

March 2007

HURRICANE KATRINA

Agency Contracting Data Should Be More Complete Regarding Subcontracting Opportunities for Small Businesses





Highlights of [GAO-07-205](#), a report to congressional addressees

Why GAO Did This Study

In response to Hurricane Katrina, the Departments of Homeland Security (DHS) and Defense (DOD), the General Services Administration (GSA), and the U.S. Army Corps of Engineers (Corps) were responsible for 94 percent of the federal funds awarded for relief efforts via contracting as of May 2006. This report, which GAO conducted under the Comptroller General's Authority, describes (1) the amounts that small businesses received from prime contracts with these agencies, (2) the extent of subcontracting, (3) and the extent to which Disadvantaged Business Enterprises (DBEs) received Department of Transportation funds for Katrina-related projects.

In conducting this study, GAO analyzed agency contract data, reviewed federal acquisition regulations, and interviewed agency procurement officials.

What GAO Recommends

GAO recommends that DOD, DHS, and GSA (1) issue guidance to key personnel reinforcing the importance of subcontracting plan requirements and (2) consider requesting that their Inspectors General review their compliance with this guidance.

The agencies generally agreed with GAO's recommendations and are taking steps to implement them.

www.gao.gov/cgi-bin/getrpt?GAO-07-205.

To view the full product, including the scope and methodology, click on the link above. For more information, contact William B. Shear at (202) 512-8678 or shearw@gao.gov.

HURRICANE KATRINA

Agency Contracting Data Should Be More Complete Regarding Subcontracting Opportunities for Small Businesses

What GAO Found

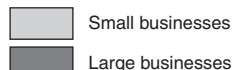
Small businesses received a total of 28 percent of the \$11 billion in contracting dollars that DHS, GSA, DOD, and the Corps directly awarded in response to Hurricane Katrina (see fig.). Local businesses of all sizes in Alabama, Louisiana, and Mississippi received 18 percent, or \$1.9 billion of these funds. Small businesses received 66 percent of the \$1.9 billion awarded in these states.

Required information on small business subcontracting is not consistently available in official procurement data systems for the four agencies. The systems had no information on whether DHS or GSA required subcontracting plans for 70 percent or more of their contracting funds. In addition, when data showed agencies determined that the plans were not required, the four agencies often did not document a reason for their determinations, even though federal rules require such documentation when prime contracts meet criteria for having these plans. Incomplete information about subcontracting limits determining the extent to which agencies complied with contracting rules and gave small businesses maximum opportunities to win subcontracts.

DBEs were awarded about 4 percent, or about \$53 million, of the almost \$1.3 billion the Department of Transportation's Federal Highway Administration funded for Katrina-related contracts in Alabama, Louisiana, and Mississippi between August 1, 2005, and June 30, 2006. These contracts were awarded by the three state departments of transportation. DBEs also received about 10 percent of \$24 million that airports in the three states awarded using Federal Aviation Administration funds for Katrina-related contracts.

Percentage of Katrina-Related Contracts Awarded to Small Businesses, by DHS, GSA, DOD, and the U.S. Army Corps of Engineers

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



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

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Abbreviations

| | |
|---------|---|
| Corps | U.S. Army Corps of Engineers |
| DBE | Disadvantaged Business Enterprise |
| DCMA | Defense Contract Management Agency |
| DHS | Department of Homeland Security |
| DOD | Department of Defense |
| DOT | Department of Transportation |
| eSRS | Electronic Subcontracting Reporting System |
| FAA | Federal Aviation Administration |
| FAR | Federal Acquisition Regulation |
| FHWA | Federal Highway Administration |
| FPDS-NG | Federal Procurement Data System—Next Generation |
| FTA | Federal Transit Administration |
| HUBZone | Historically Underutilized Business Zone |
| MOU | Memorandum of Understanding |
| GSA | General Services Administration |
| SBA | Small Business Administration |
| SDB | Small Disadvantaged Business |

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United States Government Accountability Office
Washington, DC 20548

March 1, 2007

Congressional Addressees

Hurricane Katrina caused billions of dollars in damage and affected about 1.5 million people in Alabama, Louisiana, and Mississippi.¹ In response to the widespread destruction, Congress provided emergency supplemental disaster appropriations totaling about \$88 billion to 23 different federal agencies. As of May 2006, these 23 agencies had awarded nearly \$11 billion for Katrina-related relief and recovery contracts, with the Departments of Homeland Security (DHS) and Defense (DOD) as well as the U.S. Army Corps of Engineers (Corps) and General Services Administration (GSA) accounting for 94 percent of these dollars, according to official governmentwide procurement data.² The agencies were to use the funds to, among other things, award contracts for a range of services related to hurricane relief and recovery. Some in Congress have raised concerns about how much access small businesses had to these contracting opportunities, especially small businesses in the areas that were affected by the hurricane. In addition, because of substantial damage to the region's transportation networks and the role of the Department of Transportation (DOT) in assisting the states with their rebuilding, there has been congressional interest regarding the extent to which Disadvantaged Business Enterprises (DBE)³ received funds from DOT for projects related to Hurricane Katrina.

We have prepared this report under the Comptroller General's authority to conduct evaluations on his own initiative as part of a continuing effort to assist Congress in reviewing federal activities related to Hurricane Katrina. Specifically, this report discusses (1) the amounts that small and local

¹GAO, *Disaster Relief: Governmentwide Framework Needed to Collect and Consolidate Information to Report on Billions in Federal Funding for the 2005 Gulf Coast Hurricanes*, [GAO-06-834](#) (Washington, D.C.: Sept. 6, 2006).

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

³The definition of a DBE is set forth in DOT Regulation 49 C.F.R. § 26.5. In general terms, DBEs are small businesses owned and controlled by socially and economically disadvantaged individuals.

businesses received directly from federal agencies through contracts for relief and recovery efforts related to Hurricane Katrina, (2) the extent to which selected large prime contractors subcontracted with small businesses for relief and recovery efforts, and (3) the extent to which DBEs received funds through DOT for transportation projects related to reconstruction and recovery from Hurricane Katrina.⁴

To describe the amounts that small and local businesses received directly from federal contracts, we analyzed data on contracts awarded or used by DHS, GSA, DOD, and the Corps for Katrina-related projects in Alabama, Louisiana, and Mississippi from August 1, 2005, through June 30, 2006. Our analysis included contract data from the Federal Procurement Data System-Next Generation (FPDS-NG), the governmentwide database of contracting activity, and DD-350, the Department of Defense database that contains data on individual contracting actions. Although we could not independently verify the reliability of these data, we reviewed system documentation, conducted electronic data testing for inconsistency errors and completeness and compared it with supporting documentation when available, and interviewed agency officials about each of the systems. On the basis of these efforts, we determined the data on amounts received directly from federal contracts to be sufficiently reliable for the purposes of this report. To describe the extent to which prime contractors subcontracted with small businesses, we identified contracts that were awarded or used between August 1, 2005, and June 30, 2006, for activities related to Hurricane Katrina and that required subcontracting plans. We obtained and analyzed documentation of subcontracting awards for selected DOD and Corps contractors that received the most dollars from Katrina-related contracts from August 1, 2005, through June 30, 2006. For those DHS and GSA contracts with subcontracting plan requirements, we looked for documentation of prime contractors' March 31, 2006, subcontracting awards report in the Electronic Subcontracting Reporting System (eSRS), a governmentwide database for capturing this information. In addition, we interviewed officials from each of the four agencies to gather additional information relating to the use of subcontracting plans.

⁴For the purposes of this report, we refer to "contract dollars" that agencies have awarded when, to be precise, agencies do not award dollars but instead award contracts or enter into contract actions that are either valued at certain dollar amounts or which, for example, might have a range of possible values, depending on how much work the contractor ultimately performs. We discuss the agencies' activities in terms of contract dollars because the dollar amount or value of contract actions is one of the key factors in deciding whether agencies must require a subcontracting plan and also is the measure used to gauge small business participation in federal procurement.

To describe the extent to which DBEs received funds for DOT-assisted transportation projects related to reconstruction and recovery from Hurricane Katrina, we obtained and analyzed data on Federal Highway Administration (FHWA) and Federal Aviation Administration (FAA) contracts awarded for Katrina-related projects from August 1, 2005, through June 30, 2006 (only FHWA and FAA awarded DOT funds to which DBE requirements applied). A more detailed description of our scope and methodology is presented in appendix I. We conducted our work in Washington, D.C., between March 2006 and February 2007 in accordance with generally accepted government auditing standards.

Results in Brief

Small businesses received 28 percent of the \$11 billion in contracting dollars DHS, GSA, DOD, and the Corps awarded directly for relief and recovery from Hurricane Katrina. DHS awarded the highest dollar amount to small businesses (about \$1.6 billion), and GSA awarded the highest percentage of its Katrina-related contracting dollars directly to small businesses (72 percent of about \$658 million). Of the contracting dollars that the four agencies awarded directly to small businesses, those classified as disadvantaged businesses received 24 percent of the approximately \$3 billion that the four agencies awarded to small businesses. Local businesses, or businesses located in the states primarily affected by Hurricane Katrina (Alabama, Louisiana, and Mississippi), received 18 percent, or \$1.9 billion, of the \$11 billion the four agencies awarded overall. Small businesses received approximately 66 percent of the \$1.9 billion awarded to all local businesses. Outside of this area, businesses in California and Florida received 17 and 15 percent, respectively, of the Katrina-related contracting dollars the four agencies awarded.

For the military agencies, 4 of the top 10 recipients—all large businesses—of prime contracting dollars for projects related to Hurricane Katrina reported awarding from 88 to 100 percent of their subcontracting dollars to small businesses. The amounts subcontracted ranged from \$11,000 to \$201 million. These 4 prime contractors received their contracting dollars from the Corps. For the other 6 recipients of contract dollars from DOD and the Corps, subcontracting plan requirements did not apply or contracting activities related to Hurricane Katrina could not be separated from unrelated activities. Information on subcontracting accomplishments associated with 4 of 7 DHS contracts shows that small businesses received from 14 to 83 percent of the dollars awarded through subcontracts as of March 31, 2006. Information on subcontracting accomplishments for the remaining DHS contracts and all 11 GSA contracts awarded to large

businesses was generally not available because contractors had not reported the data, the agencies had not finalized the data, or the available data included both Katrina-related and other contract activities. While we could document this information, additional key information about small business subcontracting plans was not consistently available in official procurement data systems for the four agencies. These plans, which detail goals for subcontracting to small businesses, are generally required for acquisitions by executive agencies of more than \$500,000.⁵ For DHS and GSA, information on whether the two agencies required subcontracting plans is generally not available in the data systems for nearly three-fourths of the contracting dollars each agency awarded. DHS officials could not explain the lack of subcontracting information on \$861 million in agency contracting dollars; DOD officials were unable to explain the lack of subcontracting information on \$3.3 million in agency contracting dollars. Also, according to official procurement data systems, the four agencies determined that subcontracting plans were not required from their large prime contractors for 12 percent (GSA) to 77 percent (DOD) of their contracting dollars. However, information on the agencies' reasons for not requiring these plans, which should be readily available, is incomplete. The lack of information on the four agencies' compliance with subcontracting plan requirements limits determining the extent to which they followed federal contracting rules designed to give small businesses maximum opportunities to participate in their contracts.⁶

To ensure compliance with federal contracting regulations and to more transparently disclose the extent to which subcontracting opportunities were available to small businesses, we recommend that the Secretary of Homeland Security, the Secretary of Defense, and the Administrator of General Services issue guidance to the appropriate procurement offices and personnel reinforcing, among other things, the necessity for documenting in publicly available sources the agencies' decisions regarding subcontracting plan requirements. The Secretaries of DHS and DOD along with the GSA Administrator should also consider asking their Inspectors General to conduct a review at an appropriate future date to

⁵For acquisitions related to construction, the amount is \$1 million unless a statutory exception applies. See Federal Acquisition Regulation (FAR) § 19.702(a).

⁶Under FAR § 19.702, a contractor receiving a contract for more than the simplified acquisition threshold (generally \$100,000 for contracts in the United States) must agree to give small businesses "the maximum practicable opportunity to participate in contract performance consistent with (the contract's) efficient performance."

ensure that this guidance and related requirements are being followed. In written comments on a draft of this report, the agencies generally agreed with our recommendations and described various steps they are taking to implement them (see appendixes II, III, and IV).

DBEs were awarded about 4 percent, or about \$53 million, of the approximately \$1.3 billion that FHWA funded for Katrina-related contracts in Alabama, Louisiana, and Mississippi between August 1, 2005, and June 30, 2006. The Mississippi DOT awarded about 64 percent of the FHWA dollars that DBEs were awarded. DBEs also were awarded about 10 percent, or about \$2.4 million, of the \$24 million that FAA awarded for Katrina-related contracts and subcontracts at airports in the three states between August 1, 2005, and June 30, 2006.

Background

When the President declares a state of emergency after a natural or other major disaster, the declaration gives the federal government the authority to engage in various emergency response activities, many of which the agencies provide through contracts with private businesses.⁷ Such activities include, among other things, debris removal, temporary housing assistance, reconstruction, and the provision of supplies. These contracts are subject to federal procurement regulations.

Federal Goals for Contracts with Small and Local Businesses

Federal agencies' contracts with private businesses, whether made in the normal course of agency operations or specifically related to a natural disaster declaration, are, in most cases, subject to certain goals to increase participation by various types of small businesses. The Small Business Act, as amended, defines a small business generally as one that is "independently owned and operated and that is not dominant in its field of operation."⁸ In addition, a business must meet the size standards published by SBA to be considered "small"; these standards use businesses' annual revenue or their number of employees as criteria for determining size. The act sets a governmentwide goal for small business participation of not less

⁷The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93-288, as amended, defines an emergency as "any occasion or instance for which, in the determination of the President, federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States." 42 U.S.C. § 5122(1).

⁸Public Law 85-536, as amended, 15 U.S.C. § 632(a).

than 23 percent of the total value of all prime contract awards—contracts that are awarded directly by an agency—for each fiscal year.⁹ The Small Business Administration (SBA) is responsible for reporting annually to the President and Congress on agencies' achievements relative to the goals.

Because some agencies' activities lend themselves to contracting opportunities more than others, SBA negotiates goals in annual procurement with federal executive agencies to achieve the 23 percent governmentwide goal for contract dollars awarded directly by a federal agency.¹⁰ As a result, some agencies have goals higher than 23 percent, while others may have goals that are lower than or just at 23 percent. For example, the agencies we reviewed had different goals for awarding contract dollars directly to small businesses in fiscal years 2005 and 2006. DHS's goals were 23 and 30 percent for 2005 and 2006, respectively. GSA's goals were 43 and 45 percent, respectively, and DOD's (including the Corps) goal was 23 percent for both years. The Small Business Act also sets annual prime contract dollar goals for participation by five specific types of small businesses: small businesses (23 percent); small disadvantaged businesses (5 percent); women-owned or service-disabled, veteran-owned, (5 and 3 percent, respectively); and businesses located in historically underutilized business zones (HUBZones, 3 percent).¹¹ The Small Business Act¹² defines these businesses as follows:

- Small businesses are those that are independently owned and operated, and are not dominant in their field of operations.
- Small disadvantaged businesses must be owned and controlled by socially and economically disadvantaged individuals, such as African Americans,

⁹15 U.S.C. § 644(g). Under this provision, the President must annually establish governmentwide goals for, among other things, procurement contracts awarded to small business concerns. The governmentwide goal for participation by small business concerns must be not less than 23 percent of the total value of all prime contract awards for each fiscal year. As stipulated in the Small Business Act, procurement goals are established as a percentage of the total value of all contracts directly awarded by the federal government in a fiscal year.

¹⁰See *Goaling Guidelines for the Small Business Preference Programs For Prime and Subcontract Federal Procurement Goals and Achievements*, SBA Office of Government Contracting (July 3, 2003) (SBA Goaling Guidelines).

¹¹15 U.S.C. § 644(g).

¹²The small business regulations implementing the Small Business Act further define these businesses. See 13 C.F.R. §§ 121.401 – 121.413.

Hispanic Americans, Asian Pacific Americans, Subcontinent Asian Americans, or Native Americans. These owners must have at least a 51 percent stake in the business.

- Women-owned small businesses must have at least 51 percent female ownership. For publicly owned businesses, one or more women must hold at least 51 percent of the stock and control both management and daily business operations.
- Service-disabled, veteran-owned small businesses must be owned—also at least 51 percent—by one or more veterans with a service-related disability. In addition, the management and daily operations of the business must be controlled by one or more veterans with a service-related disability.
- HUBZone small businesses must have their principal offices physically located in these historically underutilized business zones, which are economically distressed metropolitan or nonmetropolitan areas—that is, areas with low-income levels or high unemployment rates—and must employ some staff who live in these zones.¹³

Finally, the Stafford Act sets forth requirements for the federal response to presidentially declared disasters. It requires federal agencies to give contracting preferences, to the extent feasible and practicable, to organizations, firms, and individuals residing or doing business primarily in the area affected by a major disaster or emergency.¹⁴

Federal Rules for Contracts with Businesses

The general rules governing procurement for executive agencies are set out in federal procurement statutes and in the Federal Acquisition Regulation (FAR). Individual agencies may also have additional acquisition regulations to supplement the FAR. The FAR requires agencies to measure small business participation in their acquisition programs. A small business may participate via contracts that are awarded directly by a federal agency or through subcontracts with the businesses that receive contracts directly from a federal agency. Any business receiving a contract directly from a federal executive agency for more than the simplified

¹³These classifications are set forth at 15 U.S.C. § 632.

¹⁴42 U.S.C. § 5150. In this report we do not assess agency compliance with Stafford Act requirements.

acquisition threshold¹⁵ must agree to give small business the “maximum practicable opportunity” to participate in the contract “consistent with its efficient performance.”¹⁶ Additionally, for contracts (or modifications to contracts) that (1) are individually expected to exceed \$500,000 (\$1 million for construction contracts) and (2) have subcontracting possibilities, the prime contractor generally must have in place a subcontracting plan.¹⁷ The subcontracting plan must identify the types of work the prime contractor believes it is likely to award as subcontracts as well as the percentage of subcontracting dollars it expects to direct to the specific categories of small businesses for which the Small Business Act sets specific goals.¹⁸ For contracts that have individual subcontracting plans, prime contractors must semiannually and at project completion report on their progress toward reaching the goals in their subcontracting plans. Contractors that meet or exceed their goals may receive monetary incentives if the contract included such incentives. Contractors that fail to meet their subcontracting goals may be assessed damages if the contracting officer for the contract (i.e., the agency official responsible for awarding and monitoring the contract) determines that the contractor failed to make a good-faith effort to comply with a subcontracting plan.

Agency and Governmentwide Contract Data

When they award contracts, federal agencies collect and store procurement data in their own internal systems—typically called contract writing systems. The FAR requires federal agencies to report the information about procurements directly to the Federal Procurement Data System–Next Generation (FPDS-NG), GSA’s governmentwide contracting database, which collects, processes, and disseminates official statistical data on all federal contracting activities of more than \$2,500.¹⁹ This system

¹⁵FAR section 201.1 defines “simplified acquisition threshold” to mean \$100,000, except when the acquisition of supplies or services is used to support a contingency operation or facilitate defense against nuclear, biological, chemical, or radiological attack. In those instances, the term means \$250,000 for contracts to be awarded and performed inside the United States and \$1 million for contracts to be awarded and performed outside the United States.

¹⁶FAR §§ 19.702, 2.101.

¹⁷*Id.* The dollar threshold was changed to \$550,000 on September 28, 2006. 71 *Fed. Reg.* 57363 (Sept. 28, 2006).

¹⁸These and other aspects of the small business subcontracting plan requirement are set forth at FAR Part 19.7.

¹⁹The FPDS-NG reporting threshold in FAR 4.602(c) was raised from \$2,500 to \$3,000. 71 *Fed. Reg.* 57,364 (Sept. 28, 2006).

automatically obtains from other systems or online resources additional information that is important to the procurement, such as the contractor's location. According to GSA, nearly all civilian agencies have directly linked their contract writing systems to FPDS-NG so that information about their contracting activities is available in "real time." DOD also reports its contracting information to FPDS-NG via its system, DD-350, but GSA does not publicly reveal these data for 90 days due to security considerations.

DOT's Disadvantaged Business Enterprise Program

The Disadvantaged Business Enterprise Program²⁰ (DBE Program) of DOT was enacted to help ensure nondiscrimination in the award and administration of DOT-assisted contracts in the department's highway, transit, and airport financial assistance programs. State DOTs, transit authorities, and airports receiving DOT funding for transportation projects are to have a goal-oriented program for small businesses owned and controlled by socially and economically disadvantaged individuals to participate on DOT-assisted contracts. The objectives of the DBE Program are to ensure that these businesses have an equitable opportunity to participate in contracts awarded by the recipients of DOT financial assistance, and that they receive a share of the resulting contract awards. Within DOT, the three major operating administrations—FHWA, FAA, and the Federal Transit Administration (FTA)—oversee the DBE Program. DOT requires that the state and local transportation agencies and airports that receive its funds set two kinds of goals for DBE participation: (1) annual goals for the percentage of dollars that DBEs would be expected to receive through contract and subcontract awards of all DOT-assisted contracts for the year absent the effects of discrimination²¹ and (2) when appropriate and as needed to meet the annual goal for the year, contract-specific goals for DBE participation as subcontractors on prime contracts that have subcontracting possibilities. According to DOT officials, there were no overall DBE goals set for Katrina-related contracts as a whole.

²⁰DOT Regulation 49 C.F.R. § 26.1. Congress most recently reauthorized the DBE Program under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users, Pub. L. No. 109-59 § 1101(b) (2005).

²¹For fiscal years 2005 and 2006, the state DOTs of Alabama, Louisiana, and Mississippi set annual DBE goals at about 10 percent for contracts awarded with FHWA dollars. For the same fiscal years, airports across the three states that set an annual DBE goal and awarded contracts that we reviewed had goals that ranged from about 7 percent to 20 percent.

DOT also requires that the state and local agencies certify the eligibility of the DBE firms participating in DOT-assisted contracts through on-site visits, personal interviews, and reviews of business licenses and stock ownership. The purpose of certification is to ensure that the firms that state and local agencies certify as DBEs are owned and controlled by individuals who are socially and economically disadvantaged as the statute and implementing regulations define those terms.²² SBA's Small Disadvantaged Business Program (SDB) and DOT's DBE Program share many common certification requirements. According to DOT officials, a memorandum of understanding (MOU) is presently under consideration for renewal that establishes processes and procedures to streamline the certification of firms certified under DOT rules in SBA programs and participation of firms certified under SBA rules in DOT programs.²³

Small Businesses Received Varied Amounts of the Contracting Dollars Awarded by Four Agencies

Overall, small businesses received 28 percent of the \$11 billion that DHS, GSA, DOD, and the Corps awarded for Katrina-related projects, but the percentages varied among the four.²⁴ These four agencies awarded about \$3 billion of their Katrina-related contracting dollars directly to small businesses and over \$8 billion to large businesses between August 1, 2005, and June 30, 2006 (fig. 1). Assessed individually, DHS awarded the highest dollar amount to small businesses—about \$1.6 billion dollars—and GSA awarded the highest percentage of its dollars to small businesses—72 percent of about \$658 million.

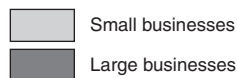
²²See C.F.R. Parts 23, 26.

²³While the MOU between DOT and SBA has expired, according to DOT officials, DOT's regulations, specifically 49 CFR §26.84 and §26.85, prescribe the same requirements as contained in the MOU. Among other requirements, DOT recipients must accept SBA certification applications in lieu of requiring an applicant to complete their own application documents.

²⁴Each of the agencies we reviewed establishes annual goals for small business participation. Among the agencies, these goals ranged from 23 to 45 percent in fiscal years 2005 and 2006, as we note in the background section of this report. The agencies, and SBA, track their progress in meeting these goals on an annual (federal fiscal year) basis—that is, in terms of all of an agency's contract actions in a year rather than on a case-by-case basis. Because of this, and because the agencies did not set Katrina-specific small business participation goals, the data we report in this section should not be used to assess the agencies' accomplishments with respect to their fiscal years 2005 or 2006 small business participation goals.

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

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



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



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

While small businesses received 28 percent of the funds that DHS, GSA, DOD, and the Corps awarded, they received 55 percent of contract actions for activities related to Hurricane Katrina, awarded directly by these agencies (fig. 2).²⁵ Individually, the agencies awarded from 41 to 68 percent of their contract actions to small businesses, with DHS awarding the lowest percentage and GSA awarding the highest. In relation to Hurricane Katrina, small businesses have received contracts directly from the four agencies to provide a variety of products, such as trailers and sewage treatment equipment, and services, such as construction, data entry, and housing.

²⁵ Contract actions include actions resulting in a new contract, as well as actions for additional supplies or services. We excluded contract modifications that were administrative, or did not adjust the dollar amount of the contract in order to focus our analysis on modifications of dollar values.

Figure 2: Number of Katrina-Related Contract Actions Awarded Directly to Businesses by Business Size

| Contract actions by business size | | | | | |
|-----------------------------------|-------|-----|-------|-------|-------|
| | Small | | Large | | Total |
| DHS | 891 | 41% | 59% | 1,257 | 2,148 |
| GSA | 1,323 | 68% | 32% | 610 | 1,933 |
| DOD | 1,118 | 54% | 46% | 935 | 2,053 |
| Corps | 1,141 | 59% | 41% | 801 | 1,942 |
| Total | 4,473 | 55% | 45% | 3,603 | 8,076 |

 Small businesses
 Large businesses

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

Among categories of small businesses, small disadvantaged businesses received 24 percent of the approximately \$3 billion that the four agencies awarded to small businesses. Other categories of small businesses, including women- and veteran-owned businesses and businesses located in HubZones, received from 2 to 16 percent (fig. 3).

Individually, the agencies we reviewed awarded different percentages of their contracting dollars directly to various types of small businesses. For example, DHS, DOD, and the Corps awarded more than 10 percent of their contracting dollars directly to HUBZone and women-owned businesses, and from 23 percent to 29 percent to disadvantaged businesses. GSA awarded 3 percent to HubZone businesses, 12 percent to women-owned businesses, and 8 percent to disadvantaged businesses. Contracting dollars awarded directly to businesses can be counted in more than one category, so the dollars awarded to various types of small businesses are not mutually exclusive.

Figure 3: Dollar Amount of Katrina-Related Contracts Awarded Directly to Small Businesses, by Type of Businesses

| | Total awarded to small businesses (dollars in millions) | Dollar amount (in millions) and percentage of small business total awarded to socioeconomic group | | | | | | | | | | | |
|-------|---|---|-------------------------------|-------|-----|---------|-----|---------------|-----|-------------|--|--|--|
| | | Veteran-owned | | | | HubZone | | Disadvantaged | | Women-owned | | | |
| | | All | Service-disabled ^a | | | | | | | | | | |
| DHS | \$1,559.9 | 8% | \$127.9 | \$1.0 | 14% | \$222.7 | 26% | \$409.0 | 16% | \$243.7 | | | |
| GSA | 474.7 | 2% | 9.0 | .6 | 3% | 14.0 | 8% | 37.7 | 12% | 58.1 | | | |
| DOD | 332.7 | 3% | 11.0 | .8 | 11% | 36.8 | 23% | 76.9 | 14% | 45.8 | | | |
| Corps | 728.2 | 8% | 61.8 | .8 | 15% | 106.2 | 29% | 207.6 | 12% | 84.7 | | | |
| Total | 3,095.6 | 7% | 209.7 | 3.2 | 12% | 379.7 | 24% | 731.3 | 14% | 432.3 | | | |

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

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

^aThe service-disabled category is a subset of the veteran-owned business category.

Local businesses, or businesses of all sizes located in the states primarily affected by Hurricane Katrina—Alabama, Louisiana, and Mississippi—received 18 percent, or \$1.9 billion, of the \$11 billion in contracting dollars that the four agencies directly awarded between August 1, 2005, and June 30, 2006. Louisiana businesses received the most contracting dollars—about \$1 billion, or 10 percent of the total amount of dollars the four agencies awarded during this time period (see table 1).

Table 1: Dollar Amount of Katrina-Related Contracts Awarded Directly to Businesses in All States and in States Primarily Affected by Hurricane Katrina

| Agency | Dollars in millions | | | | | | | | | |
|--------------------------|-------------------------|-------------|---------------|----------|----------------|-----------|---------------|----------|--|--|
| | All states ^a | | Alabama | | Louisiana | | Mississippi | | | |
| | Dollar amount | Percent | Dollar amount | Percent | Dollar amount | Percent | Dollar amount | Percent | | |
| DHS ^b | \$6,418 | 100% | \$160 | 2% | \$460 | 7% | \$138 | 2% | | |
| GSA | 658 | 100 | 77 | 12 | 48 | 7 | 210 | 32 | | |
| DOD | 987 | 100 | 10 | 1 | 7 | 1 | 45 | 5 | | |
| Corps | 3,110 | 100 | 84 | 3 | 609 | 20 | 114 | 4 | | |
| Total^a | \$11,173 | 100% | \$331 | 3 | \$1,124 | 10 | \$508 | 5 | | |

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

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

^aThe total includes dollars awarded to businesses in all states and the District of Columbia as well as businesses located outside of the United States.

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

Small businesses in these states received 66 percent of the \$1.9 billion in Katrina-related contracting dollars awarded to local businesses by the four agencies we reviewed. Among the three states, Mississippi saw the largest proportion (75 percent) of Katrina-related contracting dollars awarded to small businesses (see table 2). Although small businesses in Louisiana received the smallest proportion of Katrina-related contracting dollars (62 percent) awarded directly by the four agencies, the actual amount these businesses received was nearly double what small businesses received in Mississippi, and more than three times what they were awarded in Alabama. In general, these small local businesses received contracting dollars directly from the four agencies to provide trailers, administrative and service buildings, restoration activities, and other supportive services.

Table 2: Small Businesses Received the Majority of Contracting Dollars Awarded Directly to Local Businesses

Dollars in millions

| Agency | Alabama | | | Louisiana | | | Mississippi | | |
|--------------|----------------|------------------|------------|----------------|------------------|------------|----------------|------------------|------------|
| | All businesses | Small businesses | | All businesses | Small businesses | | All businesses | Small businesses | |
| | Dollar amount | Dollar amount | Percent | Dollar amount | Dollar amount | Percent | Dollar amount | Dollar amount | Percent |
| DHSa | \$160 | \$119 | 75% | \$460 | \$345 | 75% | \$138 | \$138 | 100% |
| GSA | 77 | 72 | 92 | 48 | 26 | 54 | 210 | 194 | 92 |
| DOD | 10 | 10 | 27 | 7 | 6 | 89 | 45 | 9 | 20 |
| Corps | 84 | 16 | 19 | 609 | 320 | 53 | 114 | 42 | 36 |
| Total | \$331 | \$217 | 65% | \$1,124 | \$697 | 62% | \$508 | \$383 | 75% |

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

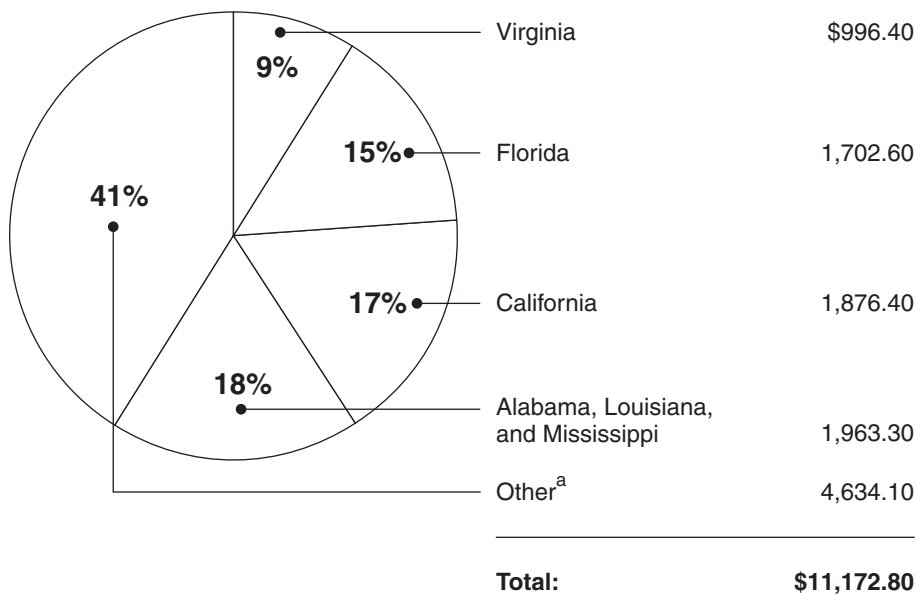
Note: Dollars are rounded to the nearest hundred thousand and percentages were calculated from unrounded numbers.

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

The remaining 82 percent of the approximately \$11 billion awarded by the four agencies went to businesses throughout the United States (including

Puerto Rico and the U.S. Virgin Islands) and Canada. For example, the agencies directly awarded 17 percent of their Katrina-related contracting dollars, or almost \$1.9 billion, to businesses located in California, and 15 percent, or approximately \$1.7 billion, to businesses located in Florida (fig. 4). Businesses located in Virginia received about 9 percent of the funds the four agencies awarded, or about \$996 million.

Figure 4: Katrina-Related Contracting Dollars by Location



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

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

^a“Other” includes other states, the U.S. Virgin Islands, Puerto Rico, and Canada.

Selected Corps Contractors Awarded Most Subcontracting Dollars to Small Businesses, but Information on Subcontracting Plans for All Four Agencies Was Incomplete

We found that the four Corps contractors that we reviewed awarded the majority of their Katrina-related subcontracting dollars to small businesses. However, viewed in terms of the total amounts obligated, we found that the selected Corps contractors awarded from less than 1 percent in one case to over half of the total amounts obligated as of March 31, 2006, to small businesses. In addition, subcontracting accomplishment information was not consistently available for the DHS and GSA contracts that were awarded to large businesses, and that, according to agency officials or FPDS-NG, required subcontracting plans. This information was not consistently available because contractors failed to submit it, agencies had not finalized the data, or the information could not be isolated from non-Katrina activities. Also, key information about small business subcontracting plans was not consistently available in official procurement data systems even though federal contracting rules state that the information should be documented there. Specifically, for significant amounts of contracting dollars, primarily at DHS and GSA, the systems had no information at all on whether or not the agencies required these plans. Also, at all four agencies, when they did not require subcontracting plans, to varying degrees there was no information on the reason for the agencies' decision even though the FAR requires that contract files contain "justifications and approvals, determinations and findings, and associated documents."²⁶ The incomplete information on subcontracting plan requirements limits determining the extent to which agencies complied with contracting rules designed to give small businesses maximum opportunities to win subcontracts.

²⁶FAR § 4.803 (a)(2), (14).

Corps Contractors Reported Awarding the Majority of their Subcontracting Dollars to Small Businesses

We reviewed 4 of the top 10 recipients of prime contracting dollars from DOD and the Corps for projects related to Hurricane Katrina.²⁷ Together, these 10 contractors accounted for 60 percent of these agencies' prime contracting dollars. Of these top 10 recipients, only 4 received contracts that were strictly for Hurricane Katrina-related projects and were required to submit small business subcontracting plans for these projects.²⁸ These 4 contractors were large businesses and received eight contracts from the Corps that accounted for \$928 million of the Corps' contracting dollars as of March 31, 2006.²⁹ In accordance with federal requirements for reporting of subcontracting information, the contractors reported the amounts they subcontracted to businesses by business size and type. According to the reports submitted for the period ending March 31, 2006, these 4 contractors awarded from 88 to 100 percent of their subcontracting dollars to small businesses, or from about \$11,000 to \$201 million (table 3).³⁰ According to their subcontracting plans, the 4 contractors we reviewed intended to use subcontractors to assist with a variety of clean-up and repair activities, including excavation, debris removal, and temporary roofing installation.

²⁷Because DOD does not electronically aggregate information on the subcontracting accomplishments of all military contractors, we chose to look at the top 10 military contractors. This is a nonprobability sample of military contractors because we did not consider including contractors other than the top 10.

²⁸Four prime contractors were not required to identify subcontracting opportunities because they were small businesses or the contract lacked subcontracting possibilities. Under FAR, a contract is not required to have a subcontracting plan if, among other things, the contract is with a small business or if no subcontracting possibilities exist. See FAR §§ 19.702(b)(1), 19.705-2(b). Of the remaining six contractors, two had contracts for both Katrina and other activities, and we excluded these contractors from our analysis because we could not isolate only the Katrina-related subcontracting accomplishments using the information that was available.

²⁹The four contractors received a total of 15 contracts from the Corps, but we excluded 7 from our analysis because they either had non-Katrina-related actions against them or were not required to include subcontracting plans.

³⁰We analyzed subcontracting awards to small businesses as of a specific point in time. However, these contracts may extend past March 31, 2006. Subcontracting accomplishments may vary over time if the amount prime contractors award to all businesses, and small businesses specifically, changes over the life of a contract.

Table 3: Awards of Selected Corps Contractors to Small Businesses as a Percent of the Subcontracting Dollars Awarded to All Businesses

Dollars in millions

| Prime contractor | Contract number | Amount contractor awarded to all subcontractors | Amount contractor awarded to small subcontractors | Percent ^a |
|------------------|-----------------|---|---|----------------------|
| Contractor A | A-1 | \$228 | \$201 | 88% |
| Contractor B | B-1 | 3 | 3 | 100 |
| | B-2 | 0.6 | 0.6 | 100 |
| | B-3 | 1 | 1 | 100 |
| | B-4 | 0.4 | 0.4 | 100 |
| | B-5 | 0.01 | 0.01 | 100 |
| Contractor C | C-1 | 24 | 23 | 95 |
| Contractor D | D-1 | \$212 | \$188 | 89% |

Source: Individual subcontracting reports as of March 31, 2006.

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

^aThe percent of all subcontracting dollars awarded that were awarded to small businesses.

We also conducted additional analysis on the four selected Corps contractors. This analysis shows that the percentages of contracting dollars that small businesses received through subcontracts from the four Corps contractors are smaller when analyzed in broader terms than those used for federal reporting requirements. The federal government requires that, when subcontracting plan requirements apply, contractors must agree to report the percentages and amounts of the total subcontracting dollars that small businesses receive, and the four contractors we analyzed met this reporting requirement.³¹ However, as we have previously reported, because a contractor could decide to subcontract only a small amount of its total federal contract, the portion of subcontracted dollars going to small businesses—if reported as a percentage of total subcontracted dollars rather than of total contract dollars—could appear to be large.³² We compared the amounts each of the four selected Corps contractors subcontracted to small businesses through eight Katrina-related contracts

³¹See, e.g., FAR §§ 19.704(a)(10), 52.219-9(d); see also GSA Form 294.

³²GAO, *Department of Energy: Improved Oversight Could Better Ensure Opportunities for Small Business Subcontracting*, GAO-05-459 (Washington, D.C.: May 13, 2005).

as of March 31, 2006, with the total amount obligated for each contract as of March 31, 2006 (table 4). This comparison, using the total amounts obligated, showed that the contractors awarded small businesses from less than 1 to 54 percent of the total amounts obligated. As we have noted, these percentages could change over time if the contractors award additional dollars to small businesses over the life of the contracts and if the total amounts obligated change.

Table 4: Amounts Small Businesses Received as Subcontractors as a Percent of Total Dollars Obligated for Selected Katrina-Related Contracts

Dollars in millions

| Prime contractor | Contract number | Total obligated ^a | Amount each prime contractor awarded to small business | Percent ^b |
|------------------|-----------------|------------------------------|--|----------------------|
| Contractor A | A-1 | \$447,025,736 | \$201 | 45% |
| Contractor B | B-1 | 7,130,002 | 3 | 39 |
| | B-2 | 15,189,862 | 0.6 | 4 |
| | B-3 | 28,283,410 | 1 | 4 |
| | B-4 | 8,662,500 | 0.4 | 4 |
| | B-5 | 14,817,225 | 0.01 | 0.08 |
| Contractor C | C-1 | 60,000,000 | 23 | 38 |
| Contractor D | D-1 | \$347,390,830 | \$188 | 54% |

Source: Individual subcontracting report as of March 31, 2006, DD-350, and Corps data.

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

^aThis total amount obligated as of March 31, 2006.

^bThe percent of the total amount obligated that was awarded to small businesses.

Subcontracting Accomplishment Information Is Not Consistently Available for the DHS and GSA Contracts Related to Hurricane Katrina That Required Subcontracting Plans

Subcontracting accomplishment information is not consistently available for the DHS and GSA contracts that were awarded to large businesses for activities related to Hurricane Katrina, and that, according to agency officials or FPDS-NG, required subcontracting plans. Contractors that have individual subcontracting plans are generally required to report on their subcontracting goals and accomplishments twice a year to the federal government through eSRS. Furthermore, the agencies' contracting officers are responsible for monitoring the prime contractors' activities and ensuring, among other things, that they submit complete and timely information in accordance with the terms of their federal contract.

For DHS, in response to our inquiries, agency officials researched contracts that appeared to meet the regulatory criteria for requiring a subcontracting plan (i.e., awarded to a large business for over \$500,000 or \$1,000,000 for construction) but which FPDS-NG indicated either did not require one or the system was missing information on a plan requirement altogether. For every contract that an agency awards, the agency is required to indicate in FPDS-NG whether a subcontracting plan is required. These officials found that subcontracting plans were, in fact, required for seven contracts, but that this had not been entered into FPDS-NG. DHS officials determined that subcontracting accomplishment information was available on four of the seven contracts.³³ For the four contracts, the contractors reported awarding from 14 to 83 percent of their subcontracting dollars, which ranged from \$154 to \$520 million, to small businesses as of March 31, 2006. For the remaining three contracts, subcontracting information was not available either because the prime contractor had not, as required, reported subcontracting accomplishment information to the electronic subcontracting reporting system (eSRS) as of March 31, 2006, or the contractor was not required to report on individual contracts.³⁴

For GSA, information is generally unavailable on the subcontracting activities associated with the 11 contracts the agency awarded to large businesses for Katrina-related activities and which included subcontracting plans. According to FPDS-NG, GSA awarded 11 Katrina-related contracts (worth a total of about \$9.6 million) for which subcontracting information was not available because contractors had failed to report it, the data had not been finalized, or, in one case, the contractor had reported aggregated figures for both Katrina-related and other subcontracts. Specifically, information was unavailable on 9 GSA-awarded contracts because the contractors had not submitted data into eSRS, and on 1 other contract because the data were still in “draft” form in

³³The FPDS-NG data for DHS initially showed that a subcontracting plan was required for two contracts the department awarded for Katrina-related activities which we could not find in eSRS. DHS officials subsequently researched these contracts and determined that neither required a subcontracting plan—one was an award to a small business (for which the requirement does not apply) and the other indicated that there were no subcontracting possibilities.

³⁴One of the contracts DHS awarded was for a commercial item. For commercial item contracts, contractors are only required to annually report on their subcontracting activities for all of their government contracts. These annual reports do not identify subcontracting activities by individual contracts.

eSRS.³⁵ While subcontracting information was available on 1 of the GSA-awarded contracts related to Hurricane Katrina, we could not isolate data related solely to that disaster, as the contract had been used for other unrelated activities and the available subcontracting information was reported for the entire contract. Because subcontracting accomplishments were reported for the contract as a whole, and not for individual contract actions, it is not possible, with available data, to disaggregate Katrina and non-Katrina-related subcontracting accomplishments.

Agency officials could not entirely explain what caused certain DHS and GSA prime contractors, whose contracts did include subcontracting plans, to fail to submit the required documentation of their activities and accomplishments into eSRS for the period ending March 31, 2006. However, one possible reason may have to do with the effect that incomplete information about prime contracts in FPDS-NG can have when it carries over into eSRS. Specifically, eSRS only allows contractors to submit information on their subcontracting activities when contracts are correctly coded in FPDS-NG as requiring a subcontracting plan. As a result, if a contract is not in FPDS-NG or has not been entered correctly as requiring a subcontracting plan, the contractor will not be able to submit information about subcontracting activities into eSRS. Without timely and complete information on the extent to which contractors are subcontracting with small businesses, the eSRS is less useful as a tool for providing transparency on the extent to which small businesses are, as intended, receiving opportunities to participate in federal contracts. In addition, the ability of eSRS to accurately produce reports on subcontracting achievements is compromised.

³⁵Data in eSRS that are in “draft” form means that a contractor has started creating a subcontracting accomplishment report, but has not yet submitted it to the government.

Incomplete Agency Information on Subcontracting Plan Requirements Raises Concerns about Compliance with Contracting Rules and Opportunities for Small Businesses

As was the case with certain agency data on subcontracting accomplishments, in two respects, key information on small business subcontracting plans was not consistently available in official procurement data systems for the four agencies. First, the official procurement data system, primarily for DHS and GSA, had no information at all on whether or not they required subcontracting plans for 70 percent or more of their contracting funds. DHS and GSA officials were, to varying degrees, unable to explain the lack of information on subcontracting plan requirements associated with their Katrina-related contracting dollars. Second, the four agencies, according to procurement data systems, determined that subcontracting plans were not required for contracts representing 12 to 77 percent of the dollars they awarded to large businesses for Katrina-related projects that appeared to meet the criteria for including such plans. Data on the four agencies' reasons for their determinations about not requiring these plans, which should be in the data systems or readily available, were incomplete.

For the types of contracts we reviewed, executive agencies generally must require subcontracting plans when they award federal contracts of more than \$500,000 to large businesses.³⁶ According to the FAR, agencies must make the maximum practical opportunities available for small businesses to participate in federal procurements and agencies must take steps to ensure that prime contractors play a role in ensuring those opportunities are made available.³⁷ Additionally, the FAR requires that federal executive agencies must maintain public files of data on their procurement activities, such as whether or not they have required prime contractors to submit and report on subcontracting plans.³⁸ We also note that the FAR requires that federal agencies have readily accessible information on each of the

³⁶As we previously noted, the dollar threshold was changed to \$550,000 on September 28, 2006. 71 *Fed. Reg.* 57363 (Sept. 28, 2006).

³⁷In July 2006, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council published, with a request for comments, interim rules establishing Part 18 of FAR, which are intended "to provide a single reference to acquisition flexibilities that may be used to facilitate and expedite acquisitions of supplies and services during emergency situations." 71 *Fed. Reg.* 38247 (July 5, 2006). According to GSA officials, these interim rules do not specifically address the subcontracting plan requirements discussed in this report. The FAR is available at <http://acquisition.gov/far/index.html>.

³⁸See FAR § 4.601(a); see also FPDS-NG User's Manual, SBA Goaling Guidelines.

contracts that they have awarded.³⁹ Finally, under the FAR, a contractor is not required to submit a subcontracting plan if the contracting officer determines that no subcontracting possibilities exist.⁴⁰ The contracting officer's determination must be approved at a level above the contracting officer and documented in the contract file.⁴¹ This information is to be captured in FPDS-NG for civilian agencies and in its military counterpart, DD-350, for military agencies. By capturing the reason for decisions about forgoing subcontracting plans, such as the lack of subcontracting possibilities, these systems provide transparency into a process intended to ensure maximum opportunities for small businesses to participate in federal procurements.

As we noted, information about whether the four agencies met the criteria for requiring subcontracting plans and, when they did not require a plan, their reasons for doing so were incomplete. Specifically, for contracts representing the majority of the dollars that DHS and GSA awarded to large businesses for contracts valued over \$500,000, no information was available in FPDS-NG on whether the two agencies required subcontracting plans or had waived this requirement (see table 5, column 6). Also, for contracts representing 12 to 77 percent of the funds they awarded to large businesses through contracts for over \$500,000, the procurement system showed that the agencies determined that subcontracting plans were not required (table 5, column 5). Agency officials were unable to explain why subcontracting plans were not required for contract dollars ranging from at least \$16 million to \$861 million.

³⁹The FAR states that agencies must transmit procurement information into FPDS-NG in accordance with the system's procedures. The FPDS-NG User Guide states that contracting officers shall submit complete and accurate data on contract actions to FPDS-NG within 3 business days after contract award. Moreover, under FAR subpart 4.8, agency contract files are to contain specified information about the contract and agencies should be able to locate them promptly. See FAR §§ 4.801 – 4.803.

⁴⁰FAR § 19.705-2. According to the FAR, in determining whether subcontracting possibilities exist, a contracting officer must determine relevant factors such as: (1) whether firms engaged in the business of furnishing the types of items to be acquired customarily contract for performance of part of the work or maintain sufficient in-house capability to perform the work; and (2) whether there are likely to be product prequalification requirements (a qualification requirement means a requirement for testing or other quality assurance demonstration that must be completed before award of a contract).

⁴¹Id.

Table 5: Subcontracting Plan Requirements by Dollar Amount Awarded

Dollars in millions

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

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

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

^aOne million dollars for construction.

Overall, procurement officials from the four agencies were able to explain some of the missing or incomplete subcontracting plan information, for example, by identifying data entry errors or providing evidence of additional justification for not requiring the subcontracting plans. Nonetheless, for each agency, there remain contracting dollars for which the subcontracting plan information is incomplete and which agency officials have not been able to explain. Specifically:

- For DHS, table 5 shows that \$3.4 billion in contracting dollars lacked any information on whether a subcontracting plan was required. DHS officials stated that information was missing for \$3.2 billion of these dollars due to data entry errors. For example, for nearly \$3 billion of these dollars, subcontracting plans were in fact required.⁴² DHS officials were unable to explain the lack of information on subcontracting plan requirements

⁴²Of the other dollars for which information was missing, DHS stated that some were awarded through purchase orders, to small businesses, or had no subcontracting opportunities—all of which would exclude the contracts from subcontracting plan requirements. As noted previously in this report, FAR does not require subcontracting plans for contracts with small businesses and when no subcontracting possibilities exist. FAR does not contain an explicit exception for purchase orders. Under FAR, a purchase order is a type of contract that, by definition, involves the use of simplified acquisition procedures. See FAR § 2.101 (definitions of “Contract” and “Purchase Order”). The simplified acquisition procedures apply where the contract amount does not exceed the simplified acquisition threshold. See FAR § 13.000.

associated with the remaining \$191 million of the dollars for which subcontracting plan requirement information is missing. Table 5 also shows that DHS did not require subcontracting plans for \$1.4 billion of the funds it awarded. DHS officials indicated \$545 million of these funds were miscoded and should have been entered in FPDS-NG as having “no subcontracting possibilities.” DHS officials were unable to explain why the remaining \$861 million were not required to have subcontracting plans.

- According to GSA officials, contracting officers did not require subcontracting plans for the Katrina-related contracts awarded to large businesses for over \$500,000 in some cases because of a temporary increase (to \$10 million) in the threshold for requiring these plans and in other cases because the emergency nature of the situation required a faster response than normal contracting procedures would have allowed.⁴³ Table 5 shows that GSA awarded a total of almost \$114 million through acquisitions that were coded in FPDS-NG as either not requiring a subcontracting plan or for which there was no information on whether a subcontracting plan was required (columns 5 and 6 of table 5, which round to \$114 million); of this amount, GSA officials indicated that \$72 million was awarded at amounts below the \$10 million threshold.⁴⁴ Of the remaining \$42 million, GSA determined that a subcontracting plan was not required for a \$26 million contract for ice because the urgent nature of the situation required procuring and delivering the ice faster than normal contracting procedures would have allowed. According to GSA officials,

⁴³ Additionally, according to GSA officials, data entry errors explain some of the information missing from their procurement systems. Specifically, GSA reported that about \$18 million were awarded through purchase agreements, against existing contracts, and to a small business that was miscoded as a large business—and therefore were not required to have subcontracting plans.

⁴⁴ According to GSA officials, under GSA Acquisition Letter V-05-17 (effective September 9, 2005) certain contracts for amounts not exceeding \$10 million were subject to simplified acquisition procedures that did not require submission of a subcontracting plan. They referred to the following paragraph in the Sept. 9 letter:

In accordance with section 101(1) of Pub. L. 109-62, the threshold in FAR 13.500(e) (\$10 million) is applicable to procurements in support of Hurricane Katrina rescue and relief operations. In addition, under section 101(2), the micro-purchase threshold for actions in support of Hurricane Katrina rescue and relief efforts is \$250,000.

The GSA officials did not provide a clear explanation of the extent to which GSA relied on the threshold amount. One official stated that subcontracting plans were not required for acquisitions of commercial items in which the contract amount was \$10 million or less. Subsequently, another official indicated that GSA relied on the threshold amount for Katrina-related contracts generally, without referring specifically to contracts for commercial items.

contracts such as this and others for which GSA did not require subcontracting plans, such as one for ambulance services to transport people from nursing homes, illustrate their point about the need to expedite contracting in an emergency situation. The ambulance services contract they cited was valued high enough that they ordinarily would have had to include a subcontracting plan which, in the normal course of operations, would require review by the SBA's Procurement Center Representatives for advisory purposes as well as a certain amount of market research to determine if subcontracting possibilities existed for potential prime contractors. In the judgment of the GSA contracting officials, the urgency of the situation requiring the ambulances was sufficient justification for forgoing the subcontracting plan requirements and procedures. GSA officials were unable to explain the lack of information on subcontracting plan requirements associated with the remaining \$16 million.⁴⁵

- Table 5 shows that DOD's data system, DD-350, had no information at all on subcontracting plan requirements for \$6.2 million of its Katrina-related contracts. Based on our queries, DOD officials determined that these contracts actually did require such plans. The system lacked this information because the DFARS instructions do not require this information for orders under a supply schedule contract. Of the \$483.6 million that table 5 shows as not requiring a subcontracting plan, based on our inquiries, DOD officials determined that \$475.9 million of these contract actions represented data entry errors and did, in fact, require such plans or should have been coded as having "no subcontracting possibilities." Moreover, DOD officials stated that about \$4.4 million in contract actions were correctly coded as not requiring subcontracting plans because they were awarded as blanket purchase agreements, purchase orders, or were awarded to a small business. DOD officials were unable to explain why the remaining \$3.3 million in contracting dollars coded as not requiring subcontracting plans were not required to have such plans.

⁴⁵The dollar amount for which it is unclear why GSA did not require subcontracting plans may be greater than \$16 million. As we indicated earlier, GSA officials were unclear whether its increase in the threshold for requiring the plans applied to all contract actions under the \$10 million or just those involving commercial items. If the threshold increase applied to all contract actions, \$16 million in GSA contract dollars remains unexplained. If the threshold increase only applied to commercial items (a subset of all contract actions), then the dollar amount for which we do not have information on why GSA did not require a subcontracting plan is likely greater than \$16 million.

-
- For the Corps, table 5 shows \$14 million for which DD-350 contained no information on subcontracting plan requirements. Corps officials determined that these were orders against existing GSA federal supply schedule contracts and for which, according to these officials, the FAR does not require subcontracting plans. Table 5 also shows \$574.5 million for which the Corps determined that subcontracting plans were not required; according to Corps officials, data entry errors explain \$437.2 million of these funds—some small businesses (which do not have to have subcontracting plans) were miscoded as large, some contracts were miscoded as not requiring a subcontracting plan when they actually did, and some should have been coded as having “no subcontracting possibilities.” Corps officials were unable to explain why subcontracting plans were not required for the remaining \$102 million in contracting dollars that were coded as not requiring a subcontracting plan.

More than 1 year after Hurricane Katrina, key information about subcontracting plan requirements remains incomplete, as we show in table 5. As we noted in reporting on the agencies’ efforts to respond to our inquiries, data entry errors explain some of what we found. Additionally, officials from GSA and DOD stated that in the emergency situation that Hurricane Katrina presented, they placed priority on awarding contracts for vital supplies with the expectation that data entry would be completed at a later time. However, as we noted, these agencies were still unable to explain why data were missing on subcontracting plan requirements, or why subcontracting plans were not required for from \$3.3 million to \$861 million in contract dollars. The incomplete information limits using the agencies’ procurement data systems and publicly reported contracting data to tell the extent to which agencies complied with federal contracting rules designed to give small businesses the maximum practical opportunity to participate in federal contracts.

Disadvantaged Business Enterprises Participated in FHWA- and FAA-Funded Contracts and Subcontracts Related to Hurricane Katrina

DBEs Received about 4 Percent of FHWA Dollars for Katrina-Related Contracts in Mississippi, Alabama, and Louisiana

Through contracts and subcontracts, DBEs were awarded about 4 percent of almost \$1.3 billion of FHWA funding for Katrina-related contracts awarded between August 1, 2005, and June 30, 2006, in the three states primarily affected by Hurricane Katrina.⁴⁶ The Mississippi Department of Transportation awarded the majority of the FHWA dollars DBEs received in these three states. DBEs were awarded about 10 percent of FAA dollars that airports in these three states awarded for Katrina-related contracts during the same period of time.⁴⁷ FTA officials said that FTA did not fund any grants to transit agencies for Katrina-related recovery projects.⁴⁸

DBEs were awarded about 4 percent of the total dollar value of Katrina-related contracting dollars awarded by three state transportation agencies through contracts and subcontracts between August 1, 2005, and June 30, 2006. The DOTs in the three states primarily affected by Katrina (Alabama, Louisiana, and Mississippi) awarded 76 FHWA-funded, Katrina-related contracts, totaling about \$1.3 billion (table 6). DBEs were awarded approximately \$53 million of this amount as prime contractors and subcontractors. Specifically, DBEs were prime contractors on 2 and subcontractors on 10 of the 76 contracts awarded.

⁴⁶The state DOTs of Alabama, Louisiana, and Mississippi set annual goals for DBE participation in FHWA-assisted contracts at about 10 percent for fiscal years 2005 and 2006, as we note in the background section of this report. Because these goals are based on DBE participation on an annual basis using data from all FHWA-assisted contracts in each state, and because DOT did not set Katrina-specific overall DBE participation goals, the data we present in this section do not represent noncompliance or the failure of any of the states to meet annual DBE participation goals.

⁴⁷Airports receiving FAA funds set annual DBE participation goals. The airports' FAA-assisted contracts that we reviewed had goals that ranged from about 7 percent to 20 percent, as we note in the background section of this report. Because these goals are based on DBE participation on an annual basis using data from all FAA-assisted contracts, and because DOT did not set Katrina-specific DBE participation goals, the data we present in this section do not represent noncompliance or the failure of any of the airports to meet annual DBE participation goals.

⁴⁸Repairs to transit for damage caused by Hurricane Katrina have been paid for with FEMA funds that were administered by FTA. According to FTA officials, DBE participation requirements do not apply to the funds they provided transit agencies in the affected states because the funds were FEMA's, not FTA's.

Table 6: DBE Participation in Katrina-Related State DOT Contracts Awarded With FHWA Funds

Dollars in millions

| State | Total dollar value of contracts awarded | Total dollars awarded to DBEs ^a | Percentage of total dollar value of contracts awarded to DBEs |
|--------------|---|--|---|
| Mississippi | \$790.0 | \$34.2 | 4.3% |
| Louisiana | 490.0 | 18.8 | 3.8 |
| Alabama | 2.9 | 0.1 | 4.0 |
| Total | \$1,282.9 | \$53.1 | 4.1% |

Source: GAO analysis of Mississippi, Louisiana, and Alabama DOT data for contracts awarded between August 1, 2005, and June 30, 2006.

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

^aIncludes amount paid to DBEs for completed projects and amount committed to DBEs for ongoing projects through prime contracts and subcontracts.

In Mississippi, DBEs were awarded a total of about \$34 million, or 4.3 percent of the \$790 million that the Mississippi DOT awarded in FHWA-funded, Katrina-related contracts. The Mississippi DOT awarded the \$790 million through 55 contracts. DBEs were the prime contractor on 2 of these contracts, which totaled about \$2 million, and subcontractors on 6 others. Almost all of the 8 contracts that DBEs participated in were for debris removal and work on U.S. Highway 90, which runs along the Mississippi coast and received substantial damage from the hurricane. As of October 2006, of the approximately \$34 million awarded to DBEs in Mississippi, about \$3 million had been paid for completed work and \$31 million is committed for work in progress.

DBEs were awarded a total of about \$19 million, or 3.8 percent of the \$490 million that the Louisiana DOT awarded in FHWA-funded, Katrina-related contracts. The Louisiana DOT awarded a total of 19 contracts, and DBEs were subcontractors on 3 of them. The 3 subcontracts included work for bridge repair and work on Interstate Highway 10, which received significant damage from Hurricane Katrina between New Orleans and Slidell, Louisiana. As of October 2006, of the approximately \$19 million awarded to DBEs, approximately \$700,000 had been paid for completed work, and a little more than \$18 million had been committed for work in progress.

DBEs were awarded a total of about \$100,000, or 4 percent, of the nearly \$3 million that the Alabama DOT awarded in FHWA-funded, Katrina-related contracts. Two contracts accounted for the nearly \$3 million and two DBEs were subcontractors on one of the contracts.⁴⁹ As of October 2006, the two DBEs had received over half of their awarded amounts, and the remainder was committed for the rest of the project, which was designed to repair a ramp on a section of Interstate Highway 10.

DBEs Received About 10 Percent of the FAA Dollars Awarded for Katrina-Related Contracts

DBEs were awarded about \$2.4 million of the nearly \$24 million in Katrina-related contracts that airports in Alabama, Louisiana, and Mississippi awarded with FAA funds for Katrina-related contracts during the period of our analysis (table 7). This \$24 million was awarded by airports through 44 contracts, and DBEs participated in 1 contract as a prime contractor and in 10 contracts as subcontractors.

Table 7: DBE Participation in Contracts Awarded by Airports with FAA Grants

Dollars in millions

| State | Total dollar value of all contracts awarded | Total dollar value awarded to DBEs ^a | Percentage of total dollar value of contracts awarded to DBEs |
|-------------------------|---|---|---|
| Airports in Mississippi | \$21.1 | \$2.3 | 11.0% |
| Airports in Louisiana | 2.6 | 0.1 | 4.1 |
| Airports in Alabama | 0.3 | — ^b | — ^b |
| Total | \$24.0 | \$2.4 | 10.1% |

Source: GAO analysis of FAA data for contracts awarded by airports between August 1, 2005 and June 30, 2006.

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

^aIncludes amount paid to DBEs for completed projects and amount committed to DBEs for ongoing projects through prime contracts and subcontracts.

⁴⁹According to an Alabama DOT official, the Alabama DOT indirectly awarded 11 additional Katrina-related contracts totaling about \$800,000 through various counties in the state. The counties awarded the contracts and the Alabama DOT reimbursed them. DBE information was not readily available on these 11 contracts and we excluded them from our analysis.

^bAirports in Alabama awarded a total of nearly \$300,000 in three FAA-funded, Katrina-related contracts, and DBEs participated in one of the three contracts. For contracts awarded with FHWA or FAA funds, we determined that contract values were sufficiently reliable to report aggregated contract amounts rounded to the nearest \$100,000. Because the dollar value awarded to DBEs in Alabama was less than \$50,000 and rounding this figure would require reporting it as zero, we chose not to report on the amount or percentage of total dollars DBEs received in Alabama. See the detailed discussion of our methodology in appendix I for more information.

DBEs were awarded approximately \$2.3 million (11 percent) of about \$21 million that airports in Mississippi awarded in FAA-funded, Katrina-related contracts. DBEs participated in 8 out of 27 contracts awarded by airports in Mississippi. The contracts included repair work for terminal areas and runway lighting, as well as construction of a new cargo building.

DBEs were awarded a total of about \$100,000, all through subcontracts, of nearly \$2.6 million that airports in Louisiana awarded in FAA-funded, Katrina-related contracts. The \$100,000 DBEs received accounted for approximately 4 percent of the \$2.6 million that the Louisiana airports awarded. Overall, DBEs participated in 2 of 14 contracts that included work to update one airport's master plan and consulting services provided to another airport.

Conclusions

There is little doubt that Hurricane Katrina posed challenges to federal agencies to award contracts expeditiously while adhering to federal acquisition regulations, including those governing subcontracting plans. We recognize that the response to Katrina was unprecedented for most agencies and that complying with certain requirements, such as negotiating subcontracting plans and documenting compliance with subcontracting requirements, may have understandably been deferred to a later time, as GSA and DOD officials said was the case. Nonetheless, a substantial amount of information about the four agencies' subcontracting requirements remains incomplete over a year after the hurricane. Conclusively demonstrating compliance with the rules about subcontracting plans is important for reasons beyond just documentation. By requiring these plans, agencies commit prime contractors to specific goals for providing opportunities to small businesses and give themselves tools—incentives as well as sanctions—that they can use to ensure the contractors engage in good faith efforts to meet their small business subcontracting goals. In doing so, the agencies ensure compliance with federal procurement regulations and that small businesses have all of the practical opportunities to participate in federal contracts that they are supposed to have. Because so much key information about subcontracting plans was incomplete in federal procurement data systems and, at the conclusion of our review, remains unresolved, we cannot tell the extent to which the agencies are complying with the regulations. Furthermore, the

lack of transparency surrounding much of the agencies' subcontracting data—missing information on plans when contracts appear to meet the criteria for having them—may lead to unwarranted perceptions about how the federal procurement system is working, particularly in terms of the government's stated preference for contracting with small businesses.

For their Katrina-related relief contracts, until DHS, GSA, DOD, and the Corps improve documentation of (1) the status of whether subcontracting plan requirements are in place and (2) their decisions on whether subcontracting plans were required, the agencies will lack the ability to provide assurance they offered small businesses the maximum practical opportunity to do business with them. However, it is questionable whether the benefit from clearing up the agencies' incomplete subcontracting information would outweigh the costs of doing so for Katrina-related contracts. Consequently, the agencies' best course of action in response to what we found may be to improve documentation for all future contracts and reinforce to all of its contracting officers and others involved in the procurement process the importance of adhering to subcontracting plan requirements and ensuring that publicly available information—such as what the agencies report in FPDS-NG—accurately reflects the extent to which the agency made subcontracting opportunities available to small businesses.

Recommendations for Executive Action

To ensure compliance with federal contracting regulations and to more transparently disclose the extent to which subcontracting opportunities are available to small businesses, we recommend that the Secretaries of Homeland Security and Defense and the Administrator of General Services take the following two actions:

- Issue guidance to the appropriate procurement offices and personnel reinforcing (1) the reasons for subcontracting plan requirements and the importance of complying with them; (2) the necessity for documenting in publicly available sources the agencies' decisions, particularly in instances when they determine not to require subcontracting plans; and (3) where subcontracting plans are in place, the need to adhere to the requirement for all prime contractors to report on their small business subcontracting accomplishments.
- Consider asking their respective Inspectors General to conduct a review at an appropriate future date to ensure that this guidance and related requirements are being followed.

Agency Comments and Our Evaluation

We provided a draft of this report to DHS, GSA, DOD, DOT, and the SBA for their review and comment. Officials from DOT and SBA provided technical clarifications, which we incorporated as appropriate. Through written comments, DHS, GSA, and DOD—the agencies to which our recommendations are addressed—concurred with our recommendations. Their comments are reprinted in appendixes II, III, and IV.

In written comments from the Director of DHS's Departmental GAO/OIG Liaison Office (app. II), DHS noted actions that it plans to take to implement the recommendations within the Federal Emergency Management Agency (which was responsible for the vast majority of the agency's Katrina-related contracting) and stated that it plans to apply them as best practices across all of the department. Specifically, the agency plans to:

- issue guidance to all acquisition offices reinforcing previously issued guidance regarding the importance of awarding all appropriate contracts to small businesses and encouraging large businesses to subcontract all appropriate work to small businesses;
- have an acquisition oversight team within the agency's Office of the Chief Procurement Officer review DHS acquisition offices' compliance with federal and DHS acquisition regulations, policies, and procedures; and,
- pursue a review by the Defense Contract Management Agency (DCMA) to benchmark the agency's contract administration efforts, including its subcontracting plan administration, against DCMA practices and procedures.

In commenting on our presentation of subcontracting accomplishments, DHS stated that many of the DHS contracts did not require contractors to enter subcontracting accomplishment data into the electronic subcontracting reporting system (eSRS), and that inputting subcontracting accomplishment information into eSRS was voluntary in fiscal year 2006. However, we note that according to a November 2005 memo to Chief Acquisition Officers from the Office of Management and Budget, all contractors for civilian agencies were required to use eSRS as of fiscal year 2005.

DHS also stated that we could have emphasized the agency's administration of four key contracts with large businesses that had subcontracting plans, noting that these businesses provided

subcontracting information weekly. While we were aware that DHS was obtaining weekly subcontracting accomplishment information from selected contractors, our methodology for DHS (and the other agencies) was to obtain and analyze the subcontracting accomplishment information that federal regulations required the agency to collect and report (semiannually, in this case, as of March 31, 2006).

DHS also offered comments regarding the report's presentation of contracts awarded directly to small businesses. Specifically, DHS stated that work under two contracts that were awarded directly to large businesses was transferred to multiple small businesses. As we note in the report, DHS awarded \$1.6 billion in Katrina-related contracting dollars directly to small businesses. To the extent that DHS accurately indicated in FPDS-NG that the contracting dollars were awarded directly to small and not large businesses, our report reflects this activity.

GSA's Administrator generally concurred with our recommendations (see app. III). The agency's Office of the Chief Acquisition Officer will, among other things, take steps such as:

- distribute an acquisition alert reminding the acquisition community of the importance of subcontracting plan requirements, and the need to document decisions, including those regarding subcontracting plan requirements;
- remind contracting officers of their responsibility to ensure that contractors properly report their subcontracting accomplishments as required; and,
- include compliance with the guidance about subcontracting plan requirements in its regularly scheduled Procurement Management Reviews as well as the special reviews it conducts during major catastrophes in order to ensure procurement statutes, regulations, and guidance are being met; when appropriate, GSA indicated it will seek the assistance of the agency's Inspector General to support these reviews.

GSA emphasized—during the course of our review as well as in its comments on our draft report—that during catastrophic situations, time is of the essence in getting goods and services to a disaster area immediately. While its contracting officers and personnel worked to comply with all contracting requirements, including the subcontracting plan requirement, GSA stated that the latter proved to be impossible given the urgency of the

needs resulting from the hurricane. GSA also noted that the subcontracting plan requirement is one it did not address when it waived certain procurement rules in early September 2005 during the emergency response. One reason GSA did not extend these waivers to the requirement for subcontracting plans is that, in the judgment of GSA procurement officials, there are no provisions or flexibility in the Federal Acquisition Regulation (FAR) that would have given them the authority, even in an emergency situation such as the response to Hurricane Katrina, to deviate from subcontracting plan requirements. We agree with GSA's conclusion that the FAR currently does not specifically permit agencies to waive the requirement for an approved subcontracting plan prior to contract award. This is because the FAR requirement is based on the Small Business Act, which does not provide for an agency to waive the subcontracting plan requirement or allow deferral of it until after the agency has awarded a contract. As a result of our findings and the lack of flexibility GSA determined the FAR has on subcontracting plan requirements, GSA plans to raise the issue of emergency processes with the FAR Council.⁵⁰

DOD's Director, Defense Procurement and Acquisition Policy, in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, concurred with our recommendations (see app. IV) and noted that the department plans to issue a policy memorandum in 2007 containing the guidance we recommend. Additionally, DOD indicated it would direct review officials for each of its military departments and other defense agencies to include subcontracting guidance and compliance as a special interest item in the periodic oversight reviews they conduct of the organizations within each department or agency. Moreover, DOD will ask the military departments' Offices of Inspectors General as well as the DOD Inspector General to review the adequacy of departmental and agency oversight and management review processes.

We are sending copies of this report to appropriate congressional committees, the Secretary of Homeland Security, the Administrator of

⁵⁰The FAR Council oversees the development and maintenance of the FAR. Its chair is the Administrator of OMB's Office of Federal Procurement Policy, who is responsible for providing overall direction for governmentwide procurement policies, regulations, and procedures. The Council's members also include the DOD Director of Defense Procurement and Acquisition Policy and the GSA Chief Acquisition Officer. The Office of Federal Procurement Policy chairs quarterly meetings to discuss and resolve significant or controversial FAR changes.

General Services, the Secretary of Defense, the Secretary of Transportation, and the Administrator of the Small Business Administration. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions regarding this report, please call me at (202) 512-8678 or shearw@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix V.



William B. Shear
Director, Financial Markets
and Community Investment

List of Congressional Addressees

The Honorable John F. Kerry
Chairman
The Honorable Olympia J. Snowe
Ranking Member
Committee on Small Business and Entrepreneurship
United States Senate

The Honorable Joseph I. Lieberman
Chairman
The Honorable Susan M. Collins
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Richard J. Durbin
Chairman
The Honorable Sam Brownback
Ranking Minority Member
Subcommittee on Financial Services and General Government
Committee on Appropriations
United States Senate

The Honorable Nydia M. Velázquez
Chair
The Honorable Steve Chabot
Ranking Member
Committee on Small Business
House of Representatives

The Honorable Henry A. Waxman
Chairman
The Honorable Tom Davis
Ranking Member
Committee on Oversight and Government Reform
House of Representatives

The Honorable José E. Serrano
Chairman
The Honorable Ralph Regula
Ranking Minority Member
Subcommittee on Financial Services
Committee on Appropriations
House of Representatives

The Honorable Donald A. Manzullo
House of Representatives

Appendix I: Scope and Methodology

To identify the amounts that small and local businesses received through direct contracts from the four federal agencies for relief and recovery efforts related to Hurricane Katrina, we identified the agencies that had received the largest supplemental appropriations for Katrina-related relief and recovery work, and then analyzed data from the Federal Procurement Data System-Next Generation (FPDS-NG), the governmentwide database of contracting activity, and DD-350, the Department of Defense (DOD) database that contains data on individual contracting actions, to identify federal agencies that had directly awarded the most contracting dollars as of May 2006. This analysis showed that the Department of Homeland Security (DHS), DOD, and the U.S. Army Corps of Engineers (Corps) had received the largest supplemental appropriations and that these three agencies plus the General Services Administration (GSA) had awarded 86 percent of all funds for Katrina-related contracts as of May 2006. Our analysis focused on these agencies.¹ For consistency, we decided to analyze all Katrina-related obligations from August 1, 2005, to June 30, 2006, in order to capture contracting actions that occurred in preparation for Hurricane Katrina, and because June 30th was the most current data available at the time we began data analysis.² In addition, this time frame allowed for analysis of nearly 1 year's worth of contracting activities.

To identify and obtain information on the Katrina-related contracting dollars awarded by DHS and GSA between August 1, 2005, and June 30, 2006, we analyzed data in FPDS-NG on new contracts, contract modifications, and task orders against existing contracts. We excluded contract modifications that were administrative or that did not change the dollar value of the contract. We analyzed data that were reported into FPDS-NG as of October 23, 2006. Although we could not independently verify the reliability of all of these data, we conducted electronic data testing for inconsistency errors and completeness, and interviewed agency officials. For DHS, we also assessed the reliability of contract information in FPDS-NG by comparing these data to information that the agency maintained on Katrina-related contracts in an ad hoc spreadsheet that it developed in the early days after the hurricane; DHS used this spreadsheet

¹We are reporting DOD and the Corps separately because three of the four supplemental appropriations specifically directed certain funds to the Corps for its disaster relief activities.

²A Katrina-related action is one that had the National Interest Action code of "H05K" or for DOD the System Code of "ZHK" or had some variation of the name "Katrina" in the Description of Requirement field or the Major Program field.

to collect and maintain Katrina-related contract information from late September 2005 through the present in order to be able to provide timely information to the White House. Subsequently DHS used this spreadsheet to check the Katrina-related contract information in FPDS-NG, and investigate any anomalies. We determined the data to be sufficiently reliable for the purposes of this report.

To identify and obtain information on the Katrina-related contracting dollars awarded by DOD and the Corps between August 1, 2005, and June 30, 2006, we analyzed data in DD-350 on new contracts, contract modifications, and task orders against existing contracts. We excluded contract modifications that were administrative or that did not change the dollar value of the contract. We analyzed data for DOD and the Corps that were reported into DD-350 as of October 26, 2006, and FPDS-NG as of November 13, 2006. Although we could not independently verify the reliability of all of these data, we conducted electronic data testing for inconsistency errors and completeness, and interviewed agency officials. For the Corps, we also assessed the reliability of contract information in DD-350 by comparing these data to information that the Corps maintained on Katrina-related contracts in an ad hoc spreadsheet that it developed following the hurricane; the Corps used this spreadsheet to collect and maintain current Katrina-related contract information from late in September 2005 through the present in order to be able to report timely information to the White House. Subsequently the Corps used this spreadsheet as a check on the accuracy and completeness of Katrina-related contract information in DD-350. Based on these efforts, we determined the data to be sufficiently reliable for the purposes of this report.

To describe the extent to which prime contractors subcontracted with small businesses, we used different approaches for military and civilian agencies. For DOD and the Corps, we obtained information on the top 10 contractors because data on the extent to which military contractors awarded subcontracts to various types of small businesses are not electronically aggregated.³ To identify the 10 contractors that cumulatively had received the most funds for Katrina-related contracts from DOD and the Corps between August 1, 2005, and June 30, 2006, we analyzed information from DD-350 and FPDS-NG. Of these 10 contractors, 4

³Identifying the top 10 contractors is a nonprobability sample because we did not consider including contractors other than the top 10.

received contracts for strictly Katrina-related projects from the Corps, and were required to submit subcontracting plans for these contracts. These 4 contractors were all large, and received a total of eight contracts. For each of the eight contracts, we obtained and reviewed the subcontracting plans and the individual subcontracting reports as of March 31, 2006. We also interviewed contractors about their subcontracting activities. We compared the amounts each of the 4 contractors awarded to small businesses to the total amounts obligated as of March 31, 2006.

To identify the extent to which contractors for DHS and GSA subcontracted with small businesses to do Katrina-related relief and recovery work, we used FPDS-NG to identify those contractors that received prime contracting dollars between August 1, 2005, and June 30, 2006, for activities that were coded as being related to Hurricane Katrina, and were required to submit a subcontracting plan. For those contracts that required a subcontracting plan, we searched for documentation of subcontracting awards in the electronic subcontracting reporting system (eSRS) as of March 31, 2006.

In addition, for all four agencies, we assessed the extent to which the agencies required subcontracting plans for Katrina-related contracting actions to large businesses for over \$500,000.⁴ According to federal acquisition regulations, contracts or contract modifications to large business valued at over \$500,000 (\$1 million for construction) and which have subcontracting possibilities, are required to submit subcontracting plans. For each of the four agencies, we identified Katrina-related contracting actions that occurred between August 1, 2005, and June 30, 2006, that met this criteria. We asked each agency to explain why subcontracting plans were not required for those contracting activities that met these criteria, but for which the data showed they had not been required to submit subcontracting plans. We also contacted, where appropriate, the procurement and legal officials at each agency to determine any basis upon which agencies may have determined not to require subcontracting plans for any contracts that otherwise appeared to have met the criteria for them.

⁴During the period of our analysis, each solicitation of offers to perform a contract or contract modification over \$500,000 (\$1 million for construction) and that had subcontracting possibilities required the contractor to submit a subcontracting plan. The dollar threshold was changed to \$550,000 on September 28, 2006. 71 *Fed. Reg.* 57363 (Sept. 28, 2006).

To obtain information on the extent to which Disadvantaged Business Enterprises (DBEs) received federal funds for transportation projects that relate to reconstruction or recovery from Hurricane Katrina, we analyzed data on contracts awarded between August 1, 2005, and June 30, 2006, with Department of Transportation funds in the states of Alabama, Louisiana, and Mississippi. Specifically, we obtained data on contracts awarded through funds from two of the three operating administrations of the DBE program—the Federal Highway Administration (FHWA) and the Federal Aviation Administration (FAA). The third operating administration, the Federal Transit Administration (FTA), did not provide us with any data since FTA funds were not used to award contracts related to Katrina reconstruction or recovery projects during the time frame that we examined. For contracts awarded with FHWA funds, we obtained contract data from each state department of transportation. For contracts awarded with FAA funds, we obtained contract data from FAA’s Southern and Southwestern regional offices, which compiled data from the various airports in the three states. The contract data we obtained for contracts funded with FHWA and FAA funds included information on DBE participation as either prime contractors or subcontractors, and the amounts awarded to DBEs, among other data fields. Overall, we obtained data on 120 contracts awarded with FHWA and FAA funds. To assess the reliability of the data we collected, we contacted a simple random sample of 29 contractors and verified specific fields used in this report. We verified specific fields for each of the contracts in the sample—contract award date, contract amount, DBE participation, and amount awarded to DBEs. We determined the data for contract award date and DBE participation to be sufficiently reliable for the purposes of this report. We identified 3 contracts award amounts in the sample that contained minor discrepancies. We estimated, at the 95 percent confidence level, that these discrepancies would not exceed \$50,000 in total error in the population of 120 contracts. Based on this estimate we determined the data to be sufficiently reliable to report aggregated information rounded to the nearest \$100,000. We chose to not report any figure below \$50,000. To obtain background information on the DBE program, we interviewed DOT headquarters officials from each of the three operating administrations. We also obtained documentation on the DBE program goals, DBE certification procedures, and information on the overall administration of the program.

Appendix II: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

January 24, 2007

Mr. William B. Shear
Director
Financial Markets and Community Investment
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Shear:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO's) draft report GAO 07-205 entitled *HURRICANE KATRINA: Agency Contracting Data Should Be More Complete Regarding Subcontracting Opportunities for Small Businesses*.

The Department of Homeland Security (DHS) concurs with the analysis and recommendations provided in the draft report. This type of audit is critical for DHS to continue to improve its acquisitions and bench mark against more established executive agencies such as the Department of Defense (DoD) and the General Services Administration (GSA). DHS intends to implement the recommendations from the report, not just within the Federal Emergency Management Agency, but apply the recommendations as best practices across all of DHS.

With respect to Recommendation 1, the DHS Office of Small and Disadvantaged Business Utilization (OSDBU) will issue guidance to all acquisition personnel (program offices, contracting offices and field personnel) reinforcing previously issued guidance from the DHS Chief Procurement Officer (CPO) regarding the importance of awarding all appropriate contracts to small businesses and encouraging large business to subcontract all appropriate work to small businesses. As the report indicates, DHS awarded 41% of the Katrina actions and 24% of the Katrina dollars to small businesses as prime contractors. Primarily these awards were for commercial acquisitions in accordance with simplified acquisition procedures. DHS components will be reminded that simplified acquisitions should be set aside for small business and other acquisitions should appropriately consider a small business set aside where two or more small businesses are likely to submit proposals in response to the requirement. These considerations are part of DHS acquisition plans, and will continue to be monitored by the OSDBU office.

Recommendation 2 suggests that DHS should consider requesting the DHS Inspector General to review compliance with the OSDBU guidance one year after the guidance is

issued. DHS concurs with the recommendation to review compliance with small business prime and subcontracting requirements one year after additional guidance is provided. The DHS acquisition oversight team will review the DHS Component acquisition offices for compliance with federal and DHS acquisition regulations, policies and procedures. These reviews will monitor DHS's compliance with subcontracting requirements pursuant to the OSDBU and CPO guidance. In addition, the CPO is pursuing a review by the Defense Contract Management Agency (DCMA) to benchmark DHS contract administration, including subcontracting plan administration against DCMA practices and procedures. As a result of the DCMA review, DHS will implement practical improvements in contract administration.

The report highlights the fact that the DHS Federal Procurement Data System (FPDS) information is incomplete or erroneous with regard to subcontracting plans. DHS concurs that during FY 06, the information was not always accurate. DHS is undertaking a process to improve the quality of the data in FPDS and as part of the process will ensure that contract specialists correctly input the subcontracting information in the future.

The report indicated that DHS contractors did not input the subcontracting information into the Electronic Subcontracting Reporting System (eSRS). However, many of the DHS contracts did not require this action. The eSRS is a new system which was voluntary for FY 06. The DHS components did not have a standard clause available during Katrina to alert contractors to eSRS availability. Training in eSRS is in process. The training in the requirements and application of eSRS should resolve this GAO finding.

In addition, the report demonstrated that DHS did not have sufficient contract administration of all contracts that included subcontracting plans during Katrina. As a corrective action, DHS is instituting Field guides and Contract Administration Plans (CAPs) within FEMA to ensure that all personnel participating in contract administration understand their roles and responsibilities. Future field guides and CAPs will include specific instructions on administering subcontracting plans where applicable.

GAO could have highlighted the administration of the four Individual Assistance Technical Assistance Contracts (IA TAC) as part of their review. For these four critical contracts, the subcontract plans were aggressively negotiated with Bechtel, Shaw, Fluor and CH2MHill. The DHS OSDBU assigned staff who administered the subcontracting program. The four companies reported the actual amounts subcontracted to small businesses segregated by state each week. The companies worked closely with DHS to ensure that small business had an opportunity to participate on each subcontracting opportunity. In addition, requirements for the maintenance and deactivation of Katrina temporary housing units has been transitioned from these four contractors to small and small disadvantaged businesses to perform this work as prime contractors rather than as subcontractors.

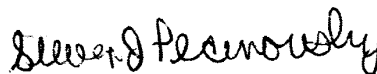
Two other significant FEMA procurements transferred work from large business prime contractors to multiple award small business prime contractors. In the first instance, 19

contracts were awarded for grounds maintenance to service disabled veteran owned small businesses where the work was previously performed by large businesses. In addition, the Mississippi Blocking, Leveling and Anchoring contracts were awarded to six Hubzone-certified small businesses where work was previously provided under the IA TAC contracts by large business prime contractors.

DHS is leaning forward to be prepared for future disasters. By awarding pre-positioned contracts prior to emergencies and establishing contingency agreements with industry, DHS will be able to obtain necessary supplies and services to respond to disasters, while complying with all of the applicable federal regulations including small business subcontracting requirements. Planning for the acquisitions allows the government and industry to negotiate appropriate guidelines that will maximize subcontracting opportunities for future requirements.

Thank you again for the opportunity to comment on this draft report and we look forward to working with you on future homeland security issues.

Sincerely,



Steven J. Pecinovsky
Director
Departmental GAO/OIG Liaison Office

Appendix III: Comments from the General Services Administration



GSA Administrator

February 8, 2007

The Honorable David M. Walker
Comptroller General
of the United States
Government Accountability Office
Washington, DC 20548

Dear Mr. Walker:

Thank you for the opportunity to comment on the Government Accountability Office (GAO) draft report, "HURRICANE KATRINA: Agency Contracting Data Should Be More Complete Regarding Subcontracting Opportunities for Small Businesses" (GAO-07-205).

Enclosed are GSA's specific comments on the draft report. If you have any other concerns, please contact me. Staff inquiries may be directed to Kevin Messner, Associate Administrator, Office of Congressional and Intergovernmental Affairs, at (202) 501-0563.

Cordially,

A handwritten signature in black ink, appearing to read "Lurita Doan".

Lurita Doan
Administrator

Enclosure

Technical Corrections/comments specific to the content of the report:

1. Page 4 the sentence which begins with "These plans" should be corrected as follows by inserting the following for accuracy "... large prime contracts expected to exceed \$500,000 and \$1M for construction".
2. Page 6, the second sentence under the same section contains the definition of small business, which is incomplete. At a minimum, the statement should be expanded to mention that a firm must meet the size standards published by Small Business Administration (SBA), based on annual revenue or number of employees.
3. Page 7, Small businesses are not required to have a net worth of less than \$750,000. Rather, this requirement applies to the owners of Small Disadvantage Businesses (SDBs). As written it confuses small businesses with SDBs.
4. Page 7, the third bullet defining women-owned Small businesses needs to be clarified. Recommend changing the statement to say, "that women-owned small businesses must be 51% owned and controlled by one or more women" and delete "publicly-owned businesses".
5. Page 8, seventh sentence and page 20 second sentence, please rewrite for accuracy where it states "For individual contracts..." change to read "For contracts that are awarded with individual subcontracting plans, contractors are required to report semi-annually for the periods ending for subcontracting goals and achievements March 31st and September 30th with a separate report for each contract at contract completion. For contracts that are awarded with commercial plans, contractors are required to report annually"
6. Page 9, DD350 is not "the military equivalent of FPDS-NG" (pages 2 and 23), nor is it a "system" (page 9). The DD 350 is a form that Department of Defense (DoD) has used to capture data for reporting to FPDS-NG until all of their legacy systems were able to transition to direct reporting.
7. Page 19, table 4 compares Total Estimated Contract Value with the Amount Each Prime Contractor Awarded to Small Business. This is misleading, because GAO is using the term FPDS-NG uses called "Ultimate Contract Value" – which is the total dollar amount awarded to the prime contractor if all options are exercised. Instead, GAO should use what FPDS-NG calls "Current Contract Value" - i.e., the current dollars obligated as of March 31, 2006, the same data as the subcontracting data in the next column. This is the only way the reader can draw any meaningful conclusions from this table.
8. Page 22, the statement that the eSRS is not a useful tool for providing transparency needs to be qualified with an additional statement at the end of this paragraph that the eSRS would be extremely useful if contracting officers entered the contract data in FPDS-NG correctly.
9. Page 27, GAO discusses the Army Corps of Engineers' orders against existing GSA supply schedule contracts. GSA schedule contracts have commercial plans. Therefore, because subcontracting plans are already negotiated and incorporated into the GSA schedule contracts, subcontracting plans are not required for individual task orders. The performance of the task order is subject to the underlying contract's subcontracting plan. The FAR does not require orders under existing

contracts such as the schedule contracts, which have commercial plans, to have separate subcontracting plans.

General Comment on eSRS

eSRS was created to provide a central system for contractors to report their accomplishments and eliminate redundant separate systems in each agency. By linking it to FPDS-NG, it offers the ability to know which contractors should be reporting and facilitate tracking. This link is dependant on accurate data input by the contracting officer regarding the contract terms. As agencies transition to these new, transparent, integrated systems, the data quality becomes increasingly critical. GSA and the Office of Federal Procurement Policy (OFPP) are partnering to work with agencies to ensure the Acquisition workforce is trained and aware of the importance of in reporting all required data in FPDS-NG accurately.

Specific comments and responses to recommendations:

1. Issue Guidance to the appropriate procurement offices and personnel reinforcing (1) the reasons for subcontracting plan requirements and the importance of complying with them; (2) the necessity for documenting in publicly available sources the agencies decisions, particularly in instances when they determine not to require subcontracting plans; and (3) where subcontracting plans are in place, the need to adhere to the requirement for all prime contractors to report semiannually on their small business subcontracting accomplishments;

Generally concur. FAR 19.708(a) prescribes the clause at 52.219-8, Utilization of Small business Concerns, in solicitations and contracts when the contract amount is expected to exceed the simplified acquisition threshold with some exceptions. The clause states, among other things, that it is federal policy that small businesses have the "maximum practicable opportunity to participate in the performance of federal contracts." There is no statutory requirement to require small businesses to subcontract to other small businesses, including awards under a small business set-aside.

FAR 19.708(b) prescribes the clause at 52.219-9, Small Business Subcontracting Plan, in solicitations and contracts that offer subcontracting possibilities, and are expected to exceed \$500,000 (\$1,000,000 for construction) and are required to include the clause at 52.219-8 (see above). The clause requires that the contractor must provide a subcontracting plan that, as approved by the contracting officer, is incorporated into the contract. In negotiated procurements, the successful offerors must submit a proposed plan and negotiate its terms with the contracting officer. In sealed bid procurements, the firm selected for award must submit its plan regarding subcontract awards to small business. The plan is not subject to negotiation because such negotiation would be inconsistent with sealed bidding. Subcontracting plans are a matter of responsibility, not responsiveness, and thus may be submitted after bids are received and opened.

GSAM 519.705-5 requires that contracting officer submit a copy of the subcontracting plan to the SBTA (GSA employee) and SBA PCR at least 5 workdays before the anticipated award. However, during catastrophic situations, it may be impossible to meet urgent contract performance and/or delivery requirements and satisfy this standard.

GSA is not aware of any issues related to the above requirements and processes in standard procurements. The subcontracting compliance issue addressed in the report addresses the government's response to Hurricane Katrina. In response to such an emergency, time is of the essence in getting the necessary goods and services to the disaster area immediately. GSA Acquisition Alert 2005-05 entitled "Emergency Procurement Authority", dated September 06, 2005, and Acquisition Letter V-05-17 entitled "Class Deviations Applicable to Acquisitions for Hurricane Katrina Rescue and Relief Efforts, dated September 16, 2005, addressed the

statutory and regulatory acquisition deviations and waivers issued in order to respond to the emergency. The statutory subcontracting requirement was not addressed in those documents. GSA believes in the future authority should clearly be given to agencies to waive the subcontracting plan requirement in times of national emergencies. GSA contracting officers and personnel worked around the clock for weeks to meet the challenge and comply with all requirements. The subcontracting requirement proved to be impossible to perform while meeting the urgent needs resulting from Hurricane Katrina.

GSA's Office of the Chief Acquisition Officer (OCAO) will distribute an acquisition alert reminding the acquisition community of the importance of subcontracting plan requirements for solicitations and resulting contracts as they procure under normal conditions. The alert will also remind the acquisition community of the need to document decisions in all phases including subcontracting plan requirements. They will be advised to take the appropriate steps during an emergency to procure from small business and large business. If time permits, during emergencies as they procure from large business they will be encouraged to require subcontracting opportunities where possible. OCAO also will recommend to the FAR council, as appropriate, to include emergency processes where none currently exists for the acquisition community's use in the newly created FAR part 18 Emergency Contracting. OCAO plans to remind the acquisition community to document contract files where it was determined that subcontracting opportunities are not available. In addition they will be reminded of their contract administration responsibility to ensure they work with the contractors to report subcontracting accomplishment as required. OCAO plans to discuss with the SBA the need to develop process and procedures to expedite solicitation and contract reviews for emergency procurements executed for catastrophic situations because no procedures exists now.

To permit transparency in the reporting process GSA will review the need for an additional data collection/reporting field for agencies in FPDS-NG to include the reason a Subcontracting Plan was not required.

GSA will review the need where current guidance maybe lacking to remind contracting officers as part of their contract administration efforts to ensure their contractors are properly reporting their subcontracting accomplishments. Additionally, eSRS will be able to assist when it begins to monitor reporting by comparing its data to FPDS now that DoD is fully integrated.

2. Consider asking their respective Inspectors General to conduct a review at an appropriate future date to ensure that this guidance and related requirements are being followed.

Generally concur. CAO has scheduled annual Procurement Management Reviews (PMRs) and special reviews during major catastrophes to ensure that procurement statutes, regulations, and guidance are being met. GSA will ensure that this area is

a special item for future PMRs. When appropriate GSA will seek the assistance of the Inspector General in support such reviews.

Appendix IV: Comments from the Department of Defense



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

JAN 26 2007

Mr. William B. Shear
Director, Financial Markets and Community Investments
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Shear:

This is the Department of Defense (DoD) response to GAO Draft Report, GAO-07-205, "HURRICANE KATRINA: Agency Contracting Data Should Be More Complete Regarding Subcontracting Opportunities for Small Businesses," dated January 8, 2007 (GAO Code 250288).

The GAO report includes two recommendations for the Secretary of Defense. The Department of Defense concurs with these recommendations and provides more detailed comments in the attached response.

My staff point of contact for this matter is Ms. Susan Pollack, 703-697-8336, susan.pollack@osd.mil.

Sincerely,

Shay D. Assad
Director, Defense Procurement and
Acquisition Policy

Enclosure:
As stated



GAO DRAFT REPORT – DATED JANUARY 8, 2007
GAO-07-205 (GAO CODE 250288)

“HURRICANE KATRINA: AGENCY CONTRACTING DATA SHOULD BE MORE
COMPLETE REGARDING SUBCONTRACTING OPPORTUNITIES FOR SMALL
BUSINESSES

DEPARTMENT OF DEFENSE COMMENTS TO THE RECOMMENDATIONS

RECOMMENDATION 1: The GAO recommended that the Secretary of Defense issue guidance to the appropriate procurement offices and personnel reinforcing (1) the reasons for subcontracting plan requirements and the importance of complying with them; (2) the necessity for documenting in publicly available sources the agencies’ decisions, particularly in instances when they determine not to require subcontracting plans; and (3) where subcontracting plans are in place, the need to adhere to the requirement for all prime contractors to report semiannually on their small business subcontracting accomplishments. (p. 33/GAO Draft Report)

DOD RESPONSE: Concur.

(1) DoD concurs with issuing guidance to the appropriate procurement offices and personnel to reinforce the reasons for subcontracting plan requirements and the importance of complying with them. It is anticipated a DoD policy memorandum will be issued in 2007.

(2) DoD concurs with the necessity for documenting in publicly available sources the agencies’ decisions, particularly in instances when they determine not to require subcontracting plans. DoD will issue a policy memorandum in 2007 to the appropriate procurement offices and personnel to reinforce the reasons for subcontracting plan requirements, including the requirements for documenting the contract file in instances when a contracting officer determines a subcontracting plan is not required. The policy will reinforce the requirement in Federal Acquisition Regulation (FAR) Subpart 19.705-2(c) that when a contracting officer determines that there are no subcontracting possibilities, the determination must be approved at a level above the contracting officer and the determination must be placed in the contract file. The determination becomes part of the official contract file in accordance with FAR Subpart 4.8 and 19.705-2(c). The contract file documentation is subject to Freedom of Information Act and contracting officers may process FOIA requests from the public in accordance with FAR Subpart 24.2.

(3) DoD concurs with issuing guidance to the appropriate procurement offices and personnel to reinforce where subcontracting plans are in place, the need to adhere to the requirement for all prime contractors to report semiannually on their small business subcontracting accomplishments. It is anticipated a DoD policy memorandum will be issued by the end of 2007.

RECOMMENDATION 2: The GAO recommended that the Secretary of Defense consider asking Office of the Inspector General DoD to conduct a review at an appropriate future date to ensure that this guidance and related requirements are being followed. (p. 33/GAO Draft Report)

DOD RESPONSE: Concur.

In the policy memo discussed in the response to recommendation 1, DoD will direct review officials for each Military Department (MILDEP) and Other Defense Agency (ODA) to include subcontracting guidance and compliance as a special interest item in their oversight reviews. The offices designated to perform oversight and management reviews in each MILDEP and ODA are responsible for preparing and maintaining a schedule of reviews, conducting reviews of subordinate organizations, and following up with actions taken for recommendations from reviews. In addition, the Defense Management Contract Agency conducts surveillance reviews of subcontracting plans, and the Small Business Administration is the principal Federal agency responsible for conducting reviews to monitor the performance of buying activities which would include the degree of compliance with small business contracting policies and programs. DoD will ask the respective MILDEP Inspector Generals and the DoD Inspector General to review the adequacy of the MILDEP and ODA oversight and management review processes.

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

William B. Shear, (202) 512-8678, shearw@gao.gov

Staff Acknowledgments

In addition to the individual named above, Bill MacBlane, Assistant Director; Jim Ashley; Emily Chalmers; Julia Kennon; Tarek Mahmassani; Alison Martin; Marc Molino; Lisa Moore; Rhonda Rose; Paul Thompson; and Myra Watts-Butler made key contributions to this report.

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