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Accessing Government Contracts and Developing the U.S. Economy: Leveling the Playing Field for Minority-Owned Businesses

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Introduction

Programs to aid minority-owned businesses (MBEs) in government contracting were enacted in response to executive and congressional findings of widespread discrimination in the marketplace.¹ Though these programs have evolved over the years to give MBEs an equal opportunity to contribute to the U.S. economy, access to the federal procurement marketplace is still limited.

During the recent economic downturn these inequity problems were exacerbated. Despite constituting 21% of all U.S. businesses² and being overrepresented in the largest industries in government procurement, only 6% of the more than 500 billion dollars spent annually for goods and services went to MBEs.³ Besides this underrepresentation, there is also fragility when it comes to MBE participation in the government procurement market—when the economy slows down, contract spending with these businesses falls at a greater rate than total government spending in the private sector. In fact, during the most recent recession, total contract spending dipped by only 1%, while MBE contract spending dipped by 7%.⁴

These economic inequities and representation inequalities may not be addressed anytime soon—collaboration between the executive branch and U.S. Congress

is not expected to be the norm given the divided government outcome of the 2014-midterm elections. If the upward economic trend President Obama shared as the centerpiece of his January 2015 State of the Union is to continue, MBEs must be given the same opportunities to contribute to our economic recovery as other businesses do. It's now in the hands of regulatory agencies⁵ to reexamine the way current programs work in order to really level the playing field. Although opportunities for agencies to work toward this equity exist in many areas, this paper will highlight problems in the areas of competition, management of contracts, program awareness, and contract bundling. It will follow with recommendations meant to boost MBE participation rates in the procurement marketplace.

Powerful Benefits of a more Equitable MBE Contracting Process

Addressing MBE equity issues by leveling the playing field in the federal procurement marketplace would benefit all Americans—first, by underscoring democratic principles and second, by stimulating the economy through job creation and increased exports.

The legitimacy of the federal government is only boosted if its workforce is reflective

of its population. Thus, the workforce the government employs and the companies with which it contracts to carry its services and activities should reflect its current demographics. It is not sufficient to allocate a mere 6% of contract spending to MBEs⁶ when Hispanics, just one of the minority groups by itself, already constitute 17% of the U.S. population and own 14.6% of all U.S. businesses.⁷

Increased MBE participation would also translate into considerable gains for the U.S. economy. Minority businesses have over \$1 trillion in economic output and provide nearly 6 million jobs for U.S. citizens.⁸ The nation is foregoing not only economic outputs estimated at \$2.5 trillion in gross receipts, but also the creation of over 11 million additional jobs.⁹ There are also potential international trade benefits. MBEs are specially positioned to contribute to the balance of trade since they are twice as likely to generate sales through exports of products and services; six times more likely to transact business in a language other than English; and three times more likely to generate 100% of their revenues from exporting.¹⁰ With 95% of the world's consumers outside the United States, international trade has never been more important to U.S. global competitiveness and MBEs have the most favorable export attributes of any sector of the U.S. economy.

Despite these set-aside and preference policies, reaching the goal of equal opportunity in government contracting has not been easy for agencies.

Current Landscape: Agencies' Ongoing Efforts and Needed Improvement

The two regulatory entities most directly affecting MBE federal procurement policy are the Small Business Administration (SBA) and the Minority Business Development Agency (MBDA). The SBA is charged with helping combat discrimination in government contracts by assuring a fair proportion of these contracts go to small businesses, including small MBEs. MBDA, on the other hand, is responsible for implementing federal policy supporting minority businesses (regardless of size) by providing technical and management assistance and coordinating activities between all federal departments to promote minority business development. However, since individual federal agencies interpret SBA or MBDA guidance independently, the result is a somewhat dizzying variety programs.

Policies instituted to promote MBE participation in government contracts fall into two general categories: set-asides and preferences. Set-asides are currently established by SBA at 5%; meaning that at least that percentage of an agency's prime contracts and subcontract dollars must be awarded to "small disadvantaged businesses."¹¹ It is worth noting here that the SBA set-asides are by statute, broadly available to "socially and economically disadvantaged individuals." Though the boost is meant to be race-neutral, a bidder can qualify as "disadvantaged" by falling under a specific minority group. According to this statute, persons from certain racial and ethnic groups are presumed to be socially disadvantaged and are considered economically disadvantaged if they face "diminished capital and credit opportunities" as measured by asset and net-worth.¹²

SBA also establishes preferences. An example of a preference policy is the SBA price evaluation adjustment program, enacted pursuant to authority in the 1994 Federal Acquisition Streamlining Act. Under this program, disadvantaged firms submitting bids on competitively awarded federal contracts may qualify for a price evaluation credit of up to 10%. These credits are available only to businesses that have been certified as socially and economically disadvantaged by the SBA. The policy gives these disadvantaged businesses a boost by allowing government agencies to add up to 10% to the price of all other bids but not to those coming from small businesses—including those that are socially and economically disadvantaged. This adjustment benefits MBEs when the government is determining which offer has the lowest price or represents the "best value."¹³

Despite these set-aside and preference policies, reaching the goal of equal opportunity in government contracting has not been easy for agencies. Regulators have had to balance making these policies work for businesses that need it while, at the same time, making sure other contractors are not given advantages they do not deserve. As a result, sometimes agencies have had to considerably restrict the administration of these programs. For instance, in *Car-Mar Construction Corp. v. Skinner*, a department had to refuse a steel erection contractor certification as a MBE, even though 100% of the contractor's stock was owned by a woman who qualified as a "minority." The certification was refused because it was her non-minority husband who really ran the business and her minority status was used as a way to qualify for preferences. Concerns such as this one have led to these programs'

qualification requirements to become more strict; especially after cases like *Richmond* and *Adarand* decided these policies needed to be narrowly tailored to a specific need and have a compelling interest. For the MBEs that actually need the help however, it can be argued that stricter requirements make the federal procurement marketplace more difficult to access. And even if a business qualifies as an MBE, there are many other barriers to actually landing a contract. These are the areas that regulatory agencies have the power to improve and, in doing so, tackle the inequities these policies were meant to address in the first place.

Current Obstacles in Four Key Areas

To understand how agencies can work for economic and social equity, it is important to examine the current obstacles that exist in the areas of competition, management of contracts, awareness of programs, and bundling.

1. Competition

In the area of competition, responsibility requirements are sometimes problematic for MBEs, specifically when it comes to the examination of potential contractors' past performance.

As stated in the *Guiding Principles of the Federal Acquisition System*, when selecting contractors to provide products or perform services, the government must only use contractors with a successful track record of past performance or demonstrated superior ability to perform.¹⁴ According to SBA, historically and currently, MBEs (especially small MBEs) that lack a performance history have difficulty entering the federal procurement market. MBDA officials also

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agree that lacking a past performance record with government contracts or private contracts of similar size makes obtaining federal contracts more difficult for MBEs because of the weight given to performance history. Similarly, advocacy group officials have echoed the concern that certain prerequisites and past performance requirements were difficult for MBEs to meet.

It's worth noting that, because prior commercial experience—not just government contracting experience—is considered when making contract award decisions, the lack of prior federal government experience is not considered an insurmountable challenge and does not necessarily make MBEs noncompetitive. Nevertheless, businesses lacking performance history are given a neutral rating at best since the *Federal Acquisition Regulation (FAR)* requires that firms receive such a rating if they do not have a performance history. Some agency officials' concern is that some small businesses may not be aware of this requirement.¹⁵

2. Management of Contracts

When it comes to the management of contracts, programs are often criticized for being difficult to understand, contract officials for not being sufficiently accessible, and the overall lack of monitoring and accountability throughout the duration of the contract.

Understanding the Process

Many federal agency and advocacy group officials recognize that lack of knowledge of the federal contracting process can be a challenge for MBEs seeking federal contracts. In a study by the Government Accountability Office (GAO), an advocacy group official noted that small businesses and MBEs spend a considerable amount

of resources to understand the work of the agencies, including any prerequisites, certifications, or specialized skill sets that are required to obtain contracts.¹⁶

Lack of Access to Contract Officials

MBEs involved in governments contracts often face difficulty gaining access to contracting officials.¹⁷ Since these officials are directly in charge of making responsibility determinations, their role is integral to a fair contract-granting process. Without favorable responsibility determinations, contracts will not be granted to an MBE—or any bidder—and thus, access to these officers' advice and/or recommendations could make a difference in MBEs' understanding of potentially beneficial steps to take to be truly competitive. Additionally, this access is important because these same contracting officers monitor contract performance. If MBEs do not properly understand how to navigate the process throughout the duration of the contract, they may inadvertently participate in activities that negatively affect their responsibility scores or future contract opportunities.

Monitoring and Accountability for Subcontractors

Advocacy group officials cite a lack of monitoring of subcontracting plans by federal agencies as a significant challenge for MBEs.¹⁸ The complaint is that there are too many instances in which prime contractors do not use the small MBE subcontractors they initially indicated they would use. Further, because federal contracting officials generally have relationships with prime contractors and not subcontractors, small, minority-owned subcontractors often have very limited recourses when a problem arises.

An additional concern has been the fact

that contracting officers have no responsibility to federal agencies to justify or explain subcontractor changes. According to a GAO report, Commercial Market Representatives (CMRs)¹⁹ and Procurement Center Representatives' (PCRs)²⁰ lack of authority to influence subcontracting processes make it difficult to enforce prime contractors' performance under subcontracting plans. Officials from one Department of Defense (DOD) contracting office confirmed that they did not communicate with subcontractors directly and that prime contractors did have the right to pick a subcontractor of their choice throughout the duration of a contract. An official from DOD's Office of Small and Disadvantaged Business Utilization (OSDBU) added that the contracting officer reviews and approves a replacement subcontractor *only* under certain circumstances—for instance, if a prime contractor's subcontracting plan included a certain percentage of work that was designated for a small disadvantaged business, then the contracting officer might not approve the proposed replacement subcontractor if the change did not adhere to the original percentage.

Monitoring subcontracting plans is also particularly challenging because determining whether a contractor acted in bad faith is not an easy task. Bad faith covers instances of, for instance, a contractor or the government terminating the subcontractor simply to acquire a better bargain or price from another subcontractor.²¹ Another example would be when the government or a contractor enter into a contract with a party knowing full well it has no intent to honor the terms of the contract.²²

3. Awareness of Programs

Regulatory agencies have an opportunity to leverage MBE access to government contracts as an economic and social equity tool to propel the U.S. economy out of the latest recession.

MBEs find it especially difficult to navigate the government contracting process and spend more time and resources than any other group of businesses searching for opportunities.²³ SBA recognizes this fact, and as a result, administers programs to help develop small businesses and MBEs by facilitating their experiences with the federal contracting process.²⁴ Yet, an OSDBU official from the Department of Homeland Security (DHS) confirmed that MBEs continue to experience challenges in obtaining information about contracting opportunities, learning and understanding how the bidding process works, and how to secure a government contract. Further, MBDA officials note that the federal contracting process is different from contracting with private sector companies and that, although federal agencies spend time and money holding sessions on doing business with the federal government, these sessions offer general information that cannot be transferred to bidding on specific projects. Similarly, agency officials cite the lack of understanding of agencies' contracting needs, which is important because businesses that do not understand the mission of the contracting agency or do not know what the agency buys might not know how to market products or services appropriately to win a contract.²⁵

4. Bundling Issues

Decreased contracting opportunities for MBEs also result from contract bundling. Contract bundling is the consolidation of two or more contracts normally performed under smaller contracts into one single contract vehicle.²⁶ This process poses a significant challenge by reducing the number of contracting opportunities available for small businesses and MBEs. For every \$100 awarded on a "bundled" contract, there is a \$33 decrease to small businesses.²⁷ This process is important because as indicated by MBDA officials,

many contracts are bundled unnecessarily, and since more than 99% of the 3 million firms owned by minorities are small, bundling limits most MBEs' ability to compete for bundled contracts.²⁸

According to a study by GAO, it is only when agencies have specific policies regarding contract bundling that the negative effects of bundling on MBEs are mitigated. Some agencies have already taken the initiative in this area. For instance, the Department of Health and Human Services (HHS) and DOD have policies that prohibit unwarranted contract bundling and allow small businesses and MBEs to protest a contract if they believe it to have been unjustifiably bundled. Officials from some HHS contracting offices work with small business specialists to determine if contracts should be separated.

Understanding MBEs' challenges in the areas of competition, management of contracts, awareness of programs, and contract bundling is essential; but most importantly, it is crucial to seize the opportunities these areas present for agencies willing to work to boost MBE participation in government contracts.

Recommendations

Regulatory agencies have an opportunity to leverage MBE access to government contracts as an economic and social equity tool to propel the U.S. economy out of the latest recession. The recommendations in the four highlighted areas are meant to accomplish just that.

1. Increase MBE Competitiveness through Mentorships and Partnerships

The responsibility determination process can present competition barriers for MBEs. One solution for those lacking the desired

level of experience is to partner with more established businesses that can help them meet the performance requirements. Mentor-mentee programs offer great opportunities for these partnerships to form and must be promoted across all federal agencies. Several agencies maintain "mentor-protégé" programs that encourage majority firms to advise and nurture new and growing minority-owned firms by providing managerial and technical assistance;²⁹ however, these initiatives should be implemented throughout all agencies, not just some.

In addition to setting yearly goals for MBE participation in contracts, agencies whose projects involve subcontracting are well advised to institute policies that reward businesses for mentoring and subcontracting with MBEs. Agencies can set up these incentives for instance, by using its grants to establish subcontracting preferences. The Department of Transportation (DOT), for example, has already established policies requiring that grant recipients provide an additional payment to contractors who attain certain levels of contracting with MBE subcontractors and who provide certain technical assistance to those subcontractors. The payment is designed to compensate the prime contractor for additional costs for assisting the subcontractors. This compensation incentive would be up to each agency's contract value and negotiated percentage.³⁰

2. Enhance the Managing of Contracts

Insufficient understanding of the contracting process by some MBEs and inadequate monitoring and accountability by agencies can be mitigated with efforts to make information more easily available, increase access to personnel, and enhance the contract monitoring processes.

Some federal agencies already participate in outreach activities such as matchmaking events (one-on-one meetings) that bring together agency contracting officials and businesses seeking contracts.³⁵ This practice should be adopted across all federal agencies.

Steps must be taken to facilitate MBEs' understanding of agencies' prerequisites, certifications, or the specialized skill sets that are required to obtain contracts. Agencies can accomplish this by making information available in different languages and distributed at minority business conferences. Being sensible to different cultural trends within MBE communities is also crucial to communicating effectively with this sector of the population about federal programs. For instance, Hispanics tend to place more trust on information that comes from within the community rather than seek out financial advice from folks outside of their communities.³¹ Therefore, agencies are encouraged to educate members of the community who can then educate other MBEs. Community-based organizations for instance, are great resources and should be educated about the contracting process and what federal programs require of participating firms.

To address the concern of MBEs lacking sufficient access to contracting officers (COs), COs should be required to be present at a wider array of events such as matchmaking events—and not just industry days. This would provide a way for MBEs to meet and interact with the actual decision makers of their contracts. COs should be encouraged to have one-on-one appointments with MBEs, and perhaps even required to have these appointments as part of the bid process. Because realistically engaging in this way would place certain burdens on agency resources, agencies must have conversations about ways in which to, at the very least, reorganize available resources to provide this one-on-one contact. Another opportunity to promote one-on-one time is to host an annual procurement conference to provide assistance to firms seeking federal government contracts. This

can be done through the OSDDBU Council—which comprises OSDDBU officials from various federal agencies—or led by a similar group of officers who focus only on MBEs. Such an event can be an opportunity to collect information such as participating firms' marketed products or services or any other relevant information from companies that choose to set up an exhibit table to showcase their capabilities.³² Events like these have the potential to attract many participants and, in fact, according to the Council's website, more than 3,500 people registered for the OSDDBU 2012 conference, and more than 130 matchmaking sessions were conducted.³³

In order to improve the monitoring of the subcontracts in which MBEs often participate, agencies should include provisions to ensure MBE subcontractors cannot simply be let go without a reason as part of their contract with the general contractors. Furthermore, agencies should also require the general contractor subcontracting to an MBE to report to the government agency its intent to dismiss a subcontracting MBE within an appropriate timeframe. The agency should then be able to determine the validity of the reasons and/or if the dismissal could be avoided. Finally, from the inception of the contract, there should be a clear standard to decide what a "good faith" dismissal would look like and all parties should be aware of that definition.³⁴

3. Increase Awareness Efforts and Publicize MBE Programs

In order to increase public awareness of programs targeted at boosting MBE participation in government contracts, agencies must engage in more outreach activities and target those activities more specifically to MBEs' needs.

Some federal agencies already participate in outreach activities such as matchmaking events (one-on-one meetings) that bring together agency contracting officials and businesses seeking contracts.³⁵ This practice should be adopted across all federal agencies. Some agencies, such as the Department of Homeland Security and the Department of Labor, are already hosting monthly vendor outreach sessions where agency officials and prime contractors that have subcontracting needs are given a series of face-to-face appointments. These sessions should be expanded as they give businesses an opportunity to discuss their capabilities and learn about potential contracting opportunities. Yet another type of outreach effort that should be replicated across agencies is MBDA's Minority Enterprise Development Week Conference. During this Conference, participants from MBEs that have been vetted and invited by MBDA are offered appointments with federal and corporate partners to discuss contracting opportunities that will be made available within the next six to 18 months.³⁶

Not only must agencies increase their outreach efforts, but that outreach must be more targeted and effective. As of now the data on agencies' outreach efforts is limited because agencies are not required to, and therefore do not for the most part, collect data on the minority group or socioeconomic category of businesses that participate in outreach events for federal contracting opportunities.³⁷ Therefore, instituting agency-wide policies of collecting more data so that outreach is more efficient in addressing the actual challenges these businesses face would be highly beneficial.

4. More Sensible Contract Bundling

Since decreased contract opportunities for MBEs result from contract bundling,

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it is critical for regulatory agencies to recognize the importance of leading efforts to eliminate unreasonable bundling practices. Doing so would allow MBEs to gain greater access to stronger relationships throughout the various channels of the federal government and consequently, position themselves to compete for more substantial contracts. Agencies must recognize that while efficiency is valuable, when it comes to MBEs, the downsides of contract bundling sometimes outweigh the benefits of efficiency; and that, it is in these larger federal contracts that lay the real economic value for these firms.

With that in mind, agencies must develop their own plans to deal with the negative impacts of bundling in the way that best fits their procurement needs.³⁸ Effective plans would include measures to ensure accountability of senior agency management for improving contracting opportunities for small business. Contract bundling reviews for task and delivery orders under multiple award contract vehicles must also be required. There should be mandatory agency review of proposed acquisitions above specified thresholds for unnecessary and unjustified contract bundling. Finally, identification of alternative acquisition strategies for the proposed bundling of contracts above specified thresholds should also be required, as well as written justification when alternatives involving less bundling are not used.

Opportunity Knocks for MBEs—Will the Government Open its Doors?

Due to the recent midterm elections resulting in a divided government, it is not likely there will be new legislative action to level the playing field for MBEs in the area of government contracts. Addressing MBE representation and economic inequi-

ties would benefit all Americans both by underscoring democratic principles and stimulating the economy. Potential economic benefits range from the creation of additional jobs to increased economic output. Similarly, international trade would benefit given that MBEs are twice as likely to generate sales through exports and have the most favorable export attributes of any sector of the U.S. economy.

Regulatory agencies have the opportunity to help unlock these benefits by increasing opportunities for MBEs to contribute to the U.S. economy. This can be done by improving the competition process, the management of contracts, increasing awareness of programs, and fine-tuning contract bundling. For MBE competitiveness to improve, mentor-mentee programs must be expanded and the hiring of MBE subcontractors must be more actively encouraged. Contract management issues must be dealt with by having more easily available information, access to contract personnel, and an improved monitoring process. In order to increase publicity of programs targeted to MBE participation, agencies must engage in additional outreach activities and better target and promote those activities. With regards to the decreased contracting opportunities that result from contract bundling, it is important for regulators recognize the importance of initiatives to eliminate unreasonable bundling as a way to allow MBEs greater access to more meaningful opportunities in federal procurement.

Now is the time for regulators to step up and address the equity issues still present in the government contracts arena. Implementing these recommendations would be an important step towards providing MBEs more access and opportunities—will regulatory agencies be up to the challenge?

Endnotes

- 1 George Stephanopoulos and Christopher Edley, Jr., Affirmative Action Review, Report to the President (July 19, 1995), p. 63.
- 2 United States Census Bureau. (2010, July 13). Retrieved February 16, 2015, from https://www.census.gov/newsroom/releases/archives/economic_census/cb10-107.html
- 3 "...In 2011, nearly \$537 billion was obligated in contracts to businesses and out of that only \$36 billion was obligated to business that identified themselves as minority owned businesses." Government Contracting: Federal Efforts to Assist Small Minority Owned Businesses, GAO-12-873: Published: Sep 28, 2012. Publicly Released: Sep 28, 2012, p. 2.
- 4 Costantini, C. (2012, May 14). Government Contracts with Hispanic Owned Businesses Fell for First Time in Decade. Retrieved February 17, 2015, from http://www.huffingtonpost.com/2012/05/14/government-contracts-with_n_1515211.html.
- 5 All regulatory agencies play an important role in government regulations. They introduce and carry out their policies and programs and affect minority-owned businesses in varying ways. Some agencies have more influence in this area either due to legislative granted authority or mere agency size. This paper will focus on SBA, MBDA, OMB, and GSA as the most relevant agencies because they deal specifically with policies regarding minority-owned businesses.
- 6 Koenig, B. (2012, October 5). GAO: 35% of Federal Contract Dollars Went to Minority-Owned Businesses. Retrieved February 17, 2015, from <http://www.thenewamerican.com/usnews/politics/item/13123-gao-35-of-federal-contract-dollars-went-to-minority-owned-businesses>.
- 7 Lichtenstein, Jules (2014, January 16). SBA: Demographic Characteristics of Business Owners, Retrieved February 17, 2015, from <http://www.sba.gov/sites/default/files/Issue%20Brief%202020Business%20Owner%20Demographics.pdf>.

- 8 Gallagher, Demetria (2014, October 6). Minority Business Development Agency, Retrieved February 17, 2015, from <http://prezi.com/z5kusaj8depr/minority-business-development-agency/>.
- 9 There is evidence suggesting that there is, indeed, a meaningful correlation between minority ownership and minority workforce, but the anecdotal evidence is that the relationship varies considerably across sectors. There has not been adequate study of the broader economic development hypothesis. Federal Procurement Policies & Practices (1995, June 28), Retrieved February 17, 2015, from <http://clinton4.nara.gov/textonly/WH/EOP/OP/html/aa/aa01.html>.
- 10 Shen, Albert K., Remarks by MBDA National Deputy Director Albert K. Shen at San Antonio MED Week Consortium, Retrieved February 17, 2015, from <http://www.mbda.gov/node/2876>.
- 11 OFPP Policy Letter 99-1 on Small Business Procurement Goals, (1999, October 8), Retrieved February 17, 2015, from <http://www.whitehouse.gov/sites/default/files/omb/fedreg/ofpp99-1.html>.
- 12 Congress first codified the §8(a) program in 1978. Congress and the Carter Administration chose to require that both conditions be satisfied in order to focus the program on victims of group-based discrimination and to ensure that all beneficiaries were economically disadvantaged. 15 U.S.C. § 637(a)(1), (4). Federal Procurement Policies & Practices (1995, June 28), Retrieved February 17, 2015, from <http://clinton4.nara.gov/textonly/WH/EOP/OP/html/aa/aa01.html>.
- 13 Notice of Price Evaluation Preference for HUBZone Small Business Concerns, Federal Acquisitions Regulation 52.219-4, Retrieved February 17, 2015, from http://www.acquisition.gov/far/current/html/52_217_221.html.
- 14 CFR 1.102.
- 15 Government Contracting: Federal Efforts to Assist Small Minority Owned Businesses, GAO-12-873: Published: Sept. 28, 2012. Publicly Released: Sep 28, 2012, p. 10.
- 16 Burke, Adrienne, "Minority-Owned Businesses Spend More to Win Government Contracts," Yahoo Small Business, Retrieved February 17, 2015, from <https://smallbusiness.yahoo.com/advisor/blogs/profit-minded/minority-owned-businesses-spend-more-win-government-contracts-152018517.html>.
- 17 Government Contracting: Federal Efforts to Assist Small Minority Owned Businesses, GAO-12-873: Published: Sept. 28, 2012. Publicly Released: Sep 28, 2012, p. 12.
- 18 *Id.*, at 8.
- 19 CMRs help ensure that small businesses gain access to subcontracting opportunities. CMRs' key responsibilities include counseling small businesses on marketing themselves to prime contractors, counseling large prime contractors on maximizing subcontracting opportunities for small businesses, and facilitating the matching of prime contractors with small businesses. Government Contracting: Federal Efforts to Assist Small Minority Owned Businesses, GAO-12-873: Published: Sep 28, 2012. Publicly Released: Sep 28, 2012, p. 35.
- 20 PCRs are SBA officials who help ensure that small businesses gain access to contracting opportunities by, for example, reviewing proposed agency solicitations—such as potentially bundled and consolidated solicitations, making set-aside recommendations to agency officials, and counseling small businesses. *Id.* at 35.
- 21 *See Krygoski Const. Co., Inc. v. U.S.*, 94 F.3d 1537, 1541 (Fed. Cir. 1996) ("A contracting officer may not terminate for convenience in bad faith, for example, simply to acquire a better bargain from another source.").
- 22 *See Torncello v. U.S.*, 231 Ct.Cl. 20 (Ct. Cl. 1982).
- 23 Burke, Adrienne, "Minority-Owned Businesses Spend More to Win Government Contracts," Yahoo Small Business, Retrieved February 17, 2015, from <https://smallbusiness.yahoo.com/advisor/blogs/profit-minded/minority-owned-businesses-spend-more-win-government-contracts-152018517.html>.
- 24 Government Contracting: Federal Efforts to Assist Small Minority Owned Businesses, GAO-12-873: Published: Sept. 28, 2012. Publicly Released: Sep 28, 2012, p. 3.
- 25 *Id.*, p. 10-11.
- 26 15 U.S.C. §632(o)(2); 48 C.F.R. §2.101; 13 C.F.R. §125.2(d)(1)(i).
- 27 Office of Management and Budget, Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business, (2012, October), Retrieved February 17, 2015, from http://www.ago.noaa.gov/acquisition/docs/contract_bundling.pdf.
- 28 SBA, "Dynamics of Minority-Owned Employer Establishments, 1999-2001," February 2005.
- 29 Federal Procurement Policies & Practices (1995, June 28), Retrieved February 17, 2015, from <http://clinton4.nara.gov/textonly/WH/EOP/OP/html/aa/aa01.html>.
- 30 15 U.S.C. § 644(g); Federal Acquisition Regulation, 8 C.F.R. § 52.219-8.
- 31 Prudential Research, "The Hispanic American Financial Experience," Retrieved February 17, 2015, from http://www.prudential.com/media/managed/hispanic_en/prudential_hafe_researchstudy_2014_en.pdf
- 32 25th Anniversary Government Procurement Conference. (n.d.). Retrieved February 17, 2015, from <http://www.fbcinc.com/e/procurement/>.
- 33 Government Contracting: Federal Efforts to Assist Small Minority Owned Businesses, GAO-12-873: Published: Sept. 28, 2012. Publicly Released: Sep 28, 2012, p. 22.
- 34 Good faith is an objective standard that requires the terminating party to exercise its discretion in accordance with the reasonable expectation of the contracting parties. *See, Questar Builders, Inc. v. CB Flooring, LLC*, 978 A.2d 651 (Md. 2009).
- 35 Government Contracting: Federal Efforts to Assist Small Minority Owned Businesses, GAO-12-873: Published: Sept. 28, 2012. Publicly Released: Sep 28, 2012, p. 3.
- 36 *Id.*, at 8.
- 37 *Id.*, at 22.
- 38 For an example of a well-thought out plan, see Office of Management and Budget, Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business, (2012, October), Retrieved February 17, 2015, from http://www.ago.noaa.gov/acquisition/docs/contract_bundling.pdf.