SBA

U.S. Small Business Administration
Washington, DC 20416

Memorandum

Office of the Administrator

Date: February 9, 1983

From: James C. Sanders JCS

Subject: Minority Small Business Programs: Expiration of Interim Size Rule on February 14, 1983

To:

SBA memo

For your information, the attachment summarizes the experience of the 23 firms (out of the total of 1800) in the SBA "8a" sole source procurement program which is the backbone of our Minority Small Business operation. The six month "reprieve" which SBA granted from adverse rulings of the GAO and U.S. District Court expires on February 14, 1983.

Because of the priority this Administration places on small business and on minority business development, I think it is important that you have a factual basis for understanding the progress that has been accomplished in this vital program.

In granting the six month reprieve SBA was responding to the unfairness of the abrupt court rulings by allowing the 23 affected firms a transition period for obtaining more contracts under 8a. Since August, two of the 23 firms have been reclassified as small businesses. We will continue to work with the remaining 21 affected firms after February 14th to assist in their continuing successful development. Observing that the 21 firms have been in the program an average of over <u>ten</u> years and have been awarded collectively more than three-quarters of a billion dollars makes us optimistic about the future for most of them. Equally important, we look with enthusiasm to the addition of more new minority firms who will fill the vacancies of graduation which Congress insisted on by passage of Public-Law 96-481.

Unfortunately, there have been some emotionally charged and excessive criticisms leveled at the program which wholly distort the picture. Sadly, a few who have benefited so much from this program have engaged in inflammatory rhetoric whereas the majority have acted responsibly, understanding the course of events that has brought us this far.

It is my hope that this program will survive the self-serving statements of a few to mature into the serviceable vehicle it can be for the many.

Henry - Hope this proves useful. JCS

8(A) PROGRAM HAS AWARDED $9 BILLION

The U.S. Small Business Administration's 8(a) program -- named after a section of the Small Business Act -- is one of the Federal Government's major assistance programs for small minority-owned companies. Since 8(a) began in 1968, $9 billion worth of federal procurement contracts have been awarded to 8(a)'s 4,598 participants.

ORIGINALLY CONTRACT SUPPORT ONLY

Originally, the program enacted by Congress directed SBA to give federal contract support to small firms owned by socially and economically disadvantaged persons. Acting as a prime contractor, SBA directed federal work to 8(a) participants on a noncompetitive basis.

SINCE 1978 BUSINESS DEVELOPMENT IS ADDED

In October, 1978, Congress enacted P.L. 95-507, which redirected the program thrust: SBA was charged with helping 8(a) participants not only obtain federal work but to assist firms in becoming competitive businesses.

In October, 1980, Congress enacted P.L. 96-481, which required all 8(a) contractors to negotiate a fixed program participation term -- a specific planned length of time for the firms to stay in the program before "graduation" as a private entrepreneur.

IN 1980 CONGRESS ASKED FOR GRADUATION

ACCOMPLISHED IN 1982

All such terms were negotiated by SBA and established in April, 1982.

Congress' purpose in enacting P.L. 96-481 was plain: Too many 8(a) firms had been in the program for too long, relying on federal work for continued existence and in so doing preventing other qualified minority-owned small firms from joining in the program. Statistics show, for example, that of the 4,598 8(a) participants, only 116 had "graduated" since the beginning -- that is, only 116 firms had become viable enough to leave the program and continue in the private marketplace. According to a General Accounting Office report, 31 percent of total 8(a) contract support had gone only to 50 companies, most of which had been in the program between seven and 11 years.

EVIDENCE THAT PROGRAM FAVORED "THE FEW"

FURTHER EVENTS OF 1982

Other 8(a) developments -- which are of current concern and interest -- took place early in 1982:

On June 16, 1982, the Comptroller General of the United States (who heads the General Accounting Office, an arm of Congress) issued a decision directly and clearly affecting approximately 23 firms in the 8(a) program. In essence, the decision stated that any 8(a) firm found to be a "non-small" business by SBA size standards must be suspended from receiving new contracts. The decision did not affect ongoing contracts or options and modifications to existing contracts, or other forms of program assistance.

GAO DECISION STOPS SBA

SBA RESPONSE

Within 48 hours, SBA filed for reconsideration of the GAO decision. On July 26, 1982, the Comptroller General reaffirmed his original decision.

On June 30, 1982, one of the affected 8(a) contractors filed suit in Federal District Court, claiming SBA was denying the company contract awards because of the Comptroller General decision. The court's decision concluded that a firm that is not "small" may not receive contract awards under the 8(a) program. The 8(a) contractor is appealing this decision.

DISTRICT COURT DECISION REINFORCES GAO

SBA had no choice but to adhere to these administrative and judicial decisions. But at the same time, the Agency wanted to be fair to those firms found, during proper and required size standard reviews, to be "non-small."

SBA RESPONSE

Indeed, throughout its administration of the 8(a) program, the Agency has strived to be fair to participants, to other small firms desiring to enter the program, to the non-minority small businesses who are foreclosed from bidding on these contracts, and, of course, to the taxpayers.

FAIRNESS ISSUE INVOLVES ALL SIDES

SBA knew it would not be fair to immediately suspend those "non-small" contractors from the program and deny them new federal contracts. Immediate suspension would have imposed undue economic hardship on most of the 23 "non-small" firms.

COMPASSION FOR AFFECTED FIRMS

In a discussion with SBA Administrator James C. Sanders on August 6, 1982, representatives of the companies stated that their progress and considerable federal resources provided to assist them would be wasted and their very economic existence would be seriously threatened by abrupt termination of contract support.

ADMINISTRATOR MEETS WITH AFFECTED FIRMS

Mr. Sanders agreed that their contentions had considerable merit.

Accordingly, on August 17, 1982, SBA issued an emergency size regulation to provide an alternate size standard under which most of these concerns would qualify for continued contract support. This regulation was effective for six months and expires on February 14, 1983. After this date, the current size standards again become the exclusive measure of a concern's size eligibility.

INTERIM SIZE STANDARD TO HELP IN TRANSITION

SBA'S OTHER ACTIONS TO ASSIST AFFECTED FIRMS

In addition to issuing the six-month emergency size standard, Administrator Sanders undertook a number of actions to assist the "non-small" 8(a) contractors:

-- He organized a special task force including representatives of the 23 affected firms to recommend strengthening implementation of subcontracting provisions of P.L. 95-507 for the benefit of all small businesses, and especially minority-owned small businesses. The basic aim was to determine ways in which more federal subcontracts can be directed to small firms. The task force, which included representatives of the "non-small" 8(a) firms, has issued recommendations, which are being reviewed by SBA.

SPECIAL TASK FORCE AND FEDERAL SUBCONTRACTS

-- Ordered SBA's Office of General Counsel to conduct size reviews of 8(a) participants and in so doing expedite appeals and on size standard matters.

SIZE REVIEWS WERE MADE

-- Delegated to SBA's regional administrators the authority to approve modifications and options to existing 8(a) contracts.

PROMPT APPROVAL THROUGH REGIONS

ALERT OTHER AGENCIES

-- Widen efforts, through SBA itself, private contractors and other federal agencies, to identify more federal contract opportunities for the "non-small" 8(a) participants.

COMMUNICATION WITH FIRMS

-- Throughout this six-month period SBA closely monitored firm progress and communicated with the affected firms and instructed field offices to expedite contract actions with these firms.

STATUS OF FIRMS AS OF FEBRUARY 15, 1983

After February 14, 1983, 8(a) participants found to be "non-small" are ineligible for new contracts. But any such firm can continue work on present contracts and receive modifications and options to existing contracts.

CONTINUING OPPORTUNITIES FOR AFFECTED FIRMS

These 8(a) firms also are eligible to do subcontracting work for other firms still in 8(a). They are eligible for SBA management assistance until the expiration of their fixed program participation plans.

RIGHTS TO SIZE APPEAL

Any 8(a) firm determined to be "non-small" has the right to undertake a new size appeal (two of the original "non-small" firms have done so and were subsequently ruled to be "small;" another 8(a) firm previously "small" was ruled to be "non-small.")

SUBCONTRACTS PLUS MBDA ASSISTANCE

SBA has encouraged other 8(a) firms to use the experience and expertise of the "non-small" firms by subcontracting with them when possible. The "non-small" companies will further benefit from a private analysis of their business needs; this analysis was commissioned by SBA. An SBA/Department of Commerce interagency agreement provides for possible government assistance through the Minority Business Development Agency.

EXPERIENCE OF FIRMS IN 8(A)

It is pertinent to note that the 21 8(a) contractors still classified as "non-small" have fared well over the years:

21 FIRMS RECEIVED OVER $750 MILLION

-- Most of the 21 have been in the program since the early 1970s, and during their overall participation (averaging 11 years) have received a total of about three quarters of a billion dollars worth of contracts.

NEW CONTRACTS SINCE AUGUST

-- Since the six-month special size standard went into effect last August 17, the 23 companies have received 29 contracts worth about $17 million. As noted above, they can continue to gain new work on such contracts through options and modifications.

ACCESS TO 8(A) BY OTHER FIRMS

The exit of these firms from the 8(a) program, of course, will help the entry of other eligible small minority-owned firms. Opening 8(a) to a larger number of eligible entrepreneurs is only fair, and in accord with federal statutes and SBA objectives.

NEW ENTRANTS

SBA's goal is to certify at least 500 new participants by Spring, 1984.

A FAIR PROGRAM FOR ALL

SBA is pleased with the progress which has been made by many 8(a) firms during their program participation. However, in order to stay within the mandate of the law and to make the wisest and most beneficial use of limited program resources, 8(a)'s primary aim must continue to be to provide a boost upward for the benefit of the greater number of firms.

THE WHITE HOUSE

WASHINGTON

February 9, 1983

SBA GRADUTING FIRMS

1. Boone Young and Associates Inc.
   David O. Boone
2. Dialog Systems Inc.
   Reginald L. Powe
3. Uniworld Group Inc.
   Byron E. Lewis
4. International Business Services Inc.
   Duke Green
5. Systems & Applied Sciences
   Porter Bankhead
6. Sterling Systems Inc.
   Robert Quinchett
7. A. L. Nellum & Associates
   A. L. Nellum
8. Rehab Group Inc.
   Richard Quigg
9. Atlantic Personnel Services Inc.
   Theodore N. Holmes
10. J. W. K. International Corp.
    J. Kim
11. Unified Industries
    Theodore Adams
12. Raven Data Processing Inc.
    Raymond A. Mott
13. Systems Management American
    Herman E. Valentine
14. Unified Services Inc
    Jerry Davis
15. Thacker Construction Co.
    Floyd Thacker
16. J. & J. Maintenance Inc.
    James H. Lee Jr.
17. ReGuard Security Service Inc.
    Albert L. Juniel Jr.
18. Superior Engineering & Electronics Inc.
    Ralph Williams
19. Washington Patrol Services Inc.
    James J. Washington
20. P. & B. Services Inc.
    Harold J. X. Botley
21. HighLife Helicopters Inc.
    Earl G. Reubel.

98TH CONGRESS
1ST SESSION

H. R. 863

To amend the Small Business Act.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 25, 1983

Mr. MITCHELL (for himself and Mr. ADDABBO) introduced the following bill; which was referred to the Committee on Small Business

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A BILL

To amend the Small Business Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 7(j)(10)(A)(i) of the Small Business Act is amended to read as follows:

"(i) assist small business concerns participating in the program to develop comprehensive business plans with specific business targets, objectives, and goals. Such targets, objectives and goals shall be designed to result in the competitiveness of the small business concern by eliminating those conditions or circumstances upon which

2365 Rayburn House Office Building
Washington, D.C. 20515

NEWS

FROM CONGRESSMAN

JOSEPH P. ADDABBO

225-3461 6th C.D., N.Y.

FOR IMMEDIATE RELEASE
February 10, 1983

ADDABBO ASKS PRESIDENT TO HALT ATTACK ON MINORITIES

Congressman Joseph P. Addabbo (D-N.Y.) today urged President Reagan to intervene personally before his administration eliminates over one billion dollars in contracts to minority businesses and thousands of minority-held jobs.

The former Chairman of the Subcommittee on Minority Enterprise joined with national civil rights leaders and with other members of Congress to decry the Small Business Administration's policies which Addabbo said "took two decades of hard work to achieve through the governmental process." The plea was sent to the President in the form of a letter asking him to overrule new policies regarding management of SBA's 8(A) program.

Congressman Addabbo charged that unless the President responds immediately an estimated 484 minority companies will be forced out of the minority enterprise program over the next twelve months. Those 484 companies, the twelve term Congressman said, represent "26%" of the minority owned companies in the program. Some thirty thousand jobs, most of them held by members of minorities, would be lost in the resultant bankruptcies, Congressman Addabbo declared.

"This is a systematic effort to dismantle the federal effort to help minority enterprise in our country. Unless President Reagan acts immediately, his administration will be responsible for the economic slaughter of many of this nation's more successful minority businesses."

SBA also intends to terminate 23 of the largest 8(A) companies from the program next Tuesday.

"These 23 firms provide 7500 jobs and if most of these companies are forced into bankruptcy by the termination of their participation in the program, the nation's minority unemployment numbers will skyrocket. Instead of providing assistance to companies providing jobs, the government will be paying unemployment benefits to people who have lost their jobs because of the administration," the lawmaker said.

The problem has occurred as a result of new policies regarding management of the 8(A) program and authority used by SBA to award federal contracts to minority owned firms on sole source, negotiated basis. Last year the government awarded $1.8 billion in 8(A) contracts.

The new policies imposed by the present administration fix the numbers of years that a minority firm may participate in the program.

"The most outrageous part of this policy is that in the nation's period of high inflation rates there has been no adjustment in the amount of business these companies can do before they are forced out. The 23 firms being kicked out of the program next week are being removed because their business volume has risen over arbitrary limits that have not been adjusted even though they were set in 1975 before inflation skyrocketed," Addabbo complained. Congressman Addabbo and civil rights leaders called upon the President to order SBA to either reject the new policies or modify them before "irreparable harm to the minority business movement is done."

STATEMENT OF REPRESENTATIVE JOSEPH P. ADDABBO

February 10, 1983

The Small Business Administration (SBA) is making history. But, it is a history which this Nation must view with shame. It has broken a 13-year commitment to assist minority business; it has deliberately withheld from minority firms Congressionally approved funds; it has violated statutory intent; it has placed arbitrary and artificial barriers on its programs; and now it seeks to summarily force out of the 8(a) program 507 firms, accounting for at least $1 billion in federal contracts and over 30,000 jobs.

The record is clear:

(1) In fiscal year 1981, SBA awarded $1.9 billion in 8(a) contracts. In fiscal year 1982, $1.8 billion was awarded -- a decrease of $100 million and the first time in the 13-year history of the program that 8(a) contracts did not exceed the previous year total.

(2) P.L. 96-481, signed in October of 1980, required SBA to negotiate a graduation date with each 8(a) firm. Under law, this date represents the time when an 8(a) firm should be competitive. SBA, however, elected to "rewrite" this law in its regulations by assigning a fixed number of years (between 1 and 5) to each firm. When a firm reaches its participation term, the regulations provide that it will be forced from the program regardless of whether or not it is competitive. A total of 484 firms will reach their participation dates over the next 13 months. Many are not ready to compete in an unsheltered market. These firms account for over $1 billion in 8(a) sales and 30,000 jobs.

(3) In addition to these 484 firms, SBA will force 23 of the largest firms from the program on February 15, 1983. These firms have exceeded SBA's small size standards. But, these standards -- most of which are based on gross receipts -- are 8 years old and have never been adjusted for inflation. These 23 firms, alone, account for $250-300 million in 8(a) sales and 7,500 jobs.

(4) In fiscal year 1982, Congress appropriated $20,000,000 for business development funds for 8(a) firms. SBA, however, only obligated $6.2 million, or 31%.

(5) In fiscal year 1981, Congress appropriated $10,000,000 for management assistance for disadvantaged firms -- SBA only obligated $4.3 million, or 43%. In fiscal year 1982, Congress appropriated another $10,000,000 for these programs: this time SBA obligated only $5.8 million, or 58%.

(6) In fiscal year 1982, SBA made or participated in only 2,521 minority business loans for a total value of $216.2 million. This is a decrease of 52% in the number of loans and 48% in the dollar value of loans from fiscal year 1981 totals. In addition, the fiscal 1982 number of loans is the lowest number of loans total since the 1960's, and the dollar total, the lowest since 1975 -- if we make no adjustment for inflation. At the end of fiscal 1982, SBA had a direct loan surplus of $39 million and a surplus of over $1.2 billion in guarantee authority.

(7) SBA has placed an artificial and, in my opinion, an illegal limitation on its certificate of competency (COC) program. Under this program, a small firm who is low bidder on a federal contract has an automatic right of appeal to SBA if the federal buying agency finds that small business to be a non-responsible bidder. SBA has recently issued a regulation which no longer makes this appeal automatic if the contract value is under $10,000. Many of our small minority firms compete for contracts in that dollar range -- but now, because of SBA's arbitrary rule, these firms will be subjected to the whims of federal buying officers and may be denied contracts on such grounds as lack of "integrity, perseverance, and tenacity."

The President must step in to prevent this slaughter of minority business programs. His commitment to minority business -- to our minority communities -- must be measured by how he responds to this crisis.

Aside from my position as senior Member of the Committee on Small Business, I also chair the Subcommittee on Defense Appropriations. This Administration has expended a great deal of time, money, and effort on defense. I can only hope that it will finally show this same depth of concern over what it is we are defending.

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Current Developments:

. In fiscal year 1981, of the $4.2 billion of Federal contracts received by minority business, $1.9 billion or over 45% were awarded under the 8(a) program. In that fiscal year, total Federal purchases exceeded $120 billion.

. In fiscal year 1982, 8(a) contract awards amounted to $1.8 billion. This was the first time in the 13-year history of the program that 8(a) contracts did not exceed the previous year's total. Statistics on total federal purchases during fiscal year 1982 are not yet available.

. At least 484 section 8(a) firms will be forced from the program between April of 1983 and April of 1984 if administrative or legislative relief is not forthcoming. There are presently about 1,900 firms in the program. Preliminary estimates indicate that these 484 firms employ over 30,000 workers -- many of whom are minority -- and accounted for over $1 billion in 8(a) sales during fiscal year 1983.

. An additional 23 section 8(a) firms -- the largest firms in the portfolio -- will be forced out of the program on February 15, 1983. These firms received over $250 million in 8(a) contracts during fiscal year 1981 and presently employ over 7,500 workers. On February 15, these 23 firms will exceed SBA's definition of a "small business" and, therefore, will be found ineligible for the award of additional contracts. When this problem first surfaced in August of 1982, SBA published a new rule providing an increased size standard for 8(a) firms. The new rule allowed these firms to continue in the program for an additional 180 days. The rule expires on February 15, and SBA has refused to extend it any further.

. Size standards for most of the 23 firms are based on their gross receipts. These standards include section 8(a) contract awards and, further, have never been adjusted for inflation. The gross receipts standards were first issued in 1975.

COMPARISON OF ALL SBA BUSINESS LOANS TO MINORITY BUSINESS

LOANS IN CURRENT AND CONSTANT DOLLARS (1975-1982)

	Number of All Business Loans	Number of Minority Business Loans	Dollar Amount All Loans (current dollars) (billions)	Dollar Amount Minority Business Loans (current dollars) (billions)	Dollar Amount All Loans (1972 dollars) (billions)	Minority Business Loans (1972 dollars) (billions)
1975	22,155	5,359	1.4	.21	1.2	.17
1976	26,078	5,533	2.1	.27	1.6	.20
1977	31,793	6,148	3.0	.35	2.2	.25
1978	31,727	6,118	2.9	.37	2.0	.25
1979	30,176	5,517	3.0	.39	1.9	.24
1980	31,674	6,049	3.4	.43	1.9	.25
1981	28,740	5,240	3.2	.42	1.7	.22
1982	15,435	2,521	1.8	.22	.88	.11