

Minorities and Women as Government Contractors—Kansas

—A report prepared by the Kansas Advisory Committee to the U.S. Commission on Civil Rights

January 1986

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LETTER OF TRANSMITTAL

Kansas Advisory Committee to the
U.S. Commission on Civil Rights
November 1983

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Dear Commissioners:

The Kansas Advisory Committee submits this report on its study of opportunities for minority and women business enterprises to do business with the State. Information for this study was obtained from the Kansas Division of Purchases; Kansas Minority Business Office; Kansas Commission on Civil Rights; Kansas Department of Transportation; and Region VII Federal Highway Administration, Office of Civil Rights. The Advisory Committee also obtained observations from some minority and women business owners regarding their efforts to participate in State contracts. An appendix to the report describes Federal procurement policies and programs to assist minorities and women become Government contractors, and information about program implementation by a sample of Federal agencies: Small Business Administration, Minority Business Development Agency, General Services Administration, Defense Logistics Agency, Environmental Protection Agency and Department of Housing and Urban Development. All agencies and persons mentioned in the report were given an opportunity to comment on a draft of this report and their comments and corrections have been incorporated.

The Advisory Committee found that the Kansas Small Business Procurement Act requires that at least 10 per cent of State contracts and purchases be made with small businesses; however the law has no special provisions to enhance business opportunities for minorities. Between 1979 and 1982 less than one percent of the value of all State contracts went to minority small business. The Advisory Committee also found that the State has no system for tracking the participation of women-owned small business in State procurement nor goals for their involvement, except in the State Department of Transportation's program. The Advisory Committee recommends that the Legislature amend the Small Business Act to include both minority and female set-aside provisions. It should also establish a procedure to determine the level of participation of small businesses owned and controlled by women.

The Advisory Committee found that the State has established an Office of Minority Business to promote the development of minority enterprise in the State, but its full potential and effectiveness are limited by understaffing. The Advisory Committee recommends that the Legislature consider providing increased support for the Minority Business Office so that it can become a more viable vehicle to assist minority participation in State procurement. The State may wish to provide

aid to women-owned businesses through this office within the Department of Economic Development.

The Advisory Committee found that the State has made efforts to disseminate information about procurement opportunities, but some minority and women-owned business owners did not feel they had received adequate information about bidding opportunities and procedures. The Advisory Committee recommends that the Division of Purchases, Minority Business Office and other State agencies and departments work together to assure that minorities and women business owners in the State are afforded all possible information about contract opportunities and technical assistance in bidding.

The Advisory Committee noted that minorities and women sometimes have difficulty obtaining bonding and monetary guaranties necessary to doing business with the State; however it also found that the Department of Administration, Division of Purchases recently established a policy that lessened monetary guaranty requirements for most contract bids, which may enhance the chances for small minority and women-owned businesses to become successful bidders on State contracts. The Advisory Committee suggests that the Kansas legislature reconsider enactment of a bond guarantee program for small contractors, comparable to that proposed in the 1981 legislative session, as a substantial means of easing one obstacle to successful bids by small and disadvantaged minority and women's firms.

We urge you to concur with our recommendations and assist the Committee in its followup activities.

Respectfully,

JACLYN GOSSARD, *Chairperson*
Kansas Advisory Committee

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1. Introduction

Small businesses play a vital role in our economy, employing over half of the labor force.¹ President Reagan, in a report to Congress on the status of American small business, stressed the contributions these businesses make to the country's economic well being and concluded, "The bottom line is quite straightforward: America needs small business formation and growth."²

Owning a business and being your own boss is for many a part of the American dream. But for many minorities and women the dream is difficult to make into reality. In economic hard times it may be impossible. Small businesses, because they do not have the resources of larger firms, suffer from the effects of inflation, high interest rates and the otherwise sagging economy earlier and more than their larger counterparts.

Data in a 1977 Bureau of the Census survey shows that minority-owned businesses account for 5.7 percent of the total number of sole proprietorships, partnerships and small business corporations in the United States and 3.5 of their gross receipts.³ Women-owned firms accounted for 7.1 percent of the total of these businesses and 6.7 percent of total gross receipts.⁴ Only 18.7 percent of all minority firms had paid employees and those were mostly firms in retail sales. The number of employees for all minority firms averaged less than five.⁵ A higher percentage of women-owned businesses, 23.9 per-

cent, had paid employees and these had an average of five employees.⁶

Government, Federal and State, play an important part in the growth and development of the Nation's small businesses. Not only do various Federal monetary policies and Federal and State tax laws have a tremendous effect, but as major consumers governments at all levels through their procurement policies can provide significant opportunities for small business generally. Small minority or women-owned small business have often found entry into government procurement opportunities difficult. Policies such as set-asides, goals for minority and women-owned small business participation and bond guarantee programs are used by both the Federal government and some States to increase these firms' participation. Most minority and women-owned firms interviewed for this report believe such policies are useful and necessary.

The Kansas Advisory Committee decided in 1982 to study government impact on minority and women-owned small businesses. In this report, the Advisory Committee examines the policies of the State of Kansas and their impact on the State's minority and women-owned small businesses. Chapter 2 examines the characteristics of the State's minority and women-owned small businesses. Chapter 3 covers State procurement policies while Chapter 4 is concerned with state policy and law which hinder full partici-

¹ United States, The President, *The State of Small Business: A Report of the President* (March 1982), p. 4.

² *Ibid.*, p. 5.

³ *Ibid.*, p. 48.

⁴ *Ibid.*, p. 49.

⁵ U.S. Department of Commerce, Bureau of the Census, 1977

Survey of Minority-Owned Business Enterprises (MB77-4) (December 1980), Table 7.

⁶ U.S. Department of Commerce, Bureau of the Census, 1977 *Economic Censuses: Women-Owned Businesses* (WB77-1) (May 1980), Table 7.

pation of minority and women-owned businesses in State procurement. Finally, Chapter 5 examines the minority and women-owned business enterprise program of one State agency, the Kansas Department of Transportation.

Realizing the importance of Federal procurement participation programs for minority and women-

owned small businesses, the Advisory Committee has included information on these programs in the Appendix. Also included in the Appendix is information on how the various agencies implement and utilize the programs.

2. Characteristics of Minority and Women-Owned Small Businesses in Kansas

Nationally minority business enterprises are predominantly small businesses, defined at the 1980 White House Conference on Small Business as businesses employing 500 or fewer employees.¹ However statistics show that minority and women-owned firms are much smaller. Only 18.7 percent of all minority firms, mostly in retail sales, had paid employees. The number of employees for all minority firms averaged less than five.² Only 23.7 percent of women-owned firms had paid employees and those averaged five employees.³ Average gross receipts for all minority-owned firms were \$41,119 annually while the average gross receipts for all firms were \$64,830. Annual gross receipts for women-owned firms averaged \$61,027.⁴

The 1977 census indicated there were 1,505 black businesses in the State of Kansas with total gross receipts of \$69,131,000. A total of 2,143 persons were employed by 251 of these firms. Most black businesses were located in Wyandotte, Sedgwick and Shawnee counties. These counties include the State's largest cities, Kansas City, Wichita, and

Topeka.⁵ There were 483 Hispanic-owned businesses in Kansas that had gross receipts of \$14,991,000; 77 firms employed 365 persons.⁶ There were 160 Asian-American firms with gross receipts of \$12,522,000. Fifty-one of these firms employed a total of 427 employees.⁷ There were 64 American Indian firms which had gross receipts of \$4,215,000. Fifteen of these firms employed a total of 78 employees.⁸ In 1977 women-owned firms in the State totalled 8,270 with gross receipts of \$421,172,000. Of these firms, 1,976 had a total of 9,627 employees. There were 16 counties in Kansas with 100 or more women-owned businesses.⁹

In 1978 a survey was done for the State to determine characteristics and status of its small businesses. A total of 35,000 businesses were surveyed, virtually every business in the State. A little over six thousand businesses responded. Of those, 451 were from minority-owned small businesses with 180 Hispanic owners, 156 black owners, 61 American Indian owners, and 54 of other origins.¹⁰ The survey found that compared to nonminority-

¹ United States, The President, *The State of Small Business: A Report of the President* (March 1982) (hereafter cited as *State of Small Business—1982*), p. 5.

² U.S. Department of Commerce, Bureau of the Census, *1977 Survey of Minority-owned Business Enterprises* (MB77-4) (December 1980), Table 7.

³ U.S. Department of Commerce, Bureau of the Census, *1977 Economic Censuses: Women-owned Businesses*, (WB77-1) (May 1980), Table 7.

⁴ *State of Small Business—1982*, Tables 1.4 and 1.5.

⁵ U.S. Department of Commerce, Bureau of the Census, *1977 Survey of Minority-owned Business Enterprises: Minority-owned Businesses, Black* (MB77-1) (December 1979), Table 2b.

⁶ U.S. Department of Commerce, Bureau of the Census, *1977*

Survey of Minority-owned Business Enterprises: Minority-owned Business, Spanish Origin (MB77-2) (August 1980), Table 2.

⁷ U.S. Department of Commerce, Bureau of the Census, *1977 Survey of Minority-owned Business Enterprises: Asian Americans, American Indian and Others* (MB77-3) (November 1980), Table 2b.

⁸ Ibid.

⁹ U.S. Department of Commerce, Bureau of the Census, *1977 Economic Censuses: Women-owned Businesses* (WB77-1) (May 1980), Tables 2 and 4.

¹⁰ Susan K. Osborne, *A Small and Minority Business Management and Procurement Study for the Kansas Department of Economic Development: Preliminary Final Report* (Wichita: Wichita State

owned firms, significantly fewer of the responding black-owned firms were engaged in manufacturing while a significantly higher concentration was engaged in service or construction.¹¹ Areas lacking minority-owned businesses were printing and pub-

University, Center for Business and Economic Research; Mar. 30, 1979), p. 62.

lishing, fabricated metal products, machinery, electric and electronic equipment; insurance agents, brokers, and service, and auto repair, services, garages.¹²

¹¹ Ibid.

¹² Ibid.

3. Doing Business with the State

The study on Kansas small business mentioned in the preceding chapter indicated that half of all businesses responding either did not know how to do business with the State or had had no opportunity to do so.¹ About one-third of the nonminority businesses surveyed had received contracts from the State while a somewhat smaller proportion of minority businesses had done so.² Only about four percent of nonminority businesses surveyed had tried without success to do business with the State, but about six percent of Indian owned businesses, eight percent of Hispanic-owned businesses and five percent of black owned businesses had tried but not succeeded. A small percentage of respondents thought there was too much red tape involved in doing work for the State or simply were not interested.³

Kansas State government consists of some 135 agencies, nearly 100 of which the State considers as major agencies.⁴ These agencies have a diversity of needs and purchase a wide variety of goods and services.⁵ The majority of goods and services are bought through a centralized purchasing system

within the Department of Administration's Division of Purchases, the exceptions being "all contracts with independent construction concerns for State highway purposes. . ." and certain architectural and engineering services.⁶ Individual agencies generally have been delegated authority to make small purchases of \$2000 or less for consumable supplies and up to \$500.00 for equipment.⁷

To do business with the State, potential vendors (contractors) must file a "Bidder's Mailing List Application" with the Division of Purchases. This places the vendor on the mailing list which is used to publicize bidding opportunities.⁸ The bidder's application includes certification related to small business ownership and minority status if applicable.⁹ In addition to companies on the bidder's mailing list, solicitations can be sent to other companies the individual agencies might know. Additionally, contracts estimated to exceed \$5000 are required by law to advertise in the *Kansas Register*, the official publication of the State and contracts for amounts

¹ Susan K. Osborne, *A Small and Minority Business Management and Procurement Study for the Kansas Department of Economic Development: Preliminary Final Report* (Wichita: Wichita State University, Center for Business and Economic Research; March 30, 1979) (hereafter cited as *Wichita State Study*), Table 34.

² Ibid., Table 36.

³ Ibid., Table 34.

⁴ Iowa, Kansas, Missouri and Nebraska Advisory Committees, *State Government Affirmative Action in Mid-America* (June 1978) p. 20 and State of Kansas, *Agency List* provided by Kansas Department of Administration, Feb. 8, 1983.

⁵ Kansas Department of Economic Development, *A Guide for*

Doing Business with the State of Kansas, (n.d.) (hereafter cited as *Kansas Business Guide*).

⁶ Department of Administration, Division of Purchases, Memorandum 29-E: Delegation of Authority for Small Purchases, Sales and Emergency Purchases by Agencies (Mar. 2, 1981).

⁷ Ibid.; Nicholas B. Roach, Director of Purchases, Division of Purchases, Kansas Department of Administration, and Hilton M. Kennedy, Small Business Coordinator, Division of Purchases, interview in Topeka, Jan. 11, 1983 (hereafter cited as Nicholas Roach and Hilton Kennedy interview).

⁸ *Kansas Business Guide*.

⁹ Data on file at CSRO.

from \$2000 to \$5000 are posted on the public bulletin board in Division of Purchases.¹⁰ Companies who do not bid are dropped from the bidder's mailing list after a period of time.¹¹ Division of Purchases' data on the total number of businesses which had at anytime held State contracts showed, as of December 1982, a total of 8600. Approximately one-half of these were small businesses of which 130 or 3 percent were minority.¹²

Data presented by the State to the Advisory Committee shows that over the period July 1979 to Dec. 1982 about 30 percent of the value of all State contracts went to small businesses.¹³ But only about one third of one percent of the value of all State contracts went to minority small businesses. The total awards are indicated in Table 3-1. While the proportion of dollars awarded to small businesses has risen slightly, the proportion of minority businesses has fallen slightly.¹⁴ A separate analysis, conducted by the State based on the first six months of its 1979-1982 fiscal years, shows a somewhat different pattern, of steady increase in minority participation, with some drop-off in fiscal years 1980 and 1981 but a rise in 1982. If the trend for the first half of 1982 were to continue into the second half, this would be a reversal of the past pattern.¹⁵

The Division of Purchases (DOP) does not have goals for promoting small minority business separate from any other small business. DOP personnel stated that the division does not have the statutory charge or funds to provide training or public education on State contracting. As division personnel see it, buying goods and services is the extent of DOP's function. However, information to prospective State contractors is disseminated through the Governor's annual business conference, seminars and training done by other State and Federal agencies.¹⁶

¹⁰ Gerald Merryman, Deputy Director, Division of Purchases, Kansas Department of Administration, telephone interview, Mar. 31, 1983.

¹¹ Wayne Rogers, Director, Minority Business Office, Kansas Department of Economic Development, interview in Topeka, Jan. 11, 1983 (hereafter cited as Wayne Rogers interview, Jan. 11, 1983).

¹² Hilton Kennedy, Small Business Coordinator, Kansas Department of Administration, Division of Purchases, telephone interview, Jan. 19, 1983.

¹³ Department of Administration, Division of Purchases, *The Kansas Small Business Procurement Act: A Progress Report to the Governor, Legislature and Secretary of Economic Development* (Jan. 1, 1980) (hereafter cited as *Kansas Progress Report, 1980*). Reports with the same title for subsequent fiscal years were published on Jan. 7, 1981; Jan. 11, 1982; and, Jan. 10, 1983.

The State of Kansas does have a small business set-aside law which provides that at least 10 percent of State contracts and purchases be placed with small businesses.¹⁷ The set-aside has not been needed though, because small businesses have received 30 percent in dollar value of the State's business between 1979-1982.¹⁸ The law does not make any special provision for a minority-owned small business set-aside even though the percentage of minority owned small business participation is very small. Such a set-aside was considered when the legislation was first introduced but in the face of strong opposition from various lobbies and the interests of expediency, it was dropped.¹⁹ Because minority small business participation is so low, the director of the State's Minority Business Office, thinks the recently established Governor's Committee on Minority Business might recommend reintroduction of minority set-aside legislation.²⁰ The committee is to examine minority business conditions throughout the State, and report semiannually to the Secretary of Economic Development and the Governor. It has not yet issued any reports or recommendations yet because it is still in an organizational stage.²¹

The law currently defines a small business as one which is independently owned and operated, not dominant in its field of operation and not an affiliate or division of a large business.²² Manufacturing businesses employing more than fifty persons and exceeding three million dollars gross income annually for the preceding three fiscal years are considered dominant in their field. General construction businesses that in the preceeding three fiscal years have exceeded four million dollars in annual gross income as well as all other nonmanufacturing businesses that employ more than twenty-five persons and have in

¹⁴ Ibid.

¹⁵ Department of Administration, Division of Purchases, *The Kansas Small Business Procurement Act: A Progress Report to the Governor, Legislature and Secretary of Economic Development* (Jan. 10, 1983) (hereafter cited as *Kansas Progress Report, 1983*), p. 5.

¹⁶ Rosch and Kennedy interview, Jan. 11, 1983.

¹⁷ Kan. Stat. §75-6003.

¹⁸ *Kansas Progress Report, 1983*, p. 5. See also earlier reports dated Jan. 1, 1980; Jan. 7, 1981; and, Jan. 11, 1982.

¹⁹ State Senator Billie Q. McCray, 29th District, telephone interview, Feb. 3, 1981.

²⁰ Wayne Rogers interview, Jan. 11, 1983.

²¹ Executive Order No. 82-57, May 21, 1982 and Joanne E. Hurst, Aide for Constituent Services, Office of the Governor, interview in Topeka, Jan. 11, 1983.

²² Kan. Stat. §75-6003.

TABLE 3.1
Data on Kansas Procurement

| | July 1, 1979- Dec. 31, 1979 | July 1, 1979- June 30, 1980 | July 1, 1980- June 30, 1981 | July 1, 1981- June 30, 1982 |
|--|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| Dollar value of Set-Asides | 0 | 0 | 0 | 0 |
| No. of small businesses qualified/eligible for set-asides | 3,356 | 3,529 | 3,772 | 4,002 |
| Total State purchases and contracts | 257,546, 344.85 | 491,508, 865.56 | 497,821, 45.18 | 427,863, 770.03 |
| Amount of small Business | 78,878, 256.47 | 156,515, 710.62 | 154,406, 67.45 | 135,606, 257.00 |
| % to small Business | 30.62 | 31.84 | 31.01 | 31.69 |
| Amount to Minority- owned small business | 935,843 | 1,510,554.88 | 1,688, 447.34 | 1,164, 623.72 |
| % of total to minority-owned small business | 0.36 | 0.30 | 0.30 | 0.27 |

Sources: Department of Administration, Division of Purchases, *The Kansas Small Business Procurement Act: A Progress Report . . .* (Jan. 1, 1980; Jan. 7, 1981; Jan. 11, 1982; and Jan. 10, 1983)

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the preceding three fiscal years exceeded one million five hundred thousand dollars gross income annually are considered dominant in their fields. It is clear from these figures that this definition of small businesses could include some firms that would be giants compared to the State's minority and women-owned small businesses. The contract compliance officer for the Kansas Department of Transportation commented that modification of the definition of small businesses by lowering the ceiling on annual gross income might increase small minority firms' opportunities to participate in State procurement by limiting the competition from larger firms.²³

The concept of set-aside has been viewed with less than enthusiasm by the Division of Purchases. In the 1980 annual report on small business participation DOP stated that set-asides would increase the cost of purchases and contracts for the State and indicated that it would take almost \$4 million in small business awards to increase minority small business participation by one percentage point.²⁴

One help to the State's minority small businesses is the Minority Business Office within the Department of Economic Development. This office was established in 1971 to "encourage, foster, and assist the development of minority business enterprise in the State, to aid in the educational program relating to such development, and to recommend necessary legislation to advance the interest of the State in development of minority business enterprise. . . ."²⁵

Funds were not provided for a director until 1975. To accomplish its goals the office has concentrated its activity on efforts to assist new minority business obtain loans and to increase the involvement of minority business owners in the State procurement process.²⁶ The office assembled a guide for small and disadvantaged business owners on how to do business with the State and also has issued a directory of Kansas minority businesses. The office also participates in planning the annual Governor's conference on small business opportunities. In 1982

²³ Keyton Barker Jr., Contract Compliance Administrator, Kansas Department of Transportation, interview in Topeka, Jan. 11 1983.

²⁴ *Kansas Progress Report*, 1980, pp. 3-4.

²⁵ Kan. Stat. §74-5010a.

²⁶ Wayne Rogers, interview in Kansas City, Mo., Nov. 15, 1982.

an estimated 20 percent of the conference participants were minority.²⁷

The Minority Business Office (MBO) does all of this with one staff person. Support services such as clerical, research assistance and development of informational materials are provided by other Department of Economic Development staff.²⁸ The Wichita State University 1979 study on Kansas small business recommended that a division of small and minority business be established within the Department of Economic Development to assume the functions of the minority business office because it regarded the office as having limited effectiveness because of its size.²⁹ Wayne Rogers, the person staffing the office, said there is definitely a need for more staff to assist minority business. The 1984 budget request for the office includes two additional professional positions and a secretarial slot. The duties of one professional would be to search out procurement opportunities in the private sector and the second would work with the individual business owners on development of loan packages and sources of financial assistance.³⁰ However, the request was not funded by the 1983 legislature.³¹

In the past there has been little communication between the Minority Business Office and the Division of Purchases. The exception has been the transmission to the Minority Business Office of quarterly reports on purchases with small and minority business compiled by DOP's small business coordinator. The director of the Minority Business Office believes that as a result of a meeting with the director of purchases in January 1983 the working relationship between the two offices will become closer. For example, "Bidder's Mailing List Application" forms are now available to minority business persons from the Minority Business Office whereas the previous procedure required MBO staff to channel prospective minority bidders' names

through the Division of Purchases which then sent the forms.³²

One other agency which could impact on the participation of minority businesses in State procurement is the Kansas Commission on Civil Rights (KCCR). Although the majority of KCCR's authority in relation to contract compliance pertains to minority and female employment, one rule states that "contractors shall not discriminatorily exclude minority and female contractors from those from whom bids are solicited."³³ Because each State contract must contain provisions to the effect that the contractor will observe the Kansas Act Against Discrimination and not discriminate against any person in the performance of work under the contract because of race, religion, color, sex, physical handicap, national origin or ancestry, presumably such discrimination against minority and female contractors could result in termination or suspension of the contract. Of 65 contract compliance reviews conducted by KCCR in FY 1982, 28 involved construction, supplies or other services to the State of Kansas and other local units of government. The KCCR stated that "fifteen non-compliance findings (involving compliance) were issued to contractors in FY 1982 relative to underutilization of minorities and women in the labor force, and for failure to solicit bids from minorities and women contractors."³⁴ In FY 1981 and 1982 KCCR docketed two individual complaints from minority contractors alleging discriminatory bidding procedures. The FY 1981 complaint was closed administratively because KCCR lacked jurisdiction. However, "the complaint docketed in FY 1982 resulted in a probable cause finding to credit the allegations made in the complaint."³⁵ However, KCCR has no responsibility to monitor compliance with the Kansas Small Business Procurement Act.³⁶

²⁷ Ibid.

²⁸ Ibid.

²⁹ *Wichita State Study*, pp. 29-35.

³⁰ Wayne Rogers interview, Jan. 11, 1983.

³¹ Wayne Rogers, telephone interview, June 19, 1983.

³² Wayne Rogers, telephone interview, Jan. 18, 1983.

³³ Kansas Commission on Civil Rights, *Rules and Regulations*, §21-50-7 (1982).

³⁴ William V. Minner, Contract Compliance Administrator, Kansas Commission on Civil Rights, letter to staff, Sept. 13, 1983.

³⁵ William V. Minner, letter to staff, Feb. 17, 1983.

³⁶ William V. Minner, telephone interview, Feb. 5, 1983.

4. Obstacles to Minority and Women-Owned Business Participation in State Contracting

The Wichita State University study of Kansas small and minority business, found that about half of all the businesses responding to the survey either did not know how to do business with the State or had no opportunity to do so.¹ During the course of this report participants, both State officials and minority and women small business owners, were asked what they perceived as problems hindering minority and women-owned businesses from competing for State contracts. Most of the responses fell into the lack of information or lack of opportunity categories. The two are interrelated because lack of information about the State procurement process results in diminished opportunity to do business with the State. The business owner who does not know how the State buys probably does not know what it is buying. Complexity of the paperwork required was mentioned by one small business owner as preventing her firm from successfully obtaining State contracts. Bonding was considered by both groups as a major problem for minority and women-owned small businesses.

Although not mentioned by any of the minority or women owners interviewed by Kansas Advisory

Committee staff as a problem, the director of the Minority Business Office stated "prompt pay" for completed work is a problem for some. He believes it would help small minority and women-owned businesses if the State could pay its bills within 15 to 30 days after receiving them instead of the current 45.²

The smaller and more local the business of a particular minority or woman-owned firm, the less likely it is to know about State procurement procedures and opportunities.³ One woman-owned firm had not sought any State contracts because she had no knowledge of them.⁴ Another firm wanted information but did not know where to turn. The booklet by the Minority Business Office, "A Guide for Doing Business with the State of Kansas" was not considered of much assistance by that small business owner.⁵ One minority business owner did not believe the State did enough to let minority contractors know about contracting opportunities.⁶

The bidding process itself was frequently cited as causing problems. Minority and women owned businesses have little chance of competing for State contracts without being on the bidder's mailing list.

¹ Susan K. Osborne, *A Small and Minority Business Management and Procurement Study for the Kansas Department of Economic Development: Preliminary Final Report*, (Wichita: Wichita State University, Center for Business and Economic Research, Mar. 30, 1979) (hereafter cited as *Wichita State Study*), Table 34.

² Wayne Rogers, Director, Minority Business Office, Kansas Department of Economic Development, telephone interview, Jan. 18, 1983.

³ *Wichita State Study*, p. 14.

⁴ Martha Jewell, Jewell Forklift Parts Company, Inc., letter to staff, Apr. 6, 1983.

⁵ Patricia G. Koehler, Manager, J.R. Custom Metal Products, Inc., letter to Leroy Tombs, Chairperson, Kansas Advisory Committee's Subcommittee on Business Enterprise, Nov. 4, 1982.

⁶ Sylvester James, James and Sons Maintenance Services, interview in Kansas City, Kans., Dec. 1, 1982 (hereafter cited as Sylvester James interview).

The Division of Purchases believes that getting more minority owned companies on the list is crucial to increasing their participation in State procurement.⁷ The comparison of minority-owned firms on the bidders' mailing list with minority firms listed in the Kansas Minority Business Directory indicated that only a small number of firms in the directory were on the list. This may be because firms that do not bid on contracts after a period of time are dropped from the list.⁸ In fact, one minority business owner remarked that he was on the list but had not received any solicitations for bids for some time.⁹ It is possible that he and other small business owners are not aware of the State's policy of dropping names from the list.

One woman small business owner alleged that the bidding process can be a futile effort because the purchase is actually being negotiated. In such cases responding to bid solicitations is not as important as being familiar with the agency contracting personnel.¹⁰ A woman-owned construction company noted that State general contractors often send bid requests too late for the company to prepare an acceptable subcontract bid and believes this may be a problem for others as well. Additionally, the very reproduction quality of the bid request may hinder a response, making it impossible to read the various items.¹¹

Bonding and monetary guaranties present problems because they are difficult and costly to obtain. In addition, the owner of a construction company asserted that bonding was one way large general contractors eliminated minority subcontractors. The general contractor requests bids for work that it knows will exceed the minority or women-owned firm's bonding capacity.¹² It can then report to the contracting agency that it has tried but been unsuccessful in securing minority or women subcontractors. The contract compliance officer for the Kansas Department of Transportation commented that bonding could be an obstacle to minority participa-

tion because it is an activity the State cannot control and therefore there is the possibility of discrimination.¹³

Monetary guaranties and bonds are meant to insure compliance with the terms of the contract. If the contractor fails to deliver the goods or services in the quantity, quality or time agreed upon, the bond or guaranty may be forfeited. The State of Kansas can require a monetary guaranty on all bids of \$2,000 or more. The guaranty, when required, can be in the form of a certified or cashier's check payable to the State.¹⁴ The guaranty check of a successful bidder will be returned after completion of the contract.¹⁵ The checks of unsuccessful bidders are returned after the contract is awarded.¹⁶ Presumably monetary guaranties for a large amount would involve a loan for most minority and women owned firms that they could not obtain.

The State only recently lessened its guaranty requirements "in an effort to reduce costs and encourage increased participation by small businesses."¹⁷ Whereas monetary guaranties had been required on all non-construction bids over \$2,000 and on all construction bids over \$10,000, the Division of Purchases no longer requires them on most purchases effective March, 1983. Monetary guaranties may be required for certain "critical commodities and service contracts at the discretion of the director of purchases." Agencies may request bonding of individual transactions but such requests will have to be thoroughly documented and outline the reasons for the request.¹⁸ It is too early to determine if the relaxation of the policy will increase minority and women owned businesses participation.

One minority entrepreneur stated that "bonding as such is probably the last bastion which prohibits female and minority enterprises from entering the economic mainstream in America. In many instances, bond requirements are no more than a

⁷ Nicholas B. Roach and Hilton M. Kennedy, interview in Topeka, Jan. 11, 1983; State of Kansas, Division of Purchases: "General Conditions and Instructions on Bidding," January 1983.

⁸ Wayne Rogers interview in Topeka, Jan. 11, 1983.

⁹ Sylvester James interview.

¹⁰ Sharon F. Poindexter, Poindexter Associates, Consultants, letter to staff, Dec. 10, 1982.

¹¹ Louisa Q. Griffin, Louisa Construction Co., Inc., letter to Leroy Tombs, Chairperson, Kansas Advisory Committee's Subcommittee on Business Enterprise, May 24, 1983.

¹² Ibid.

¹³ Keyton Barker Jr., Contract Compliance Administrator,

Kansas Department of Transportation, interview in Topeka, Jan. 11, 1983.

¹⁴ Nicholas B. Roach and Hilton M. Kennedy, interview in Topeka, Jan. 11, 1983; State of Kansas, Division of Purchases: "General Conditions and Instructions on Bidding," January 1983.

¹⁵ Kansas Department of Economic Development, *A Guide for Doing Business with the State of Kansas*, n.d.

¹⁶ Ibid.

¹⁷ State of Kansas, Department of Administration, Division of Purchases, *Information Circular 463*, Jan. 19, 1983.

¹⁸ Ibid.

convenient subterfuge to prohibit the sharing of the economic pie.”¹⁹ Bonds and guaranties are difficult for the minority and women-owned firms to obtain because banks and bonding companies require a track record before they will loan the money or issue the bond. In other words, the businesses must demonstrate experience and success in the kind of work the contract for which they seek the bond requires. For some minority or women-owned businesses this kind of track record may be difficult to show. The guaranties and bond are costly because the companies must submit financial statements prepared by certified public accountants. Liquid assets such as certificates of deposit, and stocks and bonds may also be necessary.²⁰

In the 1981 legislative session three State Senators, including the State Senator who was primarily

responsible for the small business set-aside law, introduced a bill which would have created a bond guarantee program for small contractors. (Here the term “guarantee” is used which, while similar in spelling, has a different meaning than guaranty. A guarantee is a commitment to prevent default of payment, not an assurance of performance of work.) However, the bill did not make it out of committee.²¹ Minnesota has an indemnity law which was enacted in 1977.²² It provides for the Commissioner of Administration or Transportation to partially indemnify bonding companies which provide bonds covering all or any part of a contract that is designated for award to small businesses owned by economically and socially disadvantaged persons. The amount of the indemnity shall not exceed \$100,000.²³

¹⁹ Robert L. Collins, President, Dynamic Contracting, Inc., telephone interview, Sept. 29, 1983.

²⁰ Ibid.

²¹ State Senator Billie Q. McCray, interview in Topeka, Jan. 11, 1983.

²² Minn. Stat. 574.262.

²³ Emily Shapiro, Legislative Analyst-Attorney, House Research Department, State of Minnesota, telephone interview, Sept. 29, 1983.

5. Kansas Department of Transportation

The Kansas Advisory Committee examined the minority business enterprise program of the Kansas Department of Transportation (KDOT) which was praised by the director of the Minority Business Office for doing much of the work in the State to encourage minority contractors.¹ That has not always been the case, however. KDOT's contract compliance program was staffed by only two persons in 1969 when the U.S. Department of Transportation found KDOT deficient in two areas—internal hiring and providing opportunities for minorities in State contracts. Since then the office staff has been increased to four professionals (including the contract compliance administrator).² The contract compliance administrator told Advisory Committee staff that KDOT's management is committed to utilization of minority and women owned businesses and that he has been given "full rein" to implement the minority business enterprise program.³

The State of Kansas uses Federal funds to build and repair its highways and therefore must comply with U.S. Department of Transportation requirement that both the State and its prime contractors take affirmative action to ensure maximum opportu-

nity for minority and women-owned firms to compete for and perform contracts.⁴ The Federal Highway Administration (FHWA) monitors the funds which are used.⁵

Prior to FY 1983, the State established the overall goal in dollars for their highway MBE program based on a percentage of the total Federal allocation and what they anticipated would be let in contracts.⁶

Now, the Surface Transportation Assistance Act (STAA) of 1982 requires that State highway agencies set an annual MBE goal of not less than 10 percent of their appropriation under the Act, unless granted a specific waiver.⁷ The State's FY 1983 MBE goal was set at 8.3 percent but will be 10 percent in FY 1984.⁸ Goals on individual contracts are set by KDOT's contract compliance administrator, the chief estimator and assistant engineer based on reviews of past contracting; taking into consideration such factors as whether the project is located in an area of the State that has significant numbers of minorities and the kind of subcontracting work the job might offer.⁹ The goal is then made a condition of the contract. The prime contractor designates the

¹ Wayne Rogers, Director, Minority Business Office, Kansas Department of Economic Development, interview in Kansas City, Mo., Nov. 15, 1982.

² Keyton Barker Jr., Contract Compliance Administrator, Kansas Department of Transportation, interview in Topeka, Jan. 11, 1983.

³ Ibid.

⁴ 45 Fed. Reg. 21172 et seq., Mar. 31, 1980; 46 Fed. Reg. 23457 et seq., Apr. 27, 1981; Ex. Order No. 12138; 44 Fed. Reg. 22174, May 18, 1979.

⁵ Glenn B. Smith, Acting Regional Director, Office of Civil Rights, Federal Highway Administration, U.S. Department of Transportation, Region VII, interview in Kansas City, Mo., Nov. 21, 1982. Mr. Smith subsequently became the Regional Director.

⁶ Keyton Barker, interview in Topeka, Jan. 11, 1983.

⁷ Federal Highway Administrator, "Memorandum to Regional Federal Highway Administrators," Mar. 1, 1983.

⁸ Federal Highway Administrator, "Memorandum to Regional Federal Highway Administrators," Feb. 18, 1983.

⁹ Keyton Barker, interview in Topeka, Jan. 11, 1983.

portion of the job that will be subcontracted and to whom.¹⁰ The department has developed an extensive list of minority and women-owned firms for utilization by prime contractors which is included with every contract.¹¹

In fiscal years 1981 and 1982 goals were set at three percent of total contracts for minority-owned businesses and one percent of total contracts for women-owned businesses. In fiscal year 1981 total dollar value of the minority-owned business contracts was \$4.5 million or 4.4 percent of total bids let. Women-owned business contracts totaled \$2 million or 1.9 percent of total bids. In fiscal year 1982 the minority business participation dropped to 2.6 percent of total bids let while women-owned business participation rose to the same amount.¹²

One woman construction company owner does not believe her company would receive the subcontracts it now does if it were not for KDOT minority participation goals.¹³

The regional civil rights director stated that "implementation of the contract compliance program is the responsibility of the KDOT. However, the Federal Highway Administration closely moni-

tors progress and recommends changes as necessary."¹⁴ Activities of the civil rights office of the Federal Highway Administration include review and guidance to the States in contractor prequalification procedures, procedures for approval of subcontractors and necessary assurances related to meeting subcontracting goals. A 1981 review performed jointly by the State's (KDOT) construction and maintenance engineer and regional FHWA civil rights staff indicated that KDOT was considered to be in substantial compliance with Federal civil rights regulations.¹⁵ The review stated that KDOT had not received any specific complaints about competitive bidding procedures during 1980, although two minority business owners expressed concern that most of the minority business participation goals were being met by contracting "seeding items" (landscape work incidental to the construction of a highway). The review made some recommendations for improvement in areas such as advertising periods for projects and KDOT evaluations to ensure that contract goals are placed on highway projects that will provide significant opportunities on minority and women subcontractors.¹⁶

¹⁰ Ibid.

¹¹ Ibid.

¹² W.M. Lackey, P.E., Chief of Construction and Maintenance, Kansas Department of Transportation, letter to staff, Jan. 17, 1983; calculation by Advisory Committee staff.

¹³ Louisa Q. Griffin, Louisa Construction Co., Inc., letter to Leroy Tombs, Chairperson, Kansas Advisory Committee's Subcommittee on Business Enterprise, Nov. 19, 1982.

¹⁴ Glenn B. Smith, letter to staff, September 19, 1983.

¹⁵ Ibid, and "A Review of Competition Obtained in Bidding Procedures and Methods Affecting the Selection of Subcontractors, Material Suppliers and Lessors of Equipment, in accordance with FHRM Vol. 6, Ch. 4, Sec. 1, Subsec. 16, Attachment 1," performed by KDOT and FHWA, Office of Civil Rights staff on Jan. 13 and 14, 1981.

¹⁶ Ibid.

6. Conclusion, Findings and Recommendations

Conclusions

One avenue to success for small businesses—involvement in State procurement projects—is limited for most of Kansas' minority and women owned small businesses, making the dream of owning a small business even harder to realize. Data shows that less than one percent of the total value of State contracts are awarded to minority or women-owned small businesses. Although the State has taken some steps to increase this level of participation, for the most part they have been ineffective. The one staff person in the Minority Business Office cannot be expected to insure that Office achieves its full potential as a source of assistance to the State's minority and women small businesses. Much more needs to be done in the area of public education on the State's procurement policies. Procurement opportunities could be more broadly advertised.

The State's set-aside law, while a step in the right direction, remains an empty promise for those businesses which could most benefit and are in the most need. Thirty percent of the State's business now goes to small businesses without the use of a set-aside. Unless the definition of small business is modified or a set-aside specifically for minority and women-owned businesses is incorporated into the law it will remain useless as a tool to increase those firms' participation in State procurement. The State's relaxation of its monetary guaranty policy may serve to increase minority and women-owned business participation in state procurement. It will

take time for its impact to be known. It is an example, though, of what the State can do.

Some problems mentioned by minority and women-owned business owners may well be out of the control of the State, for instance the practice of sending requests for subcontract bids too late for the minority and women-owned firms to develop an acceptable response. But the State must carefully examine the efforts of its prime contractors to insure that real opportunity is given to the minority and women-owned firms instead of empty gestures to satisfy a bothersome contract condition. While the State is not responsible for making dreams come true, it is responsible for equal access to the opportunities which can make the dream reality.

Findings And Recommendations

The following findings and recommendations are submitted under the provisions of Sec. 703.2(e) of the Commission's regulations, empowering the Advisory Committee to "Initiate and forward advice and recommendations to the Commission upon matters which the State Committee has studied."

The Advisory Committee presents the findings and recommendations for consideration by the Commission in its national program planning and for its consideration in advising the President and Congress on matters within its jurisdiction.

Finding 1: The Advisory Committee noted that the Kansas Small Business Procurement Act requires that at least 10 percent of the State contracts and

purchases be made with small business. However, the law makes no special provisions to enhance opportunities for minorities or women to become State contractors. The Advisory Committee found that less than one percent of the value of all State contracts went to minority small business between 1979 and 1982. In addition, the State has no tracking method for determining the participation of women-owned small businesses in State contracting, except for the State Department of Transportation's (DOT) Minority Business Enterprise Program, which sets goals for participation of minority and women-owned businesses in the highway program. The Committee found that the percentage of contracts going to minorities from DOT was somewhat above the State as a whole, between 4.4 percent and 2.6 percent. Women-owned business participation in DOT contracting programs ranged from 1.9 percent to 2.6 percent.

Recommendation 1A: The Advisory Committee recommends that the Legislature amend the Small Business Procurement Act to provide both minority and female set-aside provisions.

Recommendation 1B: The Advisory Committee recommends that the State institute a procedure to determine the level of participation by women-owned small businesses in all State contracting activity. This data would assist in assessing what steps might be taken to assure a fuller participation of women in obtaining business opportunities through the State.

Finding 2: The Advisory Committee found that the Office of Minority Business has insufficient staff to reach its full potential to provide assistance and outreach to minority business persons, although requests have been made for increased appropriations to be used for such purposes. The 1979 *Wichita State Study* on Kansas small business recommended that a Division of Small and Minority Business be established within the Department of Economic Development because it regarded the Office of

Minority Business as limited in effectiveness because of its size.

Recommendation 2: The Advisory Committee recommends that the Legislature note the efforts of the Office of Minority Business and consider providing increased support for its activities to encourage participation of minorities in State procurement. The State might consider provision of assistance to women businesses through this office or otherwise within the Department of Economic Development.

Finding 3: Although the Advisory Committee recognizes that the State has made efforts to disseminate information about procurement opportunities, it found that some minority and women business owners did not feel they had received adequate information about bidding opportunities and procedures.

Recommendation 3: The Advisory Committee recommends that the State agencies and departments, including the Division of Purchases and the Office of Minority Business, work together to assure minorities and women are provided all possible information about contract opportunities and technical assistance in bidding.

Finding 4: The Advisory Committee noted that minorities and women sometimes have difficulty obtaining bonding and monetary guaranties necessary to doing business with the State. The recent policy of the Department of Administration, Division of Purchases, that lessened monetary guaranty requirements may increase the chances for minority and women-owned businesses to bid successfully for State contracts.

Recommendation 4: The Advisory Committee suggests that the Legislature reconsider enactment of a bond guarantee program for small contractors, comparable to that proposed in Senate Bill No. 230 introduced in the 1981 legislative session. This would offer a substantive means to ease one obstacle to successful bids by small and disadvantaged minority and women's firms.

Appendix A

Federal Minority and Women's Business Enterprise Programs and Their Implementation

1. Federal Procurement Policies and Programs to Assist Minorities and Women

The Federal Government is the "world's biggest buyer" so it is obvious why participating in the Federal procurement process is so important to minority and women small business owners.¹ It purchases just about everything imaginable: food-stuffs, all kinds of equipment, vehicles, computers, uniforms, maintenance and janitorial services, research and consultant services. The Government also constructs anything from greenhouses, dams, driveways to roads and bridges, single family houses, to office or apartment buildings.²

In FY 1980 the Federal Government spent 51.7 percent of the total value of its contracts over \$10,000 for manufactured goods (supplies and equipment) but minority-owned manufacturing firms represent only 4.7% of all such firms, when last counted in 1977. Furthermore, only about 2.5% of all minority-owned firms were manufacturers.³ The Federal Government also spends a large share of its procurement dollar for other services and construction.⁴ It would appear that minority firms should be better able to take advantage of this circumstance

because minority construction firms comprised 10 percent of all minority firms in 1977.⁵ Additionally, 12 percent of all minority construction contractors are general contractors and therefore should be able to benefit directly from Government spending for new construction.⁶

A 1975 study by the U.S. Commission on Civil Rights found that purchases from minority firms represented only 0.7 percent of all Federal procurement in FY 1972 and that purchases from women-owned businesses were probably much less.⁷ The Commission stated that insufficient working capital and lack of knowledge of bidding opportunities limited minority and women-owned businesses in obtaining Federal Government contracts.⁸ The report made a number of recommendations directed toward increasing the annual dollar value of Federal contracts and subcontracts with minority and women-owned firms to an amount at least equal to their representation in all American businesses.⁹

The President's 1982 report on small business stated that nationally, minority and women-owned firms "are generally concerned with what they

¹ Small Business Administration, *Selling to the U.S. Government* (1979) (hereafter cited as *Selling to the Government*).

² General Services Administration, *Doing Business with the Federal Government* (October 1981) (hereafter cited as *Doing Business*).

³ United States, The President, *State of Small Business: A Report of the President* (March 1982) (hereafter cited as *State of Small Business—1982*), Tables F.4 and I.4.

⁴ *State of Small Business—1982*, Table F. 4.

⁵ *State of Small Business—1982*, Table I.4.

⁶ U.S. Department of Commerce, Bureau of the Census, *1977 Survey of Minority-Owned Business Enterprises* (MB77-4) (December 1980) (hereafter cited as *MBE Survey*), Table 1b.

⁷ U.S. Commission on Civil Rights, *Minorities and Women as Government Contractors* (1975) (hereafter cited as *Government Contractors Report*), p. 111.

⁸ *Ibid.*, p. 112.

⁹ *Ibid.*, p. 129.

perceive to be their low level of participation in the Federal procurement process.”¹⁰ Among the impediments they believe prevent their securing a higher share of the Federal procurement dollar are “complexity and inconsistency of the current procurement system and general failure to implement laws intended to increase the small business share.”¹¹ Some minority and women contractors in Kansas interviewed for this report stated they were inhibited in seeking government contracts by the “complexity of paperwork” and lack of information about bidding opportunities.¹²

Small business owners have a valid complaint when they contend that the Federal procurement system is complex. The Office of Federal Procurement Policy in 1978 and 1979 conducted a survey of nineteen Federal agencies.¹³ It found that there were “485 offices regularly issuing procurement regulations, 877 different sets of regulations, and 64,000 pages of regulations in effect. Twenty-one thousand and nine hundred new or revised pages of procurement regulations are issued each year.”¹⁴ Most general use items are purchased for the Government either by the General Services Administration (for civilian agencies) or the Defense Logistics Agency (for military agencies). The General Services Administration (GSA) issued regulations are *Federal Procurement Regulations* and the *Federal Property Management Regulations*. The Defense Logistics Agency (DLA) uses *Defense Acquisition Regulations*. But individual agencies and departments can develop their own policies and procedures to further implement the GSA regulations, thus the myriad of procurement regulations.¹⁵ *Federal Acquisition Regulations* designed to replace both the *Defense Acquisition Regulations* and the *Federal Procurement Regulations*, will become effective April 1, 1984.¹⁶

There are two methods of procurement: formal advertising and negotiation. When formal advertising is used the Government solicits bids either by sending bid invitations to firms on its bidder's lists or by advertising in various publications such as trade

papers, or the *Commerce Business Daily*. The *Commerce Business Daily* is published every business day by the U.S. Department of Commerce. It lists proposed Government procurements (\$5,000 and above for Federal civilian agencies; \$10,000 and above for the military), subcontracting leads, contract awards of \$25,000 and above, and identifies proposed purchases that are to be made exclusively from small business firms.¹⁷ Each agency maintains its own bidder's list and inclusion on one agency's list does not put a contractor on every agency's list. There is no single, governmentwide list. Federal statutes and regulations allow certain contracts to be negotiated instead of competitively bid. For example, contracts can be negotiated when it is impossible to draft adequate specifications as would be the case in experimental or developmental research work or there is need to act faster than the competitive bidding process allows.¹⁸

Superimposed on this mountain of regulations are the Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) procurement programs mandated by law. In this appendix the Advisory Committee focuses on some of those programs and the two agencies primarily responsible for assisting minority and women-owned small businesses obtain greater participation in Government procurement. These agencies are the Small Business Administration and the Minority Business Development Agency.

8(a) Program

Amendments to the Small Business Act mandate that Federal agencies utilize certain procurement programs to promote minority business enterprises. Among these are the 8(a) program, small business set-aside, and subcontracting program.¹⁹ Prior to the 1978 amendments, the 8(a) program, perhaps the best known Federal program to encourage minority-owned business participation in government procurement, was based on language authorizing the Small Business Administration (SBA) to let “subcontracts to small-business concerns or others.” Now

¹⁰ *State of Small Business—1982*, p. 165.

¹¹ *Ibid.*

¹² Patricia Koehler, J. R. Custom Metal Products, Inc., letter to Leroy Tombs, Chairperson, Kansas Advisory Committee's Subcommittee on Business Enterprise, Nov. 4, 1982; Luther White, D & H Tire Service Company, interview in Kansas City, Kansas, Dec. 1, 1982; and, Sharon Poindexter, Poindexter Associates, Consultants, letter to staff, Dec. 10, 1982.

¹³ *State of Small Business—1982*, p. 165.

¹⁴ *Ibid.*

¹⁵ *Doing Business*, p. 3.

¹⁶ John B. Platt, GSA Regional Administrator, letter to staff, Sept. 21, 1983.

¹⁷ *Selling to the Government*; See also John B. Platt, letter to staff, Sept. 21, 1983.

¹⁸ *Selling to the Government*.

¹⁹ 15 U.S.C.A. §637 (1976).

the statute specifically states that the program is for small socially and economically disadvantaged business. Under 8(a) SBA is authorized to contract with Federal agencies to provide goods and services, it in turn subcontracts with small socially and economically disadvantaged business owners.²⁰ A small business concern owned and controlled by socially and economically disadvantaged individuals is defined as one that is at least 51 percent owned and controlled by one or more such individuals.²¹ Socially and economically disadvantaged individuals are those who have been subjected to racial, ethnic or cultural bias and as a result their ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities.²² This includes but is not limited to Blacks, Hispanics, Native Americans, Asian Pacific Americans, and other minorities or other individuals found by the Small Business Administration to be disadvantaged.²³ Women, while not included as a group within the category, can qualify as individuals if they can prove disadvantage.²⁴ The program is designed to channel non-competitive Federal contracts to those firms to help them become more self-sufficient.²⁵

Business owners interested in the 8(a) program are interviewed by a SBA district office business development specialist who explains the program requirements and purposes. The business development specialist obtains basic information about the business to determine if an applicant meets the statutory requirements (e.g., social and economic disadvantage, size, ownership control). If on these bases the business is considered a candidate for the 8(a) program, the feasibility of applicant's participation is further determined—whether there is enough “support” (Federal Government contracts) for the services or goods the company provides. If not, the firm can reapply in another six months. If contracts are or will be available, the business applicant must complete a “Personal Financial Statement,” an “8(a) Personal Eligibility Statement,” an “8(a) Business Eligibility Statement,” and a “Business Plan.” The plan requires the applicant to take an objective look

at the business, its assets, liabilities, equipment facilities, employees, past contracting record and potentials for future growth. These forms make up the complete “package” which must be reviewed for approval at district and regional office levels. Final approval is given by SBA headquarters in Washington, D.C. on advise of the regional level.²⁶

8(a) participants get contracts through SBA. Minority Small Business-Capital Ownership Development (MSB-COD) staff communicate with the procurement officers of the various Federal agencies in order to locate procurement opportunities. Once it is determined that there is a contract suitable for the program, SBA staff looks through the 8(a) portfolio and selects a business that can fulfill the contract. SBA then requests the project from the agency and sends a request for proposal to the selected 8(a) contractor. The potential contractor figures costs and negotiates directly with the agency to set final terms. The 8(a) participant signs a contract with SBA. In effect, SBA is the prime contractor and the 8(a) company is the sub-contractor. The district office MSB-COD staff has the responsibility of working with the 8(a) participant to solve any problems which might develop during the course of the contract.²⁷

SBA believes that the 8(a) program should evolve from primarily a contracting program to a business development program to help eliminate 8(a) firms' dependency on Government contracts and to teach them to compete.²⁸ In fact the MSB-COD administrator told Advisory Committee staff that 8(a) is not a “contracting program” but a “business development program.” This was emphasized in the 1980 amendments to the Small Business Act of 1953, mandating fixed program participation terms. These designate a maximum length of time a firm can be in the 8(a) program.²⁹ Currently the maximum is five years.³⁰ The Fixed Program Participation Term (FPPT) is negotiated before the business applicant is finally accepted in the 8(a) program. The FPPT is determined by analyzing the business plan and applying a point system. Depending on the firm's score, the term can be 1–2 years, 3–4 years, or 4–5

²⁰ 15 U.S.C.A. §637(a) (1976); See also *Government Contractors Report*, p. 35.

²¹ 15 U.S.C.A. §637(d)(3)(C) (1976).

²² 15 U.S.C.A. §§637(a)(1)(C)(5) and (6) (1976).

²³ 15 U.S.C.A. §637(3)(1)(C) and §637(d)(3)(C) (1976).

²⁴ 15 U.S.C.A. §637(d)(3)(C) (1976) and §637(a)(2)(C)(4) (1976).

²⁵ SBA, *Annual Report FY 1981* (1982), Vol. 1, p. 61.

²⁶ Alexander Morrow, Chief, Business Development, Region

VII SBA, Minority Small Business-Capital Ownership Development Division; interview in Kansas City, Mo., Aug. 30, 1983.

²⁷ Ibid.

²⁸ SBA, *Annual Report FY 1980* (1981), Vol. 1, p. 51.

²⁹ 15 U.S.C.A. §636(j)(10)(A) (1976).

³⁰ SBA, *8(a) Fact Sheet*, n.d.

years. SBA recommends the shorter term within a range but the applicant can offer justification as to why the longer term is more appropriate.³¹ The guidelines implementing the fixed program participation terms survived a challenge by the Minority Business Enterprise Legal Defense and Education Fund.³² The Fund had attacked the guidelines as "arbitrary, capricious, an abuse of discretion, or not in accordance with the language of the 8(a) statute."³³ The Federal District Court for the District of Columbia held the guidelines were flexible because under certain circumstances the fixed program participation time can be extended to seven years and that they furthered the purpose of the Small Business Act.³⁴

Subcontracting Program

The subcontracting program provides that all government contracts in excess of \$500,000 or \$1 million in the case of construction, unless awarded to a small business, must contain a subcontracting plan for subcontracting with small and small socially and economically businesses.³⁵ The plan must include percentage goals, the name of the person who will administer the plan, a description of the contractor's efforts to include such firms, assurances that its subcontractors also will encourage their participation (in some cases subcontractors also have to develop plans) and an assurance that the contractor will maintain and submit the required reports on small and small socially disadvantaged firms' involvement.³⁶ Failure to comply in good faith with a subcontracting plan constitutes a breach of contract.³⁷

Set-aside Program

The set-aside program is authorized by Section 221 of the Small Business Act amendments.³⁸ It provides that each Federal contract for the procurement of goods and services with an anticipated value of less than \$10,000 and which is subject to small purchase procedures shall be reserved exclusively

for small business concerns unless the contracting officer is unable to obtain offers from two or more small businesses. The offers must be competitive with the market in terms of not only price but also quality and delivery. The statute mandates that contracting officers, whenever possible, use a method of payment which minimizes paperwork and facilitates prompt payment to the contractors.³⁹ The set-aside program has no special provision for small socially and economically disadvantaged businesses.

Women-owned Businesses

There are no statutory preferential procurement programs specifically for women. Executive Order No. 12138, however, requires affirmative action in support of women-owned business.⁴⁰ The Executive Order directs each Federal department and agency to

(a). . . take appropriate action to facilitate, preserve and strengthen women's business enterprise and to ensure full participation by women in the free enterprise system.

(b). . . take affirmative action in support of women's business enterprise in appropriate programs and activities including but not limited to: 1) management, technical, financial and procurement assistance; 2) business related education, training, counseling and information dissemination; 3) procurement.⁴¹

To implement the Executive Order, the Office of Federal Procurement Policy issued a policy directive amending Government-wide procurement regulations. They specify that in all Federal contracts over \$10,000 the contractor must agree to use its best efforts to subcontract with women-owned business, and on contracts over \$500,000 the contractor must agree to establish an affirmative action plan to subcontract with women-owned firms.⁴²

Small Business Administration

The Small Business Administration (SBA) was created by the Small Business Act of 1953 to "aid,

³¹ Alexander Morrow, interview in Kansas City, Mo., Aug. 30, 1983.

³² *Minority Business Legal Defense and Education Fund Inc., v. Small Business Administration*, Civil No. 82-0788, (D.D.C. Sept. 28, 1982).

³³ *Id.*

³⁴ *Id.*

³⁵ 15 U.S.C.A. §637(d) (1976).

³⁶ 15 U.S.C.A. §637(d)(6) (1976).

³⁷ 15 U.S.C.A. §637(d)(8) (1976).

³⁸ Codified at 15 U.S.C.A. §644 (j) (1976).

³⁹ *Id.*

⁴⁰ Executive Order No. 12138, 44 Fed. Reg. 29631, May 18, 1979.

⁴¹ *Ibid.*

⁴² SBA, Office of Management Assistance, *Women's Handbook* (1982).

counsel, assist, and protect the interests of small business."⁴³ It accomplishes its purpose by seeking to improve the management skills of small business owners, potential owners, and managers, conducting studies of the economic environment, making or guaranteeing loans to small businesses and state and local development companies and ensuring that small business concerns receive a fair proportion of Government purchases contracts and subcontracts. The Advisory Committee focused on this last activity.

Although SBA staff works to provide 8(a) firms with contracts based on their business plans, there are no guarantees that they will receive contract awards.⁴⁴ The administrator of SBA's Region VII Minority-Small Business and Capital Ownership Program (MSB-COD) which manages the 8(a) program, reported that Federal agencies in Region VII have been cooperative in making contracts available for the 8(a) program.⁴⁵ He said it would be unfair to compare individual agency participation in the 8(a) program because the agencies' needs do not necessarily match the capacities of 8(a) participant firms.⁴⁶ The region met the following goals in FY 1982:

- (1) A minimum of 80 percent of all approved 8(a) firms received at least one contract;
- (2) A minimum of 55 percent of the 8(a) firms received the amount of contract dollars projected in their annual business plans;
- (3) That there be not less than 25 percent of the October 1981 number of firms in the 8(a) program (that number was sixty plus).⁴⁷

Program goals for FY 1983 are:

- (1) At least 75 percent of all approved 8(a) firms should have at least one contract;
- (2) A minimum of 55 percent of firms should receive the amount of contract dollars projected in their annual business plans;

(3) Increase the number of firms in the program to a minimum of 100;

(4) Assist at least 20 firms to receive other than 8(a) contracts.⁴⁸

Nationwide in FY 1981 SBA's 8(a) contracting program exceeded its goal of \$1.6 billion in contract dollars to socially and economically disadvantaged businesses. SBA's portfolio (firms participating in 8(a)) was 2,277 companies including 275 manufacturing firms, 795 construction firms, 588 professional service firms, 582 nonprofessional service firms and 37 concessions. Of the total number of companies, 96 firms or 4.2 percent were owned and operated by women.⁴⁹

In Region VII there were 76 8(a) contractors as of November 1982, all of whom were minority.⁵⁰ Six firms were owned by women and in FY 1982 five of those performed work through the 8(a) program.⁵¹ Most of the 8(a) firms in Region VII, 37, were in Missouri. Kansas had 25 and Nebraska and Iowa followed with nine and five.⁵²

Procurement data for FY 1981 shows that of contracts for over \$10,000 for work to be performed in Region VII, the total Federal expenditure was \$6,783 million. Of that amount, \$71.4 million (1.1 percent of the total) went to minority-disadvantaged business owners.⁵³ Contract awards under the 8(a) program for work performed in Region VII totalled \$49.6 million (69.6 percent of the total awarded to minority and disadvantaged businesses).⁵⁴ In FY 1982 total procurement for work done in Region VII on contracts for \$10,000 or more totalled \$8,458 million and \$65.6 million or 0.8 percent went to minority-disadvantaged business owners.⁵⁵ The total value of 8(a) contracts for work performed in Region VII on contracts with a value of more than \$10,000 was \$37.7 million (57.5 percent of the value of all such contracts awarded to minority and

⁴³ Office of the Federal Register, *The United States Government Manual: 1981-82* (May 1981) (hereafter cited as *U.S. Government Manual: 1981-82*), p. 618.

⁴⁴ Leo Moore, Assistant Regional Administrator, SBA, MSB-COD, Kansas City Regional Office, interview in Kansas City, Mo., Jan. 27, 1983.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ SBA, *Annual Report FY 1981* (1982), Vol. I, p. 62.

⁵⁰ SBA, "8(a) Company Portfolio," Nov. 12, 1982.

⁵¹ William A. Powell, Regional Administrator, SBA Kansas City Regional Office, letter to staff, Nov. 29, 1982.

⁵² SBA, "8(a) Company Portfolio," Nov. 12, 1982.

⁵³ Federal Procurement Data Center, *Federal Procurement Data System, Special Analysis 3: Federal Contract Actions to Minority and Small Disadvantaged Businesses, 4th Quarter, Fiscal Year 1981* (Mar. 15, 1982), Table 3.3B.

⁵⁴ Ibid.

⁵⁵ Federal Procurement Data Center, *Federal Procurement Data System, Special Analysis 3: Federal Contract Actions to Minority and Small Disadvantaged Businesses, 4th Quarter, Fiscal Year 1982* (Mar. 1, 1983), Table 3.3B.

disadvantaged businesses in the region in FY 1982).⁵⁶ SBA reported that \$70 million worth of contracts in FY 1981 and \$60 million in FY 1982 were awarded under the 8(a) program to contractors in Region VII.⁵⁷

Under the subcontracting program, SBA is responsible for monitoring contractors' compliance with the plans while the Federal agency letting the contract determines the adequacy of the goals and if the plans provide "the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of a contract."⁵⁸ SBA's Region VII has two subcontracting specialists who monitor the plans and make onsite visits every month or so to see if contractors are meeting their goals. In FY 1982, 644 of these reviews were completed.⁵⁹

Data provided by SBA headquarters based on monitoring of approximately 20 prime contractors in Region VII indicated that small businesses received 24.8 percent in FY 1981 and in FY 1982 19.3 percent of the total subcontracting dollars. In FY 1981 small socially and economically disadvantaged businesses received 1.3 percent of the total subcontracting dollars and in FY 1982 they received 0.9 percent. Businesses owned by women did not do even as well, accounting for only 0.2 percent in FY 1981 and 1982.⁶⁰ Data for the first quarter of 1983 shows awards of \$6.7 billion of which 19.8 percent were to small businesses; 1.0 percent to minorities and 0.1 percent to women.⁶¹

SBA has a Women's Business Ownership Program, designed to encourage entrepreneurship among women and to promote access of women business owners and potential business owners to SBA services and private sector resources.⁶² The

regional Women's Business Ownership Program coordinator described a wide range of activities used to achieve those ends including counseling, referrals to PASS (Procurement Automated Source System), regional training events (not necessarily for women only) and establishing networks for women business owners.⁶³ One woman business owner familiar with the program, does not believe it is adequately funded but "certainly at the national level, (it) is in a position to speak out confidently on the issues that are helpful in a policy level way for women-owned firms." She criticized the fact that only one person is assigned responsibility on the district level for the women's program.⁶⁴

PASS (Procurement Automatic Source System), a SBA program begun in 1978 is "designed to respond to the request of government agencies and the private sector for profiles of potential bidders."⁶⁵ PASS is a key element in outreach efforts to involve more minorities and women in government contracting.⁶⁶ Through PASS minority and women-owned businesses can make their capabilities known to buying agencies and prime contractors.⁶⁷ In Region VII there were a total of 4,521 companies in the system, 11.4 percent of which were minority-owned and 12.9 percent of which were women-owned.⁶⁸

While letters about the purposes and uses of PASS are disseminated to all available sources of small business owners including minority and women-owner's enterprises and purchasing departments, there are fewer minority companies in PASS than were counted in the region by the Bureau of the Census in 1977.⁶⁹ There were also far fewer women-owned businesses in PASS than recorded in 1977 by the Census Bureau.⁷⁰

The system is not designed to maintain statistics or track effectiveness in matching up buyer and contractor. However, SBA staff stated that in FY 1982

⁵⁶ Ibid.

⁵⁷ Region VII SBA, "8(a) Contract Awards. . . FY 1981," and "8(a) Contract Awards. . . FY 1982," provided on Feb. 9, 1983.

⁵⁸ 15 U.S.C.A. §637(d)(4)(D) and §673(d)(10) (1976).

⁵⁹ Verne Bunn, Assistant Regional Administrator, Procurement and Technical Assistance, SBA Kansas City Regional Office, interview in Kansas City, Mo.; Feb. 7, 1983 (hereafter cited as Verne Bunn interview).

⁶⁰ Statistics provided by Dorothy Bondurant, Industrial Specialist, Office of Procurement Assistance, SBA Headquarters, telephone interview, Feb. 10, 1983.

⁶¹ "Subcontracting: First Quarter—FY 1983," provided in Verne Bunn interview.

⁶² SBA, "Office of Women's Business Ownership," n.d.

⁶³ Lonah Birch, SBA Regional Advocate, interview in Kansas City, Mo., Jan. 28, 1983.

⁶⁴ Sharon Poindexter, letter to staff, Dec. 10, 1982.

⁶⁵ SBA, *Annual Report 1981* (1982), Vol. I, p. 57.

⁶⁶ William A. Powell, SBA Regional Administrator, letter to staff, Nov. 29, 1982.

⁶⁷ Ibid., also SBA, *Annual Report 1981* (1982) Vol. I, p. 57.

⁶⁸ SBA, *PASS Data Base*, n.d., analysis by Advisory Committee staff (hereafter cited as *PASS Data*).

⁶⁹ Ibid., and *MBE Survey*, Table 2a.

⁷⁰ *PASS Data* and U.S. Department of Commerce, Bureau of the Census, *1977 Economic Censuses: Women-Owned Businesses* (WB77-1) (May 1980), Table 2. SBA commented that PASS identifies firms in four categories: service, manufacturing, construction, and research and development; and does not include retail-oriented businesses. (William A. Powell, letter to staff, Sept. 15, 1982.)

it was able to track over one million dollars in awards to companies referred from PASS. In Region VII in FY 1981, 475 searches were made for users (companies seeking minority or women contractors) and 586 in FY 1982.⁷¹

Minority Business Development Agency

Minority Business Development Agency (MBDA), an agency of the U.S. Department of Commerce, is the only Federal agency created to assist and develop minority entrepreneurs.⁷² MBDA's role is to coordinate minority business assistance around the country in order to strengthen and promote its growth and development.⁷³ MBDA provides grant support for a variety of programs. For example, in Region VII it funds a state and local government program in Omaha, Nebraska, which helps the city with its own in-house minority contractor program. The National Hispanic Chamber of Commerce, headquartered in Kansas City, Missouri, received a trade association grant in 1982 so it could provide technical assistance to minority business owners.⁷⁴ MBDA funds Minority Business Development Centers (MBDCs) which provide procurement and technical assistance to existing firms as well as to new firms in the initial stages. There are 100 MBDCs across the nation, one is located in Kansas City, Missouri.⁷⁵ The agency also provides an information clearinghouse about minority business.⁷⁶

But the MBDA function which the Advisory Committee focused upon was its staffing and coordinating activities for the Minority Business Opportunity Committee of the Federal Executive Board (FEB-MBOC). (Federal Executive Boards were established in 1961 by President Kennedy.) The FEB's are interagency groups formed to provide close coordination across department and agency lines in centers of Federal activity outside of Washington, D.C. The idea is to have the departments and agencies work together in the activities that they all have in common such as procurement, public information and community service. The

work of the FEB is carried out primarily through committees. FEB membership consists of the senior official of each department or agency located in the FEB metropolitan area.⁷⁷ The district MBDA office in Kansas City, staffed by one business development specialist and one secretary, is the support for the Greater Kansas City Federal Executive Board's Minority Business Opportunity Committee.⁷⁸

The purpose of the FEB-MBOC is to encourage minority participation in Federal contracting. It functions through four subcommittees: Business Ownership Development; Capital and Economic Development; Management Technical Development; and, Procurement. The Advisory Committee concentrated on the activities of the latter. In FY 1981, the Procurement Subcommittee's major objective was "to coordinate, stimulate and assist in the development and expansion of procurement opportunities for minority business from the government sector and toward [sic] a Federal regional total of \$135 million."⁷⁹ The Committee reported that during FY 1981 minority business procurement totaled \$167.4 million, accomplishing 123 percent of the annual goal. Non-8(a) contracting was credited with \$99.6 million and 8(a) activity at \$67.8 million. HUD was cited as the "single most active agency."⁸⁰

FEB-MBOC efforts in FY 1982 resulted in a total of \$173.5 million to minority business out of a total procurement figure of \$818.8 million. This meant that 21 percent of the Federal procurement dollars of participating regional agencies went to minority businesses. Compared to the \$12.5 million accomplished in 1975 when the FEB-MBOC began its activity, the district MBDA office views the effort as commendable. While there is still room for improvement, the district officer believes the Kansas City MBOC procurement activity compares very favorably against the aggregate national totals

⁷¹ Karen Slater, Procurement Assistant, SBA, interview in Kansas City, Mo., Jan. 27, 1983.

⁷² U.S. Department of Commerce, Minority Business Development Agency, *MBDA What You Need To Know*, n.d.

⁷³ Chester Stovall, Business Development Specialist, MBDA, interview in Kansas City, Mo., Jan. 13, 1983 (hereafter cited as Chester Stovall interview).

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ *U.S. Government Manual 1981-82*, p. 149.

⁷⁷ Greater Kansas City Federal Executive Board, "Operations Handbook," n.d., pp. 1-2.

⁷⁸ Chester Stovall interview.

⁷⁹ Greater Kansas City Federal Executive Board, "FY 1981 Annual Report of the Kansas City Minority Business Opportunity Committee," n.d., p. 4.

⁸⁰ Ibid., p. 2.

which run only about four percent of total Federal procurement dollars to minority business.⁸¹ The FY 1983 goal of the FEB-MBOC is \$155 million to minority business in government procurement contracts. The figure is lower than what was accomplished in FY 1982 probably because agencies expect to have less money for contracting. Chester Stovall, the MBDA business development specialist in Kansas City, commented that the FY 1982 goal was exceeded probably because agencies either had more funds than they anticipated or were able to use some unobligated funds from FY 1981.⁸² District office staff stated that MBDA "plans to continue to support the MBOC program and provide the highest level of possible support. However, the agency does feel that Minority Business Development Centers (MBDCs) can play a primary role towards providing *direct* management and technical assistance to minority businesses."⁸³

2. Minority and Women-Owned Small Business Participation in Procurement Programs of Selected Agencies

To determine how effectively the various programs discussed in the preceding chapter are being implemented by Federal agencies, the Advisory Committee decided to examine the MBE and WBE procurement programs of the General Services Administration, the Defense Logistics Agency, the Environmental Protection Agency, and the Department of Housing and Urban Development. Not all of the many activities of these agencies were included, only the ones with potential for contracting opportunities for small, socially and disadvantaged firms. Data was requested on a regional basis but the Committee found that often was not available.

General Services Administration

As stated earlier, the General Services Administration (GSA) does the majority of purchasing for all Federal civilian agencies. It is divided into the Office of Public Buildings and Real Property Service, the Office of Information Resources Management, the Federal Supply and Services and the

Office of Regional Comptroller.⁸⁴ According to a 1981 pamphlet published by GSA, it spends \$3 billion annually on goods and services and another billion dollars on construction, leases, repairs and alterations.⁸⁵ Through its preferential contracting programs, authorized by the Small Business Act and its amendments, GSA utilizes small businesses, socially and economically disadvantaged small businesses and other qualified firms.⁸⁶ The Advisory Committee sought information on the 8(a) program, the program dealing with women-owned businesses and the subcontracting program for small and small disadvantaged businesses.

In FY 1982 the agency's goal for 8(a) awards was 5.5 percent of total procurement dollars; however it accomplished only 3.3 percent.⁸⁷ The goal was not reached because of the "Inability of SBA to identify contractors and disqualification of 8(a) contractors due to problems found during facility checks and investigations."⁸⁸ The 8(a) goal for FY 1983 is 2.9 percent.⁸⁹ Remarking on the effectiveness of the 8(a) program, the regional administrator said,

We have had both positive and negative experiences with 8(a) contracts. Because of the many requirements that must be met for Federal contracting, it is sometimes too expensive for small businesses without the existing capabilities and therefore, the contract is "too little—too late" for many of these businesses to earn a profit from Federal contracting.⁹⁰

An analysis of GSA prime contracts to Kansas contractors shows that in FY 1981 total dollar volume was \$2.6 million of which \$229,801 (8.8 percent) went to minority contractors, and \$10,630 (0.4 percent) to women. These contracts involved four minority contractors and one woman-owned enterprise. There was one 8(a) contract in the amount of \$183,303, representing seven percent of contract dollars let. In FY 1982 the total contracting dollar volume in Kansas decreased to \$1.6 million. Contracts with minority-owned business amounted to \$167,634 (10.7 percent) and \$26,500 (1.7 percent) to women-owned business.⁹¹

⁸¹ Chester Stovall interview, and FEB-MBOC, "MBOC Procurement Data Report—FY'82," n.d.

⁸² Chester Stovall, telephone interview, Mar. 17, 1983.

⁸³ Chester Stovall, letter to staff, Sept. 21, 1983.

⁸⁴ GSA, *Who is GSA*, n.d.; and John B. Platt, GSA Regional Administrator, letter to staff, Sept. 21, 1983.

⁸⁵ GSA, *Preferential Contracting Programs* (1981), p. 3.

⁸⁶ Ibid.

⁸⁷ GSA, *Procurement Preferences Program Goal Achievement Report*, n.d. (hereafter cited as *GSA Procurement Report*).

⁸⁸ Ibid.

⁸⁹ John B. Platt, interview in Kansas City, Mo., Feb. 14, 1983 (hereafter cited as John B. Platt interview); and, *GSA Procurement Report*.

⁹⁰ John B. Platt, letter to staff, Nov. 29, 1982.

⁹¹ Data supplied by GSA, Dec. 2, 1982, "Contracts Issued—FY'81 and FY'82," n.d., analysis by Advisory Committee staff.

The preferential contracting program for women-owned businesses is authorized by Executive Order No. 12138 which requires Federal agencies to take affirmative action in support of businesses owned by women.⁹² Women-owned businesses received 2.5 percent of the dollar value of all GSA contracts awarded in FY 1981. A goal of 2.4 percent was set for FY 1982 and in fact women-owned businesses received 6.4 percent of the contract dollars. GSA staff is very proud of exceeding its goal and said that Region VI (Kansas City) had topped all other GSA regions in exceeding the FY 1982 goal.⁹³ They attribute their success to GSA's actively publicizing its women-owned business counseling. A directory of women-owned businesses, updated in FY 1981, has been widely disseminated to Federal contracting offices and private sector businesses. It is useful to prime contractors as a source of women-owned businesses to contact as potential subcontractors.⁹⁴ Despite this success in FY 1982 a goal of only 1.3 percent has been set for FY 1983.⁹⁵

Under the subcontracting program GSA requires their prime contractors to establish goals for awarding subcontracts to qualified small and small disadvantaged firms. Each prime contract or subcontract with a value of \$500,000 or more (\$1 million for construction) except those awarded to small businesses, must include a plan and percentage goals for subcontracts with such firms.⁹⁶ Small business concerns owned by socially and economically disadvantaged individuals received 1.4 percent of the dollar value of all subcontracts in FY 1981. A goal of 14.0 percent was set for FY 1982 but actual subcontract awards that year amounted to only 0.6 percent and a goal of 0.5 percent was set for FY 1983.⁹⁷

Aside from these programs, data from GSA showed that small businesses owned by socially and economically disadvantaged individuals received 20.3 percent of the dollars awarded in prime contracts of less than \$10,000 in FY 1981. The goal for FY 1982 was set at only 1.2 percent and accomplish-

ment was 1.7 percent of contract dollars on contracts of less than \$10,000. The goal for FY 1983 of 1.5 percent is somewhat lower than what was accomplished in FY 1982.⁹⁸ Large businesses owned by socially and economically disadvantaged persons received 0.2 percent of all prime contracts valued at more than \$10,000 in FY 1981. The goal for FY 1982 was set at 5.9 percent but again only 0.2 percent of the contracts went to this group. For FY 1983 the goal has been set only at the accomplishment level of the previous year.⁹⁹ In 1981, 8.4 percent of the dollar value of prime contracts valued at more than \$10,000 went to small businesses owned and controlled by socially and economically disadvantaged persons. In FY 1982 the goal set for those contracts was 8.5 percent and 8.2 percent was accomplished.¹⁰⁰

While these statistics and those cited earlier indicate a pattern of reduced participation by small disadvantaged business owners in FY 1981-1983, the GSA regional administrator asserted that GSA is continuing to work to achieve its objectives for using small businesses and small disadvantaged businesses in the procurement preference program. He pointed out FY 1982 accomplishments of over \$5.9 million to businesses owned by socially and economically disadvantaged persons. One of GSA's FY 1983 objectives is to "increase minority business enterprise dollar awards by 10 percent over FY 1982 actuals."¹⁰¹

Helping GSA meet these goals in Region VI is partly the responsibility of the Business Service Center (BSC) located at GSA in Kansas City. It shows contractors how to get on the bidder's lists, provides information on what GSA purchases and can refer business owners to other Federal agencies contracting officers. The counseling and directory of women-owned businesses mentioned earlier resulted from the efforts of the Business Service Center.¹⁰² There are BSCs located in other major metropolitan areas. Beginning in FY 1983, the Business Service Center, as GSA's Office of Small

⁹² Executive Order No. 12138, 44 Fed. Reg. 29637, May 18, 1979.

⁹³ Pat Brown-Dixon, Business Services Officer; and Wilma Hagebush, Business Specialist, GSA Business Services Center, interview in Kansas City, Mo., Feb. 14, 1983 (hereafter cited as Pat Brown-Dixon and Wilma Hagebush interview).

⁹⁴ Ibid. Copies of the directory are available at the Business Service Center, 1500 E. Bannister, Kansas City, Missouri 64131.

⁹⁵ *GSA Procurement Report*.

⁹⁶ GSA, Office of Small and Disadvantaged Business Utilization, *Preferential Contracting Programs*, August, 1981, p. 4.

⁹⁷ *GSA Procurement Report*.

⁹⁸ Ibid. Calculations are by Advisory Committee staff. GSA commented that it does not measure accomplishments or set goals in percentage terms but in dollar amounts for this category. (John B. Platt letter to staff, Sept. 21, 1983.)

⁹⁹ Ibid.

¹⁰⁰ *GSA Procurement Report*.

¹⁰¹ John B. Platt interview.

¹⁰² Pat Brown-Dixon and Wilma Hagebush interview.

and Disadvantaged Business Utilization, will monitor the preferential contracting programs.¹⁰³ The manager of the Business Services Center said the office will be monitoring this activity to assure that GSA's contracting officers are getting contractors to submit the required information on subcontracting with small and small disadvantaged firms.¹⁰⁴ Monitoring may prove difficult because contractors are not required to indicate if subcontractors are minority or women-owned businesses. GSA reporting forms require contractors to state goals and report accomplishments but there is no identification of the subcontractors involved or their geographical location.¹⁰⁵

Defense Logistics Agency

The Defense Logistics Agency (DLA) does most of the procurement for general supply items for the military services, including such items as food, clothing, medical and dental equipment, electrical equipment and petroleum products.¹⁰⁶ Currently the Department of Defense is responsible for approximately 80 percent of the entire Federal purchase budget.¹⁰⁷ Unlike the other Federal agencies reviewed, DLA does not have regional procurement operations in Kansas City. Instead its six supply centers that buy and manage specific commodities are located in Ohio, Virginia and Pennsylvania.¹⁰⁸

The defense supply centers and defense contract administration services regional offices must develop and maintain written Small and Disadvantaged Business Annual Management Plans.¹⁰⁹ They are to include a written program policy and document the kind of support which the office expects to give, specify the responsibilities of the Small and Disad-

vantaged Business Utilization Specialist; state specific dollar goals for each program and other appropriate objectives and time tables that are both immediate and long term; assess prior fiscal year performance and state reasons why previous goals and objectives were not met; estimate budget for the current fiscal year, and indicate special projects, initiatives and other objectives planned for the year.¹¹⁰

Each DLA unit must appoint a Small and Disadvantaged Business Utilization Specialist.¹¹¹ It is the specialist who is primarily responsible for the SAD-BU program which includes implementation of the annual management plan.¹¹²

DLA utilizes the same special emphasis procurement programs authorized by law as GSA does. Statistics given to the U.S. House of Representatives Committee on Small Business indicate that the aggregate amount of subcontracting awards to small businesses and small disadvantaged businesses are increasing.¹¹³ Small disadvantaged business received 1.5 percent of all defense subcontracting in FY 1981, 1.7 percent in the first nine months of FY 1982.¹¹⁴

For Region VII in FY 1981, Department of Defense (DOD) procurement statistics (including DLA) show that on contracts over \$10,000, 1.0 percent went to minority or disadvantaged businesses.¹¹⁵ In FY 1982, for the comparable category, the figure was 0.7 percent.¹¹⁶ Data submitted to the Kansas Advisory Committee indicated that in FY 1981 a total of \$39.1 million was awarded to Kansas contractors.¹¹⁷ However, the work performed on

¹⁰³ Ibid. Amendments to the Small Business Act of 1978 require that each Federal agency having procurement authority establish an Office of Small and Disadvantaged Business Utilization and appoint a director. Its responsibility is to implement the preferential procurement programs authorized under 42 U.S.C.A. §§637 and 644.

¹⁰⁴ Pat Brown-Dixon and Wilma Hagebush interview.

¹⁰⁵ GSA Standard Forms 294 and 295; and *Federal Procurement Regulations*, "Temporary Regulation 59," June 19, 1981.

¹⁰⁶ *Doing Business*, p. 17.

¹⁰⁷ House Committee on Small Business, *Minority Development Efforts of the Small Business Administration*; H.R. Rep. No. 956, 97th Cong., 2nd Sess., Dec. 10, 1982 (hereafter cited as *H.R. Report on Small Business*), p. 35.

¹⁰⁸ *Doing Business*, p. 17.

¹⁰⁹ Defense Logistics Agency, *Small and Disadvantaged Business Utilization Operations Manual*, April, 1981 (hereafter cited as *DLA, SADBUI Manual*) p. XVI-1. Management and administration of most defense contracts are consolidated under the Defense

Logistics Agency through the Defense Contract Administration Services regional offices.

¹¹⁰ *DLA, SADBUI Manual*, p. XVI-2.

¹¹¹ Ibid., p. II-1.

¹¹² Ibid., p. III-1.

¹¹³ *H.R. Report on Small Business*, p. 35.

¹¹⁴ Ibid.

¹¹⁵ Federal Procurement Data Center, *Federal Procurement Data System, Special Analysis 3: Federal Contract Actions to Minority and Small Disadvantaged Businesses, 4th Quarter, Fiscal Year 1981* (Mar. 15, 1982), Table 3.3B.

¹¹⁶ Federal Procurement Data Center, *Federal Procurement Data System, Special Analysis 3: Federal Contract Actions to Minority and Small Disadvantaged Businesses, 4th Quarter, Fiscal Year 1982* (Mar. 1, 1983), Table 3.3B.

¹¹⁷ Ray W. Dellas, Staff Director, Small and Disadvantaged Business Utilization, DLA Headquarters, letter to staff, Jan. 16, 1983.

these contracts may not necessarily be performed in Kansas.¹¹⁸ Of the total amount, \$1.2 million (3.1 percent) went to small and disadvantaged businesses, and \$0.1 million went to women-owned businesses. In FY 1982, \$101.4 million was awarded to Kansas contractors. Of that amount \$0.2 million went to small and disadvantaged businesses and also \$0.2 million went to women-owned businesses.¹¹⁹ Nationally, DOD provided 57 percent of all Federal agency prime contracts over \$10,000 with minority businesses.¹²⁰

Regarding goals in subcontracting plans (required when contracts are over \$500,000) the House Committee determined that small disadvantaged business goals are omitted from the plans much more frequently than small business goals. Additionally, in those contracts having small disadvantaged business goals actual performance was below the goal at least 30 percent of the time. When the goal was met, as it was 70 percent of the time, actual performance averaged 158.5 percent of the goal.¹²¹ The House Committee concluded that there is a "strong inference" that goals are being set at too low a level for most DOD contracts.¹²² However, the General Accounting Office reviewed some of DOD's subcontracting plans and decided it was generally satisfied with the department's efforts at setting goals.¹²³

Environmental Protection Agency

The Environmental Protection Agency (EPA) was established in 1970 to "permit coordinated and effective governmental action on behalf of the environment."¹²⁴ The major EPA grant program involves wastewater treatment construction in the Clean Water Act, as amended.¹²⁵ Grants are awarded to State municipal, intermunicipal or interstate agencies for the construction of publicly owned treatment works.¹²⁶

Prior to May, 1982, EPA policy stated that the agency encourages "increased participation of mi-

nority business enterprise (MBE) in the supply of goods and services in the work performed under the EPA grants program contained in Title II of the Clean Water Act of 1977 (Pub. L. 95-217). . . a goal-oriented system is provided to maximize MBE participation."¹²⁷ In construction contracts of less than \$400,000 the grantee had to insure that positive steps were taken to allow for maximum participation of MBEs in the construction contract and subcontracts and had to document those steps.

For construction contracts of \$400,000 or more the grantee had to establish goals which were subject to approval by the regional office. Region VII did not require a specific methodology to be followed in setting goals but the goals had to be directed towards expanding minority participation.¹²⁸ Grantees had primary responsibility to assure the MBE policy was followed. EPA could impose sanctions including termination or suspension of the grant,¹²⁹ if there was failure to do so.

The regional EPA office was responsible for reviewing the goals to determine if they were reasonable, review the sufficiency of the "positive steps" before the contract was awarded and make a final determination of whether or not sanction proceedings should be initiated if subsequent reviews showed insufficient effort.¹³⁰

Under regulations issued in May, 1982, the recipient grantee must take affirmative steps to assure that small, minority and women's businesses are used when possible as sources of supplies, equipment, construction, and services. Affirmative steps required are:

- (1) Including qualified small, minority, and women's businesses on solicitation lists.
- (2) Assuring that small, minority and women's business are solicited whenever they are potential sources.
- (3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's businesses.

¹¹⁸ Lloyd Alderman, Deputy Director, Small and Disadvantaged Business Utilization, DLA Headquarters, telephone interview, Mar. 8, 1983.

¹¹⁹ Ray W. Dellas, letter to staff, Jan. 16, 1983.

¹²⁰ *State of Small Business 1982*, Table F. 1, p. 330, analysis by Advisory Committee staff.

¹²¹ *H.R. Report on Small Business*, p. 36.

¹²² *Ibid.*

¹²³ U.S. General Accounting Office to H.R. Committee on Small Business, "Re: Establishing Goals For the Subcontracting With Small and Disadvantaged, Business Under Pub. L. 95-507," (GAO/PLRD-82-95), June 30, 1982.

¹²⁴ *U.S. Government Manual: 1981-1982*, p. 487.

¹²⁵ 33 U.S.C.A. §1251 et seq. (1976).

¹²⁶ 33 U.S.C.A. §1281 (1976).

¹²⁷ EPA, "Policy for Increased Use of Minority Consultants and Construction Contractors," Dec. 26, 1978 (hereafter cited as *EPA Policy for Increased Use of Minority Consultants* . . .).

¹²⁸ EPA, Construction Grants Notice, Region VII, "Implementation of Policy for Increased Use of Minority Consultants and Construction Contractors," Mar. 21, 1979.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

(4) Establishing delivery schedules where the requirements of the work permit, which will encourage participation by small, minority, and women's businesses.

(5) Using the services and assistance of the Small Business Administration and the Office of the Minority Business Enterprise of the U.S. Department of Commerce. . .¹³¹

There are no requirements for goals nor is there any responsibility on the part of EPA to determine the adequacy of the affirmative steps. The regulations state that "EPA will not substitute its judgment for that of the recipient unless the matter is primarily a Federal concern."¹³² The regional administrator stated that "within the grantor-grantee relationship grantees per our own regulations assume primary responsibility for achieving an acceptable level of MBE utilization."¹³³ Regional responsibilities now include providing guidance and advice to recipients as requested, maintaining lists of those MBE and WBE firms which have participated in EPA funded projects and those which request to be included on source lists, and monitoring recipients for compliance with the MBE and WBE requirements and for determining levels of MBE-WBE participation.¹³⁴ A MBE-WBE with an adversely affected direct financial interest may file a bid protest with the recipient pursuant to EPA procurement regulations. If EPA determines that there has not been compliance with the MBE-WBE requirements it can impose sanctions such as termination or suspension.¹³⁵ The new regulations in effect place the burden of enforcement on MBE-WBE themselves.

During FY 1981, EPA Region VII reported that 8.9 percent of architect, engineer and 8 percent of construction contracts by dollar value went to minority business enterprises. In Kansas the comparable figures were 8 percent and 8.3 percent. In FY 1982, 6.0 percent of construction and 7.6 percent of architect, engineer contract dollars were to minority business enterprises regionwide; in Kansas the comparable figures were 6.1 percent and 4.1 percent.¹³⁶

¹³¹ 47 Fed. Reg. 20478-20479, May 12, 1982.

¹³² Ibid.

¹³³ Morris Kay, Regional Administrator, EPA, letter to staff, Dec. 13, 1982.

¹³⁴ EPA, "Interim Guidance for Minority Business Enterprise and Women's Business Enterprise Requirement of 40 C.F.R. §33.240," June 22, 1982.

¹³⁵ Ibid.

¹³⁶ EPA, "MBE Participation—FY 1981-1982," received, Mar. 28, 1983.

Department of Housing and Urban Development

The Department of Housing and Urban Development (HUD) is the Federal agency primarily responsible for the Nation's housing programs, including fair housing opportunities. It administers programs such as Community Development, a program designed to help existing urban communities and their moderate or low income residents by eliminating slums, improving public services and increasing the supply of low and moderate income housing; and, Urban Development Action Grants, direct discretionary grants to severely distressed urban areas for local economic development projects. Other programs provide rent subsidies for low or moderate income families who could not otherwise afford decent housing, and mortgage insurance so that families can become homeowners. The various programs are carried out by regional offices (HUD's Region VII covers Iowa, Kansas, Missouri, and Nebraska), area offices, service offices and valuation, endorsement stations.¹³⁷

The Fair Housing and Equal Opportunity (FH&EO) division is responsible for coordinating and monitoring the department's minority business enterprise programs.¹³⁸ Regional goals are set by HUD headquarters based on such criteria as minority population in the region.¹³⁹ The regional goals are allocated to the area offices on a proportionate basis¹⁴⁰ and then further allocated to the several divisions in the area offices.¹⁴¹

The region's Minority Participation Program sets out the guidelines used to meet the goals.¹⁴² Each area office develops a "comprehensive plan for minority business participation," including specific numeric goals and action items.

Each area office has a Minority Business Enterprise Committee established which is comprised of the regional office FH&EO Management Liaison Office, the area office FH&EO director, an area office attorney, a representative of the local minority contractors' association(s), a major distributor/supplier, three major non-minority contractors,

¹³⁷ *U.S. Government Manual: 1981-1982*, pp. 285-305.

¹³⁸ Floyd May, Management Liaison Officer, HUD, FH&EO, interview in Kansas City, Mo., Jan. 26, 1983 (hereafter cited as Floyd May interview).

¹³⁹ Gerald Simpson, HUD Regional Administrator, interview in Kansas City, Mo., Feb. 14, 1983.

¹⁴⁰ Ibid.

¹⁴¹ Floyd May interview.

¹⁴² HUD, *Region VII Minority Business Participation Program*, (February 1979).

a banker, a representative of a bonding or insurance firm.¹⁴³ This committee convenes monthly to review housing proposals for the appropriateness of their minority business utilization targets. It meets with potential sponsors or developers to ascertain which proposals offer the most realistic MBE goals and make recommendations to the area manager. The Committee also conducts an exit conference with sponsors to evaluate MBE utilization on their projects.¹⁴⁴

HUD reported that \$66 million went to minority business in FY 1981 and \$81 million in 1982, representing approximately 27 percent of total agency procurement in 1981 and 20 percent in 1982. According to FH&EO regional staff, generally HUD has spent at least 20 percent of its allocated funds since 1977 with MBE's.¹⁴⁵ In direct procurement, including construction, there was a decrease in MBE utilization by dollar value between FY 1981 and FY 1982. However utilization of WBEs showed some increase for this same period. Subcontracting dollars to minority business based on direct procure-

ment rose from 16.5 percent in FY 1981 to 28.9 percent in FY 1982. In FY 1982 contracts to minority business through housing programs decreased from 29.5 percent to 18.5 percent. The WBE percentage share was also down. Under the Community Development Block Grant program the dollar value percent to minority business was 23.5 percent in FY 1981 and to 21.4 percent in FY 1982.¹⁴⁶

HUD's Region VII administrator stated that HUD has placed major emphasis on contracting opportunities through the housing properties and CDBG programs and on depositing funds in minority banks. In FY 1982, they exceeded their goals for MBE participation in both housing and CDBG, and had some success in the banking program. He stated that in FY 1983 an expansion of efforts in MBE contracting and minority bank is an important initiative of the national administration and HUD. Although the region had not yet received specific goals from Headquarters for FY 1983, managers have been advised there will be a target of 10 percent over last year's achievement.¹⁴⁷

¹⁴³ Ibid., pp. 1-3, 1-4.

¹⁴⁴ Ibid., p. 1-4.

¹⁴⁵ Floyd May interview.

¹⁴⁶ HUD, Region VII, "Minority Business Enterprise Activity,

FY 1981-82," Sept. 30, 1981 and Sept. 30, 1982. Analysis by Advisory Committee staff.

¹⁴⁷ Gerald Simpson, interview in Kansas City, Mo., Feb. 14, 1983.

Appendix B

Federal Agency Sources of Information or Assistance on MBE-WBE Contract Opportunities

Defense Logistics Agency

Small and Disadvantaged Business Utilization Specialist
DCASMA-Wichita
Mid-Continent Airport Terminal Building
Wichita, Kansas 67207
(316) 269-7137

Environmental Protection Agency

Grants Administration Section
MBE-WBE Coordinator
324 E. 11th Street, 4th Floor
Kansas City, Missouri 64106
(816) 374-2921

General Services Administration

Business Services Officer
GSA Business Service Center
1500 E. Bannister Road
Kansas City, Missouri 64131
(816) 926-7203

Department of Housing and Urban Development

Fair Housing and Equal Opportunity
Management Liaison Officer
1103 Grand, Room 1110
Kansas City, Missouri 64106
(816) 374-6876

Minority Business Development Agency

Business Development Specialist
911 Walnut, Room 501
Kansas City, Missouri 64106
(816) 374-3381

Small Business Administration

8(a) Program

Assistant Deputy Director, MSB-COD
Wichita District Office
110 E. Waterman
Wichita, Kansas 67202
(316) 269-6566

or

Assistant Deputy Director, MSB-COD
Kansas City District Office
818 Grand, 4th Floor

Kansas City, Missouri 64106
(816) 374-5557

General Procurement Counseling
Procurement and Technical Assistance
Kansas City Regional Office
911 Walnut, 13th Floor
Kansas City, Missouri 64106
(816) 374-3410

PASS Program
Procurement and Technical Assistance
911 Walnut, 13th Floor
Kansas City, Missouri 64106
(816) 374-5502

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