

***T***  
*Technical*



***A***  
*Assessment*

OFFICE OF THE INSPECTOR GENERAL

**Procurements in the Telecommunications  
Services Resale Market**

Report No. 95-159

April 5, 1995

**DEPARTMENT OF DEFENSE**

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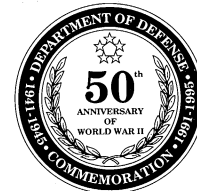
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### **Acronyms**

CTGI	Communications Transmission Group, Incorporated
DFARS	Defense Federal Acquisition Regulation Supplement
DISA	Defense Information Systems Agency
DITCO	Defense Information Technology Contracting Office
FAR	Federal Acquisition Regulation
FASA	Federal Acquisition Streamlining Act of 1994
GAO	General Accounting Office
IQO	Inquiry/Quote/Order
SADBU	Small and Disadvantaged Business Utilization
SBA	Small Business Administration
SDB	Small Disadvantaged Business
SIC	Standard Industrial Classification
UNAT	United Native American Telecommunication
U.S.C.	United States Code



**INSPECTOR GENERAL**  
DEPARTMENT OF DEFENSE  
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April 5, 1995

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION  
AND TECHNOLOGY  
DIRECTOR, DEFENSE PROCUREMENT  
DIRECTOR, DEFENSE INFORMATION SYSTEMS  
AGENCY  
DIRECTOR, SMALL AND DISADVANTAGED BUSINESS  
UTILIZATION

SUBJECT: Report on the Technical Assessment of Procurements in the  
Telecommunications Services Resale Market (Report No. 95-159)

We are providing this report for your review and comments. The assessment was done in response to a request from the Director, Defense Procurement, to review the procurement of long distance telecommunications services from small businesses and small disadvantaged businesses by the Defense Information Technology Contracting Office. Comments on a draft of this report were considered in preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. As a result of management comments, we revised, redirected and renumbered recommendations of the report to clarify certain areas. We request comments from the Under Secretary of Defense for Acquisition and Technology on Recommendation A.1., Director, Small and Disadvantaged Business Utilization, on Recommendation A.2., Director, Defense Information Systems Agency, on Recommendations A.3. and B.1., and Director, Defense Procurement, on Recommendations A.4. and B.2., by June 5, 1995.

We appreciate the courtesies extended to the technical assessment staff. If you have questions, please contact Mr. Kenneth H. Stavenjord, Technical Director, at (703) 604-8952 (DSN 664-8952) or Mr. David L. Leising, Project Manager, at (703) 604-8913 (DSN 664-8913). Copies of the final report will be distributed to the organizations listed in Appendix D. The technical assessment team members are listed inside the back cover.

*David K. Steensma*

David K. Steensma  
Deputy Assistant Inspector General  
for Auditing

## Office of the Inspector General, DoD

**Report No. 95-159**  
(Project No. 4PT-5007)

**April 5, 1995**

### **PROCUREMENTS IN THE TELECOMMUNICATIONS SERVICES RESALE MARKET**

#### **EXECUTIVE SUMMARY**

**Introduction.** This technical assessment was initiated in response to a request from the Director, Defense Procurement. The Defense Information Technology Contracting Office (DITCO) (formerly the Defense Commercial Communications Office) awarded a total of \$824 million in FY 1993 contracts. We reviewed 278 contracts that were placed through the DITCO electronic bulletin board system from May 1992 through December 1993 with small disadvantaged business (SDB) resellers of long distance services. The contracts reviewed were valued at \$30.3 million.

**Objective.** Our objective was to assess the propriety and implementation of laws and regulations applicable to the procurement of long distance telecommunication services from small businesses and SDBs in the telecommunications resale market.

**Technical Assessment Results.** The DITCO was required to continue giving the 10-percent evaluation preference to the SDBs for long distance services after the contracting office and the DoD exceeded their annual goals for procurement contract dollars awarded to SDBs for three previous fiscal years. This action was based on an interpretation of the law that established the preference program. As a result, DoD and other Government organizations ordering long distance services through DITCO paid unnecessary premiums of more than \$1.1 million from May 1992 through December 1993 on 90 contracts, valued at approximately \$22 million. Also, the percentage of contract dollars awarded by DITCO to non-disadvantaged small telecommunications firms decreased because the firms could not successfully compete with small disadvantaged business rivals being given the evaluation preference (Finding A).

The DITCO awarded contracts to the small disadvantaged businesses using the evaluation preference program without verifying the accompanying 50-percent labor requirement. The SDBs could not provide 50 percent of the labor in-house required for the execution of their contracts. The contracting officers at DITCO accepted the SDBs' statements that they agreed to provide 50 percent of the labor without performing complete responsibility determinations. As a result, contracting officers made awards resulting in numerous protests, premium payments, and termination and reprocurement costs (Finding B).

**Summary of Recommendations.** We recommend that the Under Secretary of Defense for Acquisition and Technology direct a change to the Defense Federal Acquisition Regulation Supplement requirement for relief from mandatory use of the 10-percent evaluation preference clause. Also, we recommend that the Director, Small and Disadvantaged Business Utilization, determine the impact of assigning small disadvantaged contracting goals of greater than the 5-percent statutory goal and whether the 10-percent evaluation preference program is still needed for DoD to achieve the goal.

## Small and Disadvantaged Business Utilization Comments

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We recommend that the Commander, DITCO, request a class deviation from the mandatory use of the evaluation preference clause in solicitations for long distance services and evaluate all preference-based awards for other items and services to determine whether they continue to meet their annual goal without the preference. Also, we recommend that the Director, Defense Information Systems Agency (DISA) instruct contracting officers to only award contracts using the 10-percent evaluation preference when the labor content of those contracts can be verified and to perform complete responsibility determinations before awarding contracts to small businesses.

Finally, we recommend that the Director, Defense Procurement, propose a change to the subcontracting rules in Federal Acquisition Regulation 19.502-2, "Total Set-Asides," and determine whether a 10-percent evaluation preference program is needed in the long distance services market. If so, then the Director should determine if there is an alternative criterion to the 50-percent labor rule requirement.

**Management Comments and Technical Assessment Response.** The Director, DoD Small and Disadvantaged Business Utilization, nonconcurrent with authorizing the heads of DoD contracting activities to decide when to use the evaluation preference and to determine the impact of assigning SDB contracting goals greater than 5 percent, stating that some activities are assigned a goal greater than 5 percent to compensate for other activities that cannot achieve that goal. The Director supports the recommendation that DITCO should request a deviation from mandatory use of the evaluation preference. The Director also plans to request a change in procedures for use of the evaluation preference so that a responsive, responsible non-disadvantaged small business submitting the lowest priced offer would not be displaced by an SDB being given an evaluation preference. Finally, the Director agreed to determine the percentage of contract dollars awarded annually to SDBs both with and without the preference.

The DISA stated that a class deviation from the Defense Federal Acquisition Regulation Supplement requirement for mandatory use of the evaluation clause should be requested. DISA agreed that DITCO contracting officers cannot verify the labor content of contracts for long distance service, but disagreed that DITCO had a basis for finding the SDB resellers nonresponsible. The Director, Defense Procurement, requested our views on whether the 10-percent evaluation preference program should be used for the long distance market and, if so, on alternatives to the 50-percent rule. A synopsis of management comments is in Part II and the full text of the comments is in Part IV.

The DoD exceeded its annual goal of awards to SDBs by 49 percent (\$2.8 billion) in FY 1994. It is time to change the mandatory 10-percent preference and strive to reduce acquisition costs, which is the goal of acquisition reform. Further, preference-based contracts do not need to be awarded to SDB resellers of long distance services for DITCO to continue to meet its SDB goal, because the labor content of these services cannot be verified and because the six SDB resellers that we interviewed were essentially operating as brokers. Based on these comments, we revised, redirected, and renumbered some recommendations. We request that the Under Secretary of Defense for Acquisition and Technology; Director, Small and Disadvantaged Business Utilization; Director, Defense Information Systems Agency; and Director, Defense Procurement provide additional comments on the recommendations by June 5, 1995.

# Table of Contents

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<b>Executive Summary</b>	i
<b>Part I - Introduction</b>	
Background	2
Objectives	3
Scope and Methodology	3
Other Matters of Interest	4
Prior Audit and Other Reviews	5
<b>Part II - Findings and Recommendations</b>	
Finding A. The 10-Percent Evaluation Preference Program	8
Finding B. The 50-Percent Rule	23
<b>Part III - Additional Information</b>	
Appendix A. Summary of Contracts Awarded to Small Disadvantaged Businesses for Long Distance Services	34
Appendix B. Protest History	36
Appendix C. Organizations Visited or Contacted	43
Appendix D. Report Distribution	45
<b>Part IV - Management Comments</b>	
Defense Information Systems Agency Comments	48
Defense Procurement Comments	52
Small and Disadvantaged Business Utilization Comments	53

This report was prepared by the Technical Assessment Division, Audit Planning and Technical Support Directorate, Office of the Assistant Inspector General for Auditing, DoD.

## **Part I - Introduction**

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## Background

The Defense Information Technology Contracting Office (DITCO), formerly the Defense Commercial Communications Office, is part of the Defense Information Systems Agency (DISA). Its assigned mission includes acquisition and management of all long distance communications, facilities, services, and equipment required within or emanating from the continental United States and other geographic areas for the DoD and other Government Agencies. DITCO awarded contracts for the Federal Aviation Administration, National Aeronautics and Space Administration, and all DoD Components valued at a total of \$824 million in FY 1993. In return for this service, DITCO charged a fee of 2 percent of the contracted amount.

DITCO contracting officers acquire these long distance services with an Inquiry/Quote/Order (IQO) process when the contract value is expected to exceed \$2,500 and award is based on price and price related factors. The IQO procedure begins when a Government Telecommunications Certification Office issues a Request for Telecommunications Services to DITCO. The DITCO contracting officers rapidly respond to the requests with an "electronic commerce" system, called the DISA Acquisition Bulletin Board System (the electronic bulletin board).

The electronic bulletin board describes the requested telecommunications service to allow the vendors to prepare quotations without the need for any discussions or negotiations. The bulletin board acquisitions of long distance services use full and open (unrestricted) competitive procedures under Standard Industrial Classification (SIC) code 4813, Telephone Communications, Except Radiotelephone. The DITCO staff stated that all long distance services contracts, as well as the majority of their other contracts for facilities, services and equipment were under SIC code 4813.

The Office of Management and Budget SIC Manual references resellers. For example, SIC code 4813 includes "establishments primarily engaged in leasing telephone lines or other methods of telephone transmission, such as optical fiber lines and microwave or satellite facilities, and reselling the use of such methods to others." Also, resale is defined by the Federal Communication Commission as an "activity wherein one entity subscribes to the communications services and facilities of another entity and then reoffers communications services and facilities to the public with or without 'adding value' for profit."

Public Law 99-661, Section 1207, of the FY 1987 DoD Authorization Act, established a 10-percent evaluation preference for Small Disadvantaged Businesses (SDBs) as a tool that may be used when necessary to achieve a goal of 5 percent of the total prime and subcontract procurement funds awarded annually to small business concerns owned and controlled by socially and economically disadvantaged individuals.



The authority for the "50-percent rule" is derived from Title 15, United States Code (U.S.C.), Section 644 (o)(1) of the Small Business Act. It states that a small business concern may not be awarded a contract that has been set aside for small business unless the concern agrees that, in the case of a contract for services (except construction), "at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern." This rule has been implemented in Federal Acquisition Regulation (FAR) Clause 52.219-14, "Limitations on Subcontracting." It is also cited in Title 10, U.S.C., Section 2323, "Contract goal for SDBs and certain institutions of higher education," and in Defense Federal Acquisition Regulation Supplement (DFARS) Clause 252.219-7006, "Notice of Evaluation Preference for Small Disadvantaged Business Concerns."

Several competitors protested preference-based contract awards to SDBs. The majority of the protests stated that the SDB competitors were not eligible for the 10-percent evaluation preference because they were not providing 50 percent of the cost of contract performance with their own personnel. The more recent protests also asserted that the SDB awardees were not eligible for the 10-percent preference because they were unduly reliant on their large telecommunications subcontractors (including AT&T, MCI, and Sprint) to perform the primary or vital requirements of the contract.

Due to a number of formal and informal protests by contractors, the Director, Defense Procurement, requested that the Inspector General, Department of Defense, initiate a formal review of the small business and SDB preference program at DITCO.

## Objectives

The objective of our technical assessment was to assess the propriety and implementation of laws and regulations applicable to the procurement of long-haul telecommunication services (long distance services) from small and SDBs in the telecommunications resale market. The scope of the resale market was also to be identified during the assessment.

## Scope and Methodology

**Assessment Locations.** We visited DITCO and reviewed all available communications services authorizations (contracts) competitively awarded to SDBs through the electronic bulletin board to SDBs. We also obtained historical data from various sources to try to assess the scope of the Defense telecommunications services resale market, extent of the small and SDB participation, and implementation of the related laws and regulations.

## Introduction

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We visited six participating SDBs to evaluate whether they possessed the capacity and capability to incur 50 percent of the labor on contracts as required by law and regulations, what primary and vital functions they performed, and the functions that they required their subcontractors to perform. We contacted non-disadvantaged small businesses with which DITCO was contracting for long distance services, but did not attempt to determine whether they had the capacity to comply with the 50-percent rule. Non-disadvantaged small businesses did not have to comply with the 50-percent rule under unrestricted competitive contracting procedures.

We visited or contacted three large business subcontractors who provided the long distance services necessary for the execution of the contracts with the SDBs. We visited the Federal Communications Commission offices to obtain the labor cost-related information filed by the large long distance carriers for tariff purposes. We also visited the headquarters and three regional offices of the Small Business Administration (SBA) to review their procedures for handling and deciding protests. Appendix C lists organizations visited or contacted.

**Contracts Reviewed.** We reviewed the 278 contracts still in effect that were placed through the DITCO electronic bulletin board from May 1992 through December 1993 with SDB resellers of long distance services (See Appendix A). The contracts reviewed were valued at \$30.3 million.

**Team Composition.** We performed this technical assessment from December 1993 through September 1994. The assessment team consisted of members of the Technical Assessment Division, Audit Planning and Technical Support Directorate, and auditors. The team members possessed expertise and experience in all aspects of source selection and contracting, as well as cost estimating, engineering, telecommunications operations, accounting, and auditing.

## Other Matters of Interest

We did not formally evaluate the adequacy of internal controls over DITCO's procurement of long distance services from small businesses and SDBs during this assessment. However, while trying to obtain historical data from the DITCO DD Form 350, "Individual Contracting Action Report" data base, we encountered a deficiency.

Neither our team members nor DITCO staff were able to use the DD 350 data base to determine which contracts had been won by SDBs because of the 10-percent preference. We were also not able to use the DD 350 to determine the percentage of premiums paid to SDBs because of the evaluation preference or the number of contracts that small businesses or SDBs did not win because they had not submitted the lowest priced offer. DITCO staff explained that we were not able to do so because the blocks in their automated DD 350 data base that should have provided that information were "hardcoded" with

predetermined entries that could not be changed. For example, blocks D2 and D3, "Reason Not Awarded to SDB" and "Small Business," respectively, were hardcoded "A, No Known SDB or Small Business Source." Also, all blocks in D4 "Preference Program" were hardcoded "A, None," except block D4E, "Premium Percent," which was hardcoded "0." Other blocks were also hardcoded. Because of this DD 350 hardcoding, we manually reviewed contract files at DITCO. Our review was limited to those contracts placed through the DITCO electronic bulletin board at Scott Air Force Base, Illinois, and still in effect during our visit that were awarded to SDBs during the period selected.

However, another effect of inaccurate DD 350 coding at DITCO is that the annual report the DoD Office of Small and Disadvantaged Business Utilization (SADBU) sends to the Congress on DoD's implementation of the Section 1207 Program would not be accurate without manual review and correction of the hardcoding. DITCO management was apparently unaware of this problem until we brought it to their attention. They said that they would do a thorough review of their coding procedures and take appropriate corrective action.

## Prior Audits and Other Reviews

**General Accounting Office (GAO) Report No. GAO/NSIAD 93-167 (OSD No. 9401), "Minority Contracting - DoD's Reporting Does Not Address Legislative Goal," July 1993.** The report stated that, in FY 1992, the DoD would have achieved the 5-percent goal in Title 10, U.S.C., Section 2323 even if the awards using SDB set-asides and 10-percent preference were excluded. The GAO recommended that the Secretary of Defense evaluate the extent to which preferential contracting procedures are needed to meet program goals. The Director, DoD SADBU, concurred and stated that proposed changes to the preferential contracting procedures established under Title 10, U.S.C., Section 2323, would be developed as DFARS cases.

## **Part II - Findings and Recommendations**

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## **Finding A. The 10-Percent Evaluation Preference Program**

The Defense Information Technology Contracting Office (DITCO) was required to continue giving evaluation preferences to small disadvantaged businesses (SDBs) after both DITCO and the DoD, as a whole, exceeded their annual goal for procurement contract dollars to be awarded to SDBs. The Defense Federal Acquisition Regulation Supplement rule that requires the continuation was based on a broad interpretation of the law that established this program to try to achieve that goal without unnecessarily restricting competition. As a result, organizations for which DITCO is acquiring long distance services paid an unnecessary premium of more than \$1.1 million from May 1992 through December 1993 on 90 contracts valued at \$22 million. Also, the percentage of contract dollars DITCO awarded to non-disadvantaged small telecommunications firms has declined because they frequently could not successfully compete with their small disadvantaged business rivals being given the evaluation preference.

### **Statutory Basis of the Program**

The present rule in DFARS 219.70, "Evaluation Preference for Small Disadvantaged Business Concerns," is derived from Section 1207, Contract Goal for Minorities, of the FY 1987 DoD Authorization Act (Public Law 99-661).

Section 1207, as amended, established an objective of 5 percent for the total combined contract and subcontract dollars in FYs 1987 through 2000 for awarding to SDBs, Historically Black Colleges and Universities, and Minority Institutions. This statutory objective became known as the Section 1207 Program. This same language was codified in Title 10, U.S.C., Section 2323, in 1992 when Title 10 was amended by the DoD Authorization Act for FY 1993, Public Law 102-484, on October 23, 1992. Similar language is also now in Section 7102, "Contracting Program for Certain Small Business Concerns," of the Federal Acquisition Streamlining Act of 1994, October 13, 1994, Public Law 103-355. Section 7102 is currently being implemented in the Federal Acquisition Regulation.

Section 1207 provided an optional method for achieving the 5-percent goal, which presently applies only to DoD contracts, in what became known as the SDB Evaluation Preference Program. It is also now commonly referred to as the 10-percent preference program. The language of Title 10, U.S.C., Section 2323(e)(3) provides authority for the Secretary of Defense to pay SDB offerors as much as 10 percent more than the fair market price per contract "to the extent practicable and when necessary [in contracts] using less than full and open competitive procedures."

## DoD Implementation of Statutes

A Deputy Secretary of Defense memorandum, Subject: FY 1987 National Defense Authorization Act, Small Disadvantaged Business, March 18, 1987, provided the first formal policies and procedures for DoD agencies to follow in implementing the provisions of Section 1207. An ad hoc committee was also formed in 1987 to develop DFARS coverage to implement the Section 1207 Program. That committee developed two interim rules that proposed to implement the law in the DFARS as written. The interim rules included instructions that contracting officers were to set aside all acquisitions, other than those not exceeding the small purchase threshold, for exclusive competition among SDB concerns, whenever it was determined that adequate price competition between two or more SDBs was likely. Also, the contract price was not to exceed the fair market price by more than 10 percent.

Among the hundreds of public comments received in response to the interim rules were some that objected to total set-asides for SDB concerns because small businesses would be unfairly penalized. Several respondents also stated that they would not be able to compete successfully against the SDBs that were granted a 10-percent price advantage. As a result of those comments and in keeping with section 806 of the DoD Authorization Act for FYs 1988 and 1989 (Public Law 100-180), the Under Secretary of Defense for Acquisition<sup>1</sup>, decided that the 10-percent evaluation preference should not be applied to acquisitions totally set aside for small businesses. Section 806 required that current levels in the number or dollar value of contracts awarded under small business set-aside programs as well as to SDBs be maintained. That change to the interim rule was issued in a departmental implementation letter of May 31, 1988.

The latest rule was published in a Departmental Implementation Letter of May 31, 1988, and in Defense Acquisition Circular 88-2. The DFARS 219.70 rule required inclusion of DFARS Clause, 252.219-7007, "Notice of Evaluation Preference for Small Disadvantaged (SDB) Concerns (Unrestricted)" (now 252.219-7006), in competitive acquisitions where award is based on price and price-related factors. Acquisitions under the small purchase procedure threshold, set-aside for small businesses and SDBs as well as commissary resale items, were exempt. The current DFARS rule also contains those exemptions.

## Impact of DoD Implementation

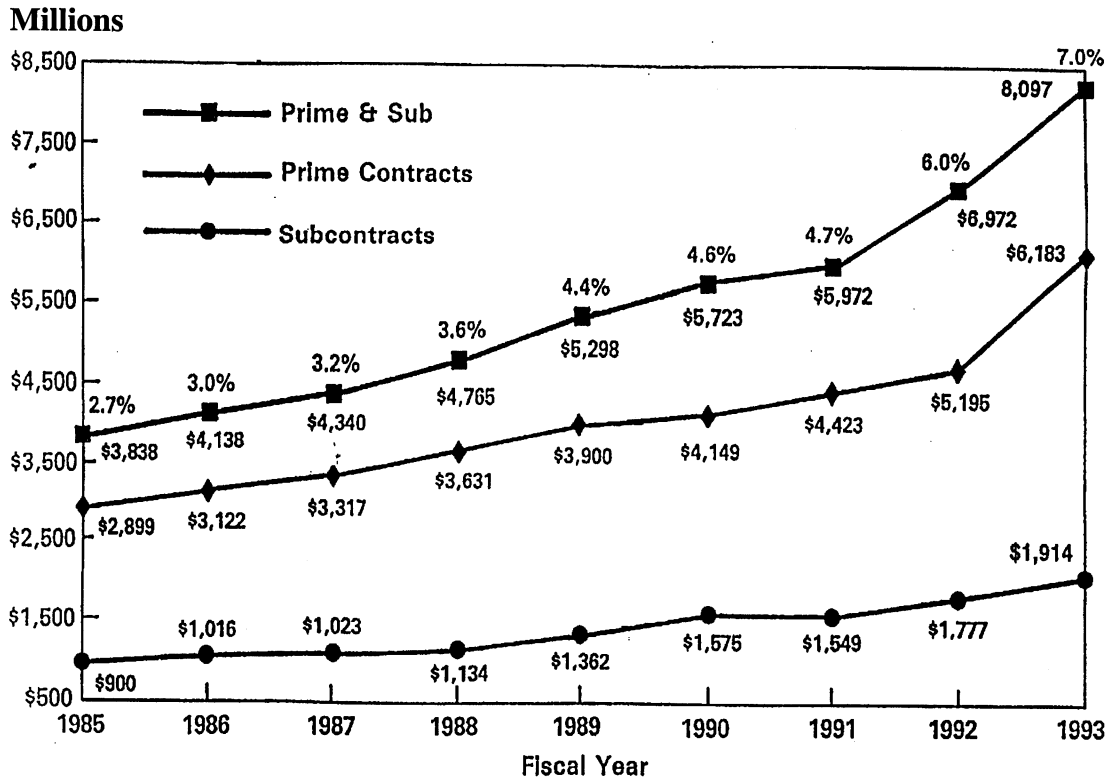
**DoD Exceeding 5-Percent Goal.** The decision in 1988 to make what the law says is a discretionary tool for achieving the 5-percent goal for contract dollars awarded to SDBs into a mandatory requirement in all unrestricted solicitations where award is based on price was understandable, given the following

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<sup>1</sup>Renamed Under Secretary of Defense for Acquisition and Technology, November 24, 1993.

## Finding A. The 10-Percent Evaluation Preference Program

circumstances. Figure 1 shows that the percentage of dollars awarded to SDBs had only increased from 2.7 percent of total DoD prime and subcontract dollars in FY 1985, when the SADBUs began to publish this data, to 3.6 percent in FY 1988. Those FY 1988 results were still short of the 5 percent goal. Also in 1988, Section 806 of Public Law 100-180 directed the Secretary of Defense to maximize the number of SDBs involved in DoD contracting and subcontracting.



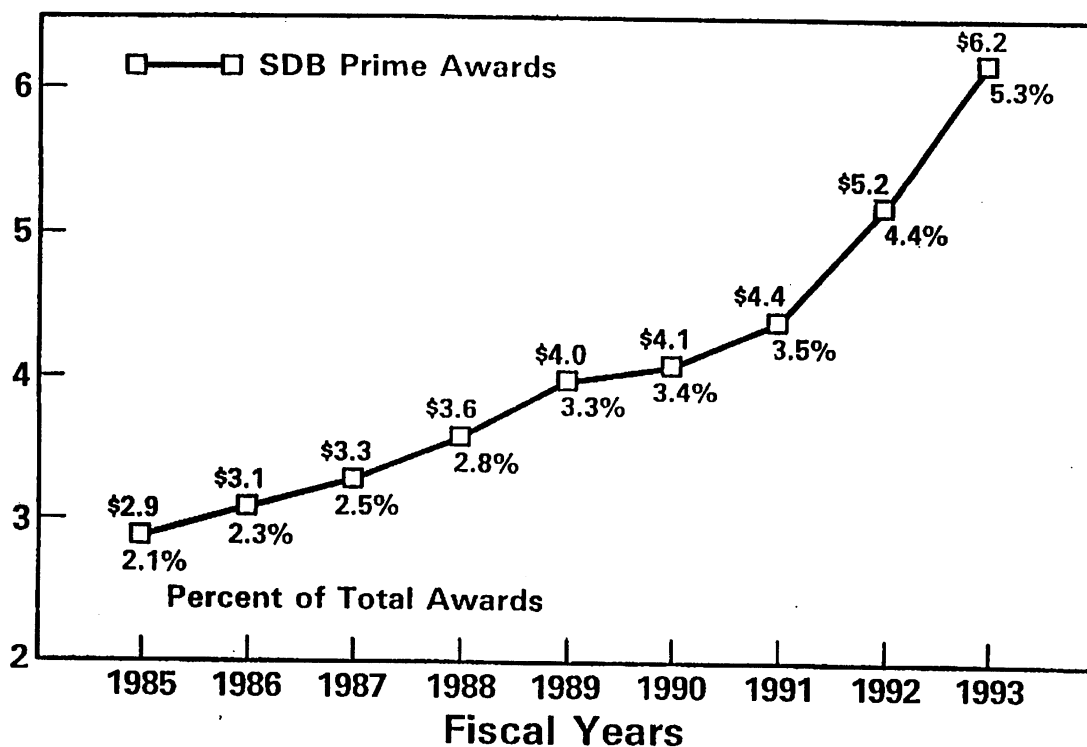
Source: DoD Office of Small & Disadvantaged Business Utilization

**Figure 1. DoD Section 1207 Goal Accomplishment, Prime and Subcontract Combined Performance**

However, the total prime and subcontract amounts awarded by all DoD contracting activities to SDBs increased to 6 percent in FY 1992 and 7 percent in FY 1993. Figure 2, also obtained from the DoD SADBUs office, shows that the amount of prime contract dollars alone exceeded the DoD's 5-percent goal in FY 1993.

## Finding A. The 10-Percent Evaluation Preference Program

Billions



Source: DoD Office of Small & Disadvantaged Business Utilization

**Figure 2. DoD Small Disadvantaged Business Prime Contract Awards**

The General Accounting Office commented on the DoD significant achievement of exceeding the Title 10, U.S.C., Section 2323, goal in its Report No. GAO/NSIAD-93-167 (OSD No. 9401). (See Prior Audits and Other Reviews in Part I). Because that goal had been exceeded in FY 1992, the GAO report recommended that the Secretary of Defense evaluate the extent to which the 10-percent preference procedures were still needed to meet program goals. Such evaluation is also a requirement of Title 10, U.S.C., Section 2323(e). In his response, the Director, DoD SADB, concurred and said that he would annually evaluate the need for preferential contracting procedures. He also replied that proposed changes to the preference procedures would be developed as DFARS cases.

Also, the DoD SADB Office stated in its annual report on implementation of the Section 1207 Program for FY 1993 that DoD would "begin the process of removing our dependency on the special authorities provided under the law in the near future."

In August 1994, the Acting Director, DoD SADB, stated that SADB staff members would brief the new Director on proposed DFARS changes that would

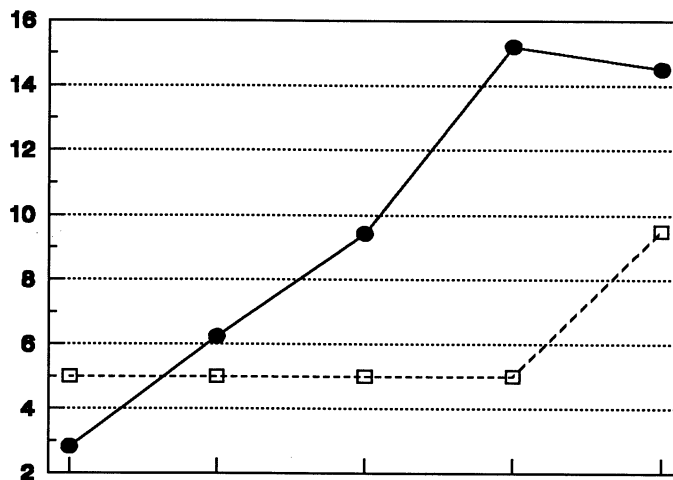


**Finding A. The 10-Percent Evaluation Preference Program**

improve small businesses' ability to compete successfully with SDBs. He further stated, however, that any DFARS case submitted from his office would probably not request a change to the current mandatory requirement in DFARS 219.70 to use the preference clause in all competitive acquisitions where award is based on price and price-related factors (See DoD SADBUs comments on Recommendation A.1. in Part IV).

**DITCO Exceeding SDB Goal.** DITCO's percentages of its total contract dollars awarded to SDBs has been even better than DoD-wide performance. Its goal in FY 1993 and prior years was 5 percent, the same as the DoD-wide goal. Figure 3 shows that DITCO has substantially exceeded that goal since FY 1991.

**Percent of Awards**



Fiscal Years	1990	1991	1992	1993	1994 (1st qtr.)
<b>Awarded to SDBs</b> ●	<b>2.8</b>	<b>6.2</b>	<b>9.4</b>	<b>15.1</b>	<b>15.0</b>
<b>Goals for SDBs</b> □	<b>5.0</b>	<b>5.0</b>	<b>5.0</b>	<b>5.0</b>	<b>9.5</b>

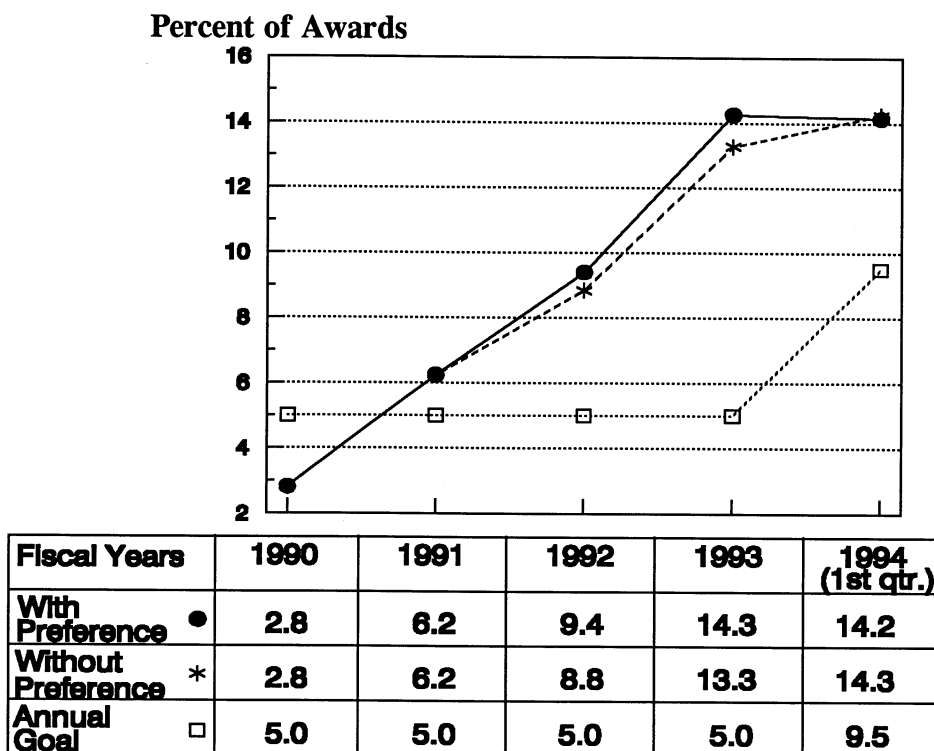
**Figure 3. Comparison of the Percentage of DITCO Awards Made to SDBs and the SDB Goals**

For FY 1994, the goal for DISA and DITCO was increased to 9.5 percent by a Deputy Secretary of Defense memorandum of December 23, 1993. DoD SADBUs staff members stated that this increase was necessary and appropriate because DITCO's excellent performance in FY 1993 and prior years helped to offset the performance of other DoD Components that were not meeting the 5-percent goal. During the period of our assessment, DITCO was exceeding its higher FY 1994 goal.

In addition, Figure 4 shows that DITCO has been substantially exceeding its annual goal both with and without the preference-based awards to SDB resellers of long distance services. Even without the preference-based awards to these

## Finding A. The 10-Percent Evaluation Preference Program

firms, DITCO would have awarded 8.8 percent of its total contract dollars to SDBs or firms that are participating in the SBA's Section 8(a) minority small business program in FY 1992, 13.3 percent in FY 1993, and 14.3 percent in the first quarter of FY 1994.



**Figure 4. Impact of DITCO Awards to SDBs With and Without Preference-based Awards for Long Distance Services**

Our analysis of the SDB contracts showed that several SDB firms with whom DITCO has been contracting for long distance services dramatically improved their ability to submit the lowest priced offers without benefit of the 10-percent evaluation preference during the time period of our sample of contracts.

As shown in Appendix A (Tables A-2, A-3 and A-4), in the aggregate, the SDBs with whom DITCO has contracted have gone from winning fewer than 3 percent of the total dollars awarded for long distance service without the preference in FY 1992 to more than 57 percent during the first quarter in FY 1994. To do this analysis, we manually reviewed each of the 278 contracts still in effect that were placed through the DITCO electronic bulletin board with SDB resellers from May 1992 through the end of the first quarter of FY 1994.

Of the 278 contracts reviewed, the SDBs won 188 because they submitted the lowest priced offer. For those contracts, amounting to a total of \$8,294,134, they did not need the assistance of the 10-percent evaluation preference.

## Finding A. The 10-Percent Evaluation Preference Program

For the remaining 90 contracts, the SDBs had the lowest "evaluated price," after the 10-percent evaluation factor was added to the non-SDB offerers' prices. The total amount of those 90 contracts was \$21,964,121 and the total evaluation preference premium paid for those contracts was \$1,106,199. We also determined that the average premium paid per contract was \$12,291, which was 5 percent of the average contract amount.

**Contract Awards to Non-Disadvantaged Small Businesses.** Title 15, U.S.C., Section 644(g) requires the President to set a Government-wide goal annually for award of contracts to small businesses of not less than 20 percent of the total value of all prime contract awards. The goals set, in turn, each year by the Deputy Secretary of Defense for DISA and DITCO are shown in Figure 5. The percentage of total contract amounts at DITCO awarded to non-disadvantaged small businesses has been well below DITCO's annual goal for at least the last 4 years, except for FY 1991. (See footnote 2)

Percent of Awards

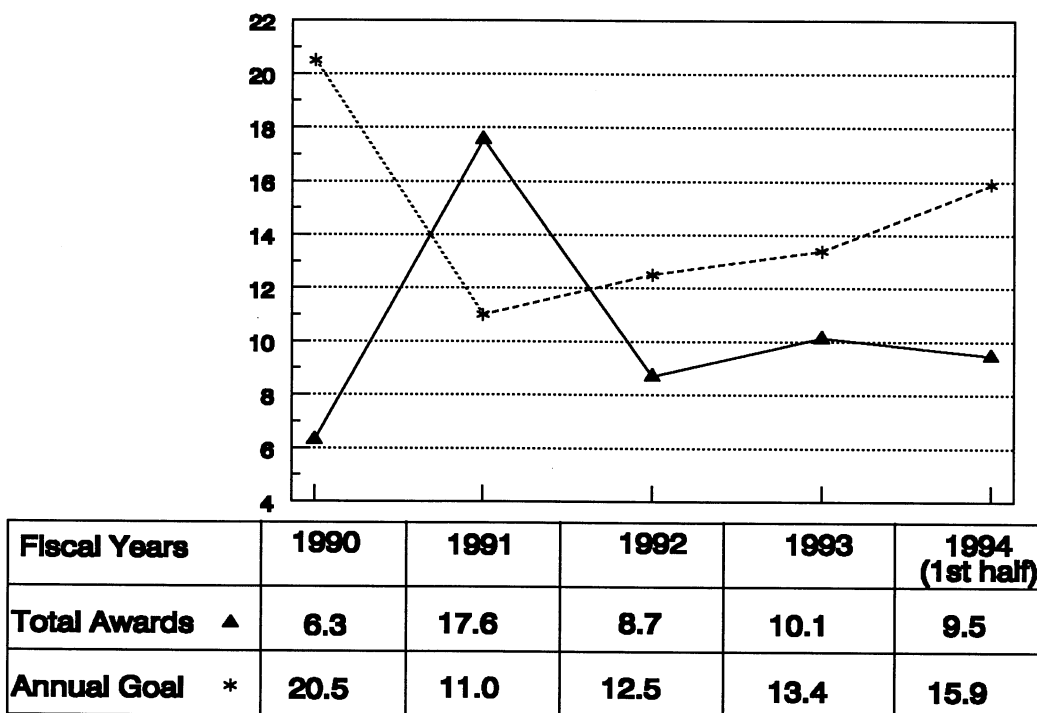


Figure 5. DITCO Awards Made to Non-Disadvantaged Small Businesses and the DITCO Small Business Goals<sup>2</sup>

<sup>2</sup>The total amounts of contract awards to small businesses, as reflected in this chart, was provided by DITCO. According to information in the Director, DoD SADBUs response to this report, it should also include the total amounts of contract awards to SDBs.

## Finding A. The 10-Percent Evaluation Preference Program

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According to the DITCO Associate Director for Small Business Programs, one reason for this low level of contracting activity with non-disadvantaged small businesses is that neither these small firms nor the SDB reseller firms could satisfy many of DITCO's solicited requirements for long distance services. The Associate Director explained that many of these firms owned very little or no facilities and network capacity of their own.

Therefore, it was also very difficult to set aside requirements for small businesses. The Size Program Manager in the SBA Philadelphia Regional Office agreed that the SIC Code 4813 market did not lend itself to set-aside contracts. The DITCO position that these requirements could not be set aside for small businesses was also based, in part, on a misinterpretation of FAR 19.502-2, "Total Set-asides." FAR 19.502-2(a) states that:

The entire amount of an individual acquisition or class of acquisitions . . . shall be set-aside for exclusive small business participation if the contracting officer determines that there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns . . . ; and (2) awards will be made at fair market prices.

This wording was interpreted by DITCO staff to mean that no requirement for telecommunications services could be set aside for small businesses unless 100 percent of the contract amount went to small businesses or SDBs, at both the prime and subcontractor levels. However, the Defense Acquisition Regulations Council Small Business Committee Chair and a DoD SADB staff member both stated that interpretation was incorrect. First, they pointed out that language in both FAR 19.102(f) and at the end of FAR Clause 52.219-6, "Notice of Total Small Business Set-Aside," states that the restrictions on subcontracting in FAR 19.502-2(a) applies only to manufactured products, not services, such as long distance services. Second, they stated that FAR Clause 52.219-14, "Limitations on Subcontracting," controls the percentage of a set-aside contract that may be subcontracted (See Finding B).

DITCO did exceed its non-disadvantaged small business goal in FY 1991 because it had non-disadvantaged small businesses regularly submitting offers. The DITCO staff stated that they made many larger dollar awards to those small businesses in that year for a network management system, satellite communications, and an integrated communications switch system.

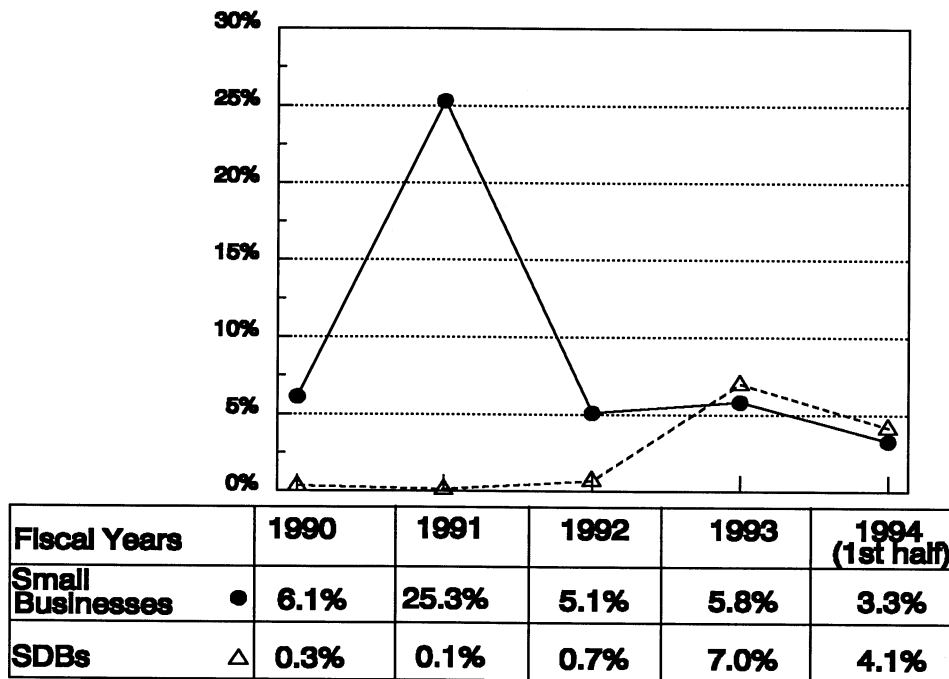
For long distance service contracts only, however, Figure 6 shows that the percentage of awards to small businesses dropped from a high of 25.3 percent in FY 1991 to 5.1 percent in FY 1992 to 3.3 percent in the first half of FY 1994. We interviewed four small business telecommunications firms that were responding to DITCO solicitations during our assessment. From their comments, we concluded that a primary reason for this decline was that non-disadvantaged small businesses were unable to price their offers low enough to compete successfully against an SDB given the 10-percent price preference. These small firms perceive that the SDBs have both the advantage of being able to satisfy the Government's requirements by reselling one or more large carriers' telecommunications network capacity and the advantage of the 10-percent evaluation preference. The Director, Business Development, of

**Finding A. The 10-Percent Evaluation Preference Program**

one small firm stated that the preference program had forced them to respond only to announced requirements that they could satisfy with their own network capacity. The Director indicated that they act as a reseller in the commercial market but not in the Government market. In reference to DITCO requirements, the Director stated that "If any portion of the long haul circuit must be procured from another vendor, our bid is automatically out of the price range because of the 10% evaluation preference."

This perception by the small businesses was at least partially substantiated by our analysis of DITCO contracts for long distance services. The non-disadvantaged small businesses would have won 17 of the 90 preference-based contracts awarded to SDBs if the 10-percent preference factor had not been added to the price of their offers. The remaining 73 contracts would have gone to large businesses.

**Percent of Awards**



**Figure 6. Percentage of Total Dollars Awarded by DITCO (for Long Distance Services Only) to Non-disadvantaged Small Businesses and SDBs**

Figure 6 also shows that the percentage of long distance awards to SDBs has decreased from a high of 7 percent in FY 1993 to 4.1 percent in the first half of FY 1994.

### Conclusion

The DoD as a whole has exceeded the statutory 5-percent goal for contract amounts awarded to SDBs in FYs 1992 and 1993. The DITCO has also exceeded this goal in FYs 1991, 1992, and 1993. Therefore, the continued mandatory use of the evaluation preference clause in solicitations for long distance services is unnecessary. The present DFARS requirement for mandatory use of the clause is not supported by the statutory language of Title 10, U.S.C., Section 2323(e)(3). Therefore, payment of evaluation preference premiums to SDBs for long distance services has been, and continues to be, unnecessary.

Evidence and a common perception among the non-disadvantaged small businesses we contacted showed that they frequently could not successfully compete with their SDB rivals because of the evaluation preference. Therefore, at least some inverse relationship existed between the percentage of contracts awarded to SDBs versus non-disadvantaged small businesses. The increase in the goal for contract awards to SDBs from 5 percent to 9.5 percent in FY 1994 could also have contributed to the adverse effect on the percentage of contract amounts for long distance services awarded to small businesses.

The data that we compiled on contract awards to SDBs indicates that several SDBs had become quite successful in pricing their offers for long distance service requirements below all their large and small business competitors without benefit of the 10-percent preference factor. Therefore, a proposed DFARS deviation to make the preference clause in solicitations optional for long distance service requirements should not prevent any SDB with the capacity to provide the required services from successfully competing for that business without relying on the preference. (See also Finding B).

Section 7102 of the new Federal Acquisition Streamlining Act of 1994 (FASA) requires that a similar 10-percent evaluation preference program be added to the FAR and incorporated into the procurement procedures of all non-DoD agencies, except the Coast Guard and the National Aeronautics and Space Administration. Any DFARS changes should be done simultaneously with implementation of the new law in the FAR.

If DITCO analyzes all preference-based contract awards for other items and services that it is procuring from SDB and 8(a) firms, DITCO may find that it can expand its request for deviation to provide the DITCO Commander with the authority to decide whether and when the evaluation preference clause is needed in all DITCO solicitations.

## **Finding A. The 10-Percent Evaluation Preference Program**

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### **Recommendations, Management Comments, and Technical Assessment Response**

**Revised, Redirected and Renumbered Recommendations.** Based on comments we revised, redirected and renumbered draft report Recommendation 1.a. as Recommendation 1 and Recommendation 1.c. as 4. Accordingly, draft report Recommendations 1.b. and 1.d. were renumbered 2.a. and 2.b., and draft Recommendation 2. was renumbered as 3.

**1. We recommend that the Under Secretary of Defense for Acquisition and Technology direct the Director, DoD Small and Disadvantaged Business Utilization, to initiate a change to Defense Federal Acquisition Regulation Supplement 219.70 to remove the mandatory use of the evaluation preference clause and give heads of all contracting activities the authority to decide when to use the clause to achieve the statutory 5-percent goal.**

**DoD SADBUCOMMENTS.** The Director, Office of DoD Small and Disadvantaged Business Utilization (DoD SADBUCOMMENTS), nonconcurrent with the recommendation and stated that the report appears biased against the use of the 10-percent preference clause merely because DoD achieved its SDB goals. The Director stated that, if adopted, this recommendation could cause the Department to fall short of its 5-percent SDB contracting goal and that achievement of the goal depends upon those organizations that exceed 5 percent being balanced against those that do not. He also stated that some organizations are assigned a goal greater than 5 percent because other organizations cannot achieve the 5-percent rate due to the composition of products and services that they buy. The Director further stated that a Department-wide DFARS change should not be based on the circumstances at a single organization. However, he supports Recommendation A.3.a. concerning a request for class deviation from mandatory use of the evaluation preference clause in solicitations for long distance services. The complete text of DoD SADBUCOMMENTS is in Part IV.

**Technical Assessment Response.** The class deviation, which the Director supports, is intended to be an interim solution concerning only the procurement of long distance telephone services at DITCO while the Director's staff and the Defense Acquisition Regulations Council deal with the DoD-wide impact of the present DFARS requirement for mandatory use of the clause. We have no bias against qualified SDBs receiving the 10-percent price preference to the extent that it is needed to achieve the statutory 5-percent goal each year. Nor are we basing this recommendation solely on the circumstances that we found at DITCO. According to information provided by the Director's staff, DoD has now exceeded the 5-percent goal for the last three fiscal years. In FY 1992, a total of almost \$7 billion in prime and subcontract dollars was awarded to SDBs. That amount was more than \$1 billion over the statutory goal. In FY 1993, the total award to SDBs of \$8.1 billion was \$2.3 billion over the 5-percent goal. In FY 1994, the total award to SDBs of \$8.4 billion was \$2.8 billion over the 5-percent goal. These total amounts above the goal were

## Finding A. The 10-Percent Evaluation Preference Program

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made by contracting activities, including DITCO, who must continue to use the evaluation preference clause, regardless of the extent to which they and DoD, as a whole, are consistently exceeding that goal. As we learned at DITCO, SDBs do not win all contracts because of the 10-percent preference. However, the continued mandatory application of this program by DoD organizations that are consistently exceeding the 5-percent goal without needing the preference program to do so is unnecessarily costly and goes beyond the statutory requirement of Title 10, U.S.C., Section 2323.

Staff of the DoD SADBUs and the Director, Defense Procurement's Contract Policy and Administration offices, stated that no DoD contracting activity has been granted a deviation from the DFARS requirement for mandatory use of the evaluation preference. The resulting additional costs to DITCO customers are one example of the general effect of this mandatory DoD rule and the DoD SADBUs position on that rule. All customers of DoD contracting activities must continue to pay up to 10 percent more than the fair market price every time a preference-based contract award is made to an SDB claiming eligibility for the preference, regardless of the percentage of total contract dollars being awarded to SDB suppliers by that contracting activity. Even though DoD awarded contracts and subcontracts to SDBs in FY 1994 valued at \$2.8 billion (49 percent) more than the amount needed to meet the statutory goal the Director, DoD SADBUs, still does not want to relinquish use of the 10-percent preference rule.

The continuous use of a preference that unnecessarily increases costs for DoD goes against a key goal of acquisition reform, which is to decrease costs of the goods and services the Government procures. According to recent testimony by the Administrator for Federal Procurement Policy, the Administration has asked for additional acquisition reform in order to empower contracting officials with the decision authority needed to perform their duties efficiently and provide the taxpayer with better service for less cost. In addition, the small business policy in FAR 19.2 clearly places responsibility for implementing the Small Business and Small Disadvantaged Business Utilization Programs and for achieving program goals with the heads of individual contracting activities.

The Federal Acquisition Streamlining Act of 1994 (FASA) requires the purchase of goods and services for values between \$2,500 to \$100,000 to be reserved for small businesses, unless the contracting officer is not able to obtain offers from two qualified small businesses. Since DoD is achieving goals set for contracting with SDBs and FASA provides greater opportunities for small business, there is a need for DoD to conserve scarce acquisition funds.

Therefore, we believe that the USD (A&T) needs to act to direct a change to the rule requiring mandatory use of the 10-percent preference clause. We have revised and readdressed the recommendation accordingly and request that USD (A&T) initiate this DFARS change.



## **Finding A. The 10-Percent Evaluation Preference Program**

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### **2. We recommend that the Director, Small and Disadvantaged Business Utilization:**

**a. Determine whether assigning small disadvantaged business contracting goals greater than the 5-percent statutory goal has an adverse impact among other DoD Components on the percentage of contract dollars awarded to non-disadvantaged small businesses.**

**DoD SADBUCOMMENTS.** The Director, DoD SADBUCOMMENTS, nonconcurrent and explained that, for goal accomplishment accounting purposes, the term "small business" includes SDBs and women-owned small businesses. The Director stated that, as a general rule, SDBs should represent approximately 25 percent of total awards to small business within a given industry. He also stated that any program designed to provide a preference to one group may infringe on the success of another group. However, he plans to initiate a DFARS change that will include a request to change the rule on use of the preference clause so that a responsive, responsible non-disadvantaged small business submitting the lowest priced offer is not displaced by an SDB offeror whose price would be low after application of a preference factor.

**Technical Assessment Response.** As a result of the Director's comments, we revised the draft version of this recommendation to address the impact on non-disadvantaged small businesses. We consider the Director's planned actions to be an acceptable alternative to our recommendation. We believe that if the Director's proposed DFARS change is approved and implemented that the present inequities between competing small businesses can be corrected. We request that the Director provide us a copy of his request memorandum.

**b. Determine whether the 10-percent evaluation preference program is still needed for DoD to achieve the 5-percent goal by separately computing and reporting the percentage of total contract dollars awarded annually to small disadvantaged businesses both with and without the preference.**

**DoD SADBUCOMMENTS.** The Director concurred, stating that DoD intends to initiate a new chart that details performance both with and without the preference.

**Technical Assessment Response.** We request that the Director confirm, in his comments on the report, that the new chart he intends to initiate will reflect each DoD Component's percentage of total contract dollars awarded annually to SDBs both with and without the preference and that each Component will be required to compile that information for its contracting activities. We further request that the Director clarify in his comments when this information will first be published.

## Finding A. The 10-Percent Evaluation Preference Program

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**3. We recommend that the Commander, Defense Information Technology Contracting Office, in the interim (until a decision is made on Recommendation A.1.):**

**a. Request a class deviation from the requirement in Defense Federal Acquisition Regulation Supplement 219.70 for mandatory use of the evaluation preference clause in solicitations for long distance services.**

**DISA Comments.** The Inspector General, Defense Information Systems Agency (DISA), responding for the Director, DISA, concurred with the finding. DISA took exception, however, to the language of the finding, stating that the language suggests that DITCO improperly awarded contracts to SDBs at an unnecessary premium of more than \$1.1 million. The Agency stated that DITCO fully complied with all DFARS mandates during the time period cited in the report because the DFARS does not authorize a contracting officer to deny a price preference claimed by a SDB based on a challenge from another offeror.

DISA also concurred that the recommended class deviation is justified, but on the basis that SBA decisions since June 1994 document the inability of SDB concerns to qualify for the evaluation preference. The Agency also stated that the continued use of the preference for requirements when it is known that SDBs cannot meet the requirements only serves to delay contract award and imposes unnecessary administrative burdens on a shrinking procurement workforce. The complete text of management comments is in Part IV.

**Technical Assessment Response.** We agree that DITCO complied with the mandatory DFARS requirement to include the evaluation preference clause after exceeding both the statutory 5-percent goal and assigned goal of 9.5 percent for contract dollars awarded to SDBs and we have clarified the wording of Finding A. accordingly. However, our analysis showed that DITCO did not need to make preference-based awards to SDB resellers of long distance services in order to exceed these goals. This mandatory DFARS requirement caused DITCO customers to pay the \$1.1 million premium cited in the finding. Since continued use of the preference clause in solicitations was unnecessary for DITCO to exceed its goals, which is the statutory purpose of the program, the premium cost would have also been unnecessary were it not for the present wording of the DFARS rule.

We continue to believe that a primary justification for a class deviation should be that DITCO does not need to make preference-based awards to SDB resellers to meet both the statutory 5-percent goal and its own higher annual goal for contract dollars awarded to SDBs. We agree that the six SDB resellers that we interviewed possessed neither the capacity nor capability to perform 50 percent of the labor nor the primary or vital requirements of providing long distance services with their own employees (See Finding B). However, to base the request for class deviation solely on the assumption that no SDB will have such capacity and capability in the future could result in disapproval of the request. (See also our response to DISA comments on Recommendation B.1.b.). In response to this report, we request that DISA reconsider its position on the

## **Finding A. The 10-Percent Evaluation Preference Program**

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justification for the DITCO class deviation and provide the date that the deviation request will be submitted to the Defense Acquisition Regulations Council.

**b. Analyze all preference-based awards for other items and services procured to determine whether the Defense Information Technology Contracting Office can continue to meet its annual small disadvantaged business contracting goal without mandatory use of the evaluation preference clause.**

**DISA Comments.** DISA nonconcurred. The Agency stated that any analysis of preference-based awards is an academic exercise that will provide historical data only and not be useful in determining DISA's acquisition strategies or achieving the following year's goals.

**Technical Assessment Response.** The Director, DoD SADB, agreed to begin computing and reporting the amount and percentage of contracts awarded to SDBs both with and without the preference. The FAR small business policy also makes the heads of contracting activities responsible for achieving their small business contracting goals. Therefore, it seems reasonable for the Commander of DITCO to also begin computing and taking appropriate action on this same type of contracting information on behalf of the customers of his office. The analysis that we recommend may reveal that DITCO is awarding a sufficient amount of contract dollars to SDBs without needing the evaluation preference to meet its annual goal. If the DFARS change recommended in Recommendation A.1. has not yet been implemented, the Commander could submit another request for deviation from the current DFARS 219.7001 requirement, covering all supplies and services acquired by DITCO in order to save the additional cost of all preference-based contracts now being awarded. We request that DISA reconsider its position and provide additional comments.

**4. We recommend that the Director, Defense Procurement, propose that Federal Acquisition Regulation 19.502-2, "Total Set-asides," be changed so that "exclusive" is deleted from the first sentence in subsection 19.502-2(a), that 19.502-2(a)(2) is renumbered (3), and that 19.502-2(a)(2) reads "or, (2) offers will be obtained from at least two responsible small business concerns that can comply with FAR Clause 52.219-14, 'Limitations on Subcontracting.'"**

**DoD SADB Comments.** The Director, DoD SADB, nonconcurred with Recommendation A.1.c. in the draft report. He indicated that his office was unaware of any systemic misinterpretation of FAR 19.502-2, "Total Set-Asides," and suggested that we initiate a FAR case to address our concern.

**Technical Assessment Response.** We have revised and renumbered this recommendation and redirected it to the Director, Defense Procurement. We request that the Director provide comments on this redirected recommendation.

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## **Finding B. The 50-Percent Rule**

DITCO awarded contracts for long distance services using the 10-percent evaluation preference program when the 50-percent labor requirement could not be verified. The SDBs we reviewed were not providing the required 50 percent of the cost of contract performance for personnel (50-percent rule). The awards occurred because DITCO contracting officers accepted contractors' statements that they agreed to provide 50-percent labor. As a result, DITCO contracting officers made awards resulting in numerous protests, premium payments, and termination and procurement costs.

### **History of the 50-Percent Rule**

The Limitations on Subcontracting clause in FAR 52.219-14(b)(1) states in part: "At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern." This clause was statutorily derived from section 921 of the Defense Authorization Act of 1987, Public Law 99-661. That section created the requirement for small business concerns to agree to perform at least 50 percent of the cost of labor to be eligible for award.

In developing the 50-percent rule as part of Public Law 99-661, Congress was concerned with the SBA's failure to require prime contractors, under a set-aside contract, to perform a specific proportion of the work in-house with its own personnel. In the House Report on this legislation, Congress expressed its concern that a legitimate small business "is thwarted when set-aside awardees are permitted to function effectively as brokers<sup>3</sup> by disbursing substantial portions of work, in clear excess of normal industry practices to . . . subcontractors." Congress also expressed concern, in the House Conference Report, over its inability to establish a "specific remedial measure against contractors who agree to perform as required and then violate the provision."

The 50-percent rule has not been altered legislatively since its enactment in 1986. However, in its Conference Report on the Defense Authorization Act of 1988 and 1989, Public Law 100-180, Congress addressed the rule and issues raised by it. In that report the Congress stated that the 50-percent rule was imposed to prevent the mere brokering of set-aside contracts with actual performance by other than small firms and to ensure that contracts to small businesses would afford them effective opportunities to sharpen their skills through actual performance.

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<sup>3</sup>The term "broker" is not specifically defined by the FAR. However, brokers are essentially middlemen; the actual contract work is performed by the subcontractor.

## **Implementation of the Law**

The language in DFARS clause 252.219-7006(d)(1)(i) requires SDBs that have not waived the preference to agree to provide 50 percent of the cost of personnel for contract performance. This requirement is the same as the 50-percent rule in FAR clause 52.219-14, "Limitations on Subcontracting."

DITCO attempted to validate the 50-percent rule by including a clause in its solicitations and contracts that require all SDB offerors to submit evidence explaining how they will meet the 50-percent rule. This clause (CC 23) is:

If a small disadvantaged business claims the 10-percent evaluation preference, the quote must include evidence that the small business meets the requirements of CC-23(d)(1)(i). If the supporting information is not provided with the quote the evaluation preference will not be considered.

All SDBs' quotes that we reviewed indicated agreement to comply with the 50-percent labor requirement and, in some instances, attempted to demonstrate how they incurred 50 percent or more of the total labor costs. DITCO contracting officers accepted the SDBs' agreement as a form of self-certification without conducting further evaluation. However, no FAR or DFARS provision allows for self-certification to the 50-percent rule.

## **Verification of the 50-Percent Labor Requirement**

The assessment team had extreme difficulty assessing the total labor content required for the telecommunications circuit contracts. We assessed the amount and the type of labor contributed by prime contractors (SDBs) and their subcontractors (long distance carriers). We determined that all SDBs, after winning award, simply leased the telecommunications circuits and some equipment from the subcontractors.

All SDBs claimed to perform more than 50 percent of the labor required to obtain the 10-percent evaluation preference. We determined that the labor involved in providing long distance services included contract administration, coordination among subcontractors and Government customers, provisioning, operation and monitoring, circuit and equipment installation, preventive maintenance, repairs, billing and collection, and handling trouble calls. The SDBs generally performed contract administration and coordination, billing and collection, and handled trouble calls. The subcontractors performed operation and monitoring duties, circuit and equipment installation, provisioning, preventive maintenance, repair, coordination and subcontracting with local exchange carriers, and many of the same activities performed by the prime contractor. The subcontractors did not allow the SDBs to operate and maintain their leased circuits. The subcontractors performed the majority of the labor.

The subcontractors did not provide labor cost information to the SDBs for their work on the subcontracts. They treated this information as proprietary and contended that it was impossible to break down the labor costs on a circuit-by-circuit basis, as they installed, operated, and maintained millions of circuits. Under the circumstances, the SDBs could only make assumptions as to the amount of labor the subcontractors expended on the leased circuit.

Since price competition was adequate for all 278 contracts reviewed, cost or pricing data were not required or requested. Thus, subcontractor's labor cost information was unavailable to DITCO and the SDBs. Without this vital information, the total labor content could not be calculated. The information the SDBs provided on labor content relating to their activities was inadequate to prove that they performed more than 50 percent of the total labor for contract performance. We interviewed the SDB executives and reviewed their operations and records. Despite their assertions, the SDBs were unable to substantiate that they were able to perform 50 percent of the labor in-house.

In addition, we used an estimated labor rate from a long distance carrier to determine that the subcontractors expended more than 50 percent of the labor costs. We subtracted the cost of the subcontractor's lease for the circuit from the SDB's contract price. We applied the estimated labor rate to the subcontractor's leased price to determine the amount of labor associated with the subcontractor. We then compared the estimated subcontractor's labor cost to the SDB's portion of the contract, which included profit and overhead, and determined that for all 278 contracts, the subcontractors performed more than 50 percent of the labor.

Our analysis of the SDBs' cost and price data revealed that they paid from 78 percent to more than 99 percent of the total cost of contract to their subcontractors. During congressional deliberations relating to Public Law 100-180, conferees stated that the contracting officers may look to the contract award price and the aggregate award prices of subcontracts to determine the contractors adherence to the 50-percent rule. For the 278 contracts we reviewed, after the subcontract costs, the SDBs had between 1 and 22 percent of the contract cost remaining to expend on their labor costs and earn profit. Yet, they all maintained that they provided 50 percent or more of the labor costs and, therefore, were entitled to the 10-percent evaluation preference. However, we did not find that the SDBs performed 50 percent or more of the labor in-house on these contracts.

## **Responsibility Determinations**

When a proposal is received from an SDB claiming the 10-percent evaluation preference, the contracting officer must determine whether the SDB is eligible for the preference. The contracting officer shall also ensure that contracts are awarded to responsible prospective contractors. FAR policy is that prospective contractors affirmatively demonstrate their responsibility including, when necessary, the responsibility of its proposed subcontractors. The FAR further

## Finding B. The 50-Percent Rule

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requires a prospective contractor to have the necessary organization, experience, accounting and operational controls, or the ability to obtain them and be qualified and eligible to receive an award under applicable laws and regulations.

For small businesses, FAR 19.602-1(a) states, in part:

Upon determining and documenting that a responsive small business lacks certain elements of responsibility (including, but not limited to, competency, capability, capacity, credit, integrity, perseverance, and tenacity), the contracting officer shall-

(1) Withhold contract award . . . ; and

(2) Refer the matter to the cognizant SBA Regional Office, except that referral is not necessary if the small business concern-

(i) Is determined to be unqualified and ineligible because it does not meet the standard in 9.104(g) . . . .

DFARS 219.602-1(a)(i) and (ii) require a contracting officer to withhold award until, "fourteen calendar days after the small business concern receives the notice (of nonresponsibility); or the contracting officer receives written notification from the concern stating that it wishes to request a determination of responsibility from the SBA, . . . or does not wish to request a determination from the SBA."

In *Sonicraft, Incorporated versus Defense Information Systems Agency and MCI Telecommunications Corporation*, May 15, 1992, the General Services Board of Contract Appeals held that the DoD Limitations on Subcontracting clause is both an evaluation factor and a mandatory performance requirement. It also held that an offeror electing to be evaluated with the SDB evaluation preference must demonstrate in its proposal that it can and will fully comply with the 50-percent rule.

Although DITCO attempted to verify the 50-percent rule with inclusion of clause CC-23, DITCO did not verify that the information submitted by SDBs to "agree" to comply with the 50-percent rule was valid. Also the contracting officers did not verify whether the SDBs could perform the requirements stated in the solicitation or whether the subcontractor was performing these requirements.

We determined that DITCO contracting officers were not adequately performing responsibility determinations, in part, because of the unavailability of labor cost data from the subcontractors. Therefore, DITCO did not know at the time of award whether SDBs could perform in accordance with the requirements of the solicitation and, therefore, should not have awarded the contracts.

## Primary or Vital Requirements

No precise or detailed definition exists of primary or vital requirements for providing long distance services. The specialists at the SBA regional offices responsible for making size determinations assess each solicitation requirement individually. They determine what service or product is being purchased, what service or product predominates, what specialized experience issues are involved, and how the dollars flow between the prime and the subcontractors in relation to the work they perform.

The agency requiring long distance services requests the primary or vital requirements of the needed service in a variety of ways. The agency telecommunications requests and inquiries principally use the words "provide," "install," and "maintain." However, other words are also used either separately or in combination with each other to describe the requirements. Examples include lease and install, provide and maintain, install, provide, and request.

Decisions on protests of preference-based awards to SDBs have been recently rendered by SBAs' regional offices and Office of Hearing and Appeals. These decisions held that SDB firms are not small businesses:

where the ostensible subcontractor of the prime contractor will perform the primary and vital requirements of the contract, and the primary contractor's duties will be confined to administrative functions such as coordination, billing and collection, and taking and referring repair problems. In such instances, the relationship will be regarded as a joint venture and the firms will be considered affiliated for the purposes of the contract under the "ostensible subcontractor" rule at 13 CFR 121.401(1)(1) and (4).

The rules:

(1) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profit/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(4) An ostensible subcontractor which performs or is to perform primary or vital requirements of a contract may have such a controlling role that it must be considered a joint venturer affiliated on the contract with the prime contractor. In determining whether sub-contracting rise to the level of affiliation as a joint venture, SBA considers whether the prime contractor has unusual reliance on the subcontractor.



## **Finding B. The 50-Percent Rule**

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Using the same factors as those the SBA regional offices used and based on our comparative analysis of the functions the SDBs performed with those the subcontractors performed, we concluded that, for the contracts we reviewed, the prime contractors were essentially brokers.

## **Protests**

An increasing number of awards by DITCO to SDBs for long distance service have been protested. Two were protested in 1992 and 16 in 1993. These protests escalated to 24 during the first 6 months of 1994, thus causing delays in contract awards and creating an additional administrative burden for DITCO. These 42 protests represent 70 contracts awarded to the SDBs (see Appendix B).

Initially, protesters alleged that the SDBs were not entitled to a 10-percent evaluation preference because they did not perform 50-percent of the labor in-house. In the more recent protests, the SDBs were alleged not to be small businesses for purposes of these requirements because they were affiliated with the large subcontractors and were not performing the primary or vital requirements of the contract. Since March 1994, the SBA regional offices in Seattle and Philadelphia have been ruling in favor of the protestors. The Chicago regional office, in its ruling on August 1, 1994, also sided with the protestors after its earlier decisions were remanded for reconsideration by the Office of Hearing and Appeals.

The Code of Federal Regulations, FAR, and DFARS provide procedures for protesting a small business representation. FAR 19.302 states that any offeror or other interested party may protest the small business representation of an offeror in a specific offer. The contracting officer can file a protest questioning the small business representation any time after offers are opened. Whether timely or not, a protest shall be promptly forwarded to the SBA regional office for the geographical area where the principal office of the concern in question is located. Also, an award shall not be made until the SBA has made a size determination or 10 business days have expired since SBA's receipt of the protest, whichever occurs first. The FAR also states that an appeal from an SBA size determination may be filed by any concern or other interested party whose protest of the small business representation of another concern has been denied by an SBA regional administrator. The appeal must be filed with the SBA Office of Hearings and Appeals.

Contracting officers had been sending all protested awards that were determined not to be urgent to the SBA for a decision. The SBA, however, had refused to rule on protests involving the 50-percent rule. The Small Business Administrator, in a September 21, 1993, letter, stated that the limitations on the subcontracting clause was only applicable to the DoD procurements and the procurement actions performed under sections 8(a) and 15(a) of the Small Business Act and were not applicable to unrestricted procurements.

DITCO's assistant legal counsel disagreed with the SBA position and felt that the SBA should rule on all protests of awards to small businesses and SDBs, including protests that raised issues involving the 50-percent rule. The assistant legal counsel reasoned that the SBA in deciding these protests should remain the exclusive source of authority with regard to application of the 50-percent rule. Additionally, in a letter to the Small Business Administrator, October 19, 1993, the Director, Defense Procurement, requested that the SBA, because of its experience and expertise, accept the responsibility for deciding protests concerning compliance with 50-percent rule.

In a decision involving a joint venture, the United States Court of Federal Claims, in *Y.S.K. Construction Company, Incorporated versus United States* (No. 93-738, February 18, 1994), ruled that the SBA is responsible for determining disadvantaged business status of business concerns. In so ruling, the Court found that the SBA's interpretation of the relevant statutes was incorrect. Also, the SBA Office of Hearings and Appeals held in a size appeal of *LDDS Metromedia Communications Corporation*, No. 3929, June 6, 1994, that SBA does have jurisdiction to determine whether an SDB concern is in compliance with the Limitation on Subcontracting clause in an unrestricted DoD solicitation that contains SDB evaluation preference.

The indecision on who should decide these protests created an additional administrative burden for DITCO and confusion among the parties involved. Additionally, had the contracting officers performed adequate responsibility determinations as required by the FAR, the number of protests would have been greatly reduced because the SDBs we reviewed would have been deemed ineligible for awards. This determination of ineligibility would have also eliminated the need to refer the matter to the SBA for a certificate of competency, unless requested to do so by the SDBs.

## **Conclusions**

The SDBs for the 278 contracts we reviewed neither performed the primary or vital requirements of the contracts nor did they possess the capacity and capability to perform 50 percent of the labor. The SDBs merely passed the cost for the leased long distance circuits to the Government and billed the Government for handling trouble calls and for administrative support. Essentially, the SDBs were operating as brokers. Hence, they did not meet the requirement for eligibility (50-percent rule) for a 10-percent evaluation preference.

DITCO contracting officers did not conduct adequate responsibility determinations to assess the SDB's capacity and capability, because they did not verify that the SDBs could perform the requirements of the contract. Also, neither the contracting officers nor the SDBs could validate whether the SDBs could perform 50 percent of the cost of personnel for contract performance.

## **Finding B. The 50-Percent Rule**

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They could not verify this cost because the long distance service providers treat their labor content as proprietary and were not required to provide information on their labor content.

### **Recommendations, Management Comments, and Technical Assessment Response**

#### **1. We recommend that the Director, Defense Information Systems Agency:**

**a. Instruct contracting officers not to award contracts to small disadvantaged businesses using the 10-percent evaluation preference unless the labor content can be verified.**

**DISA Comments.** DISA nonconcurred with the finding. DISA stated that the contracting officers are not able to verify labor content when a challenge is received. Since the U.S. Court of Federal Claims decision, February 18, 1994, that SBA has jurisdiction over such issues, DITCO's referrals for further verification of labor content are now being addressed by SBA. The complete text of DISA's comments is in Part IV.

**Technical Assessment Response.** Contracts should not be awarded to contractors when a critical element of the contract has not or cannot be determined. If contracting officers are unable to verify the labor content of a contractor's certification before award, then a 10-percent preference-based award should not be made to that contractor. Verification of labor content is a preaward function, not a post award function. As such, if the contracting officers could not determine, before award, whether the contractor could perform 50 percent of the labor requirement, then a preference-based contract award should not have been made. Additionally, the courts, boards, and regulations have given SBA jurisdiction over the 50-percent rule only after a protest of award has been made. Instead of incurring time on referring repetitive protests to SBA, the DISA should establish procedures so that contracting officers can determine when sufficient cost or pricing data has been obtained from a small business offeror and its subcontractors to determine whether that offeror can perform 50 percent of the total estimated labor requirement and is, therefore, eligible for the 10-percent evaluation preference. See our response under Recommendation B.1.b. for additional clarification. We request that DISA reconsider its position and provide comments and a copy of DITCO's instructions to its contracting officers.

**b. Instruct contracting officers to perform complete responsibility determinations, especially of a small disadvantaged business's capacity and capability to perform the requirements of the contract with its own employees, when award is to be based on the small disadvantaged business's eligibility for an evaluation preference.**

**DISA Comments.** DISA nonconcurred with the language of this recommendation in the draft report. The Agency stated that no corrective action

is necessary as the contracting officers correctly and properly handled the responsibility determinations. According to DISA, DITCO had no basis for finding the SDB firms nonresponsible, and the 50-percent verification is not a part of responsibility determinations.

**Technical Assessment Response.** As a result of DISA's comments, we have revised the draft report recommendation to clarify the need for contracting officers to determine an SDB offeror's capacity and capability to perform the labor requirements of a contract.

Title 10, U. S. C., Section 2323(f)(2) requires offerors claiming eligibility for the evaluation preference to comply with the 50-percent rule. Because contracting officers were not making adequate responsibility determinations, DITCO did not know at the time of award whether SDBs could perform in accordance with the requirements of the contract. Thus, the contracting officers had no basis for making preference-based awards.

Federal Acquisition Regulation 9.103 states, in part:

(a) Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.

(b) No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility.

If the prospective contractor is a small business concern, FAR 19.6 generally requires the contracting officer to refer nonresponsibility determinations to the SBA, except that FAR 19.602-1(a)(2)(i) states that such referrals are not necessary if the small business concern is ineligible to receive an award because it does not meet the standard in FAR 9.104-1(g). FAR 9.104-1(g) requires an offeror to be qualified and eligible to receive an award under applicable laws and regulations. The applicable law with which the SDB resellers of long distance services have to comply to be eligible for a preference-based award is Title 10, U.S.C., Section 2323(f)(2). The applicable regulation is the 50-percent rule provisions in DFARS Clause 252.219-7006(d)(1). Since DISA has stated that DITCO contracting officers could not determine the labor content of their long distance service requirements, they should have informed the SDBs that they were ineligible for 10-percent preference-based contract awards, which is a form of responsibility determination. Therefore, all contracting officers' nonresponsibility determinations that are based on the exception in FAR 19.602-1(a)(2)(i) should be final and not be referred to the SBA.

During the period of our assessment, Public Law 102-484, Section 804, and DFARS 219.602-1(a) authorized a small business concern to appeal a contracting officer's nonresponsibility determination to the SBA, by requesting a second responsibility determination under Certificate of Competency procedures. However, that authority has been repealed by Section 7101(b) of the Federal Acquisition Streamlining Act of 1994 (FASA), October 13, 1994, and was effective immediately. The protest procedures outlined in FAR Part 33

## **Finding B. The 50-Percent Rule**

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remain available to the SDB resellers of long distance services, as for any other disappointed offeror. We request that DISA reconsider its position and provide comments on the revised recommendation.

**2. We recommend that the Director, Defense Procurement, determine whether a 10-percent evaluation preference program is desired for SDBs in the long distance services market. If so, determine if there is an alternative criterion to the 50-percent labor rule requirement.**

**Director, Defense Procurement, Comments.** The Director, Defense Procurement, neither concurred nor nonconcurred. The Director did, however, request our additional views on whether a 10-percent evaluation preference program is desired for SDBs in the long distance services market and, if so, any suggested alternatives to the 50-percent labor rule.

**Technical Assessment Response.** Based on our assessment, we concluded that the 10-percent evaluation preference program should not be applicable to the long distance services market. The bases for our view are that the 50-percent rule, which is mandated when the preference program is used, cannot be practically applied in this market; and, as stated in Finding A., DITCO does not need the preference to achieve the 5-percent goal. As shown in this finding, SDBs are not able to provide 50 percent of the direct labor in the long distance services market as currently structured. We request that the Director consider our comments and respond accordingly.

## **Part III - Additional Information**

## Appendix A. Summary of Contracts Awarded to Small Disadvantaged Businesses for Long Distance Services

Table A-1. Totals for Fiscal Years 1992 Through First Quarter 1994

Firm	Total Number of Contracts Reviewed	Total Dollar Value Reviewed	Dollar Value of 90 Contracts Awarded With Preference	Percentage Awarded With Preference	Total Premium Paid	Dollar Value Awarded Without Preference	Percentage Awarded Without Preference
A	130	\$15,599,071	\$10,716,240	68.70	\$668,341	\$4,882,831	31.30
B	86	10,605,425	8,500,513	80.15	279,074	2,104,912	19.85
C	55	2,641,389	1,800,257	68.16	114,127	841,132	31.84
D	5	808,645	486,418	60.15	34,896	322,227	39.85
E	1	460,693	460,693	100.00	9,761	0	0.00
F	<u>1</u>	<u>143,032</u>	<u>0</u>	<u>0.00</u>	<u>0</u>	<u>143,032</u>	<u>100.00</u>
<b>Total</b>	<b>278</b>	<b>\$30,258,255</b>	<b>\$21,964,121</b>	<b>72.59</b>	<b>\$1,106,199</b>	<b>\$8,294,134</b>	<b>27.41</b>

Table A-2. Totals for Fiscal Year 1992

Firm	Total Number of Contracts Reviewed	Total Dollar Value Reviewed	Dollar Value of 11 Contracts Awarded With Preference	Percentage Awarded With Preference	Total Premium Paid	Dollar Value Awarded Without Preference	Percentage Awarded Without Preference
A	12	\$6,066,132	\$5,947,212	98.04	\$329,632	\$118,920	1.96
B	<u>2</u>	<u>51,451</u>	<u>0</u>	<u>0.00</u>	<u>0</u>	<u>51,451</u>	<u>100.00</u>
<b>Total</b>	<b>14</b>	<b>\$6,117,583</b>	<b>\$5,947,212</b>	<b>97.22</b>	<b>\$329,632</b>	<b>\$170,371</b>	<b>2.78</b>

## Appendix A. Summary of Contracts Awarded to SDBs

### Table A-3. Totals for Fiscal Year 1993

<u>Firm</u>	<u>Total Number of Contracts Reviewed</u>	<u>Total Dollar Value Reviewed</u>	<u>Dollar Value of 72 Contracts Awarded With Preference</u>	<u>Percentage Awarded With Preference</u>	<u>Total Premium Paid</u>	<u>Dollar Value Awarded Without Preference</u>	<u>Percentage Awarded Without Preference</u>
A	112	\$9,154,364	\$4,459,268	48.71	\$320,512	\$4,695,096	51.29
B	77	10,305,913	8,363,238	81.15	271,315	1,942,675	18.85
C	51	2,539,387	1,800,257	70.89	114,127	739,130	29.11
D	3	486,418	486,418	100.00	34,896	0	0.00
E	1	460,693	460,693	100.00	9,761	0	0.00
F	<u>1</u>	<u>143,032</u>	<u>0</u>	<u>0.00</u>	<u>0</u>	<u>143,032</u>	<u>100.00</u>
<b>Total</b>	<b>245</b>	<b>\$23,089,807</b>	<b>\$15,569,874</b>	<b>67.43</b>	<b>\$750,611</b>	<b>\$7,519,933</b>	<b>32.57</b>

### Table A-4. Totals for First Quarter Fiscal Year 1994

<u>Firm</u>	<u>Total Number of Contracts Reviewed</u>	<u>Total Dollar Value Reviewed</u>	<u>Dollar Value of 7 Contracts Awarded With Preference</u>	<u>Percentage Awarded With Preference</u>	<u>Total Premium Paid</u>	<u>Dollar Value Awarded Without Preference</u>	<u>Percentage Awarded Without Preference</u>
A	6	\$378,575	\$309,759	81.82	\$18,197	\$68,816	18.18
B	7	248,061	137,276	55.34	7,759	110,785	44.66
C	4	102,002	0	0.00	0	102,002	100.00
D	<u>2</u>	<u>322,227</u>	<u>0</u>	<u>0.00</u>	<u>0</u>	<u>322,227</u>	<u>100.00</u>
<b>Total</b>	<b>19</b>	<b>\$1,050,865</b>	<b>\$447,035</b>	<b>42.54</b>	<b>\$25,956</b>	<b>\$603,830</b>	<b>57.46</b>



## Appendix B. Protest History

### 1992 Protests - 2

Date Received	Forum	Protester	Contract	Allegation
Aug 5, 1992	GSBCA 11750-P	Sonicraft	91-R-0030 (ISVS)	Arbitrary and improper emphasis on management, failure to consider references, preaward survey as disparate treatment, entitlement to SDB preference.
Oct 10, 1992	DITCO	Electra	AZ05NOV91 3001	Lightcom improperly classified as SDB and cannot meet limitations on subcontracting (the 50-percent rule).

### 1993 Protests - 16

Date Received	Forum	Protester	Contract	Allegation
Jan 1, 1993	DITCO	Electra	MG09NOV92 0191	Lightcom does not meet the requirements of FAR 2.219-14 (SDB 50-percent rule).
Mar 3, 1993	DITCO	RMTC	93-000133	SDB set-aside is not appropriate because no systems exist that meet the 50-percent rule.
Mar 15, 1993	DITCO	Lightcom	AM03NOV92 5036	Lightcom was not evaluated using the 10-percent SDB preference.

**Appendix B. Protest History**

Date Received	Forum	Protester	Contract	Allegation
Mar 15, 1993	DITCO	Communications Transmission Group, Inc. (CTGI)	WA26OCT92 2062/63/56	Lightcom does not meet the 50-percent rule for small business set-aside.
Mar 16, 1993	DITCO	Lightcom	AO17FEB93 0027	Lightcom was not evaluated using the 10-percent SDB preference.
Apr 8, 1993	DITCO	CTGI	MG09NOV92 0398-1	United Native American Telecommunications (UNAT) does not have the capability to meet the requirements of FAR 52.219-14 for small business set-aside.
Apr 29, 1993	DITCO	CTGI	BC05MAR93 5102	Sonicraft does not meet the 50-percent rule for the 10-percent evaluation preference.
May 28, 1993	DITCO	Electra	AM26JAN93 5081	Sonicraft does not meet the 50-percent rule for the 10-percent evaluation preference.
May 28, 1993	DITCO	Electra	DF16NOV93 0016/0055	Esatel does not meet the 50-percent rule for the 10-percent evaluation preference.
Jun 28, 1993	DITCO	CTGI	MG09NOV92 0172/ NA14MAY93 1393	GCI does not meet the criteria for a small business preference.
Jun 13, 1993	DITCO	Lightcom	NA07JUN93 1611	CTGI does not meet the 50-percent rule for small business set-aside.
Jul 21, 1993	DITCO	CTGI	NR10MAY93 0007	Sonicraft does not meet the 50-percent rule for the 10-percent evaluation preference.

## Appendix B. Protest History

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Date Received	Forum	Protester	Contract	Allegation
Jul 22, 1993	DITCO	IDB Int'l	NA23FEB93 0721	SDB 10-percent evaluation preference improperly applied and awardee, Sonicraft, does not meet the 50-percent rule for application of preference.
Sept 14, 1993	DITCO	GE	93-R-0054 Americom	Esatel does not meet the 50-percent rule for application of the 10-percent evaluation preference and that affiliation with MCI should be considered in size determination in application of preference.
Sept 30, 1993	DITCO	CTGI	WA26OCT92 0256/0262, 0263	DITCO failed to notice intent to award as required by the FAR on small business set-aside solicitations and Sonicraft does not meet the 50-percent rule.
Oct 7, 1993	DITCO	Electra	WA16JUN93 3273-2	The contracting officer erred in applying the 10-percent evaluation preference to the offers of Lightcom and UNAT because they do not meet the 50-percent rule.

**January through June 1994 Protests - 22**

Date Received	Forum	Protester	Contract	Allegation
Jan 3, 1994	DITCO	Electra	AF09FEB93 3307	Lightcom does not meet criteria for 10-percent SDB preference.
Jan 5, 1994	DITCO	CTGI	WA02AUG93 3854A	Sonicraft does not meet criteria for 10-percent SDB preference.
Jan 7, 1994	DITCO	Electra	AO19NOV93 0085	Lightcom does not meet the 50-percent rule for SDBs for this solicitation.
Jan 7, 1994	DITCO	Electra	AO19NOV93 0086	Lightcom does not meet the 50-percent rule for SDBs for this solicitation.
Jan 7, 1994	DITCO	Electra	AO19NOV93 088	Lightcom does not meet the 50-percent rule for SDBs for this solicitation.
Jan 18, 1994	DITCO	LDDS Metromedia	DF05NOV93 0032/33/34/ 35	Sonicraft does not meet the criteria of 10-percent SDB preference.
Jan 28, 1994	DITCO	Electra	WA02NOV93 0328	Sonicraft does not meet the 50-percent rule for SDBs for this solicitation.

## Appendix B. Protest History

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Date Received	Forum	Protester	Contract	Allegation
Feb 4, 1994	DITCO	Electra	WA24NOV93 0405	Lightcom is not an SDB for this solicitation. Its certification is invalid in that Lightcom does not meet the criteria for the 50-percent rule and is not eligible for the 10-percent preference.
Feb 9, 1994	DITCO	Electra	NK20JUL93 0303A	UNAT does not meet the 50-percent rule for SDB 10-percent preference for this solicitation.
Feb 10, 1994	DITCO	Electra	RG09DEC93 0066 & 0070	UNAT does not meet the 50-percent rule for SDB 10-percent preference for this solicitation.
Feb 18, 1994	DITCO	Electra	NA09NOV93 0313	Sonicraft does not meet the 50-percent rule for SDB 10-percent preference for this solicitation.
Feb 22, 1994	DITCO	Electra	AY30NOV93 0073	Lightcom does not meet the 50-percent rule for SDB 10-percent preference for this solicitation.
Feb 22, 1994	DITCO	Electra	AZ28SEP93 4841	UNAT does not meet the 50-percent rule for SDB 10-percent preference for this solicitation.
Feb 25, 1994	DITCO	Electra	DL03JAN93 0618	UNAT does not meet the 50-percent rule for SDB 10-percent preference for this solicitation.

## Appendix B. Protest History

Date Received	Forum	Protester	Contract	Allegation
Feb 28, 1994	DITCO	Electra	NA09JUN93 1625	Lightcom is not a small business for this solicitation and does not qualify for the 10-percent SDB preference.
Mar 10, 1994	DITCO	Electra	DL06JAN93 3425	Lightcom does not meet the 50-percent rule for SDB 10-percent preference for this solicitation.
Mar 15, 1994	DITCO	Electra	AO03DEC93 0092A	Lightcom does not meet the 50-percent rule for SDB 10-percent preference for this solicitation.
Mar 15, 1994	DITCO	Electra	AM03JAN94 0008	Sonicraft does not meet the 50-percent rule for SDB 10-percent preference for this solicitation.
Apr 14, 1994	DITCO	Electra	CT11SEP93 2585	Sonicraft does not meet the 50-percent rule for for SDB 10-percent preference for this solicitation.
Jun 1, 1994	DITCO	Electra	TSR AO12APR94 0046-49 and AO12APR94 0074-77	Sonicraft does not meet the 50-percent rule for SDB 10-percent preference for this solicitation.
Jun 1, 1994	DITCO	Electra	TSR AO12APR94 0042-45, AO12APR94 0058-61, AO12APR94 0070-73	UNAT does not meet the 50-percent rule for SDB 10-percent preference for this solicitation.

## Appendix B. Protest History

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Date Received	Forum	Protester	Contract	Allegation
Jun 1, 1994	DITCO	Electra	DN02FEB94 0020	UNAT does not meet the 50-percent rule for SDB 10-percent preference for this solicitation.

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## **Appendix C. Organizations Visited or Contacted**

### **Office of the Secretary of Defense**

Under Secretary of Defense for Acquisition and Technology, Washington, DC  
Director, Defense Procurement, Washington, DC  
Contract Policy and Administration, Washington, DC  
Defense Acquisition Regulations Council, Washington, DC  
Director, Small and Disadvantaged Business Utilization, Washington, DC

### **Defense Organizations**

Defense Contract Audit Agency  
Capital Branch, Washington, DC  
North Carolina Resident Office, Greensboro, NC  
Mountainside Branch, Mountainside, NJ  
Kansas City Sub Office, Kansas City, MO  
Defense Information Systems Agency, Arlington, VA  
Inspector General, Arlington, VA  
Defense Commercial Communications Office, Scott Air Force Base, IL  
Telecommunications Management Service Office, Scott Air Force Base, IL

### **Non-Defense Federal Organizations**

Federal Communications Commission, Washington, DC  
Accounting and Audits Branch, Washington, DC  
Tariff Review Branch, Washington, DC  
Economic Analysis Branch, Washington, DC  
Small Business Administration, Washington, DC  
Office of the Inspector General, Washington, DC  
Office of Hearings and Appeals, Washington, DC  
Office of Government Contracting and Minority Enterprise Development,  
Washington, DC  
Regional Office, Chicago, IL  
Regional Office, Philadelphia, PA  
Regional Office, Seattle, WA



## Appendix C. Organizations Visited or Contacted

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### Non-Government Organizations

#### Large Businesses:

American Telephone and Telegraph, Federal Systems, Silver Spring, MD  
American Telephone and Telegraph, Defense Commercial Telecommunications  
Network Control Center, Dranesville, VA  
MCI Telecommunications Corporation, Government Systems, McLean, VA  
Sprint, Government Systems Division, Herndon, VA

#### Non-Disadvantaged Small Businesses:

Communications Transmission Group Incorporated, Austin, TX  
Electra, Bethesda, MD  
General Communications Incorporated, Anchorage, AK  
NTS Communications Incorporated, Lubbock, TX

#### Small Disadvantaged Businesses:

Esatel Communications Incorporated, Fall Church, VA  
Lightcom International Incorporated, Washington, DC  
Sonicraft Incorporated, Chicago, IL  
United Native American Telecommunications Incorporated, Burlington, WA  
Signal Communications Systems and Supply, Greensboro, NC  
User Technology Associates, Incorporated, Arlington, VA

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## **Appendix D. Report Distribution**

### **Office of the Secretary of Defense**

Under Secretary of Defense for Acquisition and Technology  
  Director, Defense Procurement  
  Director, Small and Disadvantaged Business Utilization  
  Director, Defense Acquisition Regulations Council  
Under Secretary of Defense (Comptroller)  
Deputy Under Secretary of Defense (Acquisition Reform)  
Assistant to the Secretary of Defense (Public Affairs)

### **Defense Agencies**

Director, Defense Information Systems Agency  
  Commander, Defense Information Technology Contracting Office

### **Non-Defense Federal Organizations**

Office of Management and Budget  
Office of Federal Procurement Policy  
U.S. General Accounting Office, National Security and International Affairs Division,  
  Technical Information Center  
General Services Administration  
  Inspector General  
  Office of Federal Acquisition Policy  
Small Business Administration  
  Inspector General  
  Associate Deputy Administrator for Government Contracting and Minority  
  Enterprise Development  
Federal Communications Commission

Chairman and Ranking Minority Member of Each of the Following Congressional  
Committees and Subcommittees:

Senate Committee on Appropriations  
Senate Subcommittee on Defense, Committee on Appropriations  
Senate Committee on Armed Services  
Senate Committee on Governmental Affairs

**Non-Defense Federal Organizations (cont'd)**

Senate Committee on Small Businesses  
House Committee on Appropriations  
House Subcommittee on National Security, Committee on Appropriations  
House Committee on Government Reform and Oversight  
House Committee on National Security  
House Committee on Small Businesses  
House Subcommittee on National Security, International Affairs, and Criminal  
Justice, Committee on Government Reform and Oversight

## **Part IV - Management Comments**

# Defense Information Systems Agency Comments



IN REPLY  
REFER TO:

Inspector General

DEFENSE INFORMATION SYSTEMS AGENCY  
701 S. COURT HOUSE ROAD  
ARLINGTON, VIRGINIA 22204-2199



1 February 1995

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE  
ATTN: Director, Audit Planning and Technical  
Support Directorate

SUBJECT: DoDIG Technical Assessment of Procurements in the  
Telecommunications Services Resale Market  
(Project No. 4PT-5007)

Reference: DoDIG Draft Report, subject as above, 21 October 1994

1. As requested by the reference, we have reviewed the subject draft report and are providing our comments on the findings and recommendations (Enclosure).

2. We partially concur with the findings in the report. We disagree with the suggestion that the Defense Information Technology Contracting Office (DITCO) has not taken appropriate action. The decisions and determinations by our contracting officers are consistent with legal requirements to assure that small and small disadvantaged business firms participate to the maximum practical extent in our procurement programs and all laws and regulations are fully complied with. DITCO exercised good business judgment and made sound decisions based upon the facts and circumstances present.

3. If you have any questions, please call Ms. Sandra J. Leicht, Audit Liaison, on (703) 607-6316.

FOR THE DIRECTOR:

Richard T. Race  
Inspector General

1 Enclosure a/s

*Quality Information for a Strong Defense*

**Comments on DoDIG Draft Report: Technical Assessment of  
Procurements in the Telecommunications Services Resale Market  
(Project No. 4PT-5007)**

**Finding A: The 10-Percent Evaluation Preference Program**

**Concur.** However, DISA takes exception to the language of the finding as it suggests that DITCO improperly awarded contracts based on the small disadvantaged business (SDB) evaluation preference at an "unnecessary premium of more than \$1.1 million." During the time period applicable to this report (May 1992 through December 1993), DITCO fully complied with all DFARS mandates regarding the SDB preference. The DFARS does not authorize a contracting officer to deny a price preference claimed by a SDB based on a challenge from another offeror.

The Office of the Secretary of Defense assigns small business program goals annually to DISA. DITCO is not reassigned separate goals by DISA. Therefore, the DISA's performance is based on total contract awards by DITCO and Headquarters. Since the measurement base to determine that an agency has met assigned goals is TOTAL AGENCY contract awards, no agency can determine at anytime during the year whether an assigned goal is met. Small business program performance can only be determined at fiscal year end.

Moreover, the annual goal is only a target. One of the main purposes of the small business socio-economic program is to assure that small business firms have the maximum practicable opportunity to compete for federal procurement program awards. Contracting officers and small and disadvantaged business utilization specialists are required to review acquisitions to make set-aside determinations. The requirement for this review is ongoing; and it is not determined by whether or not a goal has been met. The DoDIG language appears to rebuke DISA for complying with the socio-economic program. In addition, the DISA lacks the discretion of which the DoDIG is criticizing it for not using.

The SDBs could not be determined non-responsible in accordance with the criteria in FAR 9.104-1; and thus, they would be eligible for award. As such, FAR 19.602-1(a)(1) and (2)(1) do not apply. Therefore, DITCO's decision to proceed with the awards were based upon prudent judgment - consistent with all applicable laws and regulations.

Finally, the finding also implies that non-SDB awards are reduced solely due to the SDB preference. The requirement at DFAR 219.504 and 219.803 is another factor that has a more direct

Enclosure

Page 1

# Defense Information Systems Agency Comments

Final Report  
Reference

**Comments on DoDIG Draft Report: Technical Assessment of  
Procurements in the Telecommunications Services Resale Market  
(Project No. 4PT-5007)**

relationship between the increase in SDB awards and a decline in other small business awards. An 8(a) program award is the first set-aside priority, followed by small disadvantaged business set-asides, and then, small business set-asides. In addition to lease long-haul services, DISA procures other services and products. The acquisition strategy for each procurement is determined in accordance with the above.

**Recommendations to Finding A:**

Recommendation 1. **DISA response not required:** addressed to DoD Director, Small and Disadvantaged Business Utilization

Recommendation 2a. **Concur.** DISA agrees that a class deviation is justified - not on the basis of "exceeding" goals, but on the basis that SBA decisions since June 1994 document the inability of the small business to qualify for such a preference. A class deviation would ease the administrative burden inherent in determining entitlement to the evaluation preference. Also, to require the use of the preference for requirements where it is known that SDB concerns cannot meet the subcontracting limitations only serves to delay contract award and imposes unnecessary administrative burdens on an ever-shrinking procurement workforce.

Recommendation 2b. **Nonconcur.** Any analysis of preference based awards is an academic exercise in determining when to use or not use the preference in accomplishing assigned goals. As stated previously, final agency performance cannot be calculated until the end of the fiscal year. Therefore, such an exercise will provide historical data only and not be useful in determining DISA's acquisition strategies or achieving the following year's goals.

**Finding B: The 50-Percent Rule**

**Nonconcur.** The finding concludes that DITCO made improper contract awards. The issue of compliance with the SDB preference clause was correctly addressed by the contracting officer. The report characterizes DITCO's actions as "improper;" however, it was the inaction by SBA in its refusal to address the 50-percent issue that created the confusion and problems. Swift action by the SBA to our referrals (for determination as to whether an SDB

Enclosure

Page 2

Renumbered  
A.2.

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A.3.

**Comments on DoDIG Draft Report: Technical Assessment of  
Procurements in the Telecommunications Services Resale Market  
(Project No. 4PT-5007)**

concern complied with the clause) would have controlled the continuous challenges to the contracting officer's decisions.

**Recommendations to Finding B:**

Recommendation 1a. **Nonconcur.** The contracting officers are not able to verify labor content when a challenge is received. Since the federal court held that SBA has jurisdiction over such issues, DITCO's referrals for further verification of labor content are now being addressed by SBA.

Recommendation 1b. **Nonconcur.** No corrective action is necessary as the contracting officers correctly and properly handled the responsibility determinations. DITCO had no basis for finding the SDB firms non-responsible; and the 50-percent verification is not a part of a responsibility determination.

Enclosure

Page 3



# Defense Procurement Comments



ACQUISITION AND  
TECHNOLOGY

## OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON DC 20301-3000

DEC 1994



DF/CPA

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE  
ATTN: DIRECTOR, AUDIT PLANNING AND TECHNICAL  
SUPPORT DIRECTORATE

SUBJECT: Draft Report on the Technical Assessment of  
Procurements in the Telecommunications Resale Service  
Market (Project No. 4PT-5007)

This memorandum is in response to your October 21, 1994, request for comments on the subject draft report. I appreciate your doing this technical assessment in response to my request for a formal review of the small business and small disadvantaged business preference programs at the Defense Information Technology Contracting Office (DITCO).

On page 29 of the draft report, under "Recommendations for Corrective Action," #2, you intend to recommend that I determine whether a 10 percent evaluation preference program is desired for SDBs in the long distance services market. If so, then you intend to state that an alternative to the 50 percent labor rule requirement must be developed.

I would appreciate your views on whether a 10 percent evaluation preference program is desired for SDBs in the long distance services market, and, if so, any suggested alternatives to the 50 percent labor rule. These were two of the central issues that prompted my initial request for a formal review of the DITCO program.

Thank you for the opportunity to comment on the draft report. My action officer is Mr. Mike Sipple, Pentagon 3C838, (703) 697-8334.

*Eleanor R. Spector*

Eleanor R. Spector  
Director, Defense Procurement



# Small and Disadvantaged Business Utilization Comments

Final Report  
Reference



ACQUISITION AND  
TECHNOLOGY

## OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON DC 20301-3000

8 FEB 1995



MEMORANDUM FOR THE DIRECTOR, AUDIT PLANNING & TECHNICAL  
SUPPORT DIRECTORATE, DoD INSPECTOR GENERAL

SUBJECT: Draft Inspector General Report on the Technical  
Assessment of Procurement in the Telecommunications  
Resale Service Market (Project No. 4PT-5007)

The following are the "Recommendations for Corrective Action"  
and our response:

### Recommendation:

1.a. Include in the Defense Federal Acquisition Regulation Supplement case that will propose changes to Defense Federal Acquisition Regulation Supplement 219.70 an additional change to remove the mandatory use of the evaluation preference clause and give heads of contracting activities the authority to decide when to use the clause to achieve the statutory goal.

### DoD Response:

Non concur, but note support for recommendation 2.a. The IG findings from the review of preference programs utilized by the Defense Information Technology Contracting Office (DITCO) for the telecommunication resale market are not representative of the application of the 10 percent preference clause by contracting activities of the Military Departments and other Defense Agencies. Moreover, within the DoD, use of the preference clause has contributed to improved small disadvantaged business (SDB) achievements in weapons systems procurement claimant codes (the 1st 10 PCCs). Eliminating the mandatory use of the preference might degrade performance in these major systems categories. It is in these systems categories where DoD can make the important inroads, raising the critical manufacturing technology in the SDB community.

This recommendation, if adopted, has the potential to cause the Department to fall short of meeting its goal. As this is a departmental goal, its achievement depends upon those activities that exceed five percent balanced against those that do not. Allowing individual contracting activities meeting or exceeding their goals the discretion not to use the clause would affect this balance and negate the ability of DoD to achieve its overall goal.



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## Small and Disadvantaged Business Utilization Comments

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Final Report  
Reference

It appears that the report may be somewhat biased against the use of the 10 percent preference clause merely because DoD achieved its SDB goals. The preference clause is a tool that, if employed properly, levels the playing field for increased participation and contracting opportunities for SDBs. In summary, it appears premature to recommend a department-wide revision of the existing regulatory requirement based on circumstances at a single activity. Deletion or modification of the evaluation clause should be handled on a case-by-case basis through the Defense Acquisition Regulations System (DARS) in coordination with our office. In this particular market, we support recommendation 2.a. of the report, a class deviation from the requirement in DFARS 219.70 for mandatory use of the evaluation preference clause in solicitations for long distance services.

Recommendation:

1.b. Determine whether the practice of assigning small disadvantaged business contracting goals greater than the 5-percent statutory goal is having an adverse impact among other DoD Components on attaining their small business contracting goals.

DoD Response:

Non concur. The way DoD accounts for small business and small disadvantaged Business (SDB) goal accomplishment is as follows: All small business performance is divided by total contract awards to U.S. business firms. The term "small business" includes SDB and women-owned small business (WOSB). SDB and WOSB are subsets of small business. Statute mandates that each small business subset, SDB and WOSB, have their own specific goal. This interpretation is universally accepted throughout the Federal government, to include the Small Business Administration (SBA) which is responsible for consultation with all Departments and Agencies of the Federal government in the establishment of annual goals.

It appears that Recommendation 1.b. is designed to insure that non-disadvantaged small businesses are not adversely impacted by DoD's SDB preference programs. Any program designed to provide a preference to one group may infringe on the success of another group, e.g., on a contract by contract basis. DoD initially endeavored to minimize the infringement on non-disadvantaged small businesses by establishing a procurement floor below which SDB set-asides may not be established and evaluation preferences may not be applied. DoD also established the policy that contract requirements that historically have been solicited under the small business set-aside procedures are not considered for SDB set-asides. Furthermore, in accordance with DFARS 219.7001, the SDB evaluation preference does not apply to small purchase procedures, small disadvantaged business set-asides, small business set-asides

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A.2.a.

## Small and Disadvantaged Business Utilization Comments

Final Report  
Reference

and commissary or exchange resale requirements. Additionally, based on DoD's success in the SDB program, our office will request the initiation of a DAR case to limit the use of SDB set-asides and the evaluation preference clause (see response to Recommendation 1.d.). The real issue is the equity within a given industry. As a general rule, based on the structure for goals mandated by National policy (small business 20% & SDB 5%), SDBs should represent approximately 25% of total awards to small business.

If the IG's concern is that the application of a goal greater than five percent on an activity exceeds the provisions of the law, then the IG's argument is flawed. Goals are allocated to activities based on their demonstrated ability for achievement. It has long been understood that certain products and services offer little opportunity for SDBs, while others offer significant opportunity. The mix of products and services an activity buys generally becomes the limiting factor in goal achievement. One must recognize that certain activities will never achieve the five percent SDB participation rate, while others have surpassed the five percent rate many years ago. Accordingly, we assign some activities a SDB goal greater than five percent because other activities cannot achieve the five percent rate due to the composition of products and services they buy. Again, DoD's overall performance is measured on the average rate of all activities; the positive skewness of one activity, command or department offsets the shortfall from others.

Recommendation:

1.c. Determine whether misinterpretation of the subcontracting rule in Federal Acquisition Regulation 19.502-2, Total set-asides, is systemic among DoD Components and, if so, what changes are needed to improve understanding of those rules.

DoD Response:

Non concur. We are unaware of any systemic misinterpretations of FAR 19.502.2. If the DoD IG believes that the language at FAR 19.502-2 has the potential to be misinterpreted, then they may wish to initiate a FAR case to address their concern.

Recommendation:

1.d. Determine whether the 10-percent evaluation preference program is still needed for DoD to achieve the 5-percent goal by separately computing and reporting the percentage of total contract dollars awarded annually to small disadvantaged businesses both with and without the preference.

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## Small and Disadvantaged Business Utilization Comments

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### DoD Response:

Concur. DoD plans to initiate a new chart that details our accomplishment both with and without the SDB preferences established in response to section 2323, Title 10 U.S.C..

DoD has historically broken out SDB contracting data to determine if the SDB set-aside and preference program are still needed to achieve the Congressionally mandated five percent goal. DoD has achieved the 5 percent goal as established by Congress in each of the last three fiscal years (1992, 1993 & 1994). As a result of our success, we plan to request the initiation of a Defense Acquisition Regulatory (DAR) case to modify the procedure for application of SDB set-asides and the evaluation preference clause. We plan to make the following three proposals in a memorandum to the DARC by March 15, 1995:

1. Raise the floor for application of SDB set-asides from the small purchase procedures (\$25,000) to the simplified acquisition threshold, which will be initially established at \$100,000.
2. Raise the floor for application of the SDB evaluation preference clause from the small purchase procedures (\$25,000) to the simplified acquisition threshold, which will be initially established at \$100,000.
3. Modify the procedure for application of the SDB evaluation preference so that low responsive, responsible small business (i.e., non-disadvantaged small business) concerns are not displaced by application of the evaluation preference.

These proposed modifications to the SDB set-aside and the SDB evaluation preference programs should provide the appropriate balance between awards to SDBs and awards to non-disadvantaged small businesses.

Other issues that must be considered in any effort to minimize the use of the SDB set-aside and evaluation preference programs are as follows:

The claimant program mix in the DoD procurement cycle has shifted significantly over the past ten years. Our success in the small business and the SDB programs is, in part, a result of a more favorable product mix. As an example, we compared FY 1994 with FY 1985 and then developed a revised accomplishment rate by shifting the aggregate basis of FY 94 awards (\$112.0 billion) into the FY 1985 claimant program distribution. This new FY 1994 claimant program distribution applied to our FY 1994 accomplishment resulted in a small business accomplishment of 17.7% and a SDB accomplishment rate of 4.0%. Our point here is

## Small and Disadvantaged Business Utilization Comments

that a normal claimant program mix is significantly different from what we believe is an aberration that occurred in FY 1994.

We believe the intent of Congress was not only to achieve the 5% goal, but to achieve it against our normal claimant program mix. DoD will at some point in the future move back toward purchasing of major weapons systems and other hard goods which fall under the domain of large business. When this shift occurs, DoD should be in the position to sustain the 5% SDB participation rate.

Another issue that should be addressed is that DoD, Congress and the SBA recognize that in some industries, attainment of the 5 percent SDBs goal is not practicable. Accordingly, the industries in which SDBs have more potential should have goals higher than five percent. The real issue is the equity within a given industry. As explained above, SDBs should represent approximately 25% of total awards to small business.

In the final analysis, the success of the DoD SDB program will be based, not in contract dollars or number of participating SDBs, but rather the ability of SDBs to participate across the entire spectrum of DoD procurement. Notable by its absence is the lack of SDB participation in the manufacturing arena. It is in the basic manufacturing technologies where SDBs will achieve economic equality and stabilization. Once SDBs have successfully migrated into the manufacturing arena and attached their economic future to this Nation's future, we will have achieved the intent of Congress. DoD believes that true achievement of Congressional intent, with respect to SDB contracting, requires a long-term commitment to a phased approach. Phase one is to achieve the five percent goal. Phase two is to increase the number of qualified SDBs participating in DoD contracting. Phase three is to expand participation equitably across the entire spectrum of DoD procurement, to include manufacturing.

Any questions or issues discussed in the foregoing should be directed to Mr. Tim Foreman, phone (703) 697-9383.



DANIEL R. GILL  
Director, Office of Small and  
Disadvantaged Business Utilization

Attachments

## Small and Disadvantaged Business Utilization Comments

### DEPARTMENT OF DEFENSE BY PROCUREMENT CLAIMANT PROGRAM, FY 1985 (In Millions)

Procurement Claimant Program	\$	\$	%	\$	%
	Total	Small	Small	SDB	SDB
<b>Total</b>	<b>\$139,586.5</b>	<b>\$26,048.7</b>	<b>18.7%</b>	<b>\$2,898.7</b>	<b>2.1%</b>
Airframes & Spares	\$21,900.7	\$396.4	1.8%	\$9.8	0.0%
Aircraft Engines & Spares	\$7,306.5	\$292.4	4.0%	\$11.9	0.2%
Other Aircraft Equipment	\$5,372.3	\$492.5	9.2%	\$39.0	0.7%
Missile & Space Systems	\$18,667.9	\$453.8	2.4%	\$86.7	0.5%
Ships	\$10,404.3	\$1,298.9	12.5%	\$141.1	1.4%
Combat Vehicles	\$3,057.7	\$250.7	8.2%	\$12.7	0.4%
Non-Combat Vehicles	\$2,094.6	\$671.2	32.0%	\$61.4	2.9%
Weapons	\$2,618.3	\$252.6	9.6%	\$26.2	1.0%
Ammunition	\$4,684.8	\$643.2	13.7%	\$57.4	1.2%
Electronic & Commun. Equip	\$22,037.7	\$2,049.9	9.3%	\$293.0	1.3%
Petroleum	\$6,168.1	\$1,604.7	26.0%	\$121.6	2.0%
Other Fuels & Lubricants	\$130.1	\$86.2	66.3%	\$10.9	8.4%
Containers & Handling Equip.	\$9.1	\$8.1	89.0%	\$0.0	0.0%
Textiles, Clothing & Equipage	\$1,143.2	\$946.7	82.8%	\$171.6	15.0%
Building Supplies	\$138.8	\$62.2	44.8%	\$10.6	7.6%
Subsistence	\$1,023.6	\$423.9	41.4%	\$38.3	3.7%
Transportation Equipment	\$3.8	\$1.0	26.3%	\$0.0	0.0%
Production Equipment	\$306.2	\$92.2	30.1%	\$2.0	0.7%
Construction	\$7,885.6	\$5,754.9	73.0%	\$751.0	9.5%
Construction Equipment	\$144.1	\$21.1	14.6%	\$0.0	0.0%
Medical & Dental Supplies & Equip.	\$364.9	\$88.1	24.1%	\$6.6	1.8%
Photographic Equipment & Supplies	\$80.1	\$16.9	21.1%	\$1.0	1.2%
Materials Handling Equipment	\$200.8	\$78.1	38.9%	\$0.9	0.4%
All Other Supplies & Equipment	\$4,224.0	\$1,798.4	42.6%	\$186.1	4.4%
Services	\$9,126.0	\$2,600.1	28.5%	\$653.5	7.2%
Actions Less than \$25,000	\$10,493.3	\$5,664.5	54.0%	\$205.4	2.0%

SDB = Small disadvantaged business

## Small and Disadvantaged Business Utilization Comments

### DEPARTMENT OF DEFENSE BY PROCUREMENT CLAIMANT PROGRAM, FY 1994 (In Millions)

Procurement Claimant Program	\$ Total	\$ Small	% Small	\$ SDB	% SDB
Total	\$112,013.3	\$24,805.4	22.1%	\$6,113.5	5.5%
Airframes & Spares	\$17,614.9	\$345.7	2.0%	\$61.7	0.4%
Aircraft Engines & Spares	\$2,729.2	\$130.6	4.8%	\$8.4	0.3%
Other Aircraft Equipment	\$3,153.1	\$403.8	12.8%	\$79.7	2.5%
Missile & Space Systems	\$11,591.3	\$761.3	6.6%	\$179.1	1.5%
Ships	\$6,836.2	\$678.0	9.9%	\$80.9	1.2%
Combat Vehicles	\$1,401.6	\$114.6	8.2%	\$5.9	0.4%
Non-Combat Vehicles	\$982.0	\$176.2	17.9%	\$40.0	4.1%
Weapons	\$1,024.7	\$147.7	14.4%	\$22.5	2.2%
Ammunition	\$1,467.8	\$144.3	9.8%	\$40.2	2.7%
Electronic & Commun. Equip	\$12,441.0	\$1,725.1	13.9%	\$528.9	4.3%
Petroleum	\$3,168.4	\$919.4	29.0%	\$297.8	9.4%
Other Fuels & Lubricants	\$191.0	\$90.8	47.5%	\$35.1	18.4%
Containers & Handling Equip.	\$14.6	\$14.5	99.3%	\$0.0	0.2%
Textiles, Clothing & Equipage	\$568.7	\$393.4	69.2%	\$55.1	9.7%
Building Supplies	\$46.6	\$38.0	81.5%	\$2.8	6.0%
Subsistence	\$1,513.1	\$428.1	28.3%	\$56.8	3.8%
Transportation Equipment	\$0.4	\$0.4	100.0%	\$0.0	0.0%
Production Equipment	\$160.9	\$53.0	32.9%	\$1.9	1.2%
Construction	\$11,577.3	\$5,124.8	44.3%	\$1,804.6	15.6%
Construction Equipment	\$36.4	\$16.3	44.8%	\$1.4	3.9%
Medical & Dental Supplies & Equip.	\$273.1	\$36.2	13.3%	\$3.0	1.1%
Photographic Equipment & Supplies	\$32.1	\$14.3	44.5%	\$2.5	7.7%
Materials Handling Equipment	\$29.5	\$25.3	85.8%	\$1.2	4.1%
All Other Supplies & Equipment	\$5,750.3	\$1,970.3	34.3%	\$405.0	7.0%
Services	\$17,663.2	\$4,702.0	26.6%	\$1,994.0	11.3%
Actions Less than \$25,000	\$11,745.9	\$6,351.3	54.1%	\$404.9	3.4%

SDB = Small disadvantaged business



## Small and Disadvantaged Business Utilization Comments

### DEPARTMENT OF DEFENSE, ADJUSTED TO FY85 CLAIMANT BREAKOUT BY PROCUREMENT CLAIMANT PROGRAM, FY 1994 (In Millions)

Procurement Claimant Program	\$	\$	%	\$	%
	Total	Small	Small	SDB	SDB
<b>Total</b>	<b>\$112,013.3</b>	<b>\$19,873.9</b>	<b>17.7%</b>	<b>\$4,473.8</b>	<b>4.0%</b>
Airframes & Spares	\$17,574.5	\$344.9	2.0%	\$61.6	0.4%
Aircraft Engines & Spares	\$5,863.2	\$280.6	4.8%	\$18.0	0.3%
Other Aircraft Equipment	\$4,311.1	\$552.1	12.8%	\$109.0	2.5%
Missile & Space Systems	\$14,980.3	\$983.9	6.6%	\$231.5	1.5%
Ships	\$8,349.1	\$828.0	9.9%	\$98.8	1.2%
Combat Vehicles	\$2,453.7	\$200.6	8.2%	\$10.3	0.4%
Non-Combat Vehicles	\$1,680.8	\$301.6	17.9%	\$68.5	4.1%
Weapons	\$2,101.1	\$302.9	14.4%	\$46.1	2.2%
Ammunition	\$3,759.4	\$369.6	9.8%	\$103.0	2.7%
Electronic & Commun. Equip	\$17,684.5	\$2,452.2	13.9%	\$751.8	4.3%
Petroleum	\$4,949.7	\$1,436.3	29.0%	\$465.2	9.4%
Other Fuels & Lubricants	\$104.4	\$49.6	47.5%	\$19.2	18.4%
Containers & Handling Equip.	\$7.3	\$7.3	99.3%	\$0.0	0.2%
Textiles, Clothing & Equipage	\$917.4	\$634.6	69.2%	\$88.9	9.7%
Building Supplies	\$111.4	\$90.8	81.5%	\$6.7	6.0%
Substance	\$821.4	\$232.4	28.3%	\$30.8	3.8%
Transportation Equipment	\$3.0	\$3.0	100.0%	\$0.0	0.0%
Production Equipment	\$245.7	\$80.9	32.9%	\$2.9	1.2%
Construction	\$6,327.9	\$2,801.1	44.3%	\$986.4	15.6%
Construction Equipment	\$115.6	\$51.8	44.8%	\$4.5	3.9%
Medical & Dental Supplies & Equip.	\$292.8	\$38.8	13.3%	\$3.2	1.1%
Photographic Equipment & Supplies	\$64.3	\$28.6	44.5%	\$5.0	7.7%
Materials Handling Equipment	\$161.1	\$138.2	85.8%	\$6.7	4.1%
All Other Supplies & Equipment	\$3,389.6	\$1,161.4	34.3%	\$238.8	7.0%
Services	\$7,323.3	\$1,949.5	26.6%	\$826.7	11.3%
Actions Less than \$25,000	\$8,420.5	\$4,553.2	54.1%	\$290.3	3.4%

SDB = Small disadvantaged business

## **Technical Assessment Team Members**

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