

Testimony

Before the Committee on Small Business, House of Representatives

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HURRICANE KATRINA

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

Statement of William B. Shear, Director, Financial Markets and Community Investment





Highlights of GAO-07-698T, a testimony before the Committee on Small Business, House of Representatives

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 over 90 percent of the federal funds awarded for relief efforts via contracting as of March 2007.

GAO initiated work and completed a report under the Comptroller General's authority last month describing the extent to which small businesses participated in these contracting opportunities. This testimony, which summarizes information from that report, discusses (1) the amounts that small and local businesses received directly from contracts with DHS, GSA, DOD, and the Corps for relief and recovery efforts related to Hurricane Katrina and (2) the extent to which small businesses received subcontracts for relief and recovery efforts.

What GAO Recommends

GAO recommended in its March 2007 report that DHS, GSA, and DOD take steps designed to ensure compliance with federal contracting regulations and more transparently disclose the extent to which subcontracting opportunities are available to small businesses. These agencies generally agreed with GAO's recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-07-698T.

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

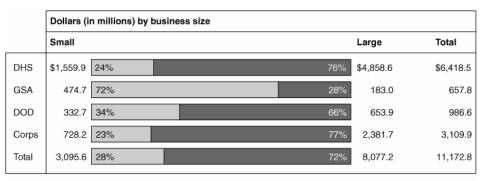
Agency Contracting Data Should Be More Complete Regarding Subcontracting Opportunities for Small Businesses

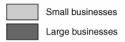
What GAO Found

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 between August 2005 and June 2006 (see fig. below). 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). Small businesses in Alabama, Mississippi, and Louisiana received 66 percent of the \$1.9 billion awarded to businesses in these states.

Required information on small business subcontracting was not consistently available in official procurement data systems for the four agencies we reviewed. For example, the systems had no information on whether DHS or GSA required small business subcontracting plans for 70 percent or more of their contracting funds. In addition, the four agencies often did not provide or document reasons for their determinations that plans were not required, even though federal rules require such documentation when prime contracts meet criteria for having these plans. Incomplete information about subcontracting limited GAO's ability to determine the extent to which agencies complied with contracting rules and gave small businesses maximum opportunities to win subcontracts.

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





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

Madam Chairwoman and Members of the Committee:

I am pleased to be here in New Orleans to discuss small business participation in the rebuilding of the Gulf Coast in the aftermath of Hurricane Katrina. As of March 2007, the Departments of Homeland Security (DHS) and Defense (DOD), the U.S. Army Corps of Engineers (Corps), and the General Services Administration (GSA) accounted for over 90 percent of the federal funds awarded for relief efforts through contracting. The agencies were to use the funds to, among other things, award contracts for a range of services related to hurricane relief and recovery.

My statement today is based on a report we issued in March 2007, which discussed the amounts that small businesses received through prime contracts and subcontracts related to Hurricane Katrina.² In my testimony, I will discuss (1) the amounts that small and local businesses received directly from federal agencies through contracts for relief and recovery efforts related to Hurricane Katrina, and (2) the extent of subcontracting by selected large prime contractors and the lack of required information in official procurement data systems on subcontracting accomplishments and plans.

To address these objectives, we analyzed data on contracts awarded or used by DHS, GSA, DOD, and the Corps for Katrina-related projects overall, and, specifically for projects in Alabama, Louisiana, and Mississippi from August 1, 2005, through June 30, 2006. We identified contracts that were used for activities related to Hurricane Katrina and that required subcontracting plans. We also interviewed officials from each of the four agencies, the Small Business Administration (SBA), and the Office of Management and Budget (OMB). We conducted our work between March 2006 and February 2007 in accordance with generally accepted government auditing standards.

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¹We 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.

²GAO, Hurricane Katrina: Agency Contracting Data Should Be More Complete Regarding Subcontracting Opportunities for Small Businesses, GAO-07-205 (Washington, D.C., Mar. 1, 2007).

In summary:

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). Small businesses received approximately 66 percent of the \$1.9 billion awarded by the four agencies to businesses in Alabama, Mississippi, and Louisiana.

Information on whether DHS and GSA required subcontracting plans was generally not available in the federal government's official procurement database for more than 70 percent of the contracting dollars each agency awarded for activities related to Hurricane Katrina. This database should have contained information on whether or not the agencies required subcontracting plans in these instances. When the database did contain information on whether or not agencies required the plans, we found additional information about them that was incomplete. Specifically, the four agencies we reviewed varied in their determinations that subcontracting plans were not required from their large prime contractors, ranging from 12 percent (GSA) to 77 percent (DOD) of their Katrina-related contracting dollars. Information on the agencies' reasons for not requiring these plans, which should have been readily available, was incomplete.

In order to more transparently disclose the extent to which subcontracting opportunities are available to small businesses, we recommended that DHS, GSA, and DOD (1) issue guidance reinforcing the need for agencies to document in publicly available sources their decisions regarding subcontracting plan requirements, and (2) consider asking their Inspectors General to conduct reviews to ensure that this guidance and related requirements are being followed. The agencies generally agreed with our recommendations and described various steps they are taking to implement them. We plan to follow up with the agencies on their efforts to implement these recommendations.

Background

When the President declares a state of emergency after a natural or other major disaster, the declaration gives the federal government the authority

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to engage in various emergency response activities, many of which federal agencies provide through contracts with private businesses.³ Such activities include debris removal, temporary housing assistance, reconstruction, and the provision of supplies. These contracts are subject to federal procurement regulations and to the Stafford Act, which, among other things, sets forth requirements for the federal response to presidentially declared disasters. A provision of the Stafford Act 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.⁴

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." In addition, a business must meet the size standards published by SBA to be considered "small." The act sets a governmentwide goal for small business participation of not less than 23 percent of the total value of all prime contract awards—contracts that are awarded directly by an agency—for each fiscal year.

The general rules governing procurement are set out in federal procurement statutes and in the Federal Acquisition Regulation (FAR). Among other things, these rules require that any business receiving a prime contract for more than the simplified acquisition threshold must agree to give small business the "maximum practicable opportunity" to

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³See Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Pub. L. No. 93-288, as amended, 42 U.S.C. §§ 5121 – 5204c.

⁴42 U.S.C. § 5150.

⁵Public Law 85-536, as amended, 15 U.S.C. § 632(a).

⁶15 U.S.C. § 644(g).

⁷FAR 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.

participate in the contract.⁸ 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.⁹ This plan must identify the types of work the prime contractor believes it is likely to award as subcontracts and 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.¹⁰

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. This system 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.

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⁸FAR § 19.702.

 $^{^9}Id$. The dollar threshold was changed to \$550,000 on September 28, 2006. 71 Fed. Reg. 57363 (Sept. 28, 2006).

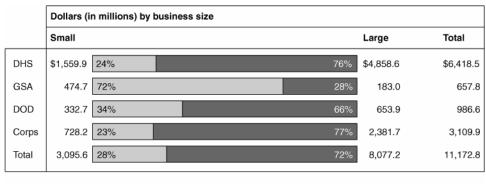
 $^{^{10}}$ These and other aspects of the small business subcontracting plan requirement are set forth at FAR Part 19.7.

 $^{^{11}}$ The FPDS-NG reporting threshold in FAR 4.602(c) was raised from \$2,500 to \$3,000. 71 Fed. Reg. 57,364 (Sept. 28, 2006).

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

Our March 2007 report identified the extent to which DHS, GSA, DOD, and the Corps awarded funds directly to small businesses; the extent to which different types of small businesses received funds; and, the extent to which small businesses located in Alabama, Mississippi, and Louisiana received funds for Katrina-related projects. We found that 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 agencies (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.

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



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.

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

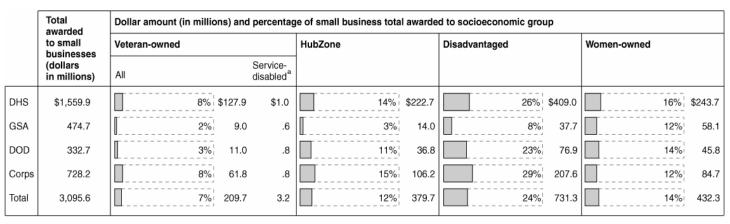
Among categories of small businesses, small disadvantaged businesses received 24 percent of the approximately \$3 billion that the four agencies awarded to small businesses. Other categories of small businesses, including women- and veteran-owned businesses and businesses located

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 $^{^{12}}$ Each 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.

in historically underutilized business zones (HUBZones)¹³, received from 2 to 16 percent (fig. 2). Contracting dollars awarded directly to businesses can be counted in more than one category, so the dollars awarded to various types of small businesses are not mutually exclusive.

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



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.

Small businesses in Alabama, Mississippi, and Louisiana received 66 percent of the \$1.9 billion in Katrina-related contracting dollars awarded to local businesses by the four agencies we reviewed. Among the three states, the proportion of Katrina-related contracting dollars awarded to small businesses was largest in Mississippi (75 percent), followed by Alabama and Louisiana at 65 percent and 62 percent, respectively, of the dollars awarded (table 1). While small businesses in Louisiana received the smallest proportion of these Katrina-related dollars, the actual amount the

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¹³HUBZones 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 those zones. See 15 U.S.C. § 632.

businesses received was nearly double what small businesses received in Mississippi. In general, these small local businesses received contracting dollars directly from the four agencies to provide trailers, administrative and service buildings, restoration activities, and other supportive services.

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

Dollars in millions

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

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

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

^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.

Information on Subcontracting Accomplishments and Plans Was Incomplete

Our March 2007 report also included information on the extent to which small businesses received subcontracts from DHS and GSA prime contractors, and selected military prime contractors, that were awarded Katrina-related contracts. The report described the accomplishments that these prime contractors reported, identified certain instances where accomplishment data was not available because contractors had not submitted it, and also identified two key ways in which necessary information on subcontracting plan requirements was incomplete.

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Subcontracting
Accomplishment
Information Was Not
Consistently Available for
Some DHS and GSA
Contracts Related to
Hurricane Katrina

Contractors that have individual subcontracting plans are generally required to report on their subcontracting goals and accomplishments twice a year to the federal government. However, we found that this information was not consistently available for some DHS and GSA contracts. For the military contracts we analyzed, accomplishment data were available.

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 a subcontracting plan 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. 14 For these 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.15

For GSA, information was generally unavailable on the subcontracting accomplishments associated with the 11 contracts (worth a total of about \$9.6 million) that the agency awarded to large businesses for Katrinarelated activities and that included subcontracting plans. According to

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¹⁴The 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.

¹⁵One 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.

agency officials, subcontracting accomplishment 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.

We reviewed 4 of the top 10 recipients of prime contracting dollars from DOD and the Corps for projects related to Hurricane Katrina. ¹⁶ 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. 17 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. 18 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. 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.

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 $^{^{16}\}mbox{Because DOD}$ does not electronically aggregate information on the subcontracting accomplishments of all military contractors, we chose to look at the top 10 military contractors.

¹⁷Four 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.

¹⁸The 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.

¹⁹We 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.

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

Table 2: Subcontracting Plan Requirements by Dollar Amount Awarded

Dollars in millions									
Agency	Total amount awarded to large businesses over \$500,000°	Percent of to awarded an amount rec subcontrac	nd dollar quiring a	Percent of tota awarded and amount w subcontra possibili	d dollar ith no acting	Percent of to awarded ar amount repo requiri subcontrac	nd dollar rted as not ng a	Percent of to awarded an amount v informat subcontrac requirer	nd dollar vith no ion on ting plan
DHS	\$4,866.2	1%	\$27.2	0%	\$16.3	29%	\$1,406.0	70%	\$3,416.7
GSA	127.1	7	8.9	4	4.7	12	15.1	77	98.4
DOD	631.2	22	141.4	0		77	483.6	1	6.2
Corps	\$2,468.7	76%	\$1,880.1	0%		23%	\$574.5	1%	\$14.1

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

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

Overall, procurement officials from the four agencies were able to explain some of the missing or incomplete subcontracting plan information by, for example, identifying data entry errors or providing evidence of reasons for

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

In our report, we concluded there was little doubt that Hurricane Katrina posed challenges to the agencies to award contracts quickly while still following government procurement rules, especially those regarding subcontracting plans. Certain choices, such as documenting compliance with these requirements at a later date (something GSA and DOD officials indicated was the case), might have been understandable. Nonetheless, more than a year after the hurricane, we reported that a substantial amount of information about the four agencies' subcontracting requirements remained incomplete. Conclusively demonstrating compliance with the rules about subcontracting plans is important for reasons beyond just documentation. 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, remained unresolved, we cannot tell the extent to which the agencies are complying with the regulations. Furthermore, the lack of transparency surrounding much of the agencies' subcontracting data—missing information on plans when contracts appear to meet the criteria for having them—may lead to unwarranted perceptions about how the federal procurement system is working, particularly in terms of the government's stated preference for contracting with small businesses.

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

The agencies generally agreed with our recommendations and are taking steps to address them. For example, GSA officials recently told us the agency's Chief Acquisition Officer will soon issue two "acquisition alerts" reminding contracting officers of the importance of subcontracting plan requirements as well as the documentation associated with complying with the requirements. Army Corps of Engineers officials told us they are currently developing a new training module on these topics and expect to deliver it to their contracting officers this summer.

Madam Chairwoman, this concludes my prepared statement. I would be happy to answer any questions at this time.

Contacts and Acknowledgments

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

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