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BY THE U.S. GENERAL ACCOUNTING OFFICE

# Report To The Mayor Of The District Of Columbia

## Some Restructuring Needed In District's Contracting Program To Serve Minority Businesses

The District's program has placed too much stress on meeting minority contracting dollar goals and not enough on developing business capability. Other problems included a weak process for certifying minority firm eligibility and differences among District officials over how to run the program. As a result:

- Over half of the dollars from contracts GAO reviewed have gone to a handful of firms in least need of help.
- Several firms received about \$5 million in contracts as "conduits" and relied on nonminority firms to perform the actual work.
- The majority of the recipients GAO interviewed reported little or no business development, increased employment, or expansion of the tax base.

A series of recommendations are presented for District action.

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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT  
DIVISION

B-200567

The Honorable Marion S. Barry, Jr.  
Mayor of the District of Columbia  
Washington, D.C. 20004

Dear Mayor Barry:

This report contains recommendations for strengthening the effectiveness of the Minority Contracting Program (D.C. Law 1-95). We hope that the current efforts are only the beginning of a comprehensive attempt to address the problems experienced by minority businesses.

Section 736(b) of the District of Columbia Self-Government and Governmental Reorganization Act (Public Law 93-198, 87 Stat. 774), approved December 24, 1973, requires the Mayor, within 90 days after receiving our audit report, to state in writing to the District Council what has been done to comply with our recommendations and send a copy of the statement to the Congress. Section 442(a) (5) of the same act also requires the Mayor to report, in the District of Columbia's annual budget request to the Congress, on the status of efforts to comply with such recommendations.

We are sending copies of this report to interested congressional committees; the Director, Office of Management and Budget; and the Council of the District of Columbia.

Sincerely yours,

*W. J. Anderson*

William J. Anderson  
Director

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GENERAL ACCOUNTING OFFICE  
REPORT TO THE MAYOR OF  
THE DISTRICT OF COLUMBIA

SOME RESTRUCTURING NEEDED  
IN DISTRICT'S CONTRACTING  
PROGRAM TO SERVE MINORITY  
BUSINESSES

D I G E S T

The 4-year old District Minority Contracting Program--held out as the District's way to foster minority business opportunities in public contracting and to develop minority firms into viable businesses--has resulted in some benefits for a few firms. However, the award of contracts to meet dollar goals has been the main emphasis; business development and other goals have taken a back seat.

PROGRAM'S ORIGIN

The Minority Contracting Program (D.C. Law 1-95), established in March 1977, is designed to expose qualified minority firms to increased business opportunities and to aid them in overcoming barriers in their attainment of professional and financial independence. The Minority Business Opportunity Commission is responsible for running the program.

Minority firms have in the past played a peripheral role in gaining a fair share of the District's contracts. Their minority status limits their growth opportunities, inhibits their financial independence, and restricts their entrance into the mainstream of various industries.

The District's praiseworthy goals, endorsed by the City Council when it passed D.C. Law 1-95, are:

- Increased local minority business participation in District contracting.
- Developed and expanded minority business capability.
- New employment opportunity for District minorities.
- Expanded District tax base.

Minority businesses received 27 percent in set asides for fiscal year 1978. This figure jumped to 32 percent (\$68 million) for fiscal year 1980.

PROGRAM'S GOALS NOT  
BEING ACHIEVED

The program has had some positive benefits for a few firms, but the majority of the recipients reported to GAO little or no business development, increased minority employment, or expansion of the District's tax base. Over half of the dollars from contracts GAO reviewed went to a handful of firms least in need of help. (See pp. 4 and 5.)

Other firms receiving contracts acted as middlemen to nonminority firms which did all the work. For example, in one case, the District paid 15 percent more for goods in which the minority firm acted merely as a "conduit." (See p. 6.)

The Commission's Executive Director and GAO differ on what are the program goals and who is responsible for achieving them. (See p. 5.)

Amendments to the D.C. law in 1980 were meant to assure at least 50-percent participation in the contract work by minority businesses. Several months after enactment the practice of minority firms acting as "conduits" was still ongoing. (See pp. 6 and 7.)

CERTIFYING MINORITY FIRM  
ELIGIBILITY HAS BEEN WEAK

There are differences over what certification of a minority firm means. Agency procuring officials interpret certification to cover both minority status and business capability whereas the Commission intended their certification to cover only minority status and relied on the firm's statement as to its business capability. (See p. 10.)

Most certified firms submitted incomplete data. Data for some firms indicated that the firms were ineligible. The files generally showed neither data verification nor chain of Commission review responsibility. (See pp. 12 and 13.)

The Commission has recently set up a new certification process intended to overcome these problems. (See p. 14.)

DIFFERENCES OVER HOW  
TO RUN THE PROGRAM

The program affects nearly every District operating agency, but neither general acceptance nor understanding of it had occurred at the time of GAO's review. Also, untimely regulations, lack of Commission guidelines, and unclear legislative provisions have resulted in differences among operating officials as to:

- What are the real program goals?
- How much additional cost over open market for minority set asides is "excessive"?
- What is the role and authority of the Commission vs. procurement officials on such matters as setting aside, withdrawing, and negotiating contracts?
- What is the authority of the Commission's staff vs. the Commission itself in affecting or reversing operational decisions of District operating agencies?
- What kind of reporting is expected? Now, District agency reporting is inconsistent and overstates program results. (See p. 15.)

EXPLORING ATTRIBUTES OF  
OTHER CITIES' PROGRAMS

GAO identified features of other cities' programs as options for the District. For example, some cities (1) varied dollar participation goals for particular procurement categories with availability of minority vendors, (2) required evidence of their business capability, (3) provided technical assistance to certified firms, (4) required a minimum number of bidders for competition, (5) allowed minorities a chance to match low responsive bid in open market, and (6) prohibited middlemen from participating in the program. (See p. 21.)

CONCLUSIONS

Although progress is now evident on both the program's certification process and other areas involving the administration of the program, decisions are needed on the future direction

of the program if minority businesses are to gain a toehold in the competitive marketplace.

Awarding contracts to healthy firms and middlemen does not contribute much to the program. Criteria are needed for agency selection of sheltered market contracts. These criteria should result in participation of firms that will contribute most to achieving program goals such as breaking into business areas now monopolized by majority firms.

#### RECOMMENDATIONS TO THE MAYOR

The Mayor of the District of Columbia should:

- Explore attributes of other programs and consult with the business community (majority and minority) on ways to improve the District program.
- Strengthen management and administration of the program by:
  1. Clarifying program goals, designing standards to reach these goals, and measuring progress towards their accomplishment.
  2. Checking to see if the new certification review procedures are working.
  3. Establishing criteria for what is an acceptable price increase for setting aside contracts for minority firms.
  4. Clarifying the differences over how the program is supposed to operate and the roles of the Commission, its staff, and the procurement agencies.
- Have the Inspector General's Office review procurement agency compliance with the 1980 amendments to assure that minority firms are actually participating in the contract work and not merely acting as conduits.

AGENCY COMMENTS AND  
GAO'S EVALUATION

The Commission's Executive Director commented on this report on behalf of the Mayor. Although the Executive Director had no strong objections to GAO's recommendations, his comments, in GAO's judgment, did not respond to the recommendations.

For example, the Executive Director said he would welcome input from similar programs of other cities (a "sit back and wait" attitude) whereas GAO recommends active exploration of other program concepts. As to consulting with the business community, the Executive Director confined his response to minority businesses, ignoring ideas and help that could be obtained from majority businesses. In no case did the Executive Director commit the District to taking any action on the matters discussed in the report. (See p. 25.)

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	<b>Memorandum dated May 5, 1981, from the</b>	
	<b>Executive Director, Minority Business</b>	
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## CHAPTER 1

### DISTRICT ESTABLISHES PROGRAM TO DRAMATICALLY INCREASE

#### USE OF MINORITY BUSINESS FOR MEETING PUBLIC NEEDS

In March 1977 the District of Columbia started a program designed to ensure fair and equitable business opportunities for minority-owned firms in the expenditure of public funds (D.C. Law 1-95). The District's decision to inaugurate this program resulted from the City Council's finding that a persistent pattern of racial discrimination had prevented minority business from gaining a fair share of the District's contracts and subcontracts in both the public and private sector. The City Council also noted difficulties experienced by minority firms in financing and bonding markets which further barred them from participating in the District's public contracting and deprived minorities of equal employment opportunity.

#### PROGRAM GOALS FOR MINORITY FIRMS

The principal program goal is to increase local minority business participation in District contracting. This is done by limiting competition on selected District procurements so that only certified minority firms can bid. The program goal in the law for these minority business set asides is at least 25-percent of the District's procurement dollars. Each agency of the District is expected to allocate sufficient procurements to reach the 25-percent goal in both construction and goods and supplies.

Other program goals enumerated in the legislative history and the Commission's report to the Mayor are to develop and expand local minority business capabilities, provide new employment opportunities for District minorities, and expand the District tax base.

#### SPECIAL COMMISSION ADMINISTERS PROGRAM

District law charges the Minority Business Opportunity Commission to implement, administer, and monitor the program. The Commission is responsible for establishing guidelines, certifying eligible minority business applicants, and monitoring the program's progress. The law gives the Commission authority to enforce provisions of the program if District agencies are not meeting their goals.

For instance, on the basis of a review of agency procurement plans, the Commission can direct that specific contracts be placed in the "sheltered market". Additionally, if an agency fails to achieve expected results, the Commission can reserve portions of the agency's contracts for the sheltered market.

As of September 1980, the Commission had listed 391 firms as currently certified and eligible to participate in the program. Firms are categorized into three groups--construction, goods and supplies, and professional and personal services. According to District procurement data, minority businesses receiving awards under the program accounted for about 27 percent of all procurement activity in fiscal year 1978 and jumped to 32 percent (\$68 million) for fiscal year 1980.

#### PROGRAM LEGISLATION TIGHTENED IN 1980

In July 1980 emergency legislation was passed, which amended certain provisions of D.C. Law 1-95. In September 1980, permanent amendments (identical to emergency legislation passed in July 1980) were enacted in an attempt to clarify the targeted population and to add requirements for eligibility and contract performance. The term "minority" as originally defined in law meant Blacks, Hispanics, American Indians, Orientals, and Eskimos. Minority was redefined in 1980 to mean only Black Americans, Native Americans, and Hispanic Americans with origins in Central and South America, Mexico, and the Caribbean. Spanish speaking persons from Europe, Africans, and Orientals were eliminated as eligible for participating in the program.

A minority business enterprise, to be eligible to participate in the program, initially had to be more than 50 percent minority owned with more than 50 percent of the net profit or loss accruing to the minority owners. Now, a minority business enterprise is defined as one in which minorities hold at least 50 percent of the management control as well as ownership.

Originally, a minority firm must have had a local business license and/or be subject to D.C. business franchise taxes as a result of engaging in District business. Now, a minority firm must also have its principal office physically located in the District. Some exceptions are permitted; for example, if a firm is located elsewhere, but its owners and employees live in and pay taxes to the District of Columbia.

The 1980 amendments further provide that a minority business awarded a contract must perform at least 50 percent of the contracted work (excluding the cost of materials, goods, and supplies) with its own organization and resources. If the remainder of the work is subcontracted, 50 percent of that effort must be with a certified minority business enterprise.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

The purpose of our review was to assess how well the District is achieving the Minority Contracting Program goals and provisions of the act. Specifically, we looked at whether the

program (1) increased local minority participation in public contracting, (2) developed and expanded local minority business capabilities, (3) provided new employment opportunities for minorities, and (4) expanded the District tax base.

Our work was done during the latter part of 1980 at various District organizations, primarily the Minority Business Opportunity Commission and the Department of General Services. The review included

- an examination of minority firm certification files for 70 companies;
- an examination of 30 contracts, valued at \$39 million, awarded to the top 25 minority firms receiving contracts under the program; and
- an analysis of management studies and other documents.

The 30 contracts reviewed were composed of all contracts over \$500,000 and the largest dollar value contract for those of the top 25 firms which did not have a single contract valued at over \$500,000.

We also interviewed the owners and/or high level officials of 23 of the top 25 firms to obtain their perceptions of the program and its impact on minority business capabilities. We obtained information from nine State and local jurisdictions on features of their programs to provide workable alternatives on the basis of what other locales are doing in similar circumstances. Finally, we looked at the impact of 1980 legislative amendments on current operations.

## CHAPTER 2

### PROGRAM GOALS NOT BEING ACHIEVED

The program has had some positive benefit for a few firms, but the majority of the recipients reported little or no business development, increased employment, or expansion of the District's tax base. Over half of the contract dollars went to a handful of firms in least need of help. On the other hand, other firms operated as passive conduits of funds rather than as regular businesses. These conditions were caused by overemphasis of dollar goals to the detriment of other program goals, a weak process for certifying minority business eligibility (ch. 3), and differences between the Commission and the operating agencies over how to run the program (ch. 4).

### 25 TOP FIRMS REPORT LIMITED PROGRESS

The Commission has not yet assessed the impact of minority business awards on program goals. Information obtained by us from the top 25 firms disclosed the following.

TABLE 2-1

#### Extent Minority Business Goals Being Achieved

	<u>Increase in business capability</u>		<u>Increase in minority employment</u>		<u>Increase in franchise taxes</u>	
	<u>No.</u>	<u>Percent</u>	<u>No.</u>	<u>Percent</u>	<u>No.</u>	<u>Percent</u>
None	13	52	11	44	8	32
Marginal	4	16	4	16	9	36
Significant	6	24	8	32	5	20
Information not avail- able	-	-	-	-	1	4
Firms could not be located	<u>2</u>	<u>8</u>	<u>2</u>	<u>8</u>	<u>2</u>	<u>8</u>
Totals	<u>25</u>	<u>100</u>	<u>25</u>	<u>100</u>	<u>25</u>	<u>100</u>

As the table indicates, according to information reported by the top 25 recipients, most firms have not experienced a real increase in business capability, minority employment, or payment of business taxes. About one-half of the 25 firms reported no capability development or increase in minority employment whatsoever. Conversely, several other firms have become dependent on the program and without it could not remain in business. This is particularly noteworthy since it is a goal of the program to develop independent business capabilities. Also, it does not appear that the program goal of expanding the District tax base is being met. Seventeen firms stated that their taxes either did not increase or only marginally increased. Data from the Department of Finance and Revenue shows that as of August 1980, eight firms had not filed 1979 District income tax returns, including four that had tax liens placed against them for nonpayment of prior year taxes. Additionally, two other firms which had filed a 1979 tax return, still had tax liens against them for prior year taxes.

#### Agency comments

In comments provided on behalf of the Mayor by the Commission, its Executive Director took the position that he was responsible for meeting only the 25 percent dollar goal in the law. His comments tended to ignore the legislative history and, in our judgment, the true intent of the program. To set aside contracts for minority firms without regard to their potential for growth, employment of minorities, and increasing the tax base would indeed weaken the program and slow down minority business efforts to progress into the business mainstream. For the Executive Director's full position and additional GAO evaluation see appendix.

#### BULK OF CONTRACT DOLLARS WENT TO HANDFUL OF FIRMS

Over \$29 million of the \$39 million in contracts reviewed went to only nine minority firms. These nine firms, accounting for a small portion of the certified firms but a major portion of the dollars, have not contributed significantly to program goals. More than half of these firms have been in existence for many years and were well established before the program began. For example, five of the firms stated that the contracts had done nothing to increase their business capability. Five of the firms stated that their franchise taxes did not increase or increased marginally. In addition, three firms stated that minority employment did not increase while one firm stated that employment had increased marginally. For the remaining five firms, employment did increase significantly.

### SOME MINORITY FIRMS ACT AS CONDUITS

The District awarded contracts totaling about \$5 million to firms who lacked the necessary capability and resources to perform the work. These firms acted as middlemen; that is, as passive conduits of funds to nonminority firms that did the work and provided the supplies.<sup>1/</sup> These minority firms did not perform a useful business function according to either trade custom or practice.

For example, one minority firm asked the current nonminority contractor to perform the next contract should the minority be awarded the contract. The minority firm's only function would be to submit invoices to the District and split the profits with the nonminority performer. Questioning the propriety of such a deal, the nonminority firm rejected the proposal. However, the minority firm found another nonminority firm to supply, warehouse, and deliver the goods. That firm happened to be an unsuccessful nonminority bidder on the previous contract. The District paid about 15 percent more for the goods and the nonminority firm received the benefits of the contract.

Neither we, the Commission, nor General Services were able to locate two of the minority firms that received about \$1.7 million in such contracts during 1979-1980.

### 1980 legislation fails to stop middlemen practice

Temporary amendments, effective July 9, 1980, and permanent amendments, effective September 13, 1980, to the Minority Contracting Act were designed to assure active participation in contract work by minority businesses. Under the act as amended, the firm is required to perform at least 50 percent of the contracting effort, and if the remaining work is to be subcontracted, 50 percent of that effort has to be performed by certified minority firms.

At the conclusion of our field work in January 1981, action on these new provisions to tighten the law had not been taken by the Commission or the procuring agencies. For example, neither the Assistant Director for Materiel Management nor his Chief of Procurement had been informed of the act's amendments until we brought them to their attention in late November 1980. The Assistant Director for Construction Management told us he first became aware of the new amendments in early December, but he had not yet taken action to comply.

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<sup>1/</sup>We are aware that at least two of these firms received other contracts not reviewed by us under similar arrangements.

In the interim period, contracts have been awarded involving firms that are subcontracting the entire work to nonminority firms. For example, an award for supplying and delivering margarine and shortening totaling about \$35,000 was made on October 3, 1980, to two minority firms who listed nonminority firms as subcontractors. The Invitation For Bid did not contain the 50-percent provision, and General Services' officials said they did not consider it in making the award. According to the owner of one of these minority firms, he had already arranged for a nonminority firm to supply, warehouse, and deliver the entire contract requirements.

Also, there were awards in process and future solicitations where bidders intended to subcontract to nonminority firms. For example, bids have been received, but no awards yet made, for over \$300,000 worth of fresh foods to be supplied during the first quarter of 1981. The District's Invitation For Bid did not contain the 50-percent provision, and on the basis of past experience it was evident that these commodities would be wholly subcontracted to nonminority firms. And, the apparent low bidder acknowledged to us that, if awarded this contract, it intended to use a nonminority firm to supply, warehouse, and deliver the entire contract requirements.

#### Agency comments

In commenting for the Mayor, the Commission's Executive Director implied that GAO had jumped the gun because the District's new law was not effective until September 1980 and guidelines were in process at the time of our review.

The new legal provisions referred to by the Executive Director actually went into effect on July 9, 1980 when the act was amended on an emergency basis (Act 3-210). Permanent legislation (D.C. Law 3-91), enacted on September 13, 1980 is identical to the legislation passed in July 1980. Therefore, a time span of about 6 months had actually passed before we concluded our work on these provisions. Moreover, by late November 1980, key General Services officials were still not aware of the new provisions. As a minimum, top procurement officials should have conferred on the new requirements and agreed on preliminary steps pending issuance of formal guidelines.

#### OTHER PROBLEMS DETERRING ACHIEVEMENT OF PROGRAM GOALS

Officials of the minority business enterprises we interviewed also expressed concern over slowness of contract award notification, purchases falling far short of the estimated contract quantities, and consistent late payments.

### Slow contract award notification

The slowness of the contract award process poses problems for minority businesses. One firm identified a time lapse of 45 days between the date of bid opening and date of award. Our analysis of the 30 contracts included in our review showed an average time lapse of about 40 days between date of bid opening and date of award. Since the bid price is that which the District agrees to pay, time lags between the date of bid and the award date causes the minority businesses to incur higher costs. This is mainly due to the instability of material prices since most contractors purchase materials and supplies after being awarded the contract. Therefore, any increase in material or supply prices between the date of bid and date of award must be borne by the minority business unless it has built any anticipated price increases into the bid.

### Shortfalls in contract drawdowns

Minority businesses are incurring problems in the District's purchase of supplies under term contracts. Term contracts are used as a means of ensuring the availability of specified items over a particular period of time for several District agencies when the exact quantity is not known. The estimated quantity of an item is usually predicted on the basis of historical usage. When a minority firm is awarded a term contract, it expects to be the sole supplier of the particular item and predicts its performance requirements based on this expectation. Minority businesses are concerned that the estimate included in the invitation for bid is not being procured by District agencies or is being procured from other sources.

According to several firms, the actual amount purchased against the contracts (i.e., drawdowns) falls far below the estimated quantity included in the invitation for bid. Also, there has been as much as an 8-month time lapse before a purchase, if any at all, was made. Yet, the minority business must remain ready to provide the item if any District agency should desire to place an order. Thus, the minority business cannot readily commit its resources to obtaining other contracts.

As an illustration, one of the minority firms required to furnish a variety of drugs requested the Office of the District of Columbia Auditor to look into why purchases on its contract fell substantially below estimates. The District of Columbia Auditor, in his report to the Mayor and Council of the District of Columbia in January 1981, found that many purchases were being made directly from the drug manufacturer, rather than through the contract with the minority firm.

The Commission staff was also aware of the fact that contract drawdowns have been less than the estimated award quantities. The Executive Director believes that this is a District-wide problem and the major cause of it is the District's lack of reliable historical data on term contracts. The Executive Director also indicated that there are instances where District agencies are procuring goods from vendors other than the term contractor. Our review confirmed this in one particular instance.

The Commission staff is trying to eliminate the contract drawdown problem by working with General Services to develop historical usage data for term contracts and informing all contract officers that it is mandatory to procure from vendors under a term contract.

#### Late payments

The District's inability to make timely payments on contracts has caused problems for minority businesses. The turnaround time on District payments ranges from 1 to 6 months from date of invoice. We were told that most minority businesses do not have sufficient credit or working capital to carry the receivable over an extended period of time. Also, minority businesses said that they are having problems finding lending institutions which will extend credit on the basis of the firm's accounts receivable due from the District, and that those firms which are able to borrow money to meet current operating needs are losing money on District contracts due to the high interest rate on borrowed funds.

The Commission has begun to take action to help alleviate the late payment problem. A Commission staff member has been assigned the responsibility of handling late payment claims from the minority businesses.

### CHAPTER 3

#### CERTIFYING MINORITY FIRM

#### ELIGIBILITY HAS BEEN WEAK

Agency procurement officials understand certification to include both minority status and the firm's business capability but the Commission has certified firms only as to minority status. In addition, most of the 70 certified firms GAO reviewed did not submit complete information, and in 10 of those cases, data on file indicated the certified firms were ineligible. The files generally showed no data verification, no followup on contingently certified applicants, and no chain of Commission review responsibility.

The eligibility criteria for minority business certification in District law and Commission regulations are:

- Written evidence that the applicant is a bona fide minority business enterprise as defined in the act.
- Written evidence that the applicant is a local entity. The amended D.C. law requires the applicant, with certain exceptions, to have its principal office physically located in the District and be subject to certain D.C. licensing and tax regulations.
- Written evidence of the applicant's ability, character, and financial standing. This includes bonding, insurance, and tax standing.

The act states the Commission shall certify firms and require applicants to submit evidence of ability, character, and financial position. According to written Commission material, the staff is supposed to match D.C. government procurements with minority business enterprises' capabilities. It is also supposed to determine capability by assessing information contained in the application for certification. This indicates that the Commission is to make some assessment of firm capability prior to certification.

#### DIFFERENCES OVER WHAT CERTIFICATION MEANS

The Commission staff told us that firms are certified only as to minority status, and the Commission relies on the applicant's statement as to its business capability. This is contrary to what agency procuring officials understand certification to mean. They use the Commission's directory of certified firms, prepared from applicant data, as evidence of potential bidders if a procurement is placed in the sheltered market.

A number of procurements have been placed in the sheltered market for which no bids were received. For example, five construction projects advertised to sheltered market bidders had to be removed and readvertised in the open market because no bids were received. This nonresponse from sheltered market bidders prolonged the procurement process. Delays in making awards for three of the five projects ranged from almost 3 months to slightly over 5 months. Although various factors such as bonding and workload could account for the no bids, one important factor could be that the firms lacked capability for these contract requirements.

The Commission staff reiterated on several occasions that District contracts are matched with minority businesses' capabilities. However, according to a study report prepared by Walker A. Williams and Co. in March 1980 on the program's ability to foster minority business development and data we obtained from minority business enterprises, capability is not being considered in the contract selection for the sheltered market. For example, one minority contractor said the Commission's list of potential bidders for particular business areas is not a reliable source of bidder capability. The owner of another minority firm confirmed this by saying that it was unrealistic to place his contracts (\$3.3 million) in the sheltered market because only three nonminority firms in the United States had the capability to produce the contract requirements. The owner stated that his firm has "brokered" the contracts entirely to the nonminority firms.

The Commission's Executive Director disagrees that certifications have misled procurement officers on bidder capability. (See app. and our evaluation.)

INELIGIBLE DATA NOT  
CHALLENGED

Ten firms were certified although their files contained data which did not meet eligibility criteria. Some applicants are listed more than once in the following table.

TABLE 3-1  
Applicants not Meeting  
Eligibility Criteria

	<u>Number of firms</u>
1. Applicant does not meet the criteria of a local business enterprise.	6
2. Applicant's minority owners do not meet 50 percent ownership requirement.	5
3. Applicant's minority owners do not meet 50 percent control requirement. (Applicable after Dec. 1979.)	1
4. Applicant does not meet the 50 percent net profit or loss accruing to minority members requirement.	3
5. Applicant is not a business enterprise because it is a division of a corporation and not a separate entity.	1

INCOMPLETE DATA ACCEPTED

Sixty-eight firms have been certified although they did not submit required information which is needed by the Commission to determine the eligibility of the applicant. Some applicants are listed more than once in the following table.

TABLE 3-2  
Incomplete Data Accepted

	<u>Number of firms</u>
1. Applicant did not submit written evidence of financial standing.	68
2. Applicant did not submit written evidence of ability, i.e., a capability statement and business plan. (Only 35 of the 70 applicants reviewed were newly formed and required to submit this information.)	25
3. Applicant did not submit written evidence of his or her character (resumes of principals).	20

DATA NOT VERIFIED; REVIEW  
RESPONSIBILITY UNCLEAR

Most of the files reviewed revealed no substantiation of applicant data or who among the Commission staff was responsible for making reviews of the submitted data.

Certification files contain a checklist to be completed after which a recommendation for certification is made at two levels of responsibility--program analyst and precertifying officer. Many of the files' checklists were incomplete, were not signed by the responsible parties, or contained no recommendations. Often we could not determine the Commission chain of responsibility because of incomplete checklists and lack of an organizational chart showing who was responsible for the program analyst and precertifying officer functions.

Also, there was no evidence that data submitted was substantiated or cross checked. For example, one firm was denied certification because it was not physically located in the District. The firm later submitted a lease agreement of questionable contents and form. The Commission certified the firm on the basis of this lease agreement, but the file does not show disposition of the matters. Another firm's file contained discrepancies in three documents as to stock owned and percentage of ownership.

NO FOLLOWUP ON CONTINGENTLY  
CERTIFIED FIRMS

Several firms which were contingently certified by the Commission did not later submit required documentation. The Commission took no action to require compliance with the contingencies nor to revoke certification because of noncompliance. The act does not make any provisions for contingent certification. The Commission established a contingent certification process to generate more competition for sheltered market procurements. Unless follow through occurs the contingent certification can be used as a means of bypassing requirements under the law and the regulations. The Executive Director told us that the Commission has not given any contingent certification since mid 1980.

POOR RECORDS CONTROL

Many checklists showed documentation submitted which we did not find in the files. In addition, a firm was inadvertently given a letter of certification even though a Commission staff member questioned its being a bona fide minority business enterprise. In another case, the Commission staff was unable to produce a file; yet, the firm submitted a letter of certification signed by the Commission Chairman to participate in one of the sheltered market procurements.

AGENCY SETS UP NEW  
CERTIFICATION PROCESS

Following the GAO review, the Executive Director furnished us a new "Standard Operating Procedures for Certification" handbook. As part of these new procedures, the Commission has a new application form which now requires data for the Commission to make an assessment of minority business capability.

The Commission's new operating procedures also include the use of two forms--the application review checklist and the application review sheet. The application checklist is prepared and signed by the program analyst to verify that all documentation has been received and contains the program analyst's recommendation. The file is then referred to the investigator for review, including onsite investigations when deemed necessary. The application review sheet is a summary of information from the application prepared for the use of the Commission in its certification decision. This document also requires the signature of the program analyst, investigator, Executive Director, and Commission Chairman along with their recommendations.

## CHAPTER 4

### DIFFERENCES OVER HOW TO RUN THE PROGRAM

The Minority Contracting Program affects virtually every District agency, but neither general acceptance nor understanding of it has yet occurred. Untimely regulations, lack of Commission guidelines, and unclear provisions in the act have resulted in differences among operating officials as to:

- What are the program goals?
- How much additional cost is "excessive?"
- What is the role and authority of the Commission vs. procurement officials?
- What is the role and authority of the Commission's staff vs. the Commission itself?
- What reporting is expected from procuring agencies?

According to agency procurement personnel, they have never received guidelines on this program. In addition, although District regulations were initially published in October 1977, the regulations were not made final until December 1979--some 33 months after legislative enactment.

### PROGRAM GOALS NOT UNDERSTOOD

Commission staff and other District officials do not have a comprehensive understanding of program goals. Though many officials stressed the 25 percent dollar goal, none of them evidenced concern with the other goals of local minority business development, expanding the District tax base, and increasing minority employment opportunities. The Commission's Executive Director attributed the lack of concern for these other factors to the wording in the law which mentions only one of the goals--the 25 percent dollar goal.

Misconceptions over the program's purpose have caused problems. Some agency procurement officials such as the chief procurement officers in Public Schools and Environmental Services have been reluctant to participate in the program. These procurement officials have requested that contracts not be placed in the sheltered market because the additional cost makes it difficult to satisfy District needs within available budgets. This negative perception could be dispelled if officials were made aware of all goals and assessed their actions on a "District-wide" basis. All of the goals are important and interrelated; but,

until they are learned, accepted, and considered, the program cannot be successful nor can its social and economic impact be determined.

The Commission's Executive Director disagreed that the program goals were not accepted or understood. (See disagreement between GAO and the Executive Director over what are the program goals (ch. 2) and further GAO discussion in app.)

DIFFERENCES OVER HOW MUCH  
ADDITIONAL COST IS "EXCESSIVE"

Under Section 10(h) of the act, the Commission may authorize agencies to refuse to let a contract where bids are deemed excessive. Although the District's informal policy is to accept a higher cost, no one has ever established what is an excessive price to pay for sheltered market participation. This situation needs to be resolved because some agencies participating in the minority contracting program are experiencing financial and programmatic problems.

In some instances, the District paid significantly higher prices in the sheltered market than it would have for comparable open market items (i.e., same item, same year). Specifically, there was comparable data available for six supply/service contracts. The award prices for these six contracts exceeded open market or Federal supply prices for the same items by \$2 million. The percentage of price increase ranged from 5.5 to 23.5 percent. In a reverse situation, another bid was rejected as "excessive" due to a 3 percent price differential. None of these six contract files included a price differential justification for sheltered market participation, either on the basis of the particulars of the procurement or in terms of the District's program goals.

Views vary widely on what is an acceptable price increase. At the time of legislative enactment, the Director of General Services cautioned that cost may be 15 to 25 percent higher due to the relatively small number of minority bidders. However, the City Council Committee on Employment and Economic Development states that it is impossible to be so clear cut in projecting this kind of increase, and that safeguards existed that would prevent excessive costs, including professional expertise in District agencies in developing their own estimates of what contracts should cost.

Agency officials have different perceptions of what is an acceptable price increase--from no increase over the open market to a price differential of 10 percent. Further, one official

stated that the Commission staff is concerned only that minority businesses get contract awards, regardless of the price differential. Several other State and local jurisdictions which have set up minority business programs do not accept any additional cost. (See ch. 5.)

According to the Commission's Executive Director, a flexible attitude exists on the definition of "excessive." What is reasonable depends on the specific circumstances of the procurement. He stated further that if General Services presents justification or analysis that a bid is too high, the Commission will authorize rejection. The Commission staff, however, has not always acted on the basis of this premise. For instance, in a food product procurement, the Executive Director refused to agree that the bid price was excessive though General Services determined that a 25-percent increase over last year was too high.

The fundamental problem appears to be that the term "excessive" is vague and subject to interpretation and judgment. If the program continues to allow prices above open market, some criteria other than just monetary would be useful in deciding the additional allowance. For example, a new business area for minorities to break into might justify a maximum as opposed to a minimum additional allowance.

#### DIFFERENCES OVER COMMISSION VS. PROCUREMENT ROLES

Provisions of the Minority Contracting Act and its regulations give the Commission special authority that the Department of General Services normally assumes in the District. However, there is no District-wide policy that attempts to harmonize the act with the longer established procurement procedures. This has resulted in conflicts between the two organizations over authority for setting aside, withdrawing, and negotiating contracts in the sheltered market.

#### Set aside authority

Both the Department of General Services and Commission staff claim authority to set aside procurements. Also, agency officials believe that General Services, as opposed to the Commission staff, makes the sheltered/nonsheltered market decision after considering agency recommendations. The problem arises because the Commission staff feels that "ultimate" placement authority is conferred upon it. The Executive Director "sees no impediment" to the Commission staff making a sheltered market placement, when it determines such action is appropriate. Further, the regulations provide that if the Commission determines that an agency's goal is too low, it may order that contracts be reserved for the sheltered market.

### Withdrawal authority

The Department of General Services and the Commission staff do not agree on the authority each has regarding removal of procurements from the sheltered market. The regulations (Section 203.8) state that "once an agency has placed a contract in the sheltered market, it shall not be removed by the agency without the approval of the Commission." The act and its legislative history are silent on the withdrawal authority issue except in cases of excessive pricing. Officials from both agencies agree that after a contract for a particular good or service has been awarded in the sheltered market, further procurements for that good or service must remain sheltered until or unless Commission approval for its removal is granted.

The disagreement is in the award process for first-time sheltered market procurements. General Services officials feel they can remove an item from the sheltered market without Commission approval at any point in the award process, if it is the first time the particular need is set aside. On the other hand, the Commission staff interprets the regulation cited above to mean at any point for any procurement, removal is contingent on their approval. Clarification is needed as to which agency has withdrawal responsibility and as to the circumstances in which such withdrawals can be made.

### Negotiation authority

Though negotiation is not a frequent occurrence in sheltered market procurements, the Commission staff and General Services interpret differently a provision in the act regarding authority to negotiate contracts in the sheltered market, rather than formally advertise--the preferred method of procurement. Section 11 (c) of the law amends the D.C. code to provide an additional exception to the requirements of formal advertising. Section 11 (c) provides that "in order to foster local minority business opportunities, the Mayor, through the District's Minority Business Opportunity Commission, may authorize negotiation in selected cases."

One procurement official says General Services can and does negotiate in the sheltered market without Commission authority simply by citing the above provision as justification. The Commission's Executive Director disagrees. He contends that in order for General Services to negotiate in the sheltered market, Commission authorization is necessary. Additionally, Commission staff have taken the initiative and directed General Services to negotiate in a particular instance, although there has been no formal delegation of this authority from the Commission to its staff.

In this case, involving the fiscal year 1980 trash hauling contract, General Services with its marketplace knowledge, determined that 20 percent of the procurement need would be set aside for sheltered market competitive bidding; the remaining 80 percent would be awarded in the open market. The Commission staff took exception to this arrangement and insisted that General Services cancel most of the open market segment and solicit it in the sheltered market. The Commission staff urged that the solicitation be negotiated sole source with a minority joint venture it helped arrange. Though General Services agreed to negotiate, it accepted bids from both the joint venture and another minority firm.

Negotiation resulted in the joint venture receiving the award at a cost to the District of \$111,000 or 13 percent more than the other minority firm's bid price. In addition, the length of time which lapsed while the Commission staff and General Services were trying to reach a decision as to placing and negotiating these requirements in the sheltered market forced the District to use its own equipment and personnel, at an added cost of \$11,000, to avoid disruption of trash removal. Further, the minority joint venture was not certified at the time of negotiation or when General Services made its contract award determination and should not have had its bid considered.

#### ROLE OF COMMISSION STAFF UNCLEAR

Use of "the Commission" in the act and in regulations seems to mean only the seven member board. Nowhere in the act, regulations, or legislative history is the staff conferred authority to behave in the capacity of the board. In addition, one Commission staff official stated that the Corporation Counsel has provided only limited, oral opinions relating to staff authority.

We noted, however, several instances where the staff of the Minority Business Opportunity Commission acted as if it has the authority of the Mayor-appointed Commission members. For example, the Executive Director determined excessive price for two procurements although the act states that only the Commission may authorize such actions. There is no information to indicate that the Commission reviewed or supported the decisions of the Executive Director or that the Commission delegated this authority. The Executive Director told us that he has been trying to get the Commission and the District Corporation Counsel to clarify in writing the actual authority of the staff.

#### DIFFERENCES OVER AGENCY REPORTING

The act requires all District agencies to report on minority procurement participation both annually, in the form of a projec-

tion, and quarterly, on the basis of actual awards made. No guidelines or standards have been issued, and agencies are reporting inconsistent data based on different concepts of relevant information. Commission staff then consolidate this questionable data for reporting to the Mayor.

For example, in counting minority participation, the agencies include the value of nonminority subcontracts. In cases where minority firms subcontract all or significant portions of a contract to a nonminority, the minority is not truly participating--the dollars simply flow through the minority firm, not to it. As to the reverse situation, that is, minority subcontracts under nonminority prime contracts, only one major agency reported information of this nature.

Subcontracting is not the only reporting problem. Some agencies count local travel, small requisitions, or petty cash disbursements as contracts; and some agencies also consider monthly payments on term contracts as separate contracts. Additionally, one Commission report noted double counting. For example, some agencies reported their requirements under contracts executed by General Services, while General Services also reported the same contracts. Another Commission report found double counting in annual projections but did not adjust for it.

The Executive Director informed us that the Commission is now using agency budget submissions to identify monies available for minority participation. In addition, plans are underway to have a vendor code programmed into the Financial Management System by October 1981 so that actual monies spent with minority vendors can be identified.

## CHAPTER 5

### EXPLORING ATTRIBUTES OF OTHER PROGRAMS

This chapter identifies some attractive features of other programs and ideas provided by Federal, State, city, and private organization officials involved with minority contracting programs.

We obtained information from program officials in 22 jurisdictions (4 States and 18 cities) to provide workable alternatives on the basis of what other locales are doing in similar circumstances. Some jurisdictions had small business programs only. Accordingly, we limited our comparative analysis to nine jurisdictions having a minority contract program.

#### SOME ATTRIBUTES OF OTHER PROGRAMS

As Table 5-1 shows, programs in other jurisdictions had some unique features. For example, some programs (1) varied dollar participation goals for particular procurement categories with availability of minority vendors, (2) required evidence of business capability, (3) provided technical assistance to certified firms, (4) required competition and a minimum number of bidders, (5) allowed minorities a chance to match low responsive bid in open market, and (6) prohibited middlemen from participating in the program.

TABLE 5-1

Comparison of District and Other Programs

District approach

- . Required 25 percent dollar participation across-the-board for construction and goods and supplies.
- . Relied on firm's statement as to capability and did not verify. More concerned with certification of firm as to minority status. Minority participants ranged from middlemen with no capabilities to perform contracts to large firms not in need of this program. (The Commission has recently set up a new certification process.)
- . No individual technical assistance offered. Commission sponsors periodic conferences, provides group technical assistance and a handbook identifying Federal and locally funded assistance programs.
- . No minimum on number of bids solicited or received.
- . Minorities not asked to match open market bids. Price increases as much as 23 percent over open market have been allowed and no specific criteria established.

Attributes of other programs

- . Varied dollar goals recognizing availability of minority vendors in a particular procurement area (i.e., supply, service, or construction).
- . Evidence of some business capability required, such as a warehouse and inventory to prohibit middlemen from participation in the program. Onsite inspections made.
- . Technical assistance provided in form of preparing bids, distributing reports listing available opportunities, clarifying specifications, ensuring that firms receive solicitations, maintaining list of minority enterprise contacts.
- . Competition and minimum number of bidders required.
- . Minorities given chance to match low responsive bids.

- . All minority firms required by law to be certified based on specific factors in law and/or regulations. New amendments do tighten ownership and control requirements.
- . Certification of eligible minority firms is required. They are required to provide evidence of ownership and control. Larger minority firms are encouraged to use small minority firms as subcontractors.
- . Some firms highly dependent on program and without it would not survive. Other firms in program were already well established businesses.
- . Contracts are supposed to provide firms an opportunity to develop, become viable businesses and compete in any market. Hopefully, firms will phase out on their own.

As to views of knowledgeable people in Federal and private organizations, one official said minority preference procurement programs should be temporary and have "sunset" provisions. He stated that according to a Dunn and Bradstreet analysis, a firm that has been in business 4 or more years has a good chance of survival. He believed also that multi-year awards help minorities better develop both financially and in terms of skills. He further said that gross sales is a valid criteria for evaluation of a firm's removal from a preference program.

Another official emphasized the selection of contracts for minority firms. He said contract selections need to be more attuned to the major objective of developing minority businesses so that these businesses become viable and are able to participate in the marketplace without special consideration. Also, contracts should be selected according to type, quality, and experience to be gained by minority businesses in their efforts to develop and grow in the community.

## CHAPTER 6

### CONCLUSIONS, RECOMMENDATIONS, AND AGENCY COMMENTS

The Minority Contracting Program--established 4 years ago--has had some positive benefits for a few firms, but it has placed too much emphasis on dollar goals and not enough stress on other intended goals. The main focus has centered on meeting a 25 percent procurement dollar allocation to minority businesses without linking these dollars to developing business capability, increasing minority employment, and expanding the District tax base. Over emphasis on this one goal clouds the program's true purpose--developing viable minority enterprises.

Although progress is now evident on both the program's certification process and other areas of program administration, decisions are needed on the future direction of the program if minority businesses are to gain a toehold in the competitive marketplace.

Awarding contracts to healthy firms and middlemen does not contribute much to the program. Criteria are needed for agency selection of sheltered market contracts. These criteria should result in participation of firms that will contribute most to achieving program goals such as breaking into business areas now monopolized by majority firms.

### RECOMMENDATIONS

We recommend that the Mayor:

- Explore attributes of other programs and consult with the business community (majority and minority) on ways to improve the District program.
- Strengthen management and administration of the program by:
  1. Clarifying program goals, designing standards to reach these goals, and measuring progress towards their accomplishment.
  2. Checking to see if the new certification review procedures are working.
  3. Establishing criteria for what is an acceptable price increase for setting aside contracts for minority firms.
  4. Clarifying the differences over how the program is supposed to operate and the roles of the Commission, its staff, and the procurement agencies.

--Have the Inspector General's Office review procurement agency compliance with the 1980 amendments to assure that minority firms are actually participating in the contract work and not merely acting as conduits.

AGENCY COMMENTS AND  
OUR EVALUATION

The Commission's Executive Director commented on behalf of the Mayor. A reading of his comments shows that he is speaking from the Commission's more limited perspective rather than that of the District or the Mayor. (See app.)

Although the Executive Director had no strong objections to our recommendations, he did not commit the Commission or the District to taking any action. For example, on exploring other program attributes as options for the District, he merely said the Commission welcomes input from similar programs of the other cities--a "sit back and wait" attitude. We mean by this recommendation that the District should aggressively seek out and explore new ideas to strengthen its program. As to consulting with the business community for the same reason, the Executive Director confined his remarks to minority businessmen. This response ignores ideas from the majority business community as well as the potential for minority business development as subcontractors to majority businessmen.

In our judgment, the Executive Director's comments taken as a whole are not responsive to the recommendations.

D.C. - 44  
APRIL 1980

**Memorandum** ● **Government of the District of Columbia**

TO: William J. Anderson, Director  
 General Government Division, GAO

Department, Office of the Mayor  
 Agency, Office: Minority Business  
 Opportunity Commission

FROM: Courtland Cox *Courtland Cox*  
 Executive Director

Date: May 5, 1981

SUBJECT: Comments on the General Accounting Office Draft Report  
on the Minority Business Opportunity Commission

The Mayor has asked me to respond to the April 2, 1981 Draft Report prepared by the General Accounting Office on the Minority Business Opportunity Commission (MBOC).

The members of the Minority Business Opportunity Commission have read the draft report and after discussion the attached response is being submitted.

CC: Mayor Marion Barry, Jr.  
Elijah Rogers, City Administrator  
Herman "Tex" Wilson, Chairperson, MBOC  
Carroll Harvey, Director, DGS

Comments on the General Accounting Office's Draft Report  
on the Minority Business Opportunity Commission

The General Accounting Office (GAO) has mistaken the mandates of D. C. Law 1-95 as amended by D. C. Law 3-91 and/or its implementing regulations.

The GAO in its report<sup>1</sup> states that the:

"Commission staff and other District officials do not have a comprehensive understanding of program goals. Though many officials stressed the 25 percent dollar goal, none were concerned with the other goals, of local minority business development, expanding the District tax base, and increasing minority employment opportunities".

D. C. Law 1-95 as amended is very clear as to its mandates to the Minority Business Opportunity Commission, its staff and the District's procurement officers. To the Commission and its staff the law states in Section 4(a) "There is hereby established for the District of Columbia a District of Columbia Minority Business Opportunity Commission to oversee the implementation of minority participation in public contracting" (emphasis added). The law is equally clear in its mandates to District agencies and their procurement officers. Section 7(a) of D.C. Law 1-95 as amended states "Each agency of the District of Columbia, including those agencies which contract a portion of their procurement through the Department of General Services, . . .

<sup>1</sup>GAO Draft Report, Chapter 4, page 12, paragraph 2. \*

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- (1) allocate its construction contracts in order to reach the goal of 25 percent ... of the dollar volume of all construction contracts to be let to local minority business enterprises;
- (2) allocate the procurement of goods and services other than construction in order to reach the goal of 25 percent ... of the dollar volume to local minority business enterprises.

Additionally, D.C. law 1-95 as amended is very specific about the tasks it expects the Minority Business Opportunity Commission to perform. The law requires the MBOC to:

1. Certify bona fide minority businesses [D.C. Law 1-95 as amended, Section 9(a)(b)(c)(d)(e)]
2. Create opportunities for mbe's to participate in the District's public contracting with special emphasis on a sheltered market approach to contracting [D.C. Law 1-95 as amended, Section 8(a)(b)(c)(d)]
3. Monitor District Government agencies to insure that the procurement requirements of the law (25% of the dollar volume of contracts being procured with certified mbe's) are followed. [D.C. Law 1-95 as amended, Section 7(a)(b)]
4. Create an environment where financing and bonding impediments for minority owned firms are removed.

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5. Establish regulations and operating procedures for D.C. Law 1-95 as amended [D.C. Law 1-95 as amended, Section 5(a)]

The Minority Business Opportunity Commission is fulfilling its responsibilities as mandated by D. C. Law 1-95 as amended.

It is evident to the MBOC, as it should be evident to the GAO, that a by-product of a greater participation by local minority businesses in public contracting is an expanded tax base for the District (because only local businesses can be certified by the MBOC) and, increased employment opportunities for minority individuals (since studies show that a minority company is more likely to hire minority individuals). It is also clear to the MBOC that a critical area necessary to the development and growth of minority businesses is access to the market place. The MBOC constantly provides access to the District's market place.

Although increased taxes, business development and minority employment are by-products of the MBOC mandate. There are other agencies that have major responsibility for the program goals the GAO mistakenly presumes as the MBOC's.

GAO mistakes the following as primary program goals for the MBOC<sup>2</sup>:

- A. Develop and expand minority business capabilities.

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<sup>2</sup>GAO Draft Report, Chapter 1, page 1, paragraph 3. \*

In order for the MBOC to have as a primary goal the development of minority business it would be necessary for the MBOC to have on staff business experts in most of the following areas:

1. Financial Management
2. Marketing Planning
3. Bid Preparation Assistance
4. Loan Packaging
5. Production Management
6. Management Analysis

Both the Federal and District Governments fund a number of agencies to which the MBOC refers firms certified by it for individualized counseling on business development problems.

Some are:

- † The Office of Business and Economic Development (District Government)
- † The Greater Washington Business Center
- † The Minority Contractors Assistance Project
- † SCORE
- † The Association of Minority Contractors

B. Expanding the District's tax base. The MBOC's certified minority businesses are the only businesses procuring from the District Government that must have their principal headquarters in the District. So clearly we help to assist the District broaden its tax base. However, that is the limit of the MBOC authority under D. C. Law 1-95. The responsibility for expanding the District's tax base thru incentives, abatement,

holidays, increases in assessments, etc. remains with the Department of Finance and Revenue of the District of Columbia.

C. Increasing minority employment opportunities. Both the Department of Employment Services (DOES) and the Office of Human Rights (OHR) have responsibility for increasing employment in general and minority employment in particular. Mayor-Commissioner's Order 73-51 clearly states that the responsibility for increasing minority employment in construction and other areas rests with the Office of Human Rights.

In summary, the MBOC is performing well on the program goals mandated by D. C. Law 1-95. The MBOC cannot be expected to perform on program goals that are not mandated by D.C. Law 1-95 as amended.

GAO Response

*The legislative history behind the law indicates that the intent was to develop certain programs to uplift minority firms to a level whereby they may effectively participate in the business mainstream of the city's economy. It further states that it is vital that the District Government assume a significant role in developing minority firms to the extent to better qualify them for entrance into the business mainstream. The legislative history, in establishing the term "local business enterprise" also states that the definition takes into consideration the employment benefits that will accrue to District residents, as a result of incoming business operations, and the legal requirements for the District to collect business taxes.*

*On the basis of the legislative history, we question what good it would have been to have a program goal of 25 percent dollar participation unless the other more salient goals could be accomplished as well. In addition, the Executive Director, in reporting to the Mayor in June 1979 on the Commission compliance with the law states that achievement of the Commission's public purpose (and the intent of D.C. Law 1-95) is the development of a viable and substantial minority business sector. The report states that the same rationale which led to passage of the law, including the need to remedy historical discrimination and to generate employment and income within the city should support a business development program to make the law work.*

*The Executive Director makes much of the fact that his Commission is not charged with the responsibility for achieving these goals. There are two problems with this. First, he has the responsibility to address these program goals for the District since he is answering the GAO report on behalf of the Mayor. Secondly, he has an obligation to execute the program in such a way as to contribute to the broader program goals of business development, minority employment, and increased tax base. To do otherwise, in our opinion, would weaken the program and impede minority business efforts to progress into the business mainstream.*

The GAO has made inaccurate assumptions and assertions concerning the implementation of D. C. Law 1-95 as amended in its draft report.

The GAO makes the following assertions:

I. "The bulk of the contract dollars have gone to a handful of firms in least need of help."<sup>3</sup>

The D. C. Law 1-95 as amended makes no reference to the size of the minority business enterprises (mbe's) eligible to participate in the sheltered market program or the size of the

<sup>3</sup>GAO Draft Report, Chapter 2, page 4, paragraph 1; page ii, paragraph 1. \*

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contracts to be set-aside by District agencies for certified mbe's.

The MBOC feels that if minority business enterprises are to make a significant economic contribution, they must be allowed to bid in the sheltered market not only on small scale contracts but on large scale contracts as well. Unfortunately, the Federal and District governments are the only real market place for most mbe's since the private sector in the main still practices racial and economic discrimination. In the District, for example, although minorities represent 73% of the population, there are maybe one or two major developers who are minorities, only one or two minority individuals are on the boards of the major lending institutions, very few minority individuals are on the boards of major corporations, and no minority owned firm is to be found in the top 100 businesses in the Washington metropolitan area (according to a survey taken by the Washington Post).

The MBOC has just completed a random sample of two hundred (200) of its' certified firms. One of the questions posed to the mbe's was "What was the dollar amounts of contracts received from District government agencies in the sheltered market by your firm in FY'80?"

Ninety-seven (97) of the two hundred (200) firms responding were able to compete successfully on District contracts. The following results indicate the percentage breakdown by contract dollar amount:

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Table I

<u>Dollar Amount of Contract Awarded</u>	<u>Number of MBF's Bidding Successfully in FY'80</u>	<u>% of MBF's Bidding Successfully in FY'80</u>
1,000-10,000	15	15.5%
10,000-25,000	16	16.5%
25,000-50,000	11	11.5%
50,000-100,000	11	11.5%
100,000-250,000	16	16.5%
250,000-1,000,000	15	15.5%
Over 1,000,000	13	13%
TOTAL	97	100%

As the above figures indicate there is an even spread of mbe's in each of the dollar categories. However, it is clear that if seven minority businesses received contracts for only one million dollars (\$7,000,000) they would outweigh the dollar amount of all of the contracts received by sixty-nine (69) minority businesses in the dollar amounts between \$1,000 and \$249,999. The highest possible dollar amount these firms could receive would be \$6,199,931. The \$6,199,931 received by 69 mbe's is at least \$800,069 less than the minimum \$7,000,000 that 7 mbe's received in contracts.

There are two points to be made about this numbers game. First, larger minority firms are able to bid on the large dollar

amount contracts. Because these firms have the financing, bonding, etc. to handle the larger contracts. Therefore, a relatively small number of firms bidding on large dollar contracts will always have a larger dollar volume than a large number of firms with small dollar amount contracts.

Secondly, we feel that the system established by D.C. Law 1-95 is good because it allows mbe's to make economic contributions at whatever level they find themselves.

Finally, the GAO, as do many other institutions in this society, make the mistake of always measuring minority owned firms against the lower end of the minority business scale so that a successful minority firm always looks larger than it is only because it is compared to a minority "Mom and Pop" establishment. But, when the revenues of a successful minority business are compared to the revenues and assets of a successful non-minority business, in the same field, the revenues and assets of the minority business pales by comparison.

#### GAO Response

*GAO is not saying that the firms which received a bulk of the contracts should not be in the program, and we did not select only large minority firms. The minority firms included in our review represent large, medium, and small firms, and we selected the minority firms on the basis of the aggregate value of awards received by these firms under the program. The individual dollar value of contracts received by these firms varied and it was not just contracts of over \$1 million received by them. Moreover, the principals of the firms told us that the program had not helped them and that they were already well established. The Executive Director is not differing with a GAO assessment but rather an assessment that we obtained from the minority firms themselves.*

II. "Some minority firms act as conduits."<sup>4</sup>

The MBOC recognized the problem of some firms acting as middlemen, that is conduits of funds to non-minority firms that did the work and provided the supplies.

In order to combat this problem the Mayor presented to the City Council language in March of 1980 designed to assure active participation in contract work by minority businesses.

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<sup>4</sup>GAO Draft Report, Chapter 2, page 5, paragraph 3.\*

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This provision mandated in Section 8(c) of D. C. Law 1-95 as amended required that a certified minority firm perform at least 50 percent of the contracting effort, and if the remaining work is to be subcontracted, 50 percent of that effort has to be performed by certified minority firms.

The GAO also states on page 6, paragraph 4 that "At the conclusion of our field work in December, 1980, action on these new provisions to tighten the law had not been taken by the Commission or the procuring agencies."

It must be noted that these new provisions did not become effective until September 13, 1980. During the time that the GAO conducted its' review of the implementation of this provision, September - December, 1980, guidelines for its' implementation were just being developed.

#### GAO Response

*The new legal provisions referred to by the Executive Director actually went into effect in July 1980 when emergency legislation was passed to continue the D.C. minority business program (Act 3-210). Permanent legislation passed in September 1980 was identical to that passed in July 1980. Therefore, a time span of about 6 months had actually passed before we concluded our work on these provisions. Moreover, by late November 1980, key General Services' officials were still not aware of the new provisions. As a minimum, a conference of top procurement officials should have been held to agree on preliminary action pending issuance of formal guidelines.*

On April 8, 1981, the MBOC adopted a new policy of minimum standard eligibility requirements for those minority firms seeking certification as a dealer or packager (the area where conduits had existed). This policy required minority firms to provide storage facilities, delivery capabilities, the maintenance of an on-going stock of the items to be distributed and that the firms sells to the private as well as the public sectors.

In addition, the MBOC and the Department of General Services have agreed that it is the contracting officers responsibility to determine whether or not a certified minority firm is performing at least 50% of the contract work and if it

subcontracts, that at least 50% of the subcontracting effort is with a certified minority firm (see exhibit 1).

III. The GAO states "Agency procurement officers understand certification to include both minority status and the firm's business capability, but the Commission has certified firms only as to minority status".<sup>5</sup>

The MBOC is unaware of the basis of this assertion. As promulgated in D. C. Law 1-95 as amended, the MBOC certifies minority firms as to the status of minority ownership and control (Section 3(a) and (b)) and the location of their principal office (Section 3(c)). The MBOC requires mbe's to fill out business capability forms that request evidence of past contract performance or staff expertise within the area to be certified. This documentation merely indicates background so that the MBOC can categorize firms for its register.

This understanding is shared by the contracting officers as indicated in the attached memorandum (see exhibit 2) from Carroll Harvey, Director of the Department of General Services which handles most of the District's procurement activities.

GAO Response

*We agree that the Commission now certifies minority firms also as to capability. This is a recent event and is recognized in our report.*

IV. The GAO also states that the "Process for certifying minority firms has been weak".<sup>6</sup>

The MBOC has submitted its' "Standard Operating Procedures for Certification" handbook to GOA for review. Although this

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<sup>5,6</sup>GAO Draft Report, Chapter 3, page 8, paragraph 1.\*

handbook was recently put under one cover, all of the procedures have been in effect since July, 1980.

*(GAO has added this information to the report)*

In reference to particular allegations concerning the certification of ineligible firms, the MBOC has received a list of these firms and is in the process of reviewing these files to determine the accuracy of these allegations.

V. The GAO also states on page 11, paragraph 2, that "Several firms which were contingently certified by the Commission did not later submit required documentation". It must be noted that the MBOC has not issued contingent certifications since May, 1980 as a matter of policy.

*(GAO has added this fact to the report)*

VI. An example of the broad generalization that the GAO has tended to make in its Draft Report without presenting support documentation is the following statement:

"The Minority Contracting Program affects virtually every District agency, but neither general acceptance nor understanding of it has yet occurred."<sup>7</sup>

In fact, as indicated by exhibit 1, the DGS has had complete acceptance and understanding of the Minority Contracting Program since its' implementation.

GAO Response

*We are satisfied from interviews conducted with procurement and/or management officials in various District agencies that they have had difficulty understanding and accepting the program. The letter by the top District procurement official to the contrary was prepared for the Executive Director after release of GAO's draft report and, in our opinion, is self serving. We question the reasonableness of the statement made by the top procurement official that both acceptance and understanding of the program has existed within his Department since the program began. Key assistants under him were unaware of new legal provisions several months after their enactment. These new provisions directly affected day-to-day operations and were supposed to stop awards to middlemen.*

VII. In its' Draft Report, the GAO states that there are "differences over how much additional cost is excessive".<sup>8</sup> The

<sup>7</sup>GAO Draft Report, Chapter 4, page 12, paragraph 1.\*

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D.C. Law 1-95 as amended implementing regulations, Section 203.9 states:

"Any District agency asserting that any bid made by certified contractor or contractors is excessive shall indicate the reasons for such assertion to the Commission in writing, including an analysis of such facts as wage determinations, overhead, man-hours required for performance, use of brokers, and other pertinent data."

The amount considered excessive is done on a contract-by-contract basis.

GAO Response

*GAO believes that, if the District program continues to allow prices above open market, some considerations other than monetary would be useful in deciding such allowances. For example, a new business area for minorities to break into might justify a maximum as opposed to a minimum or no allowance. The Executive Director admits later on that objective factors relating to the economic return to the local community are essential.*

VIII. In reference to negotiation authority<sup>9</sup>, the MBOC has only asked on one occasion for a contract to be competitively negotiated in order to insure the minority firm's ability to perform the contract. The Department of General Services has only initiated one other competitively negotiated contract. Once again, any generalization based on two contracts out of thousands of contracts is at best an exaggeration.

*(GAO has modified the report to recognize infrequent use of negotiation)*

IX. The GAO also states that there exists an "unclear role of the Commission staff".<sup>10</sup> There is no confusion over the authority of the Commission versus the Commission staff.

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<sup>9, 10</sup>GAO Draft Report, Chapter 4, page 16, paragraph 3.\*

Since the GAO did not interview any of the present or former Commission members, this allegation has not be substantiated. This is another example of unfounded statements.

GAO Response

*GAO did not need to confirm these problems with Commission members because the Executive Director himself acknowledged the problem and stated that he has been trying to get the Commission and the District Corporation Counsel to clarify in writing the actual authority of the staff.*

X. In addition, the GAO states "No guidelines or standards (for reporting agency procurement participation) have been issued, and agencies are reporting inconsistent data based on different concepts of relevant information".<sup>11</sup> The MBOC issues standard forms requesting relevant information from District agencies. There is no way to assume that the data submitted is 100 percent accurate but there is no gross confusion.

The MBOC is in the process of designing a Management Information System to utilize the District's Financial Management System to directly and automatically record procurement information from District agencies.

*(GAO has added this information to the report)*

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<sup>11</sup>GAO Draft Report, Chapter 4, page 17, paragraph 2. \*

Recommendations

After a careful review of the GAO recommendations, the Minority Business Opportunity Commission (MBOC) makes the following response.

I. GAO Recommendation

Study the attributes of other programs as options to restructure some aspects of the current program and help make the District a model for the country.

MBOC Response

The MBOC welcomes input from similar programs of other cities concerning its' program for minority businesses. The MBOC is fulfilling the mandates of D. C. Law 1-95 as amended in its' operation and we have found that D.C. Law 1-95 as amended can be used as a model for the country.

II. GAO Recommendation

The Mayor should strengthen the management and administration of the program by:

- (1) Assigning someone responsible for designing standards to reach program goals and for measuring programs toward their accomplishments.

MBOC Response

The MBOC is always open and in fact welcomes any and all comments or suggestions that are designed to assist it in reaching the mandates of D.C. Law 1-95 as amended. The mandate

to the Commission and its staff is quite precise, the MBOC is "to oversee the implementation of minority participation in public contracting".

If the MBOC is to carry out any additional programs and/or goals, the mandates of D. C. Law 1-95 as amended must be broadened by legislation.

- (2) Closely monitoring the new certification review procedures to insure that they are properly implemented

MBOC Response

The MBOC would be glad to have its' certification procedures monitored. We have been using the present certification procedures for some time now. We find that the present certification program serves to carry out the mandate of D. C. Law 1-95 as amended.

- (3) Establishing criteria for what is an acceptable price increase for setting aside contract for minority firms

MBOC Response

Most contracts placed on the sheltered market are within the D. C. government estimate of the cost for the goods or services. The Department of General Services did a review of twenty-three (23) million dollars worth of contracts placed in the sheltered market in FY'80 and it found that, taken as a

whole, the price paid for items or products in the sheltered market was five (5) percent less than the government estimate for the goods or services.

Of course there are the exceptional contracts where the bid price of minority businesses is above the government estimate, in those exceptional cases, we believe objective factors relating to economic return to the local community should be the deciding factors.

- (4) Clarifying the areas of differences over how the program is supposed to operate and the rules of the Commission and General Services

MBOC Response

The MBOC is frankly unaware of differences over D. C. Law 1-95 as amended that exist between the MBOC and the Department of General Services.

III. GAO Recommendation

Have the District Inspector General's Office review procurement agency compliance with the 1980 amendments to assure, among other things, that minority firms are actually participating in the contract work and not merely acting as middlemen.

MBOC Response

The participation in the D. C. Minority Contracts Program of minority firms who act as middlemen is rare. In order to address these rare occurrences, the MBOC has developed minimum

eligibility requirements for certification of firms who participate in industries that lend themselves to this practice. In addition, the MBOC and the DGS have agreed that the responsibility for insuring that certified minority firms do at least 50% of the work on contracts and if subcontracted, 50% of the subcontracting effort go to certified minority firms, rests in the hands of contracting officers.

#### IV. GAO Recommendation

Ask the majority and minority business communities to continuously make suggestions as to how the program can be separated.

##### MBOC Response

The MBOC has solicited comments from the minority business community concerning the operation of our program on numerous occasions. For example, questionnaires are sent to mbe's bi-annually to update our directory and solicit comments concerning MBOC's operation. In addition, each time the MBOC sponsors a conference for mbe's, comments are collected on evaluation forms concerning our program's operation as well as the particular conference.

*(See chapter 6 for GAO evaluation of comments on recommendations)*

*\*GAO note: These references refer to the draft report and not to the revised final version.*

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APRIL 1980

## EXHIBIT 1

**Memorandum**

● Government of the District of Columbia

TO: Courtland Cox  
Executive Director  
Minority Business Opportunity Commission

FROM: *Carroll B. Harvey*  
Carroll B. Harvey  
Director

Department,  
Agency, Office: General Services

Date: 1 MAY 1980

SUBJECT: Comments on General Accounting Office (GAO)  
Draft Report on the Minority Business Opportunity Commission (MBOC)

In reference to the GAO Draft Report, Chapter 4, page 12, paragraph 1, that states: "The Minority Contracting Program affects virtually every District agency, but neither acceptance nor understanding of it has yet occurred". I would like to affirm as the Director and Chief Contracting Officer of the Department of General Services, which handles over 75% of the District Government's procurement activities, that both acceptance and understanding of the Minority Contracting Program has existed within the Department of General Services since its implementation.

Additionally, in regard to the implementation of the 1980 Amendment to D. C. Law 1-95 designed to insure the active participation of certified minority business enterprise (MBE) on contracts awarded to them, DGS and MBOC have agreed on a policy which assigns the responsibility for determining that 50% of the work performed on a contract is done by the MBE and if subcontracted, 50% of the sub-contracting effort is done by certified MBEs, to the contracting officer.

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APRIL 1981

EXHIBIT II

**Memorandum**

**Government of the District of Columbia**

TO: Courtland Cox  
Executive Director  
MBOC

Department, General Services  
Agency, Office:

FROM: *Harold G. Newson*  
Carroll B. Harvey  
Director

Date: **APR 22 1981**

SUBJECT: GAO Draft Report on the Districts' Minority Contracting Program,  
dated April 2, 1981

We have reviewed the subject and had a brief discussion with Ms. Jett of your staff regarding our report. You have apparently taken the major effort to draft a response to the GAO report, as the majority of comments fall within the MBOC's decision area. However, we wish to clarify a point made by GAO, that confusion exists over the meaning of a firm's capability. (See Chapter 3, p. 8 of the Report). We infer that "capability", as used by GAO, means the type of business(s) conducted by the firm. On the other hand, if GAO means "Responsibility", this report that confusion exists regarding certification is inaccurate. The procurement agencies realize that MBOC does not certify responsibility of firms, (i.e., ability to perform under a particular scope of work in a satisfactory manner). That is left up to the contracting officer to determine.

We are ready to assist in the final response, at your convenience.

**DATE**  
**ILME**