet the criteria for having them—may lead to unwarranted perceptions about how the federal procurement system is working, particularly in terms of the government's stated preference for contracting with small businesses.

To ensure compliance with federal contracting regulations and more transparently disclose the availability of subcontracting opportunities for small businesses, we recommended that the Secretaries of Homeland Security and Defense and the Administrator of General Services issue guidance reinforcing, among other things, the necessity for documenting in publicly available sources the agencies' contracting decisions, particularly in instances when the agencies decided not to require subcontracting plans. Moreover, we recommended that the agencies consider asking their respective Inspectors General to conduct a review to ensure that this guidance and related requirements were being followed.

The agencies generally agreed with our recommendations, and GSA has already implemented them. Specifically, in March 2007, GSA issued guidance to its contracting officers reminding them of the importance both

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of the subcontracting plan requirements and of documenting key decisions affecting acquisitions, including any decisions impacting subcontracting plan requirements. In addition, GSA will include a review of compliance with subcontracting plan requirements in its annual internal procurement management reviews. DOD and DHS officials have stated that they are working on implementing these recommendations. For example, Corps officials indicated they are developing a new training module on the requirements regarding subcontracting plans and plan to deliver this to its contracting officers.

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## Some Agencies May Not Be Maximizing Their Advocacy Roles

SBA has governmentwide responsibilities for advocating that federal agencies use small businesses as prime contractors, and that prime contractors give small businesses opportunities to participate as subcontractors in federal contracts awarded to large businesses. To meet its responsibilities, SBA negotiates annual procurement goals with federal executive agencies to achieve the 23 percent governmentwide goal for contract dollars awarded directly by federal agencies. In addition, SBA is responsible for assigning Procurement Center Representatives (PCRs) to major contracting offices to implement small business policies and programs. Responsibilities of PCRs include reviewing proposed acquisitions and recommending various types of small business sources; recommending contracting methods to increase small business prime contracting opportunities; conducting reviews of the contracting office to ensure compliance with small business policies; and working to ensure that small business participation is maximized through subcontracting opportunities.

Each federal agency that has procurement authority is required to have an OSDBU. The OSDBU is responsible for helping to oversee the agency's functions and duties related to the awarding of contracts and subcontracts to small and disadvantaged businesses. For example, the office must report annually on the extent to which small businesses are receiving their fair share of federal procurements, including contract opportunities under programs administered under the Small Business Act.<sup>16</sup> The Small Business Act requires that OSDBU directors be responsible to and report only to agency heads or their deputy. By providing immediate access to top decision-makers, Congress intended to enhance the directors' ability to advocate effectively for small and disadvantaged businesses. However, in

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<sup>16</sup>13 C.F.R. § 125.3(e).

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2003 we reported that 11 of the 24 federal agencies we reviewed were not in compliance with this provision.<sup>17</sup> As of our most recent follow-up work, nine of the agencies reviewed were out of compliance (the Departments of Agriculture, Commerce, Education, Health and Human Services, Justice, State, the Interior, and the Treasury; and the Social Security Administration). The Environmental Protection Agency has complied, and the Federal Emergency Management Agency has been subsumed into the Department of Homeland Security, which has an OSDBU with a director reporting to the highest agency levels.

Most of the agencies that provided comments on this work disagreed with our conclusion that the reporting relationships did not comply with this provision of the Small Business Act.<sup>18</sup> However, none of the legal arguments that the agencies raised caused us to revise our conclusions or recommendations. For example, the Departments of Agriculture and Treasury had delegated OSDBU responsibilities to lower level officials and argued in their comments to us that because the Small Business Act does not explicitly prohibit such a delegation, their reporting relationships complied with this provision. However, we noted that the lack of an express prohibition on such a delegation does not necessarily mean that it is thereby permitted and cited case history supporting our belief that the delegation of authority may be withheld by implication, which we believe this section of the Small Business Act does. Because the OSDBU directors at agencies that do not comply with this provision of the Act do not have a direct reporting relationship with their agencies' head or deputy, the reporting relationships potentially limit their role as effective advocates for small and disadvantaged businesses.

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## Ongoing Work to Evaluate SBA and OSDBU Advocacy Efforts

At your request, we have ongoing work evaluating the efforts of SBA and, to some extent, OSDBUs within federal agencies, to advocate on behalf of small disadvantaged businesses and those in SBA's 8(a) business development program. As you are aware, both SBA and agencies' OSDBUs play important roles in advocating federal contracting opportunities for small disadvantaged businesses and 8(a) firms. SBA certifies the firms' eligibility for one or both designations and, as I noted earlier, has a governmentwide advocacy role for all types of small businesses, and OSDBUs advocate for contracting opportunities within each agency by, for

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<sup>17</sup>[GAO-03-863](#).

<sup>18</sup>Specifically, section 15(k)(3) of the Small Business Act.

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example, reviewing proposed contracts and making recommendations to contracting officials about those they believe could be awarded to a small business, including disadvantaged businesses.

The Small Business Act authorizes SBA's 8(a) Business Development Program as one of the federal government's vehicles to help small disadvantaged businesses compete in and access the federal procurement market. To be eligible for the program, a firm must, among other things, meet SBA's applicable size standards for small businesses and be owned and controlled by one or more socially and economically disadvantaged individuals who are U.S. citizens who demonstrate the potential for success. Firms receiving 8(a) certification are eligible for contracts that federal agencies set aside for them. To qualify for SDB certification, a firm must be owned or controlled by one or more socially and economically disadvantaged individuals or a designated community development organization. Section 8(a) firms automatically qualify as SDBs, but other firms may apply for SDB-only certification.

Mr. Chairman, you recently wrote to us expressing concern about whether SBA was taking an appropriate, proactive approach to advocate that small disadvantaged businesses—those in SBA's 8(a) and SDB programs—have access to federal government contracts. As you know, procurement decisions—who gets each federal contract—ultimately rest with the agencies' contracting offices, not with their OSDDBUs and not with SBA. Neither SBA nor the OSDDBUs can force contracting officials to give a contract to a small business. However, as language in the Small Business Act suggests, they do have an important role to play in advocating that small businesses have the "maximum practicable opportunity" to participate. Consequently, our evaluation will focus on the advocacy role that SBA and OSDDBUs play regarding these opportunities for small businesses. Specifically, it will include assessment of the actions SBA takes to encourage that prime contracting goals for small disadvantaged businesses are met; the extent to which such goals have been met; whether federal agencies are having difficulty awarding contracts to 8(a) firms; and SBA's efforts to advocate that small disadvantaged businesses have the maximum practicable opportunity to participate as subcontractors for prime federal contracts. In our evaluation, we also plan to assess actions by selected agency OSDDBUs in serving as advocates for 8(a) firms.

Our evaluations of contracting in the aftermath of Hurricane Katrina and agency OSDDBUs provide useful perspectives as we move forward in our examination of the important advocacy roles undertaken by SBA and the



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OSDBUs. When we complete the design phase of this work, we will reach agreement with you on our reporting objectives and the anticipated issuance date. Mr. Chairman, this concludes my prepared statement. I would be happy to answer any questions at this time.

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## Contacts and Acknowledgments

For further information on this testimony, please contact William B. Shear at (202) 512-8678 or [shearw@gao.gov](mailto:shearw@gao.gov). Individuals making key contributions to this testimony included Bill MacBlane, Assistant Director; Emily Chalmers; Nancy Eibeck; Julia Kennon; Tarek Mahmassani; Lisa Moore; Paul Thompson; Myra Watts-Butler; and Bill Woods.

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