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DEFENSE PROCUREMENT AND
THE SMALL BUSINESSMAN
JAMES PHILLIP MORGAN, JR.

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DEFENSE PROCUREMENT AND THE SMALL BUSINESSMAN

by

James Phillip Morgan, Jr.

Bachelor of Science in Commerce, 1948

Springhill College

Mobile, Alabama

A thesis submitted to the Faculty of the School of Government, Business, and International Affairs of The George Washington University in partial satisfaction of the requirements for the degree of Master of Business Administration.

June, 1961

Thesis directed by

Arlin Rex Johnson, Ph. D.

Professor Business Administration

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Morgan, J.

UNITED STATES DEPARTMENT OF THE INTERIOR

19

W. J. Morgan, Director

Office of the Director, Bureau of Land Management

Washington, D. C.

Dear Sir:

Reference is made to your letter of the 10th day of May, 1961, in which you requested that the Bureau of Land Management be advised of the results of the survey of the land owned by the State of California in the area of the California State Lands Commission, and to the fact that the Bureau of Land Management is the only agency of the Federal Government which has jurisdiction over the public lands of the United States.

Sincerely,
W. J. Morgan

Director, Bureau of Land Management

Enclosure

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FOREWORD

The traditional notion that small business is "a good thing," quite apart from the question of competitive efficiency, is based on certain political, psychological, and sociological assumptions. Consequently, our United States Government is committed to the premise that small business has a unique and indispensable role in our society.

CHAPTER I

The first part of the book is devoted to a general survey of the history of the subject. It begins with a brief account of the early attempts to explain the phenomena of life, and then proceeds to a more detailed consideration of the various theories which have been advanced from time to time. The author's own views are stated in a clear and concise manner, and are supported by a wealth of facts and arguments. The book is written in a simple and straightforward style, and is accessible to all who are interested in the subject.



CHAPTER I

INTRODUCTION

Since the end of World War II and particularly since the Korean incident, military procurement has achieved a peacetime volume never before contemplated in our history. The high level which defense spending has reached and the strong indications that it will continue for a long time, gives this activity a new and significant importance in the national economy -- especially in selected industries -- such as electronics, airframes, ships, jet and rocket power plants. It is logical under these conditions, that small business should seek participation in this large opportunity, since it always has been in competition with itself, but more important with large companies, to serve the needs of the private and government consumer.

A considerable amount of legislative effort has gone into attempts to protect small business against the consequences of inequality and concentration. The traditional notion that small business is a "good thing" apart from the question of competitive efficiency, is based on certain political, psychological and sociological assumptions. The diffusion of economic power in a society of small businessmen is often regarded as a safeguard against the concentration of power. The tendency to such ideas is expressed in the statement which follows:

REPORT

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Chapter I. Introduction

Chapter II. Theoretical Foundations

Chapter III. Experimental Methods

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The Executive agencies and the Congress, in the performance or development of their programs, have shown their recognition that our traditional economic freedom and, indeed, our political freedom as well, are dependent on the maintenance of an economic climate in which new small enterprises can be established and (if they prove their economic worth) grow and flourish. A sound and thriving small business segment is a fundamental expression of our democracy.¹

The difficulties and problems of small business are numerous. Tax burdens, restraint of trade, monopolistic practices, price fixing, and financing are but a few of the problems. Even more significant than any of these, which are not exclusively those of the small business firm, is where and to what extent can the small business segment of our economic complex participate in furnishing the commodities and services required to operate our federal government. Equally as important, and one that has come to the fore in recent years, is the consideration of small businesses as an important and vital member of the procurement team.

This paper examines procedures and programs in military procurement as they pertain to business transactions between the Department of Defense and the small business man. Time does not permit an all-inclusive and detailed analysis of small business participation in defense procurement and it is intended, therefore, to concentrate on the most important concepts and issues. The problems with the military in such commodities as clothing, typewriters, and foods are small and can best be solved on the spot. Such items and others similar to or identical with standard articles on the markets are not specifically included as a part of this thesis.

It is intended that this discussion be confined to the ways and means of participation by the small business firms in defense procurement. Chapter I

¹14th Semiannual Report Small Business Administration for Six Months Ending June 30, 1960, p. 1.

presents, in addition to appropriate introductory remarks, a brief evolution of the development of federal government assistance programs specifically designed to help the small businessman, and a general view of defense procurement in its totality. Chapter II presents the organization, policies, and assistance programs of the Small Business Administration. Chapter III offers a look at the Department of Defense organization, policies, and programs developed and followed in the interest of small business. Chapter IV discusses some of the more pressing issues of the small business concern involved with defense procurement and which have received attention from the Congress. Chapter V is a summary of the major points discussed with conclusions and comments of the writer, which may or may not be worthy of consideration.

The Evolution of Small Business Programs

Small businesses benefit from a large number of policies and programs adopted to assist business concerns in general, and from a number of programs designed specifically to help small concerns. Federal government assistance with the special problems of small business began in 1941. In that year, a Small Business Unit was established in the Bureau of Foreign and Domestic Commerce of the United States Department of Commerce. The newly established unit was directed at the outset to (1) study the small business segment of the nation's industries; (2) determine the problems encountered by smaller firms because of their size; (3) and to plan a program to assist the firms with their problems.

The small business program in the Department of Commerce had been under way only a short time when World War II began. During the ensuing years, several of the projects initiated by the Small Business Unit were adopted by the

The following table contains a summary of the results of the survey conducted in the year 1985. The data is presented in the form of a table with 10 columns and 5 rows. The first column lists the different categories of respondents, and the remaining columns show the percentage of respondents in each category for each of the five years from 1980 to 1984. The data shows a general increase in the number of respondents over the period, with a significant increase in the number of respondents in the 'Other' category in 1984.

Category	1980	1981	1982	1983	1984
Male	45%	48%	50%	52%	55%
Female	55%	52%	50%	48%	45%
Age 18-24	15%	18%	20%	22%	25%
Age 25-34	25%	28%	30%	32%	35%
Age 35-44	30%	32%	35%	38%	40%
Age 45-54	20%	22%	25%	28%	30%
Age 55-64	10%	12%	15%	18%	20%
Age 65+	5%	8%	10%	12%	15%
Other	10%	12%	15%	18%	25%

Summary of Results, 1980-1984

The following table contains a summary of the results of the survey conducted in the year 1985. The data is presented in the form of a table with 10 columns and 5 rows. The first column lists the different categories of respondents, and the remaining columns show the percentage of respondents in each category for each of the five years from 1980 to 1984. The data shows a general increase in the number of respondents over the period, with a significant increase in the number of respondents in the 'Other' category in 1984.

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War Production Board and the Smaller War Plants Corporation. Throughout the war years, the Commerce Department carried on a limited small business program, devoted for the most part, to advice on management problems and the distribution of marketing and economic information.

The major effort to bring small manufacturers into war-supporting industries during World War II began with the establishment on June 11, 1942, of the Smaller War Plants Corporation (SWPC) as a part of the War Production Board. Earlier attempts to increase small business participation in the war effort, through the establishment of several units and offices, had met with little success. The SWPC, by April, 1943, had been separated administratively from the War Production Board.

In January, 1946, the SWPC was abolished by Executive order.² All loan functions were transferred to the Reconstruction Finance Corporation, and the majority of the other functions were transferred to the Department of Commerce. These functions in the Commerce Department were combined with the small business functions the Department had continued during the war years and placed in a new unit, the Office of Small Business.

The Defense Production Act of 1950,³ which established the National Production Authority, made the Office of Small Business a primary unit of that authority. At that time, the office began to devote most of its efforts to the government procurement program, research on production and economic problems of small business resulting from the defense program, and assistance to small business in obtaining scarce materials.

²Executive Order No. 9665, Dec. 27, 1945: 10 Fed. Reg 15365 (1945).

³U. S. Congress, Defense Production Act of 1950, Public Law 774, 81st Congress, 2nd Session, 1950.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the success of any business and for the protection of the interests of all parties involved. The text also mentions the need for regular audits and the importance of having a clear system in place for handling financial data.

In the second part, the author discusses the various methods used to collect and analyze data. This includes a detailed description of the survey process, from the design of the questionnaire to the distribution and collection of responses. The text also covers the statistical techniques used to interpret the data, such as calculating means, standard deviations, and correlation coefficients. The author notes that while these methods are powerful, they must be used carefully to avoid drawing incorrect conclusions.

The third section of the document focuses on the practical application of the research findings. It provides a series of recommendations based on the data collected, aimed at improving the efficiency of the organization's operations. These recommendations include suggestions for streamlining processes, reducing costs, and enhancing the quality of customer service. The author also discusses the importance of monitoring the implementation of these changes and making adjustments as needed.

Finally, the document concludes with a summary of the key findings and a list of references. The author expresses confidence in the results of the study and hopes that the findings will be helpful to other organizations facing similar challenges. The references list several books and articles that were consulted during the research process, providing a starting point for further exploration of the topics discussed in the document.

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Congress created the Small Defense Plants Administration (SDPA) in July, 1951, by the addition of section 714 to the Defense Production Act.⁴ After establishment of the Small Defense Administration, and assignment to it the major responsibility for increasing small business participation in the defense effort, many of the functions of the Office of Small Business were transferred thereto by the President. The principal functions of the SDPA, as prescribed by Congress, were to see that small business (1) obtained a fair share of defense contracts; (2) received a fair share of critical materials; and (3) obtained the financial and technical assistance needed to participate effectively in defense and essential civilian activities.

In 1953, the Small Business Administration (SBA) was established as the first independent agency of the Government charged with the duty of fostering the interests of small business.⁵ The SBA, for the first five years of its existence, resembled the SWPC in the sense that it was only a temporary agency designed primarily to assist small business in meeting problems created by the defense effort. The most important difference between the two agencies was that the lending powers of the SBA were not, like those of the predecessor agency, confined to defense or essential civilian purposes. Even at this stage of its development, the SBA could and did make loans to small businesses for peacetime purposes.

In 1958, the Small Business Act⁶ was enacted to convert the SBA into a permanent agency expressly authorized to assist small concerns in meeting their

⁴U. S. Congress, Defense Production Act Amendments of 1951, Public Law 96, 82nd Congress, 1st Session, 1951.

⁵U. S. Congress, Small Business Act of 1953, Public Law 163, 83rd Congress, 1st Session, 1953.

⁶U. S. Congress, Small Business Act of 1958, 85th Congress, 2nd Session, Public Law 536, 1958.

problems, including those which have no relation to national defense. This change in the character of the SBA resulted from the desires of the President and the Congress to stabilize and strengthen the small business program and extend its operations into the peacetime economy.

The legislative enactment of the Small Business Act creating the Small Business Administration as a permanent agency of the Executive branch of the Government, made clear the intent and policy of the Congress that government assistance would be available to small business in maintaining its role in our national economy and security.⁷ At the same time, the Chairman of the Senate Select Committee on Small Business stated in the foreword of a published copy of the Act:

. . . In thus formalizing a philosophic concept first given tangible expression by the creation of the Smaller War Plants Corporation in the early days of World War II, Congress has now made it clear that independent small business enterprises are to be considered as one of this Nation's invaluable resources -- as essential to our strength as our fertile farmlands, timber, mines, and waterway systems.⁸

The feelings and intent of the Congress in government assistance programs for the small business firms have not diluted or in any sense weakened since July, 1958. In each subsequent session of the Congress, significant small business legislation has been enacted, although none enacted or even proposed is comparable to that of 1958.

A Background View of Defense Procurement

The Department of Defense annual procurement program approximates \$25 billion. A tremendous variety of supplies, equipment, and services is purchased

⁷Ibid., Sec. 2. (A).

⁸Hon. John Sparkman, (D), Alabama.

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annually, and includes housekeeping items, maintenance supplies, production facilities, research and development, and military weapons. This vast range of purchased items, running from the simple, commonplace variety to the highly complex, some of which exist only on the drawing board when contracted, presents a huge undertaking. The Honorable Perkins McGuire, when serving as Assistant Secretary of Defense (Supply and Logistics)⁹ said before the Procurement Subcommittee of the Senate Committee on Armed Forces:

Any consideration of defense procurement must necessarily be based on an understanding of its magnitude and complexity. . . . Because our program is so vast and complex it is not easy to appreciate in its totality.¹⁰

Military procurement, as the term is used by the Department of Defense, refers to purchases of supplies and services, including construction. There are three general categories of items purchased:

1. Items which are identical with those required by other Government agencies, such as office furniture and supplies, household furniture, etc. These items are normally acquired through the General Services Administration.
2. Commercial type items and conventional military equipment which can be supplied by a number of concerns. This category includes such items as clothing, petroleum products, lumber, paint, etc.
3. The third category, and by far the largest dollar-wise, comprises research, development, and production of complex military weapons and equipment. These include missiles, aircraft, ships, tanks, radar, and other complicated items. These items, in general, have no counterpart in the commercial market.

⁹This office was recently designated as (Installations and Logistics).

¹⁰Report of Dept. of Defense Procurement Presentation, 1960, to the Procurement Subcommittee of the Senate Committee on Armed Forces, p. 1. (Feb. 8 and 9, 1960). (Department of Defense, Washington, D. C.).

In fiscal year 1959, the defense procurement program involved the purchase of, either on a first time or replenishment basis, a large number of the 3.5 million different items carried in the stock catalog, required about 6.7 million separate actions, and totaled \$25 billion. This represents over 60 percent of the defense budget of \$40 billion and comprised over 30 percent of the national budget of \$80 billion. By way of comparison, three of the largest United States corporations (General Motors, General Electric, and United States Steel), with combined annual sales of \$17 billion for the calendar year 1958, purchased during that period materials and services of about \$8 billion.¹¹

In the procurement organization of the Department of Defense, the Assistant Secretary of Defense (Installations and Logistics) establishes procurement policies and procedures for the entire Department. Within each military department, an Assistant Secretary is in charge of military procurement.¹² At the next lower echelon a military officer in each Department is responsible for coordinating and directing the overall procurement operation.

In the Army, the Deputy Chief of Staff for Logistics is delegated the authority for carrying out the procurement functions of the Army technical services. The Chief of Naval Material is delegated the responsibility for directing the efforts of the bureaus and offices of the Navy Department in procurement matters. In the Air Force, procurement authority is delegated through the Chief of Staff, and Deputy Chief of Staff, Material, to the Air Material Command.

¹¹Ibid., p. 2.

¹²In the military departments these civilian officials are designated as the Assistant Secretary of the Army (Logistics), the Assistant Secretary of the Navy (Material) and the Assistant Secretary of the Air Force (Material).

The Armed Services Procurement Regulation (ASPR) is the basic procurement document within the Department of Defense. It prescribes uniform policies and procedures for the military departments and provides direction and guidance for complying with pertinent statutes, Executive orders and regulations of other agencies. It covers policies, practices and procedures on such matters as the appointment of contracting officers, formal advertising, negotiation, pricing, types of contracts, contract clauses, and contract cost principles.

Supplemental procurement regulations are also issued by the military departments. These are the Army procurement procedures (APP), the Navy procurement directives (NPD) and the Air Force procurement instructions (AFPI). These supplemental directives are arranged and numbered so as to correspond to ASPR in providing detailed procedures which necessarily vary among the services to take care of differences in their organizational structures.

One of the principal controls on military procurement is that exercised over the appointment of contracting officers. The authority to execute and administer contracts is derived from the basic authority vested in the Secretaries of the military departments. Contracting officers may be designated by the Secretaries themselves or by subordinate officials to whom authority to designate has been delegated. Only persons who are determined to possess the required attributes, including training, experience, judgment and maturity, are designated as contracting officers.

Procurements by the smaller field activities are usually limited to a reasonable dollar amount to avoid the requirement of staffing these activities with a number of technical assistants. The monetary limitations insure that the large dollar value procurements or those of an unusual nature are effected

by officers who are specifically qualified and properly supported to accomplish the more complex procurements.

The contracting officer whose authority is not so limited is the one who handles the procurement actions involving most of the defense dollars, but he does not carry out his responsibility alone and unaided. These officers direct the actions of a team of qualified individuals which includes, depending on the complexity of the procurement, engineers, auditors, price analysts, lawyers, material inspectors, buyers and negotiators.

The complexity of military procurement during and after World War II demanded and stimulated the development of types of contracts having greater flexibility than the standard fixed-price contracts generally in use during that time.

ASPR defines and describes the types of contracts, the areas of appropriate application for each, policies and considerations governing their selection, and conditions imposed on their use. The approved types of contracts are divided into four categories:

1. Fixed-price contracts;
2. Cost-reimbursement contracts;
3. Special incentive contracts;
4. Special-purpose contracts.¹³

There are a number of factors which affect the type of contract selected for use in a particular procurement situation and the most important of these are:

¹³Report of Dept. of Defense Procurement Presentation, op. cit., p. 22.

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1. The type and complexity of the item.
2. The urgency of the requirement.
3. The period of contract performance and the length of production.
4. The degree of competition.
5. The difficulty of estimating performance costs due to such factors as the lack of firm specifications, production experience, or instability of design.
6. The availability of comparative cost data, or lack of firm market prices or wage levels.
7. Prior experience with the contractor.
8. The extent and nature of subcontracting contemplated.
9. The assumption of business risk.
10. The technical capability and financial responsibility of the contractor.
11. The administrative cost to both parties.¹⁴

The selection of a particular contract type in a procurement situation is designed to produce the most successful contract. It is a vital step in obtaining from responsible sources what is needed for the defense effort at the lowest ultimate cost to the government.

¹⁴ Ibid.

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CHAPTER II

THE SMALL BUSINESS ADMINISTRATION

The Small Business Administration is an independent agency of the Federal Government established to advise and assist small business concerns. The agency was created by act of Congress on July 30, 1953,¹ and was made permanent by the Small Business Act of 1958.²

Responsibilities

The major responsibilities assigned the Small Business Administration (hereafter referred to as the SBA or the Agency) by the President and the Congress are:

1. To counsel with small business concerns on their financial problems and to make loans to them when private financing is not available on reasonable terms.
2. To license, regulate, and help finance privately owned small business investment companies, which in turn extend long-term and equity-type financing to small business concerns.

¹U. S. Congress, Small Business Act of 1953, Public Law 163, 83rd Congress, 1st Session, 1953.

²U. S. Congress, Small Business Act of 1958, Public Law 536, 85th Congress, 2nd Session, 1958.

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3. To make loans to State and local development companies to help them provide facilities and financing for small business concerns in their areas.
4. To make loans to help restore or replace businesses and homes damaged or destroyed by storms, floods, and other disasters.
5. To assist small firms in obtaining a fair share of contracts and orders for supplies and services for the Government, and a fair share of property being sold or leased by the Government.
6. To assist small firms in overcoming production problems, and in diversifying their product lines.
7. To assist small business concerns with their management problems, and to finance research into the problems of small business.³

Organization

The management of the SBA is vested in an Administrator, who is appointed by the President with the advice and consent of the Senate. The Administrator is assisted by four Deputy Administrators, who are responsible for Financial Assistance, Small Business Investment Division, Procurement and Technical Assistance, and Administration of the Agency.

There are four principal operating offices in the SBA: Office of Loan Processing, Office of Loan Administration, Office of Procurement and Technical Assistance, and Office of Management and Research. In addition, the following staff offices assist in the operation of the SBA: General Counsel, Information, Organization and Management, Economic Adviser, Controller, Personnel and Program Analysis.

³Small Business Administration -- What It Is -- What It Does, June, 1959 (Small Business Administration, Washington, D. C.).

1. The first part of the report deals with the general situation of the country and the progress of the work done during the year.

2. The second part deals with the results of the various investigations carried out during the year.

3. The third part deals with the conclusions drawn from the results of the investigations.

4. The fourth part deals with the suggestions for the future work.

5. The fifth part deals with the summary of the work done during the year.

Summary

The summary of the work done during the year is as follows:

The first part of the report deals with the general situation of the country and the progress of the work done during the year.

The second part deals with the results of the various investigations carried out during the year.

The third part deals with the conclusions drawn from the results of the investigations.

The fourth part deals with the suggestions for the future work.

The fifth part deals with the summary of the work done during the year.

In order to assist small business concerns at the community level, the SBA has fifteen regional offices and fifty-two branch offices. These offices are conveniently located throughout the United States and Puerto Rico in such a geographical pattern that they are readily accessible to all small business concerns.

The SBA has established both national and local small business advisory groups to assist in developing and carrying out its programs. The National group is called the National Council of Consultants; the local groups, the National Board of Field Advisers. It is through these boards that the SBA draws upon the advice of owners and representatives of small businesses in all areas of the country.

The membership of these groups is made up of persons from a number of types of businesses, and their primary purpose is to advise directors of SBA regional offices on the effectiveness of existing and proposed programs. The members are appointed by the SBA Administrator and serve without pay.

Programs

Business Loans

The SBA's loan program is designed to assist small businesses in their financial problems and, if borrowing is necessary, to help them obtain funds from private lending sources. If a small business concern cannot obtain private financing on reasonable terms, the SBA will make a direct loan, provided the business meets necessary credit and other requirements.

The general loan policies of the SBA are determined by a three-member Loan Policy Board. This board is composed of the Administrator of the SBA, who

The first part of the paper is devoted to the study of the
 properties of the function $f(x)$ defined by the equation
 $f(x) = \int_0^x f(t) dt$. It is shown that $f(x)$ is a
 constant function and that $f(x) = 0$ for all x .

In the second part of the paper we consider the
 function $g(x)$ defined by the equation
 $g(x) = \int_0^x g(t) dt + x$. It is shown that
 $g(x)$ is a linear function and that $g(x) = x$ for all x .

The third part of the paper is devoted to the study of
 the function $h(x)$ defined by the equation
 $h(x) = \int_0^x h(t) dt + x^2$. It is shown that
 $h(x)$ is a quadratic function and that $h(x) = x^2$ for all x .

References

1. J. L. Lagrange, *Leçons sur le calcul différentiel*, Paris, 1797.
 2. L. Euler, *Opera postuma*, Berlin, 1825.
 3. M. J. J. Stieltjes, *Leçons sur le calcul des variations*, Paris, 1895.
 4. H. A. Schwarz, *Leçons sur le calcul des variations*, Paris, 1901.
 5. G. Darboux, *Leçons sur le calcul des variations*, Paris, 1905.

serves as chairman, and the Secretaries of the Treasury and Commerce. It is the responsibility of this board to revise the loan policies as necessary, to meet the changing needs of small business concerns and the national economy as a whole.

There are two basic types of SBA business loans -- "participation" and "direct." In a participation loan, the SBA joins with a bank or other private lending institution in a loan to a small business concern. In a direct loan, the loan is made entirely and directly by the SBA to the borrower.

The amount which may be borrowed from the SBA depends upon the financial needs of the business and the intended purpose of the loan. The maximum amount, with two exceptions, which the Agency may have outstanding to any one borrower is \$350,000. This maximum applies to both the participation type and direct SBA loan.

The exceptions to the \$350,000 limitation are loans made to small retail, service and other concerns under a special plan -- the Limited Loan Participation Plan -- and loans made to corporations formed by "pools" or groups of small business concerns. The maximum loan under the former is limited to \$15,000 or 75 percent of the total amount of the loan, whichever is the lesser; the maximum pool loan is \$250,000 multiplied by the number of small firms which form and capitalize the corporation.

The SBA may participate in a loan on either an "immediate" or a "deferred" basis. It may purchase directly from or sell to a bank or private lender, a certain percentage of a loan or agree that at any time during a stated period it will purchase a percentage of the outstanding loan balance. The Agency cannot, however, make a direct loan if one is available from other sources, nor

can it enter into a loan on an immediate participation basis if arrangements can be made on a deferred basis.

SBA business loans are generally repayable in regular monthly installments. The maximum maturity is ten years, except that where a pool loan is made for the construction of facilities for a group of small business concerns, the loan may be repayable over a period up to twenty years.

The interest rate on the SBA's direct business loans, and the maximum interest rate on the SBA's share of a participation loan, is five and one-half percent. A private lending institution may set a higher rate on a participation loan, provided it is legal and the SBA is not called upon to purchase its share of the loan. If the private institution sets a rate lower than five and one-half percent, the interest rate on the SBA share of the loan is the same as that of the private lender, except that in no case may the SBA interest rate be less than five percent.

Investment Companies

The Small Business Investment Act of 1958⁴ authorized the SBA to license, regulate and provide financial assistance to privately-owned small business investment companies. The primary function of these companies is to provide long-term loans and equity capital to small-business concerns.

Small business investment companies formed to operate under this Act may be chartered under State law, or by the SBA in states where such companies cannot be chartered under law. In either instance, the SBA in determining whether to issue a permit must consider the need for small-business financing in

⁴U. S. Congress, Small Business Investment Act of 1958, Public Law 699, 85th Congress, 2nd Session, 1958.

the area where the proposed company is to operate, the character of the proposed management, and the expected volume of business.

To encourage the formation and growth of Small Business Investment Companies as a source of equity-type and long-term funds for small business, the SBA is authorized to make loans to an investment company, up to 50 percent of the company's paid-in capital and surplus.⁵

Fair Share of Purchases and Sales

The Congress indicated its intention in the Small Business Act concerning small business participation in government purchases and sales when it stated that:

. . . a fair proportion of the total purchases and contracts for property and services for the Government (including but not limited to contracts for maintenance, repair, and construction) be placed with small-business enterprises, and that a fair proportion of the total sales of Government property be made to such enterprises.⁶

The responsibility for carrying out the congressional policy on government purchases and sales is that of the SBA Administrator through the Deputy Administrator, Procurement and Technical Assistance. The principal ways the Agency carries out its responsibilities in this area are:

1. The SBA and the principal Government buying agencies cooperate in setting aside suitable Government purchases to be made exclusively from small business concerns.
2. The SBA and agencies which are disposing of Government property set aside a fair share for small business concerns.
3. Through its certificate of competency service, the SBA offers an appeal procedure for the small firm, small business production pool, or group

⁵Ibid.

⁶Small Business Act of 1958, op. cit., Sec. 2(a).

of small firms jointly engaged in research and development, whose bid on a Government purchase, sale or lease is rejected because of a question of financial or productive ability.

4. The SBA provides information to small firms on Government buying and selling methods, items being bought by the Government, property being disposed of by the Government, and related matters.

5. The Agency's regional offices maintain inventories or listings of the productive facilities of small firms in their areas, and use them to refer prime contract and subcontract opportunities to firms which can furnish the needed products or services.

6. The SBA's field offices provide a meeting point for Government prime contractors and other business concerns in need of sub-contracts and small firms which have the required facilities.

7. The SBA helps small business concerns to undertake research and development work, including work for the Government, and to obtain the benefits of research and development.⁷

Small Business Set Asides

The major Government purchasing agencies, in cooperation with the SBA, have developed programs under which proposed purchases are "set aside" for exclusive contract bidding by small business concerns. There must be reasonable expectation that a sufficient number of small firms will bid on the set aside purchase to result in a satisfactory, competitive price for the Government. All or part of a purchase or class of purchase may be set aside for small business participation.

⁷Small Business Administration, op. cit., pp. 17-18.

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The SBA has representatives in the larger purchasing offices and field activities of the Government agencies to review proposed purchases with agency personnel. Those purchases jointly agreed upon as suitable for award to small business are set aside. The SBA representatives call to the attention of small firms those purchases reserved for small business which the firms are capable of supplying and on which they may wish to bid. Set aside purchases for small business are also listed in a separate section of the United States Department of Commerce publication, Synopsis of U. S. Government Proposed Procurement, Sales and Contract Awards.⁸

Certificates of Competency

The Small Business Administration is authorized by law⁹ to certify that a small business concern, small business production pool, or group of small firms jointly engaged in research and development, has the necessary financial and productive ability to carry out the terms of a particular Government contract. This authority of the SBA offers an appeals procedure for the small firm or group of small firms whose low bid is rejected on a Government purchase for reasons of lack of financial ability or productive capacity. In such instances, the contracting officer must accept a certificate of competency issued by the SBA as conclusive and is prohibited from requiring the bidder to meet any other requirements as to financial ability or productive capacity.

The SBA issues certificates of competency only under the following conditions:

⁸This publication is issued daily and available at SBA and U. S. Dept. of Commerce offices, or may be obtained on a subscription basis.

⁹Small Business Act of 1958, op. cit., Sec. 8(b).

The first part of the report deals with the general situation of the country and the progress of the work done during the year. It is followed by a detailed account of the various projects undertaken and the results achieved. The report concludes with a summary of the work done and a list of the names of the persons who have assisted in the work.

Summary of the work done during the year
1. General situation of the country

The general situation of the country is satisfactory. The progress of the work done during the year has been satisfactory. The various projects undertaken have been completed and the results achieved are satisfactory. The work done during the year has been satisfactory. The names of the persons who have assisted in the work are listed below.

The work done during the year has been satisfactory. The names of the persons who have assisted in the work are listed below.

1. The small business concern or group of small firms applying for a certificate must be the lowest responsible bidder on an advertised procurement, or have submitted an otherwise acceptable proposal on a negotiated purchase.

2. The contracting officer responsible for letting the contract must declare the small firm or group of small firms as not competent in financial ability or productive capacity to carry out the particular contract.

3. The Agency determines, after a survey, that the small business concern or group of small firms is capable of satisfactorily performing the contract.¹⁰

Information on Government Buying

The SBA carries on a broad informational program to acquaint small business concerns with the Government's purchasing methods. As a part of this program, the SBA helps the small business owner to determine what he can supply to the Government by advising him of Government agencies which normally purchase particular products or services. Agency staff members also advise how and where the small business firm can obtain specifications for the products or services and the procedure for getting the business listed on bidders lists.

The small business owner may also be advised on how to resolve difficulties which arise in contracting matters or the method of obtaining financing to carry out or participate in Government contracts.

As another service, the SBA makes available to small firms a number of helpful publications on selling to the Government. For example, one of these publications is the U. S. Government Purchasing and Specifications Directory,¹¹

¹⁰Small Business Administration, op. cit., p. 19.

¹¹The directory is obtained through the Superintendent of Documents, Government Printing Office, Washington 25, D. C. or from field offices of the U. S. Department of Commerce.

The first part of the report deals with the general situation of the country and the position of the various departments. It then goes on to discuss the work done during the year and the results achieved. The report concludes with a summary of the main points and a list of recommendations.

Yours faithfully,

John Doe, Secretary

The following is a list of the names of the members of the committee who have been appointed to deal with the various matters mentioned in the report. It is hoped that this will be of assistance to you in your work.

The committee has also decided to hold a meeting on the 15th of next month to discuss the progress of the work done since the last meeting. It is hoped that you will be able to attend.

I am sure that you will find the information contained in this report of interest and value. If you have any questions or require further information, please do not hesitate to contact me.

Yours faithfully,

The Secretary

a comprehensive guide to the Government's purchasing activities and specifications for products and services purchased by the Government.

Facilities Inventory

The regional and larger branch offices of the SBA compile a record or inventory of the productive facilities of small business concerns in its area. This record serves two purposes: (1) provides data on small firms for use in the event of defense mobilization; (2) enables the SBA to advise the listed firms of prime contract and subcontract opportunities in the area.

Research and Development Assistance

The SBA actively assists small business concerns in obtaining Government contracts for research and development. In addition, the Agency is also instrumental in assuring that these concerns gain the benefits of research and development performed under Government contract or at Government expense.

Small firms are encouraged by the SBA to undertake joint programs of research and development and the Agency is authorized to approve a proposed group operation after consultation with the Attorney General and the Chairman of the Federal Trade Commission. Approval of these ventures exempts the joint program from prosecution under the antitrust laws and the Federal Trade Commission Act.

Subcontracting Assistance

The SBA considers it particularly important that small business firms get a share of the subcontracts awarded by prime contractors of Government contracts. This particular phase of small firm participation in government contracts has taken on added importance in recent years due to the increased

The following information is provided for your information and is not intended to constitute an offer of any financial product or service.

Investment Objective

The primary objective of this fund is to provide long-term capital appreciation. The fund will invest primarily in common stocks of U.S. companies. The fund may also invest in convertible preferred stocks, bonds, and other securities. The fund's investments will be managed to meet its objective of providing long-term capital appreciation.

Investment Strategy

The fund's investment strategy is to invest in common stocks of U.S. companies. The fund will invest primarily in common stocks of U.S. companies. The fund may also invest in convertible preferred stocks, bonds, and other securities. The fund's investments will be managed to meet its objective of providing long-term capital appreciation. The fund will invest in common stocks of U.S. companies. The fund may also invest in convertible preferred stocks, bonds, and other securities. The fund's investments will be managed to meet its objective of providing long-term capital appreciation.

Investment Risk

The fund's investments are subject to various risks, including market risk, credit risk, and interest rate risk. The fund's investments may also be subject to other risks, including the risk of loss of principal. The fund's investments will be managed to meet its objective of providing long-term capital appreciation.

purchase of large and complex military items in defense procurements. A vigorous subcontracting program offers the means for small business to share in these purchases.

The field offices of the SBA serve as a central point through which prime contractors and small subcontractors are brought together. By means of the facilities inventory, SBA procurement specialists direct prime contractors to small firms which have needed facilities and skills. In like manner, the small firm which seeks subcontract assistance through the SBA is directed to prime contractors who have a need for small firm assistance.

The subcontracting assistance program of the SBA is coordinated with the Department of Defense. The large firms receiving military prime contracts of more than one million dollars are required to designate a small business liaison officer with responsibility for subcontracting work to small firms. SBA field offices offer assistance to the liaison officers in selecting small firms with facilities suitable for subcontract participation.

Management Assistance and Publications

The SBA assists small business concerns with their management problems by helping the owners and managers in the use of new and improved business practices. Staff specialists in the field offices are available to assist in the problems of established businesses and also provide their services to those contemplating the undertaking of a new enterprise. In addition to this personal service, the SBA has established business reference libraries in its Washington, D. C. and each of the regional offices. These libraries contain textbooks, Government and private publications and papers in the management field, and are available for reference use by businessmen.

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The SBA, in cooperation with a number of educational institutions, has established a program to assist owners and managers of small businesses in broadening and strengthening their management abilities and techniques. Courses are offered by the participating institutions in the administrative management field -- planning, organizing, staffing, directing, and controlling -- as distinguished from day-to-day operational subjects.

A series of management and technical booklets and leaflets are offered to the operators of small business firms by the SBA and are distributed free or at a very nominal price to the businessman. There are a number of these publications available but the most significant ones are:

1. Management Aid for Small Manufacturers. A series designed to supply information on sound business administration in small plants.
2. Small Marketers Aids. These leaflets are intended for owners and operators of small retail, wholesale and service enterprises.
3. Technical Aids for Small Manufacturers. These aids are for the use of operators of small plants and discuss significant developments in materials, equipment and maintenance.
4. Small Business Management Series. These booklets cover important management subjects by recognized authorities in the fields covered.
5. Starting and Managing Series. This series, the most recent published, provides information on starting and managing different types of small business concerns.
6. Small Business Bulletins. These leaflets provide reference sources for prospective or established small business owners and managers in a number of appropriate subjects.

The SBA has indicated that there is a great need, among small business owners and managers and those who serve small business, for additional knowledge concerning the successful operation of these businesses. In order to attain some fulfillment of this objective beyond the extent to which the Agency can and does participate itself, there is a program arranged with colleges, universities and state agencies. These institutions are financed by the SBA to participate in research studies concerning the financing and operation of small business enterprises. The Agency finances selected projects in this area up to a maximum of \$40,000 per year in each of the states.

CHAPTER III

THE SMALL BUSINESS PROGRAM IN THE DEPARTMENT OF DEFENSE

It is the policy of the Department of Defense to place a fair proportion of its total purchases and contracts for supplies and services (including but not limited to contracts for maintenance, repair, and construction) with small business concerns.

Each Military Department shall implement this policy by affording small business concerns an equitable opportunity to compete for prime contracts . . . and subcontracts within their capabilities.¹

The Department of Defense, like other departments of the federal government, is subject to the congressional mandate that a "fair proportion" of its total procurement be placed with small business concerns. To implement this policy, the Defense Department, in cooperation with the Small Business Administration, has established an organization within the military procurement activities to insure that small business is offered the opportunity to participate in the procurement programs.

Definition of Small Business

For those military procurements on which preferential treatment of bids from small business concerns are authorized by the Department of Defense, a bidder must conform to the small business definition in order to receive preference. Congress has given the Small Business Administration the sole

¹Armed Services Procurement Regulation, Sec. 1-702, p. 141 and 1-707.1, p. 153 (Department of Defense, Washington, D. C.).

UNITED STATES DEPARTMENT OF JUSTICE

THE UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
WASHINGTON, D. C. 20530
MAY 15 1964

MEMORANDUM FOR THE ATTORNEY GENERAL

RE: [Illegible text]

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authority for the determination as to what concerns shall be considered small business.

It is mandatory for all procurement agencies in the Department of Defense to use the following definition of small business:

General Definition. A small business concern is a concern that (i) is not dominant in its field of operations and, with its affiliates, employs fewer than 500 employees; or (ii) is certified as a small business concern by SBA.²

Dominance in field of operation. A concern is not dominant in its field of operation when it does not exercise a controlling or major influence in an area of business activity.

Affiliates. Business concerns are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other, or (ii) a third party controls or has the power to control both.

Number of employees. In connection with the determination of small business status, except as SBA otherwise determines in a particular industry or part thereof, number of employees means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the 15th of the 3rd month in each calendar quarter for the preceding four quarters.

Dealer as small business concern. A dealer who submits bids or offers in its own name, but who proposes to furnish a product not manufactured by itself, is considered to be a small business concern, when, in addition to meeting the general definition, it agrees to furnish in the performance of the contract, products manufactured or produced in the United States, its Territories or possessions by small business concerns.

Small business certificate. A small business certificate is a certificate issued by SBA certifying that the holder of the certificate is a small business concern for the purpose of Government procurement and in accordance with the terms of the certificate.³

Contracting officers must accept at face value a small business certificate issued by the SBA, or a written statement by the bidder that it is

²Number of employees has recently been increased by 25% for those firms located in declared labor surplus areas.

³How to Sell to Agencies Within the Department of Defense, March, 1958. (Department of Defense, Washington, D. C.).

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a small business concern in accordance with the general definition. In the event there is question concerning the authenticity of the bidder's status, the contracting officer may refer the matter to the SBA for ruling, and the resulting findings are accepted as final.

Organization

At the Departmental level, a Director for Small Business for the Department of Defense has been established. It is the primary duty of this official to advise the Assistant Secretary of Defense (Installations and Logistics) on matters relating to the establishment, implementation, and execution of an appropriate Small Business Program within the Department of Defense. It is also the responsibility of the Director to conduct or to authorize negotiations with the Small Business Administration and other agencies, in matters concerning small business policy and programs. The duties of the Director are of an advisory and policy-making nature and do not involve actual procurement operations.

Each Military Department has established an Office of Small Business and designated a Director, Small Business Program. The Director devotes his efforts exclusively to small business matters and acts in an advisory capacity to the Secretary of the Department. He is also responsible for implementing the Department of Defense Small Business Program within his Department, and is a representative in negotiations with other Military Departments or Government agencies on small business matters. The Directors are primarily interested in policy, implementation, and direction within their Departments and do not normally become involved in specific procurement operations except in an advisory capacity.

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The Military Departments have appointed individuals in each of the principal procurement agencies and offices who devote their time exclusively to assisting small business concerns. These individuals are designated as Small Business Specialists. The Small Business Specialists are responsible for implementing and monitoring the small business policies and programs of the Department of Defense and the Military Departments. Each of the Military Departments has specific instructions on the duties and functions of its Small Business Specialists and while these instructions vary according to Department, the general responsibilities and duties of these individuals are summarized as follows:

1. Screen all proposed procurements prior to issuance of invitations for bids or requests for proposals to insure that small business is receiving adequate consideration in connection with the award of contracts.
2. Make recommendations to the contracting officer with respect to the competency, capacity, and credit of specific small business concerns with reference to specific procurements.
3. Make appropriate recommendations in connection with the issuance of certificates of necessity, defense order priorities and allocation ratings, financing, furnishing of government equipment, inspections, payments, and other measures to assist small business concerns in the conversion of their plants for defense production.
4. Maintain liaison with contracting officers to insure that requests by small concerns for financial assistance, available under existing regulations are not treated as a handicap in the award of formally advertised or negotiated contracts.

5. Observe the effect of current procurement policies on small business participation in procurement programs and recommend to the appropriate authority any desirable changes or new policies.

6. Obtain information concerning subcontracting policies and procedures of prime contractors in order to discover and report to the appropriate authority any practices that tend to discriminate against small business concerns or discourage them from taking an interest in subcontracting.

7. Maintain liaison and exchange information with local offices of other Government agencies for the purpose of rendering maximum assistance to small business concerns.

8. Furnish available data concerning small business suppliers, their facilities, and capabilities; and otherwise assist Federal, State, and authorized private agencies, if requested, in developing an inventory of the productive facilities of small business concerns.

9. Review any action within his activity involving: (1) a defense prime contractor's acquisition of industrial facilities through a proposed defense contract, (2) a request from a business concern after award for the furnishing of Government-owned facilities, or (3) a request for accelerated amortization for contractor-owned facilities. The Small Business Specialists must recommend to the head of his procuring activity disapproval of such actions when adequate facilities for defense purposes are known to exist within the small business community and are available to the prime contractor involved on a subcontract basis.

10. Provide a focal point to which small business concerns may direct inquiries concerning participation in the procurement programs or assistance in the performance of contracts.

THE HISTORY OF THE UNITED STATES OF AMERICA

CHAPTER I. THE DISCOVERY OF AMERICA BY CHRISTOPHER COLUMBUS

IN THE YEAR 1492, CHRISTOPHER COLUMBUS, AN ITALIAN

SEAFARER, WAS SENT BY KING ISABELLA OF SPAIN

TO DISCOVER A WESTERN PASSAGE TO THE EAST INDIES

BY SAILING WEST FROM EUROPE. HE WAS ACCOMPANIED

BY THREE SHIPS, THE SANTA MARÍA, THE PINTA, AND THE NIÑA

ON SEPTEMBER 8, 1492, HE SET SAIL FROM PALERMO

IN THE SANTA MARÍA, AND AFTER A LONG AND DANGEROUS

TRAVEL, HE REACHED THE ISLANDS OF THE CARIBBEAN

ON OCTOBER 12, 1492. HE WAS THE FIRST EUROPEAN

TO SET FOOT ON THE CONTINENT OF NORTH AMERICA

AT THE ISLAND OF SAN SALVADOR. HE FOUND THE

INDIANS WHO LIVED THERE TO BE A BRIBER

AND HE TOOK THEM TO HIS SHIP. HE WAS

IMPRESSED BY THEIR COURAGE AND BRAVERY

AND HE DECIDED TO RETURN TO SPAIN WITH

SOME OF THEM. HE WAS ACCOMPANIED BY

THE INDIAN CHIEF, CUBAYAN, WHO WAS

THE FIRST NATIVE AMERICAN TO BE TAKEN

TO EUROPE. HE DIED OF DYSENTERY

ON JANUARY 6, 1493, IN THE PORT OF

BARCELONA

IN SPAIN. HIS DISCOVERY OPENED UP

THE WAY FOR THE EUROPEAN CONQUEST OF

THE WESTERN HEMISPHERE.

11. Institute a program to discover small business sources capable of participating in procurements to meet current and anticipated requirements.

12. Initiate action where appropriate to accomplish full cooperation of the purchasing activities with the Governor's Commission on Small Business of each state in implementing a program to assist small business and to broaden the industrial base of suppliers.

Various agencies of the Government have also established certain boards and committees to further the aims of the Congress in providing assistance to small business concerns. The President has established a President's Cabinet Committee on Small Business which insures that the problems and needs of small business are attended to at the highest level in the executive branch.

The Department of Defense has established a committee known as the Department of Defense Small Business Advisory Committee. This committee is composed of representatives of large and small business firms in industry and functions independently of the Secretary of Defense. The purpose of the committee is to insure independent and objective views and recommendations from the business community with which the Department of Defense conducts its procurement operations. The committee meets quarterly and conducts a subcommittee-type seminar to discuss small business problems and makes recommendations to the Department of Defense on the small business program.

Each of the Military Departments has established a committee or council to assist and counsel its Small Business Advisors. These committees are made up of the senior Small Business Specialists from the major procurement subdivisions in each Department and they take an active part in determining policies and programs within their respective departments.

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The organizational position of the Small Business Specialists and the Small Business Director in each department differs to some degree, depending on the department concerned and the differences in size and mission of the procurement offices within the departments. At the Military Department level, the Small Business Director generally has direct responsibility and reports to the head of the department. In the Bureaus of the Navy Department, the Technical Services of the Army and the District Offices, Depots, and Headquarters of the Air Material Command of the Air Force, the Small Business Specialists, regardless of their position on the organization chart, must be close to and operate with or through the procurement offices in order to carry out their assigned responsibilities.

Programs

In order to carry out its responsibilities under the Small Business Act of 1958,⁴ the Department of Defense, like the Small Business Administration, has adopted certain policies and developed programs designed to provide that a fair proportion of purchases and contracts are placed with small business enterprises. Some of these programs are similar to those of the SBA and, for the most part, were developed and are operated in cooperation with that agency. In addition, the Military Departments have developed internal programs to facilitate the operation of their respective small business programs.

Set-Aside Program

The set-aside program in the Department of Defense is a cooperative effort jointly entered into by the responsible procurement agency and the Small

⁴Supra., p. 6.

Business Administration.⁵ It is usually referred to in procurement circles as the joint-determination program; similarly, set-asides are often referred to as joint-determinations.⁶ This program allows, and in some instances requires, that contracting officers restrict (set-aside) certain procurements, or portions thereof, for exclusive small business participation.

The total set-asides are used only where there is a reasonable expectation that bids or proposals can be obtained from a sufficient number of small business concerns to insure that awards can be made at reasonable prices without detriment to the Government. If sufficient competition cannot be obtained to justify a total set-aside, the procurement may be partially set-aside if: (1) procurement quantities can be divided into two or more economical production runs, and (2) two or more small business sources are known or believed to have the technical competency and the productive capacity to supply the portion of the procurement being set aside.

The procedures followed by procurement offices within the Department of Defense make the Small Business Specialists responsible for screening all procurement requests for possible set-asides. The decision to set-aside a procurement for small business must be made before the procurement is initiated by the procurement officer, that is, prior to the time the Invitation for Bids or the Request for Proposals are sent to prospective bidders. In the major procurement offices, a representative of the SBA also screens all proposed procurements and recommends those which are suitable for set-aside for exclusive

⁵Supra., p. 20.

⁶The Armed Services Procurement Regulation directs that all press releases, reports, or other references to the set-aside program refer to it as a Joint SBA-Defense Program.

The first part of the document is a letter from the Secretary of the State to the Governor, dated the 1st day of January, 1862. The letter is addressed to the Governor and is signed by the Secretary of the State.

The second part of the document is a report from the Secretary of the State to the Governor, dated the 1st day of January, 1862. The report is addressed to the Governor and is signed by the Secretary of the State.

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or partial participation by small business concerns. A written request is made by the SBA representative to the contracting officer requesting that the procurement be restricted to small business contractors and the contracting officer either approves or disapproves the request in writing. The SBA representative may appeal any disapproval to the senior officer of the purchasing activity, and if the matter is not resolved at this level, then the Administrator of the Small Business Administration may appeal to the Secretary of the Military Department.

If the contracting officer feels that the bids or proposals received on a set-aside procurement are unreasonable, he may withdraw the set-aside provisions. The withdrawal is sent to the SBA representative for his approval or disapproval. If he disapproves, the same appeal procedure as for rejecting a set-aside request is used.

In procurements involving total set-asides for small business, the contracting officer inserts in each Invitation for Bids or Request for Proposals substantially the following notice:

Bids or proposals under this procurement are solicited from small business concerns only and this procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the contracting officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of government procurement is placed with small business concerns. . . .⁷

In procurement actions where a portion of a procurement is to be set-aside for small business, the procurement is divided into a set-aside portion and a non-set-aside portion, each of which must be not less than an economic

⁷Armed Services Procurement Regulation, op. cit., Sec. 1-706.5(c).

production run or reasonable lot. Insofar as practical, the set-aside portion is such as to make maximum use of small business capacity. In procurements involving partial set-asides, the Invitations for Bids and the Request for Proposals contain substantially the following notice:

A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more small business concerns. Negotiations for award of this set-aside portion will be conducted only with responsible small business concerns who have submitted responsive bids on the non-set-aside portion. Negotiations shall be conducted with such small business concerns in the order of their bids on the non-set-aside portion beginning with the lowest responsive bid. . . .⁸

The joint set-aside program is one of the oldest for small business participation in procurement of the Department of Defense. This program, in cooperation with the Small Business Administration, dates back to 1954; during that year, the volume of proposed procurements set-aside by joint determination for exclusive participation of small business concerns totaled \$247,600,000. In comparison, set-asides in the Department of Defense agreed to in fiscal year 1960 totaled \$974,438,204, and awards pursuant to these set-asides totaled \$781,231,635. In addition, the Department of Defense has extended the set-aside program to include construction procurement which should substantially increase the annual dollar volume of the program.⁹

Certificates of Competency

The Small Business Administration has authority to certify the capacity and credit competency of any small business concern.¹⁰ Capacity in this

⁸Armed Services Procurement Regulation, op. cit., Sec. 1-706.6(c).

⁹A Report on the Small Business Program of the Department of Defense, August, 1960, p. 9. (Department of Defense, Washington, D. C.).

¹⁰Supra., p. 21.

instance, means the overall ability of a prospective small business contractor to meet quality, quantity, and time requirements of a proposed contract. Contracting officers in military procurement activities must accept SBA certificates of competency as conclusive of a prospective contractor's responsibility as to capacity and credit. In those instances where contracting officers have substantial doubt as to a firm's ability to perform and the SBA has issued a certificate of competency, the matter must be referred by the contracting activity to the departmental level for discussion with the SBA. In any event, whether or not the SBA reconsiders and withdraws the certificate, the final decision of this agency is considered as conclusive.

In those instances when a small business concern submits an otherwise acceptable bid or proposal but is found to be nonresponsible as to capacity and credit, the military contracting officer must, prior to rejecting the bid, notify the SBA of the circumstances. The SBA may investigate the situation and issue a certificate of competency, or concur in the findings that the firm is nonresponsible. This regulation is binding on all military contracting officers except in the following circumstances:

1. The award must be made without delay and the contracting officer certifies the urgency in writing.
2. The proposed award does not exceed \$2,500.
3. This procedure is optional at the discretion of the contracting officer for proposed awards of more than \$2,500 but less than \$10,000.
4. This procedure does not apply where the contracting officer finds the small business concern nonresponsible for a reason other than lack of capacity or credit.

The first part of the report deals with the general situation of the country and the progress of the work done during the year. It is followed by a detailed account of the various projects and schemes which have been carried out. The report then goes on to discuss the financial position of the organization and the results of the various committees and sub-committees. Finally, it concludes with a summary of the work done and a list of the members of the organization.

The report is divided into several sections, each dealing with a different aspect of the organization's work. The first section deals with the general situation of the country and the progress of the work done during the year. The second section deals with the various projects and schemes which have been carried out. The third section deals with the financial position of the organization and the results of the various committees and sub-committees. The fourth section deals with the work done by the various committees and sub-committees. The fifth section deals with the summary of the work done and the list of the members of the organization.

The report is a valuable document which provides a detailed account of the work done by the organization during the year. It is a must-read for all those who are interested in the work of the organization.

REPORT ON THE WORK OF THE ORGANIZATION DURING THE YEAR 1950

To assist SBA in determining the capacity and credit of small business concerns involved in a particular procurement, the military purchasing activity makes available for review all pertinent data, including technical and financial information on the small business concern involved. In procurements where the highest competence obtainable or the best scientific approach is needed, such as in certain negotiated procurements of research and development, highly complex equipment, or personal or professional services, the certificate of competency procedure is not applicable to the selection of the source offering the highest competence obtainable or the best scientific approach. If a small business concern has been selected on the basis of the highest competence obtainable or best scientific approach and, prior to award, the contracting officer determines that the concern is not responsible because of lack of capacity or credit, the certificate of competency procedure is applicable.

Subcontracting Program

The Department of Defense subcontracting program is designed to increase the amount of procurement dollars going to small business concerns through prime contractors' subcontracting activities. There are, however, certain major items of defense procurement, such as aircraft, ships and combat vehicles, which generally are unsuited to the production facilities of small firms. This should not, contends the Defense Department, exclude small business from participation in these procurement programs and it is general policy to encourage the small firms to participate to the maximum as subcontractors and suppliers.

To insure that appropriate consideration is given to small business concerns as potential subcontractors, all fixed-price and cost-reimbursement type defense contracts in excess of \$5,000 contain a contractual clause requiring the

prime contractor to make the maximum practical utilization of small business concerns as subcontractors. In addition, contracts frequently include clauses requiring the prime contractor to furnish information and reports on the total amount of subcontracting performed. This information, when collated with other information, indicates the extent of participation of small business in the defense procurement program. Another means employed by procurement agencies in eliciting such information is to require the prospective contractor during the course of contract negotiations, to furnish estimated figures concerning small business subcontracting.

The Armed Services Procurement Regulation requires that all contracts in excess of \$1,000,000, which offer substantial subcontracting possibilities, contain the "Defense Subcontracting Small Business Program" clause. Each contractor having a prime contract which contains this clause is required to establish and conduct a program to include the following:

1. Designate a small business liaison officer who maintains liaison with the purchasing activity and the SBA in small business matters.
2. Assure that small business concerns have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules as to facilitate small business participation.
3. Maintain records showing whether each prospective subcontractor is a small business concern and that procedures have been adopted to comply with the Defense Subcontracting Small Business Program clause.
4. Include in all subcontracts a clause encouraging small business participation.
5. Require subcontractors having subcontracts in excess of \$1,000,000 to establish and conduct a Defense Subcontracting Small Business Program.
6. Submit reports on the results of the program twice yearly on DD form 1140.¹¹

In order to achieve maximum compliance, once a contractor has established a Defense Subcontracting Small Business Program, it is assigned to an

¹¹Armed Services Procurement Regulations, op. cit., Sec. 1-707.3.

The first part of the report is devoted to a general survey of the situation in the country. It is followed by a detailed account of the work done during the year. The report then discusses the results of the work and the conclusions reached. Finally, it contains a list of references and a list of names of the persons who have assisted in the work.

The second part of the report is devoted to a detailed account of the work done during the year. It is followed by a detailed account of the results of the work and the conclusions reached. Finally, it contains a list of references and a list of names of the persons who have assisted in the work.

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appropriate defense procuring activity which is responsible for evaluating the adequacy of the program. An initial survey is made of the program, usually by a Small Business Specialist, and a report of adequacy made to the responsible authorities. In addition, periodic re-evaluations and inspections are made by a representative of the responsible activity, often in cooperation with a representative of the SBA.

Procurement Information Program

The Department of Defense has established Procurement Information Centers in all major procurement offices and activities throughout the country. These centers are staffed with personnel who are familiar with the procurement procedures of the offices they represent, and each has available the latest information on procurement procedures and procurements in progress. The Centers serve a useful and worthwhile purpose for the immediate local area by providing information and counsel on all local procurements and in assisting local small business concerns which desire to bid on the smaller procurements. A limitation of this type of assistance is that the Centers normally have available only information on procurements for activities within the immediate area or for the activity at which the Center is located.

The Department of Defense and the Military Departments publish directories of their Small Business Specialists who are available for counsel and assistance to the small business concerns which are or may be interested in participating in defense procurements. In addition, the Department of Defense and particularly the Military Departments, publish and make available to the small business concerns a number of pamphlets covering both general and specific information on defense procurement matters. This service includes such

The first part of the document is a letter from the Secretary of the State to the Governor, dated 18th March 1871. The letter is addressed to the Governor and is signed by the Secretary of the State. The letter is dated 18th March 1871 and is signed by the Secretary of the State.

The second part of the document is a letter from the Governor to the Secretary of the State, dated 19th March 1871. The letter is addressed to the Secretary of the State and is signed by the Governor. The letter is dated 19th March 1871 and is signed by the Governor.

publications as:

1. How to Sell to Agencies Within the Department of Defense.
2. Small Business and the Air Force.
3. Selling to Navy Prime Contractors.
4. Contractors Guide on Research and Development in the U. S. Army.

Another means of disseminating information on proposed procurements by the defense activities is through public posting. This method usually takes the form of posting a copy of each procurement solicitation in a public place where it is available for inspection by anyone who cares to read it.

In the matter of general procurement information of particular interest to the small business concerns, while the Department of Defense and the military procurement activities exert considerable effort to keep these firms advised, it is through the vigorous efforts of the SBA that the most helpful and pertinent information is disseminated.¹² To this end, however, the Department of Defense and the Military Departments extend considerable cooperative effort.

Procurement Clinics and Technological Exhibits

This program furnishes assistance to small business concerns by conducting clinics and technological exhibits in local areas. The clinics and exhibits are coordinated with the SBA and local groups such as the Chamber of Commerce and other industrial or civic groups interested in bringing Department of Defense contracts into a community. Small Business Specialists, representatives of the SBA, major prime contractors and local interests are available at the clinics and exhibits to explain the how, when, where, and what of Department of Defense procurement. The Military Departments set up elaborate

¹²Supra., pp. 24-25.

displays of the various items procured by each major procurement office in the Department of Defense and furnish procurement specialists, and in some cases engineers and technicians, to discuss with businessmen their possible participation in defense procurement. Major prime contractors also furnish procurement and technical personnel to discuss their subcontracting programs, procurement programs, and methods of conducting their business with interested small business concerns. The major prime contractors frequently install exhibits of the items they furnish to the Government and identify the components and items that they desire to secure by subcontracting.

CHAPTER IV

THE AREAS OF CONTROVERSY

It is intended in this chapter to present some of those issues or concepts in defense procurement that have created concern, particularly as they affect the small business firms. None of the subjects discussed pertain exclusively to small industries, but their impact on this segment of our industrial complex has tended to create the loudest noises. Further, it is not intended to defend the objectives or positions of the parties involved, be it the small businessman, the Congress or the Department of Defense.

Research and Development

It is estimated that agencies of the United States Government are currently paying for almost two-thirds of all research and development work undertaken in this country. Within this total expenditure, which in fiscal year 1960, amounted to over six and one-half billion dollars, the Department of Defense is by far the biggest spender of research funds and its programs the most crucial in their economic effects.

The Military Departments, in fiscal year 1960, spent eighty-five percent of all Federal funds which were spent for research and development, the total expenditures approximating five and one-half billions of dollars. The majority of these funds went to large, private business firms; the small firms receiving only three and four-tenths percent of the total.

IN WITNESS

WHEREOF

It is hereby certified that the foregoing is a true and correct copy of the original as the same appears from the records of the office of the Secretary of the State of New York.

Attest:

Secretary of the State

Witness my hand and the seal of the office of the Secretary of the State of New York at Albany, this _____ day of _____, 19____.

The Department of Defense has long been a target of the Congress and the small businessman for its alleged subsidy of large firms by the oft-called exclusive awarding of research contracts to the more prominent businesses. The Select Committee on Small Business, U. S. House of Representatives, has repeatedly expressed concern about the long-range implications of the military research and development procurement program. The feelings of the Congress in this regard are summed up in very definite terms in the words of the Honorable Wright Patman, Chairman of the United States House of Representatives Select Committee on Small Business, when he addressed the Honorable Charles E. Wilson, Secretary of Defense:

I am not asking you to subsidize small business, or to subsidize any business. But I am asking you to give thoughtful consideration to the consequences which will surely follow if you continue passing out the huge research and development funds, which have been placed at your disposal, exclusively to big business. In the technological revolution which American industry is presently undergoing, Government research and development expenditures may well prove to be the kiss of death for independent small business!

The excluded position of the small business firm in research and development programs is not exclusively one held by the small business world or the Congress. One of the findings of the President's Cabinet Committee on Small Business,² as expressed in its progress report to President Eisenhower, dated August 7, 1956, has deep implications for the long-range future of many small business enterprises in the United States. The Committee reported:

¹U. S. House of Representatives, Final Report of the Select Committee on Small Business, 84th Congress, 2nd Session, 1957, p. 101. (Government Printing Office, Washington, D. C.).

²The Committee comprises the Secretaries of Defense, Commerce, and Labor; the Administrator of the Small Business Administration; the Administrator of the Housing and Home Finance Agency; the Director of the Office of Defense Mobilization; and the Chairman of the Council of Economic Advisers.

The Commission on the Status of Women, in its report to the General Assembly, has stated that the Commission has been established to study the status of women in all countries and to make recommendations for their improvement. The Commission has held several sessions and has received many suggestions from governments and individuals. It has also conducted extensive research into the various problems which women face in different parts of the world. The Commission has found that women are often discriminated against in many countries, particularly in the areas of employment, pay, and education. It has also found that women are often over-represented in the areas of health and social services. The Commission has therefore recommended that governments should take steps to improve the status of women in all these areas. It has also recommended that women should be encouraged to participate more fully in the political and social life of their countries.

The Commission has also found that women are often discriminated against in the area of employment. In many countries, women are paid less than men for the same work. This is particularly true in the public sector, where women are often employed in lower-paying jobs. The Commission has therefore recommended that governments should take steps to ensure that women are paid the same as men for the same work. It has also recommended that governments should take steps to ensure that women are not discriminated against in the area of employment opportunities. This means that women should be given the same opportunities as men to enter all professions and occupations. The Commission has also found that women are often discriminated against in the area of education. In many countries, women are often denied access to higher education. This is particularly true in the area of technical and scientific education. The Commission has therefore recommended that governments should take steps to ensure that women have the same access to education as men. It has also recommended that governments should take steps to ensure that women are not discriminated against in the area of educational opportunities. This means that women should be given the same opportunities as men to attend all schools and universities.

The Commission has also found that women are often discriminated against in the area of health and social services. In many countries, women are often denied access to these services. This is particularly true in the area of reproductive health services, where women are often denied access to contraception and abortion. The Commission has therefore recommended that governments should take steps to ensure that women have access to these services. It has also recommended that governments should take steps to ensure that women are not discriminated against in the area of health and social services. This means that women should be given the same opportunities as men to receive all health and social services. The Commission has also found that women are often discriminated against in the area of political and social life. In many countries, women are often denied the right to participate in the political and social life of their countries. This is particularly true in the area of voting and running for office. The Commission has therefore recommended that governments should take steps to ensure that women have the same opportunities as men to participate in the political and social life of their countries. It has also recommended that governments should take steps to ensure that women are not discriminated against in the area of political and social life. This means that women should be given the same opportunities as men to vote and run for office.

The Commission has also found that women are often discriminated against in the area of pay. In many countries, women are often paid less than men for the same work. This is particularly true in the public sector, where women are often employed in lower-paying jobs. The Commission has therefore recommended that governments should take steps to ensure that women are paid the same as men for the same work. It has also recommended that governments should take steps to ensure that women are not discriminated against in the area of pay. This means that women should be given the same opportunities as men to receive the same pay for the same work. The Commission has also found that women are often discriminated against in the area of employment opportunities. In many countries, women are often denied access to all professions and occupations. This is particularly true in the area of technical and scientific education. The Commission has therefore recommended that governments should take steps to ensure that women have the same access to employment opportunities as men. It has also recommended that governments should take steps to ensure that women are not discriminated against in the area of employment opportunities. This means that women should be given the same opportunities as men to enter all professions and occupations.

. . . the pace of technological change has been accelerating in recent years. Large and well-financed firms have been accustomed to undertaking costly research and development programs, which enable them to set the pace or meet the pace of industrial innovation and investment. Small business enterprises cannot normally do this.³

The programs of research and development in the Defense Department have reached an all-time high in importance never before realized in military history. The world we live in today makes it mandatory that our military forces possess and utilize an ever-increasing knowledge in every field of science and technology.

The Department of Defense has a certain amount of "inhouse" research and development capability, but it is inadequate for the magnitude of the research and development effort required today. The Honorable Perkins McGuire, former Assistant Secretary of Defense (Supply and Logistics)⁴ said before the Procurement Subcommittee of the Senate Committee on Armed Forces:

It is in the interest both of the national defense and of the national economy that research and development sources be expanded, including greater participation by competent small business firms. Thus, we require unified effort by technical personnel, contracting officers, and small business specialists, to seek out new sources with competence in this area and to utilize their capabilities to the maximum practicable extent in our research and development program.⁵

It is Department of Defense policy that research and development contracts be awarded to those organizations, large or small, industrial or institutional, which have the highest competence in the specific branch of science or technology required for successful conduct of the work involved.

³Cabinet Committee on Small Business, Progress Report 2 (1956), p. 7. (Government Printing Office, Washington, D. C.).

⁴Supra., note 9, p. 7.

⁵Department of Defense Procurement Report, op. cit., p. 27.

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Cost considerations must necessarily be of secondary importance, since the most important factor in making the award is the comparative technical abilities of the proposed contractors. The reason that technical abilities are considered primary to cost factors is that in cost-reimbursement-type contracts, which must usually be used for research and development work, advance estimates of cost are not always valid indicators of final, actual costs. It is the opinion of the Department that this policy of awarding to the most technically competent sources results in the most expeditious accomplishment and lower overall cost to the Government.

In determining which prospective contractor possesses the highest technical competence, procurement agencies of the Department of Defense carefully consider the following factors:

1. Availability of experienced scientific and technical personnel;
2. Availability, from any source, of suitable test or other facilities;
3. Experience or pertinent novel ideas in the specific branch of science or technology involved in the proposed contract;
4. Willingness to devote these resources to the proposed work with appropriate diligence.⁶

It is evident from its magnitude and complexity that the small business concern has little or no place in defense prime contracting for research and development.⁷ It appears logical in approaching this problem, that it must be recognized there is no "cure-all" by which small business can be assured of maximum participation in these contracts. Small business by definition does not,

⁶U. S. Senate, Procurement Subcommittee Hearings of the Committee on Armed Services, 86th Congress, 2nd Session, 1960, p. 94. (Government Printing Office, Washington, D. C.).

⁷This would, of course, not necessarily be applicable to small research and development companies.

in this advanced technological age, have the resources and facilities to undertake the majority of defense research and development programs.

The conduct of research, with increasing frequency, involves the establishment of a research organization or a team consisting of high-priced and highly specialized talent along with complex and costly facilities, requiring heavy initial capital outlays. More important, since research and development by nature is an overhead rather than a direct expense, a large income from sales is frequently a requisite justification for the conduct of research and development by a manufacturing establishment. Either or both of these factors, for the most part, eliminate the majority of small firms from undertaking business in the area of research and development.

Criticism by the small business firms with respect to the inadequacy of advance notice of defense procurement of supplies and services has been prevalent for many years. Such complaints, whether justified or not, are still heard frequently and assume particular difficulty and complexity with respect to the purchase of research and development work. A considerable portion of such work is so abstract or exploratory in nature as to render impossible the advertising for bids on a competitive basis.

The Department of Defense, in procuring research and development, frequently is in a position of being able only to state a problem. The development of "specifications," so to speak, is dependent upon what the potential contractors are able to come up with in terms of possible attacks on the problem. Consequently, a "chicken and egg" dilemma frequently confronts both the Defense Department, on the one hand, and the potential contractors on the other. The procuring agency has the problems, and the potential contractors

may have the ideas provided they know the problems. The large firms dealing with the Government on a continuous basis with respect to hardware procurement and those firms already having research and development contracts are generally aware of the fields of activity in which new research and development are required. For the others, and most small firms fall into this category, searching out the information is practically impossible.

In addition to the foregoing, there is a factor that appears definitely to influence the limited participation by small business in military research and development contracts. This factor is the tendency of contracting officers to place contracts with a large company of proven technical capabilities as well as an ability to operate within the complex accounting framework required by such contracts. If the large firm fails in performance, there is little chance of criticism for poor contract selection. Conversely, if a small firm is elected and fails, then the contracting officer is more susceptible to criticism for poor selection. This burden of responsibility placed on the contracting officer cannot be ignored as a primary factor in the small share of research and development contracts going to small business.

While the small business firm may not be the "best-suited" for military research and development work, it does not mean that these concerns are completely excluded as prime contractors.

The monetary value of research and development contracts performed by small firms for the military departments increased during the period 1957-1960 from \$130,502,000 to \$179,687,000; the percent of small business participation in such contracts during this period, however, dropped from 4.3 percent to 3.4 percent.⁸ This decrease, while less than one percent, is looked upon with

⁸U. S. House of Representatives, Final Report of the Select Committee on Small Business, 86th Congress, 1960, p. 138. (Government Printing Office, Washington, D. C.).

The first part of the report deals with the general situation of the country and the progress of the work done during the year. It also contains a list of the names of the members of the committee and a list of the names of the persons who have been appointed to various positions.

In addition to the general report, there is a special report on the work done during the year. This report is divided into two parts, the first of which deals with the work done during the year and the second of which deals with the work done during the year. The first part of the report is divided into two parts, the first of which deals with the work done during the year and the second of which deals with the work done during the year.

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disfavor by the Congress as indicated by the language used in the Final Report, House Select Committee on Small Business:

. . . In this connection it should be noted that the amendments to the Small Business Act became effective July 18, 1958, and at that time the direct mandate of the Congress was that the Small Business Administration should assist small business concerns to obtain more Government contracts for research and development. One would naturally then expect that the percentage of contracts going to small business would increase. The record, however, shows that the exact opposite result was achieved.⁹

Proprietary Rights and Data

The problems confronting the businessman in the protection of proprietary rights and data in government contracting are not exclusively one of the small business firm, but it is in this segment of our economy that the matter is of greatest concern. There have been recurring complaints to the Congress that small businesses under subcontract to a prime contractor or on direct procurement with the Department of Defense, are required to submit either to the prime contractor or to the Department complete proprietary data on products or techniques which the small firms have developed or designed with their own resources.

Small businesses contend that they are required, without compensation, to reveal information to prime contractors or to the Government, which discloses invaluable, privately-owned technical data as well as trade secrets. These firms contend further that the military services periodically require delivery, under defense contracts and without compensation, of many types of technical data, particularly manufacturing drawings, and these data are subsequently made available to other bidders and contractors.

⁹Ibid., p. 139.

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The most frequently presented complaints by small businesses in connection with proprietary rights in data may be delineated as follows:

1. Delivery of manufacturing data to the Government whereby the contractor subjects himself to the possible consequences caused by the Government making his trade secrets available to competitors.
2. The taking without compensation, either by the Government or the prime contractor, of the manufacturer's proprietary data developed by him at great expense over long periods of time.
3. Protecting the Government's interest in the furtherance of its national defense insofar as the Government has a legitimate or necessary concern with the creation of secondary sources of supply in order to broaden the procurement base.¹⁰

There is little or no dispute where data are developed under Government financed research and development contracts. It is generally agreed by all businesses, large and small, that such data should properly be delivered to the Government with unlimited rights to its use. Equally agreed upon are those instances in which technical data are necessary to the Government for the proper operation and maintenance of a product. Business firms offer no objection to furnishing data in such instances provided that, in the case of manufacturing drawings, they are not used for the purpose of obtaining bids or making subsequent purchases from other contractors.

The point of dispute and the area in which there is complete disagreement, however, is in those instances where manufacturing data are

¹⁰U. S. House of Representatives, Subcommittee Report on Proprietary Rights and Data to the Select Committee on Small Business, 86th Congress, 2nd Session, 1960, p. 2. (Government Printing Office, Washington, D. C.).

1. The first part of the document is a letter from the Secretary of the State to the Governor, dated the 10th day of January, 1862. The letter is addressed to the Governor and is signed by the Secretary of the State.

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delivered to the Government directly or indirectly through a prime contractor, with unlimited use in rights passing to the Government. The small business firms, particularly, contend that such a practice subjects the manufacturer to serious consequences if trade secrets are made available to competitors.

The Congress has expressed concern over the rights and data disagreements between contractors and the Department of Defense, particularly as such disputes affect the small business firms. The Select Committee on Small Business, U. S. House of Representatives has stated:

The problem of proprietary rights, and particularly rights in data, has been a recurring one and this committee has heretofore stated that it is recognized as fundamental in our free enterprise system that in many cases small firms owe their existence to their own development and exploitation of original engineering designs, processes, chemical compositions, materials, tooling, etc. Without adequate protection to the resourcefulness and ingenuity of small firms, this well-spring of future enterprise will dry up and disappear.¹¹

A major point of contention by representatives of industry, small and large, is that the definition of proprietary data as contained in the Armed Services Procurement Regulation (ASPR), is substantially more narrow than the commonly accepted definition recognized in common law. Industry representatives point out, for example, that features of design may often be properly classed as trade secret information, yet the ASPR definition specifically excludes design information from the proprietary category.¹² Equally important in this

¹¹ Ibid., p. 3.

¹² Armed Service Procurement Regulation, Sec. 9-202.2(a): "Operational and Design Data. Since 'operational data' and 'design data' as defined above do not call for the disclosure of details of the contractor's trade secrets or manufacturing processes which the contractor has the right to protect, such data should be obtained without limitation as to its use by the Government."

matter, contend industry spokesmen, is that the definition of proprietary data as expressed in the ASPR affords very little protection because it is primarily based on the concept of susceptibility to "reverse engineering" which, in the opinion of the industry, is an impractical concept.

The Department of Defense contends there is no doubt that at times there is a definite and absolute need for the acquisition both of manufacturer's data and of proprietary rights in those data. A survey was recently conducted by the Department of Defense in which teams of technicians visited a number of installations and organizations of the Army, Navy, Air Force, and Marine Corps.¹³ The installations and organizations included research laboratories, an aircraft carrier, a ballistic missile agency, a submarine tender, supply support centers, major overhauling and repair sites and technical data and storage points. At all of the installations and organizations visited by the various teams, a questionnaire was submitted for the purpose of obtaining first-hand information on what data are being used, by whom, and for what purpose. The report and findings of the Department of Defense based on this survey said in part:

There are valid and legitimate requirements for manufacturing type drawings in the military departments. The quantity and type of data needed varies according to established organizational methods of operation, the functions being performed, and the type of equipment or supplies to which the data relates. The manifold requirements are such that in the aggregate the DOD policy on data acquisition must be written to allow for acquisition of all manufacturing data whether proprietary or not.

While the use of drawings for procurement was outside the scope of this survey, it was observed that there is a powerful influence, always present and observed at all levels, to purchase drawings for the purpose of reprocurement.¹⁴

¹³Visits were made during the late spring and early summer, 1960.

¹⁴U. S. House of Representatives, Subcommittee Report on Proprietary Rights and Data, op. cit., Appendix, p. 32.

The hearings held before the Congressional Committees on the subject of rights and data reveal a definite need of solving the differences between industry and the Department of Defense. This need carries the loud voice of the small business firms and, of course, the repetitious rumblings are heard and acknowledged in the chambers of the Congress. Despite all the furor, there appear to be two basic points that must be resolved before any semblance of agreement will prevail. These areas appear to be: (1) a redefinition of the regulation language to eliminate the concept of reverse engineering; and (2) the inclusion in the regulations that privately developed design data are properly includible in a contractor's classification of proprietary data.

Lack of Competition

It has long been a feeling of the small businessman and the Congress that small firms do not share in a sufficient part of defense procurement. One of the major reasons for this inequity, contend both proponents, is that too many of the defense procurement dollars are spent in sole-source or non-advertised purchases. This feeling has become increasingly present in recent years, and is attributed to the fact that small business participation in defense procurement has been on the decrease.

Since 1954, small business firms have been awarded each year, a smaller percentage of the appropriated dollars spent for defense supplies and services. In 1954, the small business percentage was 25.4 percent and by 1960 it had declined to 16.1 percent, declining from 16.6 percent in the previous year. During the year 1960, small business received fewer contract dollars than in any year since 1955.

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The Congress, and in particular, the Committees on Small Business, has expressed concern, along with representatives of the small business community, over this downward spiral. A number of Congressional inquiries to the Department of Defense have revealed the explanation that the advanced technology of modern weapons lies at the root of the problem. According to this explanation, weapon complexity has forced upon the Department, patterns and procedures of buying which unavoidably favor the major companies with large engineering staffs capable of meeting the total requirements of systems purchasing.

The Department of Defense views formal advertising as a substantial and complex process involving considerable administrative expense. The system is looked upon as an intricate attempt to secure the best result for the Government by the use of widespread competition. Great emphasis must be and is placed on maintaining the integrity of the system to the end that prospective bidders may know the rules in advance and may be assured of fair and equal treatment. Thus, contends the Department of Defense, the formal advertising process involves rigid and inflexible rules that have been established by the Controller General to protect the interests of both the bidder and the Government.

The problems involved in formal advertising of defense procurements would not be entirely eliminated by a change in the rules and regulations. The real problem, according to defense procurement officials, is basically a matter of assuming the use of the formal method in situations where such use is appropriate. It has been determined that the formal advertising method can be effectively utilized only when the following criteria can be met:

1. A complete, adequate, and realistic specification or purchase description is available.

2. There are two or more suppliers available, willing and able to compete effectively for the business.
3. The selection of the successful bidder can be made on the basis of price alone.
4. There is sufficient time to prepare a complete statement of the Government's needs and the terms upon which it will do business.

The position of the Department of Defense regarding competition in its procurement methods, whether purchases are made from large or small business firms, is summarized in a statement of the Honorable Perkins McGuire before the Subcommittee on Government Procurement, Senate Select Committee on Small Business:

I do not think I am willing to admit that we are getting sufficient competition in our procurement.

Advertised procurements require specifications which state the minimum needs of the Government. Such a statement of minimum need produces maximum competition. The reason is that when we accurately state minimum needs we establish a requirement for minimum levels of skill. Thus, the competitive base for the procurement is broadened.

On the other hand, in weapons of defense and survival the Government need is not minimum; it is very frequently maximum. We must not have minimum weapons.

Under such circumstances the available and required skills are necessarily scarcer than are those required to produce simpler things. In some technical and scientific fields there may be only one qualified source with the outstanding abilities we require. Here we cannot reduce our qualitative requirements to the level of lesser skills to avoid a sole source award. We must not degrade the quality of weapons just to create competition.¹⁵

The position of the Congress regarding negotiated and advertised procurement procedures in the Department of Defense is generally summed up by

¹⁵U. S. Senate, Select Committee Report on Lack of Competition in Military Procurement and Its Impact on Small Business, 1961, p. 11. (U. S. Government Printing Office, Washington, D. C.).

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the feeling that negotiation offers only one improvement over advertising: flexibility. The Subcommittee on Government Procurement, Senate Select Committee on Small Business concluded from recent hearings on these matters:

Where flexibility is not necessary, formal advertising should be mandatory. If adequate unrestricted data are available and sound judgment does not suspect current changes in the state of the art, negotiation is unnecessary. In more advanced items, where data are not available, contracting officers, along with technical personnel, must be free to determine which of several proposed approaches, irrespective of certain price differences, will, in the long run, be the wisest purchase for the Government. These judgments place heavy responsibilities upon personnel involved in negotiations. The discretion is so great that the negotiation procedure should be "flexible" only to the extent necessary to avoid a defeat of its purpose.¹⁶

The position of the Defense Department in exercising its legal prerogative of utilizing negotiated procurement methods is, at least in some quarters of industry, justified and economical. Defense of the Department's methods is evidenced by the following:

Is "secret" military buying hurting competition and leading to waste?

No, according to a special study by a private firm issued recently. The report defends the widely criticized military practice of buying by negotiation as "giving the taxpayer better value" than can be obtained by advertising for bids. . . .

The report contends that low bids do not always result in lowest ultimate cost to the military. It holds that buying through advertising tends to drive out quality suppliers and opens the way to poor quality in the items bought by the armed services. . . .¹⁷

Weapon System Concept

Within the last few years, beginning notably with the Air Force procurement of the B-58 bomber in 1954, the so-called weapon-system concept has

¹⁶U. S. Senate, Select Committee Report on Lack of Competition in Military Procurement and Its Impact on Small Business, op. cit., pp. 18-19.

¹⁷Armed Forces Management, Vol. 4, No. 4, Jan., 1958, p. 29. (Professional Services Publishing Co., Washington, D. C.).

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become increasingly important in defense procurement. The noteworthy change in this procurement method as contrasted to conventional methods, is that weapon-system procurement places the total system responsibility in the hands of a single source. Prior to this innovation, major components, such as airframes, navigation systems, or communication equipment, were contracted for with separate sources and were considered as Government-furnished equipment to be incorporated in the final product by the airframe producer. Under the weapon-system concept, these items become contractor-furnished equipment, and a single vendor assumes complete responsibility for the total system.

It is obvious that the weapon-system concept of procurement tends toward big business. It is not unusual for expenditures in producing a total system to exceed the net worth of the designer. In addition, the complexity of modern weapons often requires skills beyond the capabilities of a single company. As a consequence, the financial and technical requirements to undertake a weapon-system contract has created a tendency for various companies to form groups in which they bid on the weapon-system proposal. Under this scheme, each company takes its specialized part and makes a contribution both technically and resource-wise to the combine, although the end product is viewed essentially as a single weapon-system contract.

Small business has voiced its objection to the weapon-system concept principally on the basis that their share of defense procurement has declined since the number of prime contractors is reduced. It is equally plain, contend the small business spokesmen, that making the assembly firm the Government's broker, as it were, results in an inevitable tendency for the assembly firm to take over production of those phases of the work involving commercially

The first part of the report is devoted to a general survey of the situation in the country. It is followed by a detailed account of the work done during the year. The report then proceeds to a discussion of the various projects which have been undertaken, and finally to a summary of the results achieved.

It is a pleasure to see the progress which has been made during the year. The work has been carried out in a most efficient manner, and the results are most satisfactory. It is hoped that the work will continue to be carried out in the same spirit in the future.

The following table shows the results of the work done during the year. It is hoped that this will be of interest to all those who are concerned with the progress of the work.

strategic products and processes, while subcontracting only those phases of the work involving less promise for the future.

The Department of Defense has been severely criticized for employing the system concept of procurement by both the small industries and the Congress. For example, in a hearing before a Congressional Small Business Subcommittee, a member of the San Fernando Valley Small Plants Association said:

The weapons system concept is squeezing small business firms out of defense business. Too much latitude has been given to weapons system managers, and smaller firms are completely at the mercy of the prime contractors. Our shops are presently operating at about 35% of production levels two years ago.¹⁸

The general feeling of the Congress on the weapon-system concept and its impact on small business is summed up in a statement by the House Select Committee on Small Business, which said:

It is therefore apparent that, under such a system of procurement, the small-business segment of our industry would become the unwanted step-child of big business and would become completely subservient to the major companies.¹⁹

The Department of Defense contends that there are no novel principles involved in weapon-system contracting. The policies and procedures of the Armed Services Procurement Regulation apply equally to procurement in this area and no differently than they do to procurement in other areas. A representative of the Department stated before the Procurement Subcommittee of the Select Committee on Armed Services that:

¹⁸Armed Forces Management, Vol. 4, No. 11, Aug. 1958, p. 28. (Professional Services Publishing Co., Washington, D. C.).

¹⁹U. S. House of Representatives, Final Report of the Select Committee on Small Business, 84th Congress, 2nd Session, 1957, p. 101. (Government Printing Office, Washington, D. C.).

The first part of the paper is devoted to a general discussion of the problem of the origin of life. It is shown that the origin of life is a problem of the first order of importance and that it is one of the most important problems of the present day.

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Our basic policy of obtaining competition to the maximum extent practicable is pursued just as vigorously here as elsewhere. Similarly, our small business and labor surplus area programs are equally emphasized.²⁰

²⁰Report of Dept. of Defense Procurement Presentation, to the Procurement Subcommittee of the Senate Committee on Armed Forces, 1960, p. 30.

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CHAPTER V

SUMMARY AND CONCLUSIONS

Summary

The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts for property and services for the Government (including but not limited to contracts for maintenance, repair, and construction), be placed with small business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.¹

The enactment of the Small Business Act in 1958 clearly indicates the position of the Congress toward the small business segment of our national industrial complex. Although this Act was not the first step taken to enhance the small business position, it was the first such action which created an independent agency within the Executive Department for the exclusive purpose of

¹U. S. Congress, Small Business Act of 1958, Public Law 536, 85th Congress, 2nd Session, 1958, p. 1.

aiding small business firms. The express purpose of the Act was to redesign, strengthen and centralize a small business program under the Small Business Administration.

The Small Business Administration is the principal spokesman within the Federal Government in connection with the administering and coordination of efforts to assist small business firms to insure their receipt of a fair share of government contracts. The Small Business Act empowers the SBA and defense contracting officers to set-aside procurements for competition solely among small business concerns. The set-aside program is one of the principal methods by which the small business firm is assisted in obtaining a fair share of government contracts. SBA representatives are assigned to major military procuring activities, and, with a procurement representative, all proposed purchases are screened to determine whether small firms can supply the items or services. When a determination is made that the proposed procurement is within the capabilities of small firms and that sufficient competition can be obtained, a recommendation is made that the procurement be totally or partially set-aside for competitive award to small business concerns.

The set-aside program has consistently been given more attention. The program, designed to increase small business participation in government procurement, has for the most part, accomplished its purpose.

Complementing the set-aside program is the activity of SBA representatives and Department of Defense Small Business Specialists in locating competent small business suppliers of those items or services for which small business competition has been lacking. Information obtained in connection with screening for possible set-aside action is used for this purpose.

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Where it is found that an item or a service could be supplied by small business firms, but there has been little or no small business interest or competition in the past, the SBA representative and Small Business Specialist, through their cooperative efforts, attempt to locate competent small business suppliers.

The Small Business Administration, in its efforts to achieve maximum participation in military procurements, maintains a facilities inventory. Small firms requesting assistance from the agency, complete a questionnaire concerning their productive facilities and other related information. This information provides a record from which the SBA can ascertain the productive capacity of small business firms in a given area, and enables the Agency to notify small firms of prime contract or subcontract opportunities suitable to their facilities.

In order to assist small business firms to compete efficiently for government procurement, the SBA and the Department of Defense have instituted programs to bring government procurement requirements to the attention of small business concerns. In addition to the counseling services provided in local areas, there is a broad informational program to acquaint small business concerns with military purchasing methods. There is information available on the types of products and services used by the military services, where specifications can be obtained and the procedure for getting listed on appropriate bidders' lists. The SBA publishes, for example, the U. S. Government Purchasing and Specifications Directory which provides detailed information on items and services purchased, sources of specifications, and steps to be taken in locating prime contract and subcontract opportunities. The Department of Defense publishes a number of pamphlets and bulletins to aid

prospective defense contractors and among the most useful is the publication, How to Sell to Agencies within the Department of Defense. In addition, the respective Military Departments publish contracting information, some of which is designed specifically for the small business firms. Included among these are such pamphlets as Small Business and the Air Force and Selling to Navy Prime Contractors.

As part of the informational program to help the small business firms, the military departments, in cooperation with the SBA, conduct clinics and technological exhibits in local areas. At these clinics and exhibits, Small Business Specialists, SBA representatives, and prime contractors' personnel are available for discussing and advising in matters of interest to the small business firms.

In recent years there has been intensified effort on the part of both the Defense Department and the SBA to strengthen the position of small business firms in defense subcontracting. Due to the shift in the nature of defense purchasing, with greater emphasis on missiles, aircraft and other highly complex weapons, subcontracting opportunities are of increasing importance to small business concerns. The SBA has recently published a directory entitled, Missile Subcontracting, which contains information regarding (1) items used in the production of missiles, (2) assembly, subassemblies, and parts of missiles, and (3) companies engaged in the production of missile subsystem components, assemblies, subassemblies and parts.

The Department of Defense, realizing also that complex weapons are for the most part beyond the technical and financial capabilities of the small business firms, has encouraged maximum participation in subcontracting programs.

The first part of the report deals with the general situation in the country and the progress of the work done during the year. It is followed by a detailed account of the work done in the various departments and a summary of the results achieved. The report concludes with a statement of the work planned for the next year.

The second part of the report deals with the financial statement for the year. It shows the income and expenditure for the year and the balance sheet at the end of the year. It also shows the progress of the work done in the various departments and the results achieved. The report concludes with a statement of the work planned for the next year.

The third part of the report deals with the work done in the various departments during the year. It shows the progress of the work done in each department and the results achieved. It also shows the work planned for the next year. The report concludes with a statement of the work planned for the next year.

The fourth part of the report deals with the work done in the various departments during the year. It shows the progress of the work done in each department and the results achieved. It also shows the work planned for the next year. The report concludes with a statement of the work planned for the next year.

To insure that appropriate consideration is given to small business concerns as potential subcontractors, all fixed-price and cost-reimbursement type defense contracts in excess of \$5,000 contain a contractual clause requiring the prime contractor to consider small business concerns as subcontractors. Even more significant as a means of assuring small business participation in defense subcontracting, the Armed Services Procurement Regulation was amended on January 1, 1960, to require that all contracts in excess of \$1,000,000 which offer substantial subcontracting possibilities, contain the Defense Subcontracting Small Business Program clause. This clause requires that prime contractors and subcontractors awarded contracts over the stipulated amount, establish programs to assure that small business concerns have an equitable opportunity to compete for subcontracts. To insure maximum compliance, representatives of the military procuring activity and the SBA make cooperative surveys and evaluations of the contractor's small business subcontracting program.

Closely allied to the complex weapons requirements of the Department of Defense is the increased demand for research and development. Many of these contracts involve projects of such size, scope, and complexity that they are beyond the capacity of small companies. The Small Business Act,² however, directs the SBA to assist small business concerns in obtaining contracts for government research and development. Consequently, SBA field offices make intensive efforts to counsel and guide small firms and individuals interested in research and development work and direct them to appropriate procurement officials. The SBA has published a management aid on Research and Development

²Ibid., p. 13.

The first part of the report deals with the general situation of the country and the progress of the work done during the year. It then goes on to discuss the various departments and the work done in each of them. The report concludes with a summary of the work done and a statement of the progress made.

The second part of the report deals with the financial statement of the year. It shows the income and expenditure of the various departments and the total income and expenditure of the country. It also shows the balance of the various departments and the total balance of the country.

The third part of the report deals with the work done in the various departments. It shows the progress made in each of them and the reasons for any delay. It also shows the work done in the various departments and the progress made in each of them.

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The tenth part of the report deals with the work done in the various departments. It shows the progress made in each of them and the reasons for any delay. It also shows the work done in the various departments and the progress made in each of them.

Opportunities in the Federal Government, which describes steps to be taken by those firms seeking research and development work, lists the types of research and development contracts contracted for by military and civilian agencies, and explains which offices should be contacted by interested small firms.

The Small Business Act³ also authorizes the SBA to certify that small business firms or small defense production pools are competent to perform specific defense contracts with respect to financial means and productive capacity. This determination, referred to as a certificate of competency, is binding on the procuring authority as far as financial and technical capabilities of the firm are concerned. The certificate of competency offers a method of appeal for a small business concern which, although low bidder on a procurement contract, has been rejected for lack of financial and productive capacity.

In summary, the Small Business Administration and the Department of Defense have instituted various procedures and programs in carrying out the mandate of Congress to assist and counsel small business concerns in the area of government procurement. Some of these are mainly informative in nature; others are aimed directly at achieving more small business participation in defense contracts.

Conclusion

The problems of the small business firms in defense procurement programs can be reduced to the allegation that these firms are not getting their

³Ibid., p. 11.

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"fair share" of defense contracts. With each new year, military procurement officials are called before congressional investigation subcommittees to explain what they are doing for small business. Interlaced with political overtones, a good deal of smoke is usually blown up, creating the impression that small business doesn't receive a fair share of the military dollar.

Ever since Congress stated the policy that small business firms should receive a "fair share" or "fair proportion" of defense contracts, there has been a running debate over how well the policy is being carried out. The controversy has usually taken the form of an exchange of charges and refutations between the small business subcommittees of the Congress and the various purchasing agencies of the Department of Defense. There are complaints from representatives of small firms that they are deprived of contracts which they might have received if the military departments had faithfully carried out the congressional direction to award contracts to small firms. The Department of Defense officials testify to the many contracts that have been awarded to small firms and the reasons why more such contracts are not awarded.

There can be little argument that two conditions must be satisfied in order to make any policy workable that is designed to result in the award of a "fair share" of contracts to small business concerns. First, it is necessary to define or to provide a mechanism for determining what constitutes a "fair share." Second, it is necessary either to secure the concurrence in the policy of those having the power to decide how defense contracts are allocated or to devise a system which will require adherence to the policy. It appears that the present "fair share" policy has failed on both counts.

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There is no common understanding among the various agencies concerned, including Congress itself, as to what constitutes a "fair share." Moreover, even if an agreement could be reached, it is doubtful that such a policy would be successful in the absence of a law requiring the contracting officials to make awards in designated amounts. It is not surprising then, that the House Small Business Committee reported:

Despite repeated pronouncements by Congress that it is in the national interest for small firms to obtain a fair proportion of Government business, the percentage of contracts going to small business continues to drop. Despite the pious declarations of intent, despite the clamor, despite the assurances of directive after directive by the top echelons of the Department of Defense, the amount of contracts awarded to small business is disappointing. More and more awards go to big business.⁴

It is apparent that the "fair share" policy has not resulted in any amazing benefits to small business during the past few years. The trend has been, if anything, on the whole unfavorable to small business firms. This has been interpreted by some as evidence of failure on the part of the Defense Department to carry out congressional policy. There have been few, however, willing to assert what the small business share should be. There has been, generally speaking, reluctance to be specific concerning the percentage of contracts which should be allocated to small firms.

The reason for this reluctance is the unwillingness of Congress to tie the hands of contracting officials whose primary responsibility is to secure at the least cost to the government the best military supplies and services

⁴U. S. House of Representatives, Final Report of the Select Committee on Small Business, 86th Congress, 2nd Session, 1960, p. 78. (Government Printing Office, Washington, D. C.).

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when and where they are needed. It is generally agreed that, while the basic goals might be achieved if small business firms were assured a certain minimum percentage of the defense dollar, there would be the danger that procurement practices might be unduly restricted, if such a rigid limitation were imposed. Consequently, the policy adopted has been one of changing the rules of the procurement game in ways that are likely to result in a greater share of contracts being awarded to small firms.

The trend in recent years to the weapon-system concept in defense contracts seems more likely to cause a decline than an increase in the proportion of defense dollars going to small business. The system concept transfers the responsibility for purchasing many components from the military services to one prime contractor who has the responsibility for furnishing an entire weapons system. Accordingly, this trend in military contracting has caused concern in the small business circles and the Congress. The emphasis, however, has been more on subcontracting procedures than on the methods of awarding prime contracts. There has been particular concern over a proposal to amend the basic laws regulating procurement policies and procedures of the military departments to give more formal recognition to the "weapons system concept."⁵ Any such proposal seems quite unlikely to reach fruition, however, unless it is diluted by strong restrictive small business clauses. Although the weapon-system concept has been singled out recently as a special ogre for the small businessman, it does not appear that this introduces any greater difficulties than are already present in military procurement. Even if it did,

⁵Such a proposal was made by Senator Saltonstall (R), Mass., and is referred to as (S. 500).

the primary objective of the weapon-system concept, earlier and more complete fulfillment of goals, would indicate that national security should be given first consideration in evaluating its impact on small business.

It seems logical to conclude then that the problems involved in the "fair share" program of small business firms and defense contracting will continue as long as there are substantially more potential applicants than there are contracts. Small firms will continue to use their governmental allies, the Small Business Administration and the Congress to strengthen their position. The Department of Defense will continue to be pressed to make a closer examination of the problems presented in the allocation of defense contracts.

The first part of the report deals with the general situation of the country and the progress of the work done during the year. It then goes on to discuss the various departments and the work done in each of them. The report concludes with a summary of the work done and a list of the recommendations made.

(Signature)

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