



November 2023

# SMALL BUSINESS SUBCONTRACTING

## Some Contracting Officers Face Challenges Assessing Compliance with the Good Faith Standard

Accessible Version

# GAO Highlights

Highlights of [GAO-24-106225](#), a report to congressional requesters

## Why GAO Did This Study

Federal regulations require, contractors make a good faith effort to provide small businesses with maximum practicable opportunities to participate in federal contracts. GAO was asked to review federal agencies' assessment of contractors' compliance with this good faith standard. This report examines (1) how contracting officers assess contractors' compliance with the good faith standard and the extent to which they find contractors noncompliant, and (2) the benefits and challenges associated with good faith standard assessments.

GAO reviewed documentation and interviewed contracting related officials at two Department of Defense agencies (Air Force and Army) and four civilian agencies (Departments of Homeland Security, Health and Human Services, and Veterans Affairs, and the National Aeronautics and Space Administration), selected based on total contracting obligations. GAO also reviewed documentation and interviewed SBA and Defense Contract Management Agency officials on their role in supporting contracting agencies.

## What GAO Recommends

GAO is making 13 recommendations, including that five agencies periodically review data on contractors' small business subcontracting goal performance, that SBA include these agency-level data in its annual report to Congress, and that SBA analyze the risk of conducting a limited number of compliance reviews. Some agencies agreed with the recommendations, but DOD and SBA partially concurred. While they proposed some corrective actions, the actions do not fully address the recommendations.

View [GAO-24-106225](#). For more information, contact William B. Shear at (202) 512-8678 or [shearw@gao.gov](mailto:shearw@gao.gov).

November 2023

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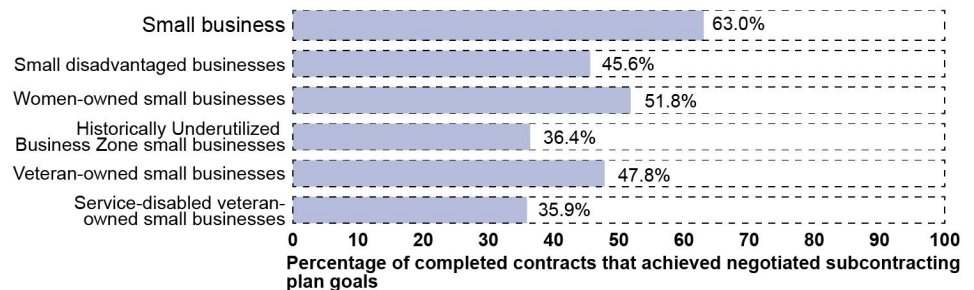
## Some Contracting Officers Face Challenges Assessing Compliance with the Good Faith Standard

### What GAO Found

Certain federal contracts must have a plan containing goals for the percentage of work to be subcontracted to small businesses. Contracting officers are required to assess contractors' good faith efforts to meet these goals by comparing contractors' small business subcontracting performance against their goals. The contracting officer is to assess the contractor's explanation when the goals are not achieved. For these contracts, contracting officers are also required to assign contractors a rating related to subcontracting in the Contractor Performance Assessment Reporting System.

Contracting officers from six agencies stated they rarely identify contractors who have not met their small business goals, and therefore rarely assign below-satisfactory ratings. In contrast, according to government-wide data released by the Small Business Administration (SBA), many contractors reported not meeting their subcontracting goals in fiscal year 2022 (see figure).

### Reported Government-wide Contractor Achievement of Subcontracting Goals by Small Businesses and Socioeconomic Category, Fiscal Year 2022



Source: GAO analysis of Small Business Administration data. | GAO-24-106225

### Accessible data table for Reported Government-wide Contractor Achievement of Subcontracting Goals by Small Businesses and Socioeconomic Category, Fiscal Year 2022

Category	Percentage of completed contracts that achieved negotiated subcontracting plan goals
Small business	63.0%
Small disadvantaged businesses	45.6%
Women-owned small businesses	51.8%
Historically Underutilized Business Zone small businesses	36.4%
Veteran-owned small businesses	47.8%
Service-disabled veteran-owned small businesses	35.9%

Note: Data include only contractors that have individual subcontracting plans.

SBA's data do not include agency-level information that may help explain the differences in the contracting officers' statements and SBA's government-wide data. Further, most federal agencies GAO reviewed do not report or review data on contractors' achievement of their subcontracting goals at the agency level, as required by statute. Collecting and reviewing these data would help agencies better understand the extent to which contractors comply in good faith with their subcontracting plans and the overall success of the agencies' small business subcontracting program. In addition, SBA could use these data to identify specific agencies that may need additional support and training related to small business subcontracting.

SBA conducted only six compliance reviews of subcontracting plans in each of fiscal years 2021 and 2022. SBA found that contractors generally were not in compliance with all of the subcontracting plan requirements and regulations. SBA officials did not believe these reviews were representative of the universe of federal contracts. However, SBA has not analyzed the risks associated with conducting this limited number of reviews each year. Conducting such an assessment could help SBA determine whether to conduct additional reviews, which would further SBA's understanding of the extent and nature of contractors' noncompliance.

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**Abbreviations**

CMR	Commercial Market Representative
CPARS	Contractor Performance Assessment Reporting System
DCMA	Defense Contract Management Agency
DHS	Department of Homeland Security
DOD	Department of Defense
eSRS	Electronic Subcontracting Reporting System
FAR	Federal Acquisition Regulation
HHS	Department of Health and Human Services
ISR	individual subcontracting report
NASA	National Aeronautics and Space Administration
SBA	Small Business Administration
SPCR	Subcontracting Program Compliance Review
SSR	summary subcontract report
VA	Department of Veterans Affairs

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November 9, 2023

The Honorable Roger Williams  
Chairman  
Committee on Small Business  
House of Representatives

The Honorable Blaine Luetkemeyer  
Committee on Small Business  
House of Representatives

In fiscal year 2022, the federal government obligated more than \$400 billion to contracts with required small business subcontracting plans.<sup>1</sup> Federal regulations require that small businesses be given the maximum practicable opportunity to participate in contracts awarded by federal agencies, including in subcontracts. Federal prime contractors who are not small businesses themselves are required to have small business subcontracting plans for contracts that exceed \$750,000 (or \$1.5 million for construction contracts), when subcontracting opportunities exist.<sup>2</sup> These plans contain goals—agreed upon between the contractor and the agency—designating the percentage of dollars that will be subcontracted to small businesses.

The good faith standard requires contractors to make a good faith effort to achieve negotiated small business subcontracting goals included in subcontracting plans. Examples of good faith efforts include conducting market research to identify potential small business subcontractors and soliciting small businesses early in the acquisition process to allow them

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<sup>1</sup>This amount includes active contracts that were awarded in prior years.

<sup>2</sup>Federal law requires prime contractors to make a good faith effort to award a portion of their subcontracts to small businesses consistent with their approved subcontracting plan. Small business subcontracting plans, which are required by the Small Business Act, 15 U.S.C. § 637(d), establish goals for small business subcontracting and describe how the contractor plans to achieve those goals. The Small Business Administration (SBA) establishes small business size standards on an industry-by-industry basis. FAR § 19.102(a). According to SBA, prime contractors are contractors that work directly with the government. They manage any subcontractors and are responsible for ensuring the work is completed as defined in the contract. For the purposes of this report, we refer to federal prime contractors as contractors.

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sufficient time to submit a timely offer.<sup>3</sup> If contractors do not achieve their small business subcontracting goals, they must explain why they did not. A contracting officer with the relevant agency must then determine whether the contractor made a good faith effort to achieve the negotiated goals. Failure to make a good faith effort constitutes a material breach of the contract and can result in negative performance reviews. Negative performance reviews may affect a contractor's future contracting opportunities or result in the imposition of liquidated damages against the contractor.

You asked us to review issues related to assessment of the good faith standard. This report examines (1) how contracting officers assess contractors' compliance with the good faith standard and the extent to which they find contractors noncompliant, and (2) the benefits and challenges associated with good faith standard assessments.

We selected contracting activity offices at two military agencies—the Department of the Air Force and the Department of the Army—and at four civilian agencies—the Departments of Homeland Security (DHS), Health and Human Services (HHS), and Veterans Affairs (VA), and the National Aeronautics and Space Administration (NASA) for review. Using data from the Federal Procurement Data System, we selected agencies with the largest total obligations made to contracts with individual subcontracting plans in fiscal year 2021 (the most recent available data at the time of our analysis).<sup>4</sup>

We interviewed officials and reviewed training materials from the selected agencies on their processes for overseeing subcontracting plans, specifically regarding their assessment of whether contractors have met the good faith standard, and the factors that may lead to the imposition of

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<sup>3</sup>There is no legal definition of the good faith standard in statute or regulations. But the FAR does provide a definition for "failure to make a good faith effort to comply with the subcontracting plan," which states that it is a willful or intentional failure to perform in accordance with the requirements of the approved subcontracting plan or willful and intentional actions to frustrate the plan. SBA regulations and the Federal Acquisition Regulation (FAR) include a nonexclusive list of examples of positive and negative activities contractors may conduct related to a contractor's good faith efforts. For a list of SBA and FAR examples, see table 2 in this report.

<sup>4</sup>The Federal Procurement Data System is the primary system of record through which U.S. government agencies are responsible for collecting and reporting data on prime federal contract awards. Despite being among the agencies with the largest total obligations made to contracts with individual subcontracting plans, we did not select the Department of the Navy or the Department of Energy for our review because of recent or ongoing GAO work on federal subcontracting at these agencies.



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liquidated damages. At each agency, we randomly selected two contracting activity offices for further review. We interviewed office leadership at these offices and conducted small-group, semi-structured interviews with 46 contracting officers at the selected agencies to learn about their understanding of the good faith standard and benefits and challenges associated with good faith standard assessments. We also reviewed documentation and interviewed officials at the Small Business Administration (SBA) and Defense Contract Management Agency (DCMA) about their roles in supporting contracting agencies and contractors in meeting the good faith standard. Our review is not generalizable to the six agencies we reviewed, or to the federal government as a whole.

We conducted this performance audit from August 2022 to October 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

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### Contractors' Subcontracting Responsibilities

Federal law and regulations require that contractors, who are not small businesses themselves, receiving a contract with a value greater than the simplified acquisition threshold must ensure that small businesses have the “maximum practicable opportunity” to receive subcontracting work consistent with efficient contract performance.<sup>5</sup> In addition, a prospective contractor generally must submit a subcontracting plan for each solicitation or contract modification with a value of more than \$750,000—or \$1.5 million for construction contracts—whenever subcontracting opportunities exist.

Contractors use these plans to document subcontracting goals as a specific dollar amount planned for small business awards, and to document specific socioeconomic categories of small businesses as a

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<sup>5</sup>15 U.S.C. § 637(d) and FAR § 19.702. The simplified acquisition threshold amount is generally \$250,000. FAR § 2.101(b).

percentage of total subcontracting awards. In some cases, agencies may also require goals expressed as a percentage of total contract dollars. The socioeconomic categories are defined by the Small Business Act, as amended, and include small businesses that are women-owned, veteran-owned, service-disabled veteran-owned, small disadvantaged, and those certified as Historically Underutilized Business Zone firms.<sup>6</sup> Contractors with federal contracts typically use one of three types of subcontracting plans: individual, commercial, or comprehensive (see table 1).

**Table 1: Types of Federal Subcontracting Plans and Contractor Reporting Requirements**

Type of plan	Description	Electronic Subcontracting Reporting System reporting requirements
Individual	Applies to a specific contract and covers the entire contract period including option periods, and contains subcontracting goals	Individual Subcontracting Report (ISR) required semiannually Summary Subcontract Report (SSR) required annually
Commercial	Covers a company's fiscal year and the entire production of commercial products and services sold by either the entire company or a portion of it (such as a division, plant, or product line) and contains subcontracting goals	ISR not required SSR required annually
Comprehensive	Similar to a commercial subcontracting plan and applies only to Department of Defense contracts. Each company reports on subcontracting goals and achievements for a specific fiscal year on a plant-, division-, or corporate-wide basis. A comprehensive plan may cover a large number of individual contracts. <sup>a</sup>	ISR not required SSR required semiannually

Source: Federal Acquisition Regulation and Department of Defense Subcontracting Program Business Rules and Processes. | GAO-24-106225

<sup>a</sup>In 1989, Congress authorized the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans, which permits participating contractors for the Department of Defense and military departments to submit a single subcontracting plan covering all their contracts rather than a separate plan for each contract.

After a contract is awarded, the contractor must periodically submit to the government a subcontracting report that describes progress toward achieving its small business subcontracting goals, allowing the government to determine compliance with the subcontracting plan. In these subcontracting reports, contractors describe their progress toward achieving the small business subcontracting goals, allowing the government to determine compliance with the subcontracting plan. Individual subcontracting plans require reporting on a single contract (including options). Commercial subcontracting plans report both commercial and government subcontracting for the determined time frame that applies to the entire production of commercial products and

<sup>6</sup>15 U.S.C. § 637(d). Socially and economically disadvantaged small business concerns are also known as "small disadvantaged" businesses.

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commercial services sold by either the entire company or a portion thereof. Comprehensive subcontracting plans, which apply only to the Department of Defense (DOD), report all subcontracting under a DOD prime or subcontract. In most cases, contractors must submit these reports through the Electronic Subcontracting Reporting System (eSRS), a web-based, government-wide system accessible to both contractors and agency contracting officers.<sup>7</sup>

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## Contracting Officers' Subcontracting Responsibilities

Several regulations, processes, and procedures dictate contracting officers' responsibilities for oversight of subcontracting plans during the pre-award and post-award phases of the acquisitions process.

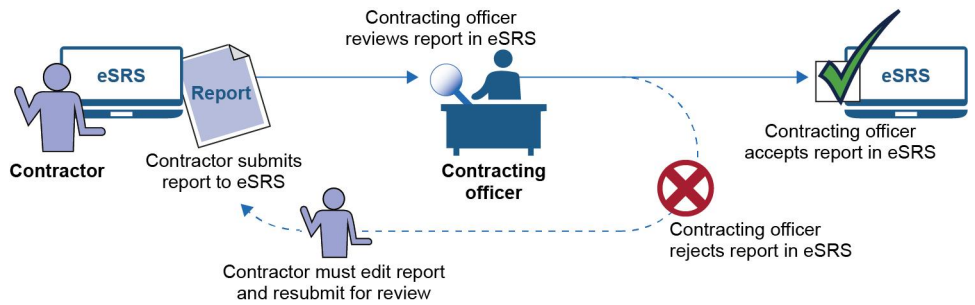
- **Pre-award.** Before making an award, the FAR requires that contracting officers review the subcontracting plan to ensure that the required information, goals, and assurances are included. For example, the plan must include a commitment by the contractor to submit periodic reports to the government for determining the extent of compliance with the subcontracting plan. Additionally, the FAR requires contracting officers to provide an SBA Procurement Center Representative an opportunity to review the proposed contract, including the subcontracting plan and supporting documentation.
- **Post-award.** After a contract or contract modification containing a subcontracting plan is awarded or an existing subcontracting plan is amended, the FAR requires contracting officers to monitor the contractor's compliance with the subcontracting plan. Specifically, the FAR requires contracting officers to (1) ensure the contractor files its subcontracting report in eSRS within 30 days of the close of each reporting period (a report is also required for each contract within 30 days of contract completion); (2) review the ISR and, where applicable, the SSR in eSRS within 60 days of the reporting end date; and (3) acknowledge receipt of and accept or reject the report in eSRS (see fig. 1).<sup>8</sup>

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<sup>7</sup>According to SBA, in some cases (when FAR 52.219-9 alternates are used), contractors submit paper SF 294 reports instead of entry in eSRS.

<sup>8</sup>If a report is rejected, the contracting officer must provide an explanation for the rejection to allow the prime contractor the opportunity to respond specifically to identified deficiencies.

**Figure 1: Process for Monitoring Compliance with Small Business Subcontracting Plans**



Source: GAO analysis of Electronic Subcontracting Report System (eSRS) process documentation; GAO (icons). | GAO-24-106225

**Accessible text for Figure 1: Process for Monitoring Compliance with Small Business Subcontracting Plans**

- 1) Contractor (eSRS)
  - Contractor submits report to eSRS
- 2) Contracting officer reviews report in eSRS
  - a) Contracting officer accepts report in Esrs
  - b) Contracting officer rejects report in eSRS
    - i) Contractor must edit report and resubmit for review

Source: GAO analysis of Electronic Subcontracting Report System (eSRS) process documentation; GAO (icons). | GAO-24-106225

- **Good faith assessment.** The FAR requires contracting officers to first determine whether a contractor achieved the small business goals included in its subcontracting plan. The eSRS reports for individual subcontracting plans contain the percentage goals established in the subcontracting plan and the actual percentage of subcontracting awards that the contractor made to small businesses.<sup>9</sup> Contracting officers are to verify that the goals match what was negotiated in the subcontracting plan and then compare the goals to the actual amounts to determine whether the contractor achieved the small business goals. If the contractor did not achieve its goals, the FAR requires contracting officers to then assess whether the contractor made a good faith effort to achieve those goals. The

<sup>9</sup>Summary Subcontract Reports in eSRS, which contractors with commercial or comprehensive plans are required to submit, do not contain percentage goals established in the subcontracting plan. Rather, contractors are required to report the whole dollars amount contracted to each specific subcontracting category for the fiscal year.

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contractor's failure to achieve subcontracting goals does not, in and of itself, constitute failure to make a good faith effort.

If the contractor does not achieve its goals, the contracting officer is to assess the contractor's written explanation concerning why the goals were not achieved (also included in the ISR or SSR). Additionally, the FAR requires a contracting officer to look at the totality of the contractor's actions, consistent with the information and assurances provided in its subcontracting plan. If the contracting officer determines that a contractor failed to make a good faith effort—and upon additional requests the contractor fails to demonstrate otherwise—the FAR requires the contracting officer to assess liquidated damages.<sup>10</sup>

- **Ratings in the Contractor Performance Assessment Reporting System (CPARS).** The FAR requires agencies to perform evaluations of and report on a contractor's performance at least annually and when work under the contract has been completed. Within CPARS, small business subcontracting is one evaluation area for which agencies rate a contractor's performance. When making future contract award decisions, agency contracting officers are to consider information from these reports on a contractor's past performance, including a contractor's actions regarding prior small business subcontracting plans.

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## SBA's Role in Subcontracting

SBA's Office of Government Contracting administers SBA's subcontracting assistance program. According to SBA officials, this office works to create an environment for maximum practicable participation by small and socioeconomic small businesses in federal prime and subcontract awards. SBA staff have related responsibilities in both the pre- and post-award acquisition phases. SBA's Procurement Center Representatives have responsibilities related to the pre-award phase, including reviewing proposed subcontracting plans and providing advice and recommendations on them to contracting officers.

SBA's Commercial Market Representatives (CMR) have key roles in the post-award phase, including providing subcontracting orientation sessions to contractors and conducting contractor performance reviews. CMRs conduct two types of contractor performance reviews on a selected

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<sup>10</sup>FAR § 19.705-7. Liquidated damages refer to monetary assessments imposed against a contractor for breaching the contract.

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number of contractors with a small business subcontracting plan— performance reviews and subcontracting program compliance reviews (SPCR).<sup>11</sup>

- **Performance reviews.** These reviews are performed while a contract is still ongoing. According to the SBA Performance Review Desk Guide, CMRs are to review and analyze the ISRs and SSRs submitted by the selected contractor to determine how the contractor is progressing toward accomplishing its subcontracting goals. Following review, CMRs are to send a letter to the contractor highlighting any area where the contractor is falling short on its goals, and potentially suggesting the contractor develop a corrective action plan. According to SBA officials, the contractor is not expected to respond to the CMR or provide SBA with a copy of the corrective action plan.
- **Subcontracting program compliance reviews.** CMRs are to conduct SPCRs on a selected number of contractors with either an ongoing or completed contract from the previous 12 months, according to the SBA Subcontracting Program Compliance Review Desk Guide. CMRs use SPCRs to determine whether the contractor complied with its subcontracting roles and responsibilities outlined in the subcontracting plan. During the review, CMRs are to answer the following questions related to a contractor’s subcontracting goals:
  - Is the contractor achieving or exceeding its goals for small businesses?
  - If it did not achieve the goals, did it list reasons why?
  - Does the contractor have a corrective action plan to raise its achievements?
  - Is the contractor offering realistic and challenging goals each year?
  - Does the contractor’s achievement support maximum use of small businesses?

According to the desk guide, to receive an exceptional rating, the contractor must exceed all negotiated subcontracting plan goals. Contractors who achieve all small business goals and at least three of

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<sup>11</sup>These orientations are referred to as Subcontracting Orientation Assistance Reviews and are given when a new contractor enters a CMR’s portfolio, when a contractor has hired a new official to administer the subcontracting plan or under any other circumstances when the CMR identifies that such a review would be useful to the contractor.

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the socioeconomic goals will receive a very good rating. Contractors who do not achieve their goals but demonstrate a good faith effort should receive a satisfactory rating. Contractors who do not demonstrate a good faith effort are to receive a marginal or unsatisfactory rating and, for ongoing contracts, are required to develop a corrective action plan. They are also required to receive a follow-up review within 12 months of the CMR's approval of the corrective action plan.

Although SBA conducts monitoring activities, the awarding federal agency remains responsible for overseeing and enforcing compliance with a subcontracting plan throughout the life of the contract. This differs somewhat for certain contracts awarded by DOD, which conducts contract monitoring but receives contract administration services—including subcontracting program compliance services—from DCMA, a specialized component within DOD. Additionally, SBA and DCMA may conduct compliance reviews jointly to evaluate contractors' subcontracting programs supporting specific DOD contracts administered by DCMA.

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## **Contracting Officers Said Good Faith Noncompliance is Rare and Agencies Have Not Implemented Data Reporting Requirements**

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### **Contracting Officers Reported Contractors Almost Always Achieve Their Goals**

Contracting officers we spoke with described how they review the ISR or SSR and compare the approved subcontracting plan with the accomplishments to determine whether contractors achieved—or made a good faith effort to achieve—their plan's goals.

Contracting officials from the six agencies we reviewed said they rarely identify a contractor who is not achieving the goals of its small business

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subcontracting plan.<sup>12</sup> In group interviews, contracting officers said contractors generally achieve their goals because the contractors are knowledgeable about potential small business subcontractors in their area of work and are able to plan effectively before an award is made. For example, one contracting officer said agencies and contractors establish achievable subcontracting goals by conducting market research and communicating with each other prior to finalizing a contract. In addition, contracting officers said contractors are aware that satisfactory performance in achieving subcontracting goals has a positive effect on future bids for federal contracts.

In the event that a contractor reports not achieving its goals, contracting officers said they review the contractor's written explanation for the shortfall, which is included in the ISR or SSR. For example, a contractor may explain that changes in the availability of subcontractors affected its performance against its goals, such as small businesses that ceased operations or expanded and were no longer classified as small businesses. Contracting officers said the written explanation should describe steps the contractor took to identify and use subcontracting opportunities over the reporting period, as well as plans the contractor made to improve its efforts over the next reporting period. These written explanations can be part of contracting officers' assessment of good faith effort. Contracting officers also said they focus on steps the contractor can take to achieve its subcontracting goals going forward because contracts are typically implemented over several years.

Nearly all of the groups of contracting officers said that if there were concerns over a contractor's efforts to achieve its goals, they would work with the contractor to help it meet the good faith standard before considering any further action. For example, one contracting officer reported helping a contractor connect with potential subcontractors to support a highly technical contract because of the limited number of small businesses able to conduct the specialized work. Another contracting officer noted it is harder to make a good faith determination in the absence of collaborative relationships with contractors.

If, after working with a contractor, the contracting officer determines that a contractor's efforts to achieve its subcontracting goals remain insufficient,

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<sup>12</sup>For the purposes of this report, the term contracting officials refers to staff within contracting activity offices who are not contracting officers. It also refers to other contracting related staff, such as officials in agency small business program offices or offices of small and disadvantaged business utilization.



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agency contracting officials reported the contracting officer may notify the contractor in writing that it is not in compliance with its subcontracting plan and request corrective action. An agency contracting official at one of the six agencies we reviewed reported that they had sent such a notification. According to this official, the written notification formally asks the contractor to demonstrate that a good faith effort has been made to achieve the subcontracting goals and that it promptly provide a corrective action plan to achieve the contract's subcontracting goals going forward.

Contracting officers said that if a contractor did not sufficiently respond to the request for corrective action and continued to not meet the good faith standard, then that contractor would receive a below satisfactory CPARS rating for small business subcontracting performance. However, some contracting officials said such ratings are only used as a last resort because they may contribute to decisions about a contractor's ability to obtain future federal contracts. Across 11 group interviews with contracting officers, only one contracting officer reported giving a contractor a below satisfactory CPARS rating for small business subcontracting performance.<sup>13</sup> The contracting officer said her team determined the contractor had not used available subcontracting opportunities and expressed this concern to the contractor's management team before assigning the below satisfactory rating. Agency officials said this contractor showed it was attempting to improve its performance and comply with the subcontracting plan going forward. Specifically, the contractor provided a plan including specific steps and resources to improve its subcontracting performance for the remainder of the contract. The team of contracting officers concluded that this plan represented a good faith effort because it demonstrated the contractor's commitment to applying the necessary resources to bring performance to a satisfactory level.

Contracting officials said it is difficult to determine that a contractor has not made a good faith effort because doing so requires evidence that the contractor has acted willfully or intentionally in not complying with the subcontracting plan. Agency contracting officials from two agencies said it is difficult to assert a lack of good faith effort in any other than clear or extreme cases of violation. For example, one group of contracting officers said that in one case, a construction contractor did not achieve its subcontracting goals or demonstrate efforts to do so. However, the

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<sup>13</sup>During a CPARS evaluation, the contractor is given a rating in seven evaluation areas, one of which is Small Business Subcontracting.

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agency's attorneys determined the agency could not prove the contractor did not make a good faith effort, including showing that there were capable subcontractors available with whom the contractor could have subcontracted. The agency decided not to pursue liquidated damages.

In addition, none of the contracting officers or contracting agency officials we spoke with could recall a time that their office imposed liquidated damages related to a contractor's lack of good faith effort. Further, some contracting officers said the process of applying liquidated damages in this situation was unfamiliar, vague, or confusing for them.

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### SBA and Agencies Have Not Fully Implemented Requirements for Reporting Data on Achievement of Subcontracting Goals

The Small Business Act, as amended, requires each contracting agency to collect and report data on the extent to which contractors achieve the goals and objectives of their subcontracting plans.<sup>14</sup> The statute requires agencies to periodically review these data for several purposes, including ensuring that contractors comply in good faith with the subcontracting plan. However, we found that five of the agencies we reviewed generally do not collect or report data describing contractors' achievement of their small business subcontracting goals. This can make it difficult for agencies to understand the extent to which contractors achieve their small business subcontracting goals.

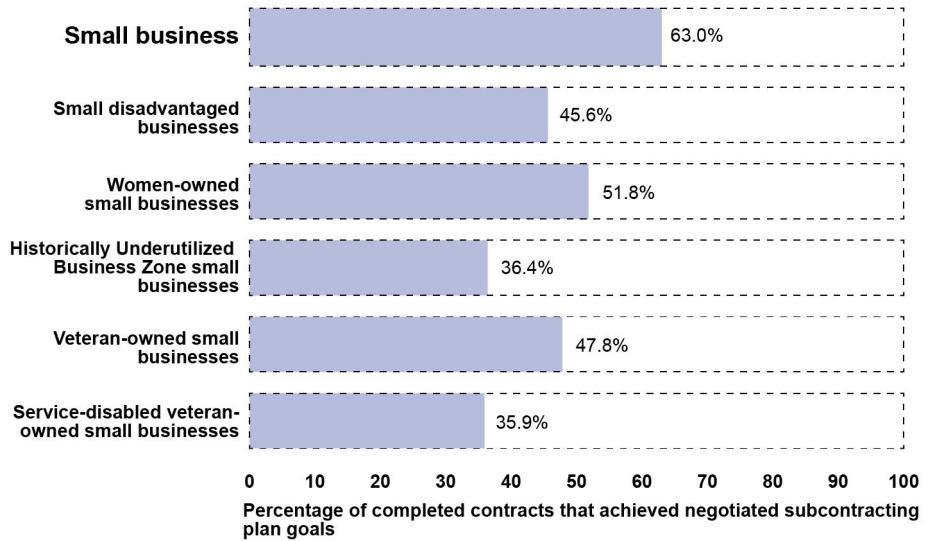
SBA data from eSRS on government-wide contracting show that contractors who submitted final ISRs (i.e., ISRs submitted for completed contracts) in fiscal year 2022 reported achieving only 63 percent of their overall small business subcontracting goals (see fig. 2). Yet, as discussed earlier, contracting officers told us they rarely identified contractors who are not achieving their small business subcontracting goals.

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<sup>14</sup>National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, § 1653, 126 Stat. 1632, 2081 (codified at 15 U.S.C. § 637(d)(7)).

**Figure 2: Government-wide Contractor Reported Achievement of Subcontracting Goals by Small Businesses and Socioeconomic Category, Fiscal Year 2022**

Prime federal contractors have subcontracting plans that can include goals to subcontract with certain categories of small businesses. The bars below represent the percentage of prime contractors with a goal in the respective category that reported meeting that goal.



Source: GAO analysis of Small Business Administration data. | GAO-24-106225

**Accessible data table for Figure 2: Government-wide Contractor Reported Achievement of Subcontracting Goals by Small Businesses and Socioeconomic Category, Fiscal Year 2022**

Category	Percentage of completed contracts that achieved negotiated subcontracting plan goals
Small business	63.0%
Small disadvantaged businesses	45.6%
Women-owned small businesses	51.8%
Historically Underutilized Business Zone small businesses	36.4%
Veteran-owned small businesses	47.8%
Service-disabled veteran-owned small businesses	35.9%

Source: GAO analysis of Small Business Administration data. | GAO-24-106225

Note: Data include only contractors that have individual subcontracting plans.

Our selection of contracting offices was not generalizable, which may partially explain this apparent discrepancy. It is difficult to explain the differences between the contracting officers' experiences and the government-wide data because these data generally are not broken down

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by agency. We have previously found that some contracting officers did not ensure that contractors submitted required ISRs and SSRs, and that some contracting officers accepted subcontracting report submissions with erroneous information on subcontracting goals.<sup>15</sup> Thus, the contractor-reported information in eSRS may not be fully accurate. Nonetheless, there is a substantial difference between the statements of contracting officers—who told us they rarely identify a contractor not achieving subcontracting goals—and the eSRS data (depicted in fig. 2), which show these goals frequently are not met.

Of the six agencies in our review, we found that only NASA fulfills the statute's requirement to periodically review and report data on the extent to which contractors achieve their subcontracting plan goals by directing each of its contracting activity offices to submit annual reports to the agency's Office of Small Business Programs. These reports describe the percentage of ISRs that are achieving small business goals and any actions the office is taking to address contractors who are not achieving their goals.

The remaining five agencies we reviewed did not consistently collect and report data.

- VA was able to provide data on the number of ISRs that reported contracts had achieved their goals, which the agency had collected and reported under a different requirement.<sup>16</sup> However, VA could not demonstrate that it reviewed and incorporated findings into its small business subcontracting oversight process.
- Contracting officials at the remaining four agencies we reviewed—Air Force, Army, DHS, and HHS—told us they do not periodically report or review data on the extent to which contractors achieve their subcontracting plan goals, as required by statute.<sup>17</sup>

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<sup>15</sup>GAO, *Small Business Subcontracting: Oversight of Contractor Compliance with Subcontracting Plans Needs Improvement*, [GAO-20-464](#) (Washington, D.C.: May 28, 2020).

<sup>16</sup>VA has provided this information as part of a report requested yearly by the House Appropriations Committee and the Senate Appropriations Committee.

<sup>17</sup>For contractors with a comprehensive subcontracting plan, DCMA annually reviews the extent to which these contractors achieve their subcontracting plan goals. DOD reported to Congress that in fiscal year 2019, of the nine contractors with comprehensive subcontracting plans negotiated under the program, six achieved or surpassed all of their negotiated goals, and all nine achieved or surpassed three or more of their goals.

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By periodically collecting and reviewing agencywide data, these agencies could better understand the extent to which contractors comply in good faith with their subcontracting plans and the overall success of the agencies' small business subcontracting program, as well as ensure they are in compliance with statutory requirements. Further, they could identify opportunities to adjust their efforts or improve oversight.

In addition, the National Defense Authorization Act for Fiscal Year 2013, requires SBA to submit an annual report to Congress describing the percentage of contractors who filed ISRs reporting that they achieved, exceeded, or failed to achieve goals in their subcontracting plans during the prior fiscal year.<sup>18</sup> The statute requires SBA to report this information by agency, but SBA has only reported government-wide data. SBA officials said its annual report has not broken out subcontracting goal achievement information by agency because eSRS does not associate these data with the relevant agency, but instead with each office or component within the agencies.

Because of this limitation in eSRS, to report on subcontracting goal achievement by agency, SBA officials said they would need to manually associate each office or component in the eSRS data with an agency prior to summarizing the information for the annual report. However, if SBA considers this process too burdensome, it could request that agencies summarize data for their offices or components and provide the information directly to SBA. In July 2023, SBA's annual report to Congress noted that if contractors had achieved their subcontracting plan goals on completed contracts, small businesses would have received an additional \$2 billion in subcontracts. By also including subcontracting goal achievement information by agency in its annual report, SBA would ensure its compliance with the statutory requirement. Further, such reporting could help identify specific agencies that may need additional support and training related to small business subcontracting.

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<sup>18</sup>15 USC § 637d(2). SBA is not able to report similar information for contractors with commercial or comprehensive subcontracting plans because eSRS does not contain subcontracting plan goals for these contract types. This prevents comparison of the goals to the actual subcontracted amounts. In addition, SBA cannot report the percentage of contractors who failed to submit required ISRs because eSRS does not indicate which contractors received a contract award with a subcontracting plan but failed to file a report. SBA also reported only information from ISRs contracting officers have accepted. Information from ISRs with a pending, reopened, rejected, draft, or resubmitted status is not included in SBA's report.

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## SBA Compliance Reviews Generally Find Contractors Noncompliant with Subcontracting Goals and Reviews Are Limited in Number

As previously mentioned, under SBA's subcontracting assistance program, Commercial Market Representatives (CMR) conduct performance reviews and subcontracting program compliance reviews (SPCR). SBA updated internal guidance related to performance reviews and SPCRs in September 2020 and January 2021, respectively. According to SBA officials, the new guidance was intended to standardize compliance reviews.

Since these updates, CMRs completed around 200 performance reviews in each of the fiscal years 2021 and 2022. They completed six SPCRs in each fiscal year. SBA officials told us that during these fiscal years, the Office of Government Contracting employed six full-time CMRs.<sup>19</sup> According to SBA officials, due to CMRs' other responsibilities, personnel resources, and the updated nature of these reviews, SBA set a goal for each CMR to perform one SPCR each year, because this was all that was deemed feasible based on current staffing.<sup>20</sup>

As previously discussed, an SPCR is to result in a marginal or unsatisfactory rating if a CMR finds that a contractor is deficient in achieving one or more of its subcontracting plan elements. Contractors with ongoing contracts who receive a marginal or unsatisfactory rating must develop a corrective action plan, and CMRs must complete a follow-up review within 12 months of approving the corrective action plan. For the six SPCRs conducted in fiscal years 2021 and 2022 respectively, contractors generally did not comply with all of the subcontracting plan requirements and regulations. In 2022, SBA conducted follow-up reviews

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<sup>19</sup>In fiscal year 2023, SBA added one full-time CMR to reach a total of seven CMRs.

<sup>20</sup>The DCMA also conducts subcontracting plan compliance reviews each year for contracts for which they have contract administration responsibility. For contractors that obtained contracts with both a civilian agency and DOD, DCMA has performed subcontracting program compliance reviews on DCMA administered contracts under a memorandum of understanding with SBA established to ensure the agencies did not duplicate resources. Officials told us this memorandum expired in 2018 and is being renegotiated. Officials also said some activities covered by the expired memorandum have continued in the interim. In 2018, DCMA also established a memorandum of understanding with DOD's Office of Small Business Programs that covered compliance reviews for contractors with a comprehensive subcontracting plan.

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for the 2021 SPCRs, as required. The follow-up reviews conducted in fiscal year 2022 revealed that most contractors continued to be out of compliance. However, SBA officials explained that the businesses that received a follow-up review may have continued to be out of compliance because they required more time to implement planned corrective actions across their operations.

SBA officials told us they do not believe that the noncompliance found during the SPCRs was representative of the universe of federal contracts. Specifically, SBA officials said their selection process prioritizes contractors with the largest total subcontracting dollars, among other risk factors. Officials told us these SPCRs tend to be contractors with commercial subcontracting plans who conducted business with the federal government in addition to their primary work with the private sector. In addition, some of these contractors operated simultaneous supplier diversity programs required by nonfederal customers. As a result, they said these contractors were less focused on meeting federal requirements than contractors who had individual subcontracting plans, meaning CMRs were more likely to identify deficiencies. However, as previously stated, SBA data showed that contractors with individual subcontracting plans also reported not achieving their subcontracting goals for the socioeconomic categories of small businesses 37 percent of the time.

Federal internal control standards state that management should identify, analyze, and respond to risks related to achieving defined objectives. Management can achieve this by analyzing the identified risks to estimate their significance, which provides a basis for responding to the risks.<sup>21</sup> SBA has not analyzed the risk to its understanding of contractor compliance gained by conducting only six SPCRs in each fiscal year, with selection criteria that results primarily in contracts with commercial subcontracting plans. Understanding this risk is particularly important in light of the overall data showing shortfalls in achieving subcontracting goals. Such an assessment could include, for example, assessing whether additional reviews can be achieved and whether those reviews can be more broadly representative of different types of subcontracting plans. Conducting such an assessment would help SBA determine whether to conduct additional reviews, which would in turn further SBA's

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<sup>21</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

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understanding of the extent and nature of contractors' noncompliance. This assessment could also help inform SBA's future staffing needs.

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## The Good Faith Standard Provides Benefits, but There Are Challenges Associated with Its Implementation

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### Agency Officials We Spoke With Described Benefits of the Good Faith Standard

Agency contracting officials and contracting officers identified benefits of the good faith standard. For example, they said the standard puts additional focus on creating opportunities for small businesses. Contracting officers are required to not only assess whether contractors have achieved their goals, but also how diligently contractors worked in their efforts to achieve those goals. One official told us the standard requires contractors to describe specific steps they will take to provide maximum practicable opportunities to small businesses and characterized this as a good accountability tool.

Agency officials and contracting officers also told us that the standard created flexibility for contracting officers to consider contractors' different circumstances when evaluating their efforts to achieve subcontracting goals. One group of agency officials noted that the standard was neither rigid nor pass-fail. In addition, contracting officers we met with said the standard allows them to account for factors unique to individual contracts or changes outside the contractors' control that may make the original goals less feasible. For example, three groups of contracting officers we spoke with noted that several of their contractors did not achieve small business goals during the COVID-19 pandemic because the original small businesses they planned to use had shuttered. The contracting officers were able to consider these circumstances when they assessed the contractors' good faith efforts. One contracting officer noted that this flexibility allowed them to maintain better relationships with contractors as they worked with them to evaluate their progress toward their subcontracting goals.



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## Contracting Officers Said They Face Challenges Assessing Contractors' Good Faith Efforts

In our group meetings, contracting officers described challenges they face when assessing a contractor's good faith efforts. In eight of our 11 group interviews, contracting officers told us that the flexibility of the good faith standard can also be a challenge and lead to different interpretations of the standard. When a contractor does not achieve its small business subcontracting goals, the contracting officer uses professional judgement to determine whether the contractor's actions were sufficient. One contracting officer noted that every contracting officer might have a slightly different interpretation of what constitutes sufficient effort.

To provide contracting officers with more clarity regarding the definition of good faith effort, SBA regulations and the FAR include a nonexclusive list of examples of positive and negative activities contractors may conduct related to a contractor's good faith efforts (see table 2).<sup>22</sup>

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<sup>22</sup>SBA is required by law to amend its regulations to provide examples of activities that would be considered a failure to make a good faith effort. National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 1821, 130 Stat. 2000, 2654 (2016).

**Table 2: Positive and Negative Examples of Good Faith Effort Included in the Federal Acquisition Regulation**

**Positive examples of good faith effort**

- Breaking out work into economically feasible units to facilitate small business participation.
- Conducting market research to identify potential small business subcontractors through all reasonable means.
- Soliciting small businesses early in the acquisition process to allow them sufficient time to submit a timely offer for the subcontract.
- Providing interested small businesses with adequate and timely information about plans, specifications, and requirements for performance of the prime contract to assist them in submitting a timely offer for the subcontract.
- Negotiating in good faith with interested small businesses.
- Directing small businesses that need additional assistance to the Small Business Administration.
- Assisting interested small businesses in obtaining bonding, lines of credit, required insurance, necessary equipment, supplies, materials, or services.
- Utilizing the available services of small business associations; local, state, and federal small business assistance offices; and other organizations.
- Participating in a formal mentor-protégé program with one or more small business protégés that results in developmental assistance to the protégés.

**Negative examples of good faith effort**

- Failure to submit an acceptable Individual Subcontracting Report or Summary Subcontracting Report in the Electronic Subcontracting Reporting System by the report due dates.
- Failure to designate and maintain a company official to administer the subcontracting program and monitor and enforce compliance with the plan.
- Failure to pay small business subcontractors in accordance with the terms of the contract with the prime contractor.
- Failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan including subcontracting flowdown requirements.
- Adoption of company policies or documented procedures that have as their objectives the frustration of the objectives of the plan.
- Failure to correct substantiated findings from federal subcontracting compliance reviews or participate in subcontracting plan management training offered by the government.
- Failure to attempt through market research to identify small businesses for contract award through all reasonable means including outreach, industry days, or the use of federal systems.
- Failure to provide the contracting officer with a written explanation if the contractor fails to acquire articles, equipment, supplies, services, or materials or obtain the performance of construction work from the small business concerns that the contractor used in preparing the bid or proposal.

Source: Federal Acquisition Regulation. | GAO-24-106225

Note: Small Business Administration regulations and the Federal Acquisition Regulation both contain non-comprehensive lists of positive and negative examples of good faith efforts.

Some agency officials told us these regulations have been useful in removing some of the subjectivity related to good faith determinations. However, contracting officers in one of the groups we spoke with were not familiar with the list of examples. In addition, contracting officers in two other groups told us they had not previously heard the term “good faith standard,” although some of them were familiar with the general concepts of a good faith assessment.

Contracting officers’ exposure to small business subcontracting plans can vary, and some contracting officers have very limited experience. The majority of contracting officers we met with administered a small number of contracts each year. For example, several contracting officers told us they administered five or fewer contracts with a small business subcontracting plan each year. Some contracting officers described even less frequent interaction with small business subcontracting plans. For example, one contracting officer described having worked on only three contracts with a subcontracting plan over 21 years as a contracting

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officer. Further, members of two of the 11 groups of contracting officers we met with said they did not have a firm understanding of the good faith standard.

Contracting officers who said they understood the standard said experience in their role and assistance from small business office specialists were the primary factors that contributed to their understanding. Contracting officers in six of our 11 group interviews told us contracting officers learn how to assess a contractor's good faith efforts through on-the-job experience. One contracting officer noted by looking at a number of subcontracting plans, contracting officers can better see the differences in contractors' efforts. However, as previously mentioned, contracting officers do not always have the opportunity to gain this experience because they may see only a limited number of small business subcontracting plans over their career. Contracting officers from eight of the contracting activity offices we spoke with also described relying on an office of small business specialist as a resource.

Contracting officers in five of the 11 contracting officer groups said more training would be helpful for their understanding and implementation of the good faith standard. Agency officials from DHS, HHS, and NASA provided us with training materials that addressed the good faith standard. However, each of these trainings covered several different subcontracting topics beyond good faith and were not offered frequently. DHS and Army provided us with documents that laid out steps contracting officers should take in eSRS when evaluating subcontracting reports. These documents described the technical steps that a contracting officer should take in eSRS but did not address how contracting officers should evaluate a contractor's good faith efforts when subcontracting goals are not met.

In fiscal year 2022, SBA provided a training to federal contracting agencies. This training included a broad range of topics, including contracting officers' pre- and post-award responsibilities and SBA's subcontracting responsibilities. SBA officials told us they have also provided subcontracting plan training to federal agencies upon request. In addition, SBA offers monthly trainings to contracting officers on federal contracting topics. Some of these monthly trainings have included information related to small business subcontracting. Some contracting officers told us they had attended these trainings, while others had not, or told us they did not have time to attend. One contracting officer who attended told us these trainings were generally broad and did not go into detail on information contracting officers need to know. One contracting

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officer said that just-in-time training (i.e., training that is accessible as needed) on the good faith standard would be more effective than scheduled training for busy contracting officers.

In three of our group interviews, contracting officers emphasized their many and growing responsibilities. In one interview, agency officials said contracting officers now have responsibility for both pre- and post-award administration, rather than dividing these duties among multiple officers as it had been done historically. Contracting officers in four groups described competing priorities that lead them to be selective about where they direct their attention. They also said they generally focus on the goal of successfully awarding contracts.

Federal internal control standards state that management should demonstrate a commitment to recruit, develop, and retain competent individuals. Personnel need to possess and maintain a level of competence that allows them to accomplish their assigned responsibilities. Management should consider enabling individuals to develop competencies appropriate for key roles and tailor training to the needs of the role.<sup>23</sup> Just-in-time training tailored to contracting officers conducting good faith assessments could be an effective way to help contracting officers develop competencies appropriate for their role, particularly given their limited experience and competing responsibilities. Such training could help contracting officers maintain a level of competence that allows them to conduct effective good faith assessments, better ensuring that small businesses are given maximum practicable opportunity to participate in federal contracts.

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## Conclusions

The requirement that certain federal contractors have small business subcontracting plans enhances opportunities for small businesses to participate in federal contracting. However, we identified weaknesses in some agencies' oversight of subcontracting plans, such as failing to periodically review data on contractors' attainment of their subcontracting plan goals. These weaknesses may reduce the effectiveness of the subcontracting requirement and limit agencies' knowledge about the extent to which contractors fulfill obligations to small businesses. Collecting, reviewing, and reporting agencywide data on contractors'

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<sup>23</sup>[GAO-14-704G](#).

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compliance with their subcontracting plans would help these agencies better understand the effectiveness of their efforts to support subcontracting.

Selected agencies also have opportunities to enhance their oversight by offering just-in-time training to support contracting officers who have limited exposure to small business subcontracting plans. SBA has provided some training related to the good faith standard, but not all contracting officers have accessed these resources. Agencies could improve contracting officers' understanding of the good faith standard by making available just-in-time training with a specific focus on good faith assessments.

SBA reports annually on the extent to which federal contractors are meeting their subcontracting plan goals for individual subcontracting plans. More complete reporting that included agency-level data would ensure SBA's full compliance with this statutory reporting requirement and could help identify agencies that may need additional support and training. In addition, SBA's current practice of conducting only six SPCRs each fiscal year provides only a limited understanding of contractor compliance. An analysis of the risks associated with this practice could help SBA determine whether additional reviews are needed and could help inform its future staffing needs.

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## Recommendations for Executive Action

We are making a total of 13 recommendations, including two to the Air Force, two to the Army, two to DHS, two to HHS, one to NASA, two to SBA, and two to VA:

The Secretary of the Air Force should periodically collect, review, and report data on the extent to which contractors achieve the goals and objectives of their subcontracting plans. (Recommendation 1)

The Secretary of the Air Force should work with relevant contracting staff, such as small business specialists, to develop and implement just-in-time training for contracting officers related to good faith assessments. (Recommendation 2)

The Secretary of the Army should periodically collect, review, and report data on the extent to which contractors achieve the goals and objectives of their subcontracting plans. (Recommendation 3)

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The Secretary of the Army should work with relevant contracting staff, such as small business specialists, to develop and implement just-in-time training for contracting officers related to good faith assessments. (Recommendation 4)

The Secretary of Homeland Security should periodically collect, review, and report data on the extent to which contractors achieve the goals and objectives of their subcontracting plans. (Recommendation 5)

The Secretary of Homeland Security should work with relevant contracting staff, such as small business specialists, to develop and implement just-in-time training for contracting officers related to good faith assessments. (Recommendation 6)

The Secretary of Health and Human Services should periodically collect, review, and report data on the extent to which contractors achieve the goals and objectives of their subcontracting plans. (Recommendation 7)

The Secretary of Health and Human Services should work with relevant contracting staff, such as small business specialists, to develop and implement just-in-time training for contracting officers related to good faith assessments. (Recommendation 8)

The NASA Administrator should work with relevant contracting staff, such as small business specialists, to develop and implement just-in-time training for contracting officers related to good faith assessments. (Recommendation 9)

The SBA Administrator should develop and implement actionable steps to ensure compliance with the statutory requirement to include agency-level data in its annual report to Congress on status of small business subcontracting plan goals. (Recommendation 10)

The SBA Administrator should analyze the risk of having a limited understanding of federal contractors' noncompliance with their subcontracting plans, based on current practices, and determine whether the Office of Government Contracting should conduct additional reviews. (Recommendation 11)

The Secretary of Veterans Affairs should periodically review data on the extent to which contractors achieve the goals and objectives of their subcontracting plans. (Recommendation 12)

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The Secretary of Veterans Affairs should work with relevant contracting staff, such as small business specialists, to develop and implement just-in-time training for contracting officers related to good faith assessments. (Recommendation 13)

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## Agency Comments and Our Evaluation

We provided a draft of this report to DOD, HHS, DHS, NASA, SBA, and VA for review and comment. HHS, DHS, NASA, and VA provided written responses, reproduced in appendixes II, III, IV, and VI, respectively, in which they concurred with our recommendations. DOD and SBA provided written responses, reproduced in appendixes I and V, in which they partially concurred with our recommendations. DHS, SBA, and VA also provided technical comments which we have incorporated as appropriate.

While HHS concurred with our recommendations, its proposed actions to address recommendation 7 may not fully address the intent. HHS stated it would work with SBA as SBA conducts an annual performance review of a random sampling of subcontracting plans from each HHS agency. HHS said that the results of these reviews will be compiled into a report to be shared with HHS leadership. This may be a good practice for SBA and HHS to conduct and in some instances a sample can provide useful information. However, in this instance the option of using ISR reports in eSRS is available and could provide HHS with more information on the extent to which contractors achieve the goals and objectives of their subcontracting plans.

DOD provided a written response, reproduced in appendix I, in which Air Force and Army partially concurred with our recommendations. In its response to our recommendation related to periodically collecting, reviewing, and reporting data on contractors' achievement of subcontracting plan goals, DOD stated that both Air Force and Army plan to implement the Department of the Navy's process for tracking subcontracting compliance. We have not reviewed Navy's process, but DOD's description of the process, included in their comments, reflects an approach that would only provide data on a sample of plans. As stated earlier, we believe that collecting, reviewing, and reporting data aggregated from eSRS on individual subcontracting plans would provide more complete information on the extent to which contractors achieve the goals and objectives of their subcontracting plans and help them meet the requirements of the Small Business Act. Air Force and Army note that such a process may cause staffing constraints or undue burden to

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implement. However, because this information is accessible from a data run through eSRS, we do not believe that this process would require a substantial increase in personnel or related resources. We suggest that the agencies work with SBA to better understand how to use ISR reports in eSRS to collect, review, and report data on contractors' achievement of subcontracting plan goals.

In response to our recommendation related to developing just-in-time training for contracting officers, Air Force stated that they will not produce additional training and listed subcontracting training, guidance, and resources that they already provide. During our audit, Air Force provided us with some of these materials. However, in their response to our recommendation, they also refer to resources included in two different libraries, which we were not provided. We will examine those resources as part of our follow-up on the implementation of the recommendation. The materials we did review did not address our recommendation, which was to provide just-in-time training focused on how good faith assessments should be conducted. A training offered at a single point in time, would not satisfy the intent of our recommendation.

In its response to this same recommendation, Army clarified that Small Business Professionals are not part of contracting staff. We encourage Army to work with staff that are most familiar with topics related to small business subcontracting and the good faith standard. We emphasize that this training should be available to contracting officers on a just-in-time basis and focused on conducting good faith assessments.

SBA provided a written response, reproduced in appendix V. SBA partially concurred with our recommendation related to including agency-level data in its annual report to Congress. SBA noted that as stated in our report, only companies with individual subcontracting plans, and not commercial or comprehensive subcontracting plans, submit their subcontracting plan goals into eSRS. Due to this limitation, SBA said that its annual report to Congress can only contain data on subcontracting plan goal accomplishment for contractors with individual subcontracting plans. We acknowledge that SBA will submit information on individual subcontracting plans in its annual report to Congress as information on comprehensive and commercial plans is not readily available in eSRS.

SBA also partially concurred with our recommendation related to the risk of having a limited understanding of federal contractors' noncompliance with their subcontracting plans. SBA stated that it does not believe it has a limited understanding of contractors' noncompliance with their



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subcontracting plans. SBA noted that it can examine any contractor's subcontracting achievement report in eSRS at any time. However, as noted in our report, SBA is only able to view subcontracting achievement reports in eSRS for contracts with individual subcontracting plans. In addition, SBA also said it conducts hundreds of performance reviews each fiscal year. However, during our review, SBA officials told us SBA does not aggregate or track performance review results. Further, SBA does not know whether results of its more comprehensive SPCRs are representative of the universe of federal contractors due to the small overall number of these reviews and its methods for choosing contractors to include in the reviews. Because of these factors, we continue to believe that SBA should analyze the risk of having a limited understanding of federal contractors' noncompliance with their subcontracting plans.

We are sending copies of this report to the House Committee on Small Business, Members of Congress, the Secretary of Defense, the Secretary of Homeland Security, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Administrator of the National Aeronautics and Space Administration, the Administrator of the Small Business Administration, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact William B. Shear, at (202) 512-8678, [shearw@gao.gov](mailto:shearw@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VI.



William B. Shear  
Director, Financial Markets and Community Investment

## Appendix I: Comments from the Department of Defense



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

INDUSTRIAL BASE POLICY

Mr. William Shear  
Director, Financial Markets and Community Investment  
U.S. Government Accountability Office  
441 G Street, NW  
Washington DC 20548

Dear Mr. Shear,

Attached is the Department of Defense (DoD) response to the GAO Draft Report GAO-24-106225, "SMALL BUSINESS CONTRACTING: Some Contracting Officers Face Challenges Assessing Compliance with the Good Faith Standard," dated September 7, 2023 (GAO Code 106225).

My point of contact is Dr. Jacqueline Charles, Associate Director for Small Business Policy, Legislative Affairs, and Workforce Development who can be reached at [jacqueline.a.charles2.civ@mail.mil](mailto:jacqueline.a.charles2.civ@mail.mil) or 703-508-7567.

Sincerely,

MITHA.FAROOQ.A  
MIN.1403101385

Digitally signed by  
MITHA.FAROOQ.AMIN.14031013  
85  
Date: 2023.10.19 15:26:44 -0400

Farooq Mitha  
Director, Department of Defense  
Office of Small Business Programs

Attachment: as stated

**GAO DRAFT REPORT DATED SEPTEMBER 7, 2023  
GAO-24-106225 (GAO CODE 106225)**

**“SMALL BUSINESS CONTRACTING: SOME CONTRACTING OFFICERS FACE  
CHALLENGES ASSESSING COMPLIANCE WITH THE GOOD FAITH STANDARD”**

**DEPARTMENT OF DEFENSE COMMENTS  
TO THE GAO RECOMMENDATION**

**RECOMMENDATION 1:** The GAO recommends that the Secretary of the Air Force should periodically collect, review, and report data on the extent to which contractors achieve the goals and objectives of their subcontracting plans.

**DoD RESPONSE:** Partially concur.

**SAF/SB Observations:** This response identifies actions that will be taken by the Secretary of the Air Force/Small Business (SAF/SB) and the Secretary of the Air Force/Contracting (SAF/AQC) for ease of tracking. The Department of the Air Force (DAF) understands that this recommendation addresses agency obligations under 15 U.S.C. 637(d)(7) to: (A) collect and report data on the extent to which contractors of the agency meet the goals and objectives set forth in subcontracting plans; and (B) periodically review such data for the purpose of ensuring that such contractors comply in good faith with the requirements of this subsection and subcontracting plans submitted by the contractors pursuant to this subsection.

SAF/SB agrees that it does not currently conduct agency-wide tracking of data on subcontracting goal achievement and plan compliance by prime contractors from across DAF commands and other major units. Nonetheless, the DAF believes that its current and planned review processes are consistent with practices previously accepted by the GAO and represent the best possible course of action based on Small Business Administration priorities, current resources, other statutory and policy duties, and mission demands.

The DAF strongly recommends a DoD-wide uniformed approach be adopted across all DoD components. The DAF also strongly recommends, for resourcing and practicability reasons, that this uniform process be aligned to the DoN's current process for subcontracting compliance tracking. The DAF understands DoN Office of Small Business Programs (OSBP) periodically reviews eSRS data for progress on goal achievement, and Navy Secretariat officials meet with approximately one prime contractor per month to discuss subcontracting goal achievement and any lack of progress. The DAF recognizes the DoN process as an effective best practice and believes that there should be procedural alignment of subcontracting tracking processes across the Department of Defense, to the maximum extent practicable. The DAF is concerned that creation of tracking and follow-up processed beyond the DoN's current process may potentially require substantial increases in personnel and related resources.

Additionally, on page 15, the draft GAO report highlights staffing constraints that limit the Small Business Administration (SBA) to conducting only six subcontracting program compliance

reviews each year instead of broad tracking and in-depth engagements with prime contractors on subcontracting compliance improvements. DAF would face staffing constraints similar to SBA if DAF were to attempt broad tracking and in-depth engagements beyond what is proposed here.

**SAF/ACQ Observations:** Currently, the DAF Contracting function already has processes in place to periodically collect, review, and report data on contracts that require subcontracting plans. However, that process does not include SAF/SB, nor analysis of contractor compliance across the enterprise.

- Individual Subcontracting Reports (ISRs) are submitted by applicable contractors semi-annually through the Electronic Subcontracting Reporting System (eSRS). These reports are reviewed by the Contracting Officer. During this review, the contracting officer assesses whether the prime contractor made a good faith effort to comply with its small business subcontracting plan. These subcontracting reports are also reviewed to verify that the contractor is documenting reasons why they have failed to meet any of their subcontracting goals in the Individual Subcontracting Plan.
- Contracting personnel document rejected subcontracting reports and detail actions that the contracting officer took to resolve any issues, within the contract file. In addition, contracting organizations accomplish annual contracting self-inspection required by DAFFARS 5301.601-91 and may utilize the Air Force Contracting Self-Inspection Checklist which includes three inspection items related to subcontracting plan requirements.
- In addition, contracting organizations accomplish semi-annual reviews required by the DoD Procurement Data Improvement and Compliance Plan to confirm that the Government is receiving subcontracting reports as required by the subcontracting plan.

Further, SAF/AQC, on behalf of the DAF, collects, reviews, and reports on field activities eSRS reviews as part of semi-annual Verification & Validation (V&V) submissions to Defense Pricing and Contracting. Currently, the V&V process doesn't include small business professionals, at any level of the DAF (unit, Major command (MAJCOM)/ Field Command (FLDCOM), Headquarters Air Force (HAF)), nor does it include an enterprise analysis of subcontracting plan compliance.

**Corrective Actions**

DAF Corrective Actions: The Deputy Assistant Secretary for Contracting (DAS(C)) and the Director, SAF/SB will issue a dual signed memorandum to remind DAF contracting professionals of their responsibility to evaluate contractor compliance with its subcontracting plan, per Federal Acquisition Regulation 19.705-6(g), and to involve their small business professional counterparts when performing reviews in eSRS for contracts with subcontracting plans, to document the results of the reviews in the official contract file(s), and to take appropriate action as it pertains to the good faith standard factors at FAR 19.705-7(b). DAF small business professionals will support required contracting officer reviews to the maximum extent practicable, due to resource constraints. **ECD: April 1, 2024**

**AF/SB Corrective Actions:** The DAF Office of Small Business Programs (SAF/SB) intends to replicate a DoN-style process at the Secretariat level. SAF/SB also intends to expand this process to MAJCOM/FLDCOM/Direct Reporting Unit (DRU)/Center Small Business Office level.

Adoption of a new process, modeled on the DoN's process, will be subject to resource, and operational constraints. **ECD: October 1, 2024**

**SAF/AQC Corrective Actions:** DAS(C) will coordinate with SAF/SB on the semi-annual V&V reports and actions taken to address non-compliance, to perform an enterprise analysis of subcontracting plan compliance. Additionally, DAS(C) will direct the creation of a self-inspection checklist item concerning the contracting officer's responsibility to evaluate prime contractor compliance with its subcontracting plan. **ECD: April 1, 2024**

**RECOMMENDATION 2:** The GAO recommends that the Secretary of the Air Force should work with relevant contracting staff, such as small business specialists, to develop and implement just-in-time training for contracting officers related to good faith assessments.

**DoD RESPONSE:** Partially concur.

**DAF Observations:** The DAF does not need to produce additional training.<sup>1</sup> The Department of Defense and the DAF are already providing subcontracting training, guidance, and resources relative to evaluating the good faith standard to include the following:

- a. DAF Contracting Tactics, Techniques, and Procedures (TTP) library, with several TIP documents related to subcontracting, available online to Air Force personnel.
- b. Air Force Contracting Central DAFFARS library with DAF training materials and other guidance related to subcontractor management and evaluating subcontracting plans, available online to Air Force personnel.
- c. DoD Business Process Rules for the DoD Subcontracting Program.  
[https://business.defense.gov/Portals/57/Documents/Rules%20and%20Processes%20eSR%20Subk%20Plans%20Reports01%2009%2020.pdf?ver=""2019-12-02-11:1212-443](https://business.defense.gov/Portals/57/Documents/Rules%20and%20Processes%20eSR%20Subk%20Plans%20Reports01%2009%2020.pdf?ver=)
- d. AFI 90-1801, Small Business Programs, which describes various capabilities that Small Business Professionals provide with regards to subcontracting.  
[https://static.e-oulishimz.af.mil/oroduction/1/saf sb/ouublication/afi 0-J80 llafi90-1801.pdf](https://static.e-oulishimz.af.mil/oroduction/1/saf%20sb/ouublication/afi%200-1801%201.pdf)
- e. Relevant regulations, including FAR 19.7, DFARS 219.7, & DAFFARS 5319

In August 2022, SAF/AQC forwarded the 19 Jul 22 DPC memo to the DAF contracting workforce, reinforcing the requirement that DAF personnel who monitor contract performance and are responsible for ensuring compliance with subcontracting requirements, including Contracting Officers and Contracting Officer Representatives, are required to complete Defense Acquisition University course CLC 059, "Management of Subcontractor Compliance," by the end of Jan 2023.

**DAF Corrective Actions:** The SAF/AQC and SAF/SB dual signature memorandum noted previously will also reiterate the importance of subcontracting training as it relates to the good faith requirement and will make contracting and small business professionals aware of the

<sup>1</sup> Based on the 19 Jul 22 DPC memorandum referenced above, which required DoD 1102s (contracting) workforce to complete Defense Acquisition University course CLC 059, "Management of Subcontractor Compliance," the DAF does not intend to develop Department-unique training.

resources listed above. This memorandum will also institute a requirement that new small business professionals, and new contracting professionals also complete CLC 059 within six months of assuming duties where they monitor contract performance and are responsible for ensuring compliance with subcontracting requirements. **ECD: April 1, 2024**

**SAF/AO Corrective Actions:** DAS(C) will institute a new self-inspection checklist item, ensuring compliance with the CLC 059 training requirement. **ECD: April 1, 2024**

**RECOMMENDATION 3:** The GAO recommends that the Secretary of the Army should periodically collect, review, and report data on the extent to which contractors achieve the goals and objectives of their subcontracting plans.

**DoD RESPONSE:** Partially concur.

The Army agrees to adopt a process similar to that which the Navy currently uses. Therefore, Army agrees to implement a process similar to the Navy's process, including a review of one top contractor with subcontracting plan per month. The Army believes this narrower approach meets the intent of GAO's recommendation. If the Army were forced to adopt GAO's recommendation of a full Department-wide tracking process, it would put an undue burden on the Service, and would significantly impact our current and future resources.

**RECOMMENDATION 4:** The GAO recommends that the Secretary of the Army should work with relevant contracting staff, such as a small business specialist, develop and implement just-in-time training for contracting officers related to good faith assessments.

**DoD RESPONSE:** Partially concur.

Army needs to clarify that Small Business Professionals are not part of contracting staff. Army agrees to provide training consistent with the statutory requirement in 15 USC 644(k) (to the extent that it does not interfere with personnel's primary duties) and does not conflict with the training provided by the Defense Acquisition University.

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## Text of Appendix I: Comments from the Department of Defense

Mr. William Shear

Director, Financial Markets and Community Investment

U.S. Government Accountability Office 441 G Street, NW

Washington DC 20548 Dear Mr. Shear,

Attached is the Department of Defense (DoD) response to the GAO Draft Report GAO-24-106225, "SMALL BUSINESS CONTRACTING: Some Contracting Officers Face Challenges Assessing Compliance with the Good Faith Standard," dated September 7, 2023 (GAO Code 106225).

My point of contact is Dr. Jacqueline Charles, Associate Director for Small Business Policy, Legislative Affairs, and Workforce Development who can be reached at [jacqueline.a.charles2.civ@mail.mil](mailto:jacqueline.a.charles2.civ@mail.mil) or 703-508-7567.

Sincerely,

Farooq Mitha

Director, Department of Defense Office of Small Business Programs

Attachment: as stated

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GAO DRAFT REPORT DATED SEPTEMBER 7, 2023 GAO-24-106225 (GAO CODE 106225) "SMALL BUSINESS CONTRACTING: SOME CONTRACTING OFFICERS FACE CHALLENGES ASSESSING COMPLIANCE WITH THE GOOD FAITH STANDARD"

DEPARTMENT OF DEFENSE COMMENTS TO THE GAO  
RECOMMENDATION

**RECOMMENDATION 1: The GAO recommends that the Secretary of the Air Force should periodically collect, review, and report data on the extent to**

**which contractors achieve the goals and objectives of their subcontracting plans.**

**DoD RESPONSE: Partially concur.**

SAF/SB Observations: This response identifies actions that will be taken by the Secretary of the Air Force/Small Business (SAF/SB) and the Secretary of the Air Force/Contracting (SAF/AQC) for ease of tracking. The Department of the Air Force (DAF) understands that this recommendation addresses agency obligations under 15 U.S.C. 637(d)(7) to: (A) collect and report data on the extent to which contractors of the agency meet the goals and objectives set forth in subcontracting plans; and (B) periodically review such data for the purpose of ensuring that such contractors comply in good faith with the requirements of this subsection and subcontracting plans submitted by the contractors pursuant to this subsection.

SAF/SB agrees that it does not currently conduct agency-wide tracking of data on subcontracting goal achievement and plan compliance by prime contractors from across DAF commands and other major units. Nonetheless, the DAF believes that its current and planned review processes are consistent with practices previously accepted by the GAO and represent the best possible course of action based on Small Business Administration priorities, current resources, other statutory and policy duties, and mission demands.

The DAF strongly recommends a DoD-wide uniformed approach be adopted across all DoD components. The DAF also strongly recommends, for resourcing and practicability reasons, that this uniform process be aligned to the DoN's current process for subcontracting compliance tracking. The DAF understands DoN Office of Small Business Programs (OSBP) periodically reviews eSRS data for progress on goal achievement, and Navy Secretariat officials meet with approximately one prime contractor per month to discuss subcontracting goal achievement and any lack of progress. The DAF recognizes the DoN process as an effective best practice and believes that there should be procedural alignment of subcontracting tracking processes across the Department of Defense, to the maximum extent practicable. The DAF is concerned that creation of tracking and follow-up processed beyond the DoN's current process may potentially require substantial increases in personnel and related resources.

Additionally, on page 15, the draft GAO report highlights staffing constraints that limit the Small Business Administration (SBA) to conducting only six subcontracting program compliance reviews each year instead of broad tracking and in-depth engagements with prime contractors on subcontracting compliance improvements. DAF would face staffing constraints similar to SBA if DAF were to attempt broad tracking and in-depth engagements beyond what is proposed here.



SAF/ACQ Observations: Currently, the DAF Contracting function already has processes in place to periodically collect, review, and report data on contracts that require subcontracting plans. However, that process does not include SAF/SB, nor analysis of contractor compliance across the enterprise.

- Individual Subcontracting Reports (ISRs) are submitted by applicable contractors semi- annually through the Electronic Subcontracting Reporting System (eSRS). These reports are reviewed by the Contracting Officer. During this review, the contracting officer assesses whether the prime contractor made a good faith effort to comply with its small business subcontracting plan. These subcontracting reports are also reviewed to verify that the contractor is documenting reasons why they have failed to meet any of their subcontracting goals in the Individual Subcontracting Plan.
- Contracting personnel document rejected subcontracting reports and detail actions that the contracting officer took to resolve any issues, within the contract file. In addition, contracting organizations accomplish annual contracting self-inspection required by DAFFARS 5301.601-91 and may utilize the Air Force Contracting Self-Inspection Checklist which includes three inspection items related to subcontracting plan requirements.
- In addition, contracting organizations accomplish semi- annual reviews required by the DoD Procurement Data Improvement and Compliance Plan to confirm that the Government is receiving subcontracting reports as required by the subcontracting plan.

Further, SAF/AQC, on behalf of the DAF, collects, reviews, and reports on field activities eSRS reviews as part of semi- annual Verification & Validation (V&V) submissions to Defense Pricing and Contracting. Currently, the V&V process doesn't include small business professionals, at any level of the DAF (unit, Major command (MAJCOM)/ Field Command (FLDCOM), Headquarters Air Force (HAF)), nor does it include an enterprise analysis of subcontracting plan compliance.

### **Corrective Actions**

DAF Corrective Actions: The Deputy Assistant Secretary for Contracting (DAS(C)) and the Director, SAF/SB will issue a dual signed memorandum to remind DAF contracting professionals of their responsibility to evaluate contractor compliance with its subcontracting plan, per Federal Acquisition Regulation 19.705-6(g), and to involve their small business professional counterparts when performing reviews in eSRS for contracts with subcontracting plans, to document the results of the reviews in the official contract file(s), and to take appropriate action as it pertains to the good faith standard factors at FAR 19.705-7(b). DAF small business professionals will support required contracting officer reviews to the maximum extent practicable, due to resource constraints. ECD: April 1, 2024

AF/SB Corrective Actions: The DAF Office of Small Business Programs (SAF/SB) intends to replicate a DoN-style process at the Secretariat level. SAF/SB also intends to expand this process to MAJCOM/FLDCOM/Direct Reporting Unit (DRU)/Center Small Business Office level.

Adoption of a new process, modeled on the DoN's process, will be subject to resource, and operational constraints. ECD: October 1, 2024

SAF/AQC Corrective Actions: DAS(C) will coordinate with SAF/SB on the semi-annual V&V reports and actions taken to address non-compliance, to perform an enterprise analysis of subcontracting plan compliance. Additionally, DAS(C) will direct the creation of a self-inspection checklist item concerning the contracting officer's responsibility to evaluate prime contractor compliance with its subcontracting plan. ECD: April 1, 2024

**RECOMMENDATION 2: The GAO recommends that the Secretary of the Air Force should work with relevant contracting staff, such as small business specialists, to develop and implement just-in-time training for contracting officers related to good faith assessments.**

DoD RESPONSE: Partially concur.

DAF Observations: The DAF does not need to produce additional training.<sup>1</sup> The Department of Defense and the DAF are already providing subcontracting training, guidance, and resources relative to evaluating the good faith standard to include the following:

- a. DAF Contracting Tactics, Techniques, and Procedures (TTP) library, with several TIP documents related to subcontracting, available online to Air Force personnel.
- b. Air Force Contracting Central DAFFARS library with DAF training materials and other guidance related to subcontractor management and evaluating subcontracting plans, available online to Air Force personnel.
- c. DoD Business Process Rules for the DoD Subcontracting Program.  
[https://business.defense.gov/Portals/57/Documents/Rules%20and%20Processes%20eSR%20S%20Subk%20Plans%20Reports01%2009%2020.pdf?ver=""](https://business.defense.gov/Portals/57/Documents/Rules%20and%20Processes%20eSR%20S%20Subk%20Plans%20Reports01%2009%2020.pdf?ver=)2019-12-02-11:1212-443

d. AFI 90-1801, Small Business Programs, which describes various capabilities that Small Business Professionals provide with regards to subcontracting.  
[https://static.e-publishimz.af.mil/oroduction/1/saf sb/oublication/afi 0-J80 llafi90- 180 l .pdf](https://static.e-publishimz.af.mil/oroduction/1/saf%20sb/oublication/afi%20J80%20lafi90-1801.pdf)

e. Relevant regulations, including FAR 19.7, DFARS 219.7, & DAFFARS 5319

In August 2022, SAF/AQC forwarded the 19 Jul 22 DPC memo to the DAF contracting workforce, reinforcing the requirement that DAF personnel who monitor contract performance and are responsible for ensuring compliance with subcontracting requirements, including Contracting Officers and Contracting Officer Representatives, are required to complete Defense Acquisition University course CLC 059, "Management of Subcontractor Compliance," by the end of Jan 2023.

DAF Corrective Actions: The SAF/AQC and SAF/SB dual signature memorandum noted previously will also reiterate the importance of subcontracting training as it relates to the good faith requirement and will make contracting and small business professionals aware of the <sup>1</sup> resources listed above. This memorandum will also institute a requirement that new small business professionals, and new contracting professionals also complete CLC 059 within six months of assuming duties where they monitor contract performance and are responsible for ensuring compliance with subcontracting requirements. ECD: April 1, 2024

SAF/AQ Corrective Actions: DAS(C) will institute a new self-inspection checklist item, ensuring compliance with the CLC 059 training requirement. ECD: April 1, 2024

**RECOMMENDATION 3: The GAO recommends that the Secretary of the Army should periodically collect, review, and report data on the extent to which contractors achieve the goals and objectives of their subcontracting plans.**

DoD RESPONSE: Partially concur.

The Army agrees to adopt a process similar to that which the Navy currently uses. Therefore, Army agrees to implement a process similar to the Navy's process, including a review of one top contractor with subcontracting plan per month. The Army believes this narrower approach meets the intent of GAO's recommendation. If the Army were forced to adopt GAO's recommendation of a full Department-wide

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<sup>1</sup> Based on the 19 Jul 22 DPC memorandum referenced above, which required DoD 1102s (contracting) workforce to complete Defense Acquisition University course CLC 059, "Management of Subcontractor Compliance," the DAF does not intend to develop Department- unique training

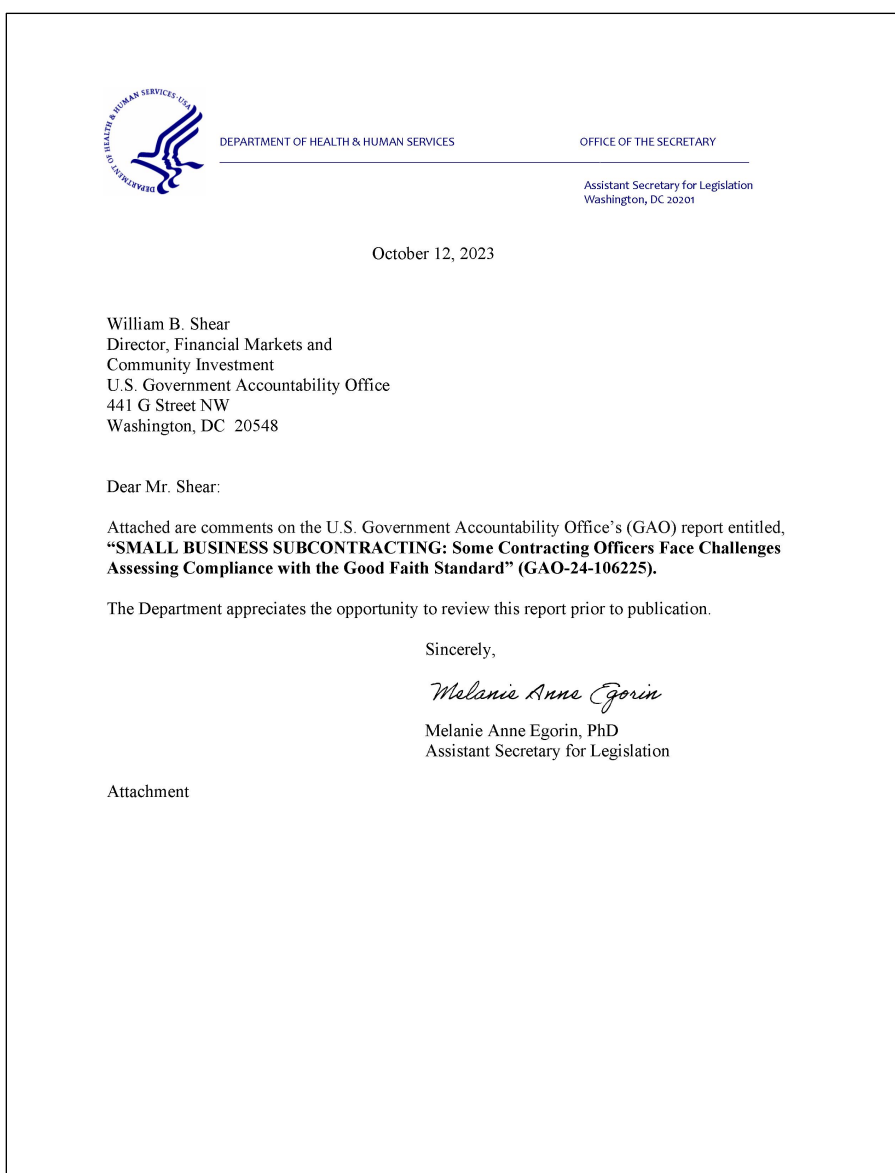
tracking process, it would put an undue burden on the Service, and would significantly impact our current and future resources.

**RECOMMENDATION 4: The GAO recommends that the Secretary of the Army should work with relevant contracting staff, such as a small business specialist, develop and implement just- in-time training for contracting officers related to good faith assessments.**

DoD RESPONSE: Partially concur.

Army needs to clarify that Small Business Professionals are not part of contracting staff. Army agrees to provide training consistent with the statutory requirement in 15 USC 644(k) (to the extent that it does not interfere with personnel's primary duties) and does not conflict with the training provided by the Defense Acquisition University.

## Appendix II: Comments from the Department of Health and Human Services



**GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN SERVICES ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED - SMALL BUSINESS SUBCONTRACTING: SOME CONTRACTING OFFICERS FACE CHALLENGES ASSESSING COMPLIANCE WITH THE GOOD FAITH STANDARD (GAO-24-106225)**

The U.S. Department of Health & Human Services (HHS) appreciates the opportunity from the Government Accountability Office (GAO) to review and comment on this draft report.

**Recommendation 7**

The Secretary of Health and Human Services should periodically collect, review, and report data on the extent to which contractors achieve the goals and objectives of their subcontracting plans.

**HHS Response**

HHS concurs with the recommendation.

The HHS Office of Small and Disadvantaged Business Utilization (OSDBU) will work in conjunction with the individual HHS Agency Contracting Officer's, whose responsibility is to monitor the small business performance of prime contractor subcontract plans, along with the Small Business Administration (SBA), to conduct a yearly assessment of prime contractor goal achievement. This assessment will consist of SBA conducting a performance review of a random sampling of the prime contractor's subcontracting plan from each HHS individual Agency. The results of these reviews will be compiled into a report to be shared with HHS leadership and for the Contracting Officer to hold the prime contractor accountable.

**Recommendation 8**

The Secretary of Health and Human Services should work with relevant contracting staff, such as small business specialists, to develop and implement just-in-time training for contracting officers related to good faith assessments.

**HHS Response**

HHS concurs with the recommendation.

HHS OSDBU currently conducts monthly training with the acquisition workforce to educate them on various small business topics and policy updates. These training sessions are recorded and are available for the acquisition workforce to review at any time. HHS OSDBU will initiate a workforce survey to be distributed by the HHS training coordinators to assess what additional training is needed and what would be the most opportune time to conduct training with the acquisition workforce.

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## Text of Appendix II: Comments from the Department of Health and Human Services

October 12, 2023

William B. Shear

Director, Financial Markets and Community Investment

U.S. Government Accountability Office 441 G Street NW

Washington, DC 20548

Dear Mr. Shear:

Attached are comments on the U.S. Government Accountability Office's (GAO) report entitled, "SMALL BUSINESS SUBCONTRACTING: Some Contracting Officers Face Challenges Assessing Compliance with the Good Faith Standard" (GAO-24-106225).

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

Melanie Anne Egorin, PhD Assistant Secretary for Legislation

Attachment

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**GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH  
& HUMAN SERVICES ON THE GOVERNMENT  
ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED -  
SMALL BUSINESS SUBCONTRACTING: SOME CONTRACTING  
OFFICERS FACE CHALLENGES ASSESSING COMPLIANCE  
WITH THE GOOD FAITH STANDARD (GAO-24-106225)**

The U.S. Department of Health & Human Services (HHS) appreciates the opportunity from the Government Accountability Office (GAO) to review and comment on this draft report.

### Recommendation 7

The Secretary of Health and Human Services should periodically collect, review, and report data on the extent to which contractors achieve the goals and objectives of their subcontracting plans.

#### **HHS Response**

HHS concurs with the recommendation.

The HHS Office of Small and Disadvantaged Business Utilization (OSDBU) will work in conjunction with the individual HHS Agency Contracting Officer's, whose responsibility is to monitor the small business performance of prime contractor subcontract plans, along with the Small Business Administration (SBA), to conduct a yearly assessment of prime contractor goal achievement. This assessment will consist of SBA conducting a performance review of a random sampling of the prime contractor's subcontracting plan from each HHS individual Agency. The results of these reviews will be compiled into a report to be shared with HHS leadership and for the Contracting Officer to hold the prime contractor accountable.

### Recommendation 8

The Secretary of Health and Human Services should work with relevant contracting staff, such as small business specialists, to develop and implement just-in-time training for contracting officers related to good faith assessments.

#### **HHS Response**

HHS concurs with the recommendation.

HHS OSDBU currently conducts monthly training with the acquisition workforce to educate them on various small business topics and policy updates. These training sessions are recorded and are available for the acquisition workforce to review at any time. HHS OSDBU will initiate a workforce survey to be distributed by the HHS training coordinators to assess what additional training is needed and what would be the most opportune time to conduct training with the acquisition workforce.



## Appendix III: Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

September 26, 2023

Mr. William B. Shear  
Director, Financial Markets and Community Investment  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548-0001

Re: Management Response to Draft Report GAO-24-106225, "SMALL BUSINESS  
SUBCONTRACTING: Some Contracting Officers Face Challenges Assessing  
Compliance with the Good Faith Standard"

Dear Mr. Shear:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

DHS leadership is pleased to note GAO's recognition that DHS provided copies of training materials to GAO that addressed the good faith standard. DHS remains committed to increasing training to support contracting officials' understanding of, and compliance with, the good faith standard.

The draft report contained thirteen recommendations, including two for DHS with which the Department concurs. Enclosed find our detailed response to each recommendation. DHS previously submitted technical comments addressing several accuracy, contextual, and other issues under a separate cover for GAO's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

JIM H CRUMPACKER Digitally signed by JIM H  
CRUMPACKER  
Date: 2023.09.26 13:33:11 -0400

JIM H. CRUMPACKER, CIA, CFE  
Director  
Departmental GAO-OIG Liaison Office

Enclosure

**Enclosure: Management Response to Recommendations  
Contained in GAO-24-106225**

GAO recommended that the Secretary of Homeland Security:

**Recommendation 5:** Periodically collect, review, and report data on the extent to which contractors achieve the goals and objectives of their subcontracting plans.

**Response: Concur.** The DHS Office of Small and Disadvantaged Business Utilization (OSDBU) is currently considering how best to efficiently collect, review, and annually report on how well large prime contractors comply with each subcontracting plan. Initially, this process will likely require manual reporting by the Contracting Activities. By the end of March 2024, the OSDBU will leverage best practices from across the federal government and issue a plan for the Contracting Activities to begin reporting the required information to the OSDBU and the DHS Chief Procurement Officer. Reporting information will detail which contracts are not meeting their subcontracting goals, and actions being taken to address contractors who are not achieving their goals. Estimated Completion Date (ECD): June 28, 2024.

**Recommendation 6:** Work with relevant contracting staff, such as small business specialists, to develop and implement just-in-time training for contracting officers related to good faith assessments.

**Response: Concur.** The OSDBU will conduct training with the small business specialists on the good faith assessment, and is developing standardized training materials that can be provided to the acquisition policy representatives, small business specialists, and contracting officers, once complete. The Heads of the Contracting Activities will be briefed when the training materials are available, and an Acquisition Alert will be issued to remind the contracting officers how to access the just-in-time training. ECD: June 28, 2024.

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## Text of Appendix III: Comments from the Department of Homeland Security

September 26, 2023

Mr. William B. Shear

Director, Financial Markets and Community Investment

U.S. Government Accountability Office 441 G Street, NW

Washington, DC 20548-0001

Re: Management Response to Draft Report GAO-24-106225, "SMALL BUSINESS  
SUBCONTRACTING: Some Contracting Officers Face Challenges Assessing  
Compliance with the Good Faith Standard"

Dear Mr. Shear:

Thank you for the opportunity to comment on this draft report. The U.S. Department  
of Homeland Security (DHS or the Department) appreciates the U.S. Government

Accountability Office's (GAO) work in planning and conducting its review and issuing  
this report.

DHS leadership is pleased to note GAO's recognition that DHS provided copies of  
training materials to GAO that addressed the good faith standard. DHS remains  
committed to increasing training to support contracting officials' understanding of,  
and compliance with, the good faith standard.

The draft report contained thirteen recommendations, including two for DHS with  
which the Department concurs. Enclosed find our detailed response to each  
recommendation. DHS previously submitted technical comments addressing several  
accuracy, contextual, and other issues under a separate cover for GAO's  
consideration.

Again, thank you for the opportunity to review and comment on this draft report.  
Please feel free to contact me if you have any questions. We look forward to working  
with you again in the future.

Sincerely,

Digitally signed by JIM H

JIM H. CRUMPACKER, CIA, CFE

Director

Departmental GAO-OIG Liaison Office

Enclosure

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### Enclosure: Management Response to Recommendations Contained in GAO-24-106225

GAO recommended that the Secretary of Homeland Security:

Recommendation 5: Periodically collect, review, and report data on the extent to which contractors achieve the goals and objectives of their subcontracting plans.

Response: Concur. The DHS Office of Small and Disadvantaged Business Utilization (OSDBU) is currently considering how best to efficiently collect, review, and annually report on how well large prime contractors comply with each subcontracting plan.

Initially, this process will likely require manual reporting by the Contracting Activities. By the end of March 2024, the OSDBU will leverage best practices from across the federal government and issue a plan for the Contracting Activities to begin reporting the required information to the OSDBU and the DHS Chief Procurement Officer. Reporting information will detail which contracts are not meeting their subcontracting goals, and actions being taken to address contractors who are not achieving their goals. Estimated Completion Date (ECD): June 28, 2024.

Recommendation 6: Work with relevant contracting staff, such as small business specialists, to develop and implement just-in-time training for contracting officers related to good faith assessments.

Response: Concur. The OSDBU will conduct training with the small business specialists on the good faith assessment, and is developing standardized training materials that can be provided to the acquisition policy representatives, small business specialists, and contracting officers, once complete. The Heads of the Contracting Activities will be briefed when the training materials are available, and an Acquisition Alert will be issued to remind the contracting officers how to access the just-in-time training. ECD: June 28, 2024.

# Appendix IV: Comments from the National Aeronautics and Space Administration



**Estimated Completion Date:** September 30, 2024

We have reviewed the draft report for information that should not be publicly released. As a result of this review, we have not identified any information that should not be publicly released.

Once again, thank you for the opportunity to review and comment on the subject draft report. If you have any questions or require additional information regarding this response, please contact Sholainka Martyn at (301) 286-4679.

Sincerely,

**Karla  
Jackson**

Digitally signed by  
Karla Jackson  
Date: 2023.10.02  
15:42:18 -04'00'

Karla Smith Jackson  
Assistant Administrator, Office of Procurement

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## Text of Appendix IV: Comments from the National Aeronautics and Space Administration

Mr. William B. Shear Director

Financial Markets and Community Investment United States Government  
Accountability Office Washington, DC 20548

Dear Mr. Shear:

The National Aeronautics and Space Administration (NASA) appreciates the opportunity to review and comment on the Government Accountability Office (GAO) draft report entitled, "Small Business Subcontracting: Some Contracting Officers Face Challenges Assessing Compliance with the Good Faith Standard" (GAO-24-106225), dated September 7, 2023.

GAO identified some weaknesses in some agencies' oversight of subcontracting plans, such as failing to periodically review data on contractors' attainment of their subcontracting plan goals. These weaknesses may reduce the effectiveness of the subcontracting requirement and limit agencies' knowledge about the extent to which contractors fulfill obligations to small businesses. GAO is making 13 recommendations in this government-wide audit, including that five agencies periodically review data on contractors' small business subcontracting goal performance, that the Small Business Administration (SBA) includes these agency-level data in its annual report to Congress, and that SBA analyzes the risk to its understanding of contractor compliance of conducting only a limited number of compliance reviews.

In the draft memorandum, GAO makes one recommendation addressed to the NASA Administrator.

Specifically, GAO recommends the following:

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**Recommendation 1: The NASA Administrator should work with relevant contracting staff, such as small business specialists, to**

develop and implement just-in-time training for contracting officers related to good faith assessments,

Management's Response: NASA Concur.

The Office of Procurement will provide refresher training for contracting officers related to good faith assessments in FAR 19.705-7, in compliance with the subcontracting plan.

Estimated Completion Date: September 30, 2024

We have reviewed the draft report for information that should not be publicly released. As a result of this review, we have not identified any information that should not be publicly released.

Once again, thank you for the opportunity to review and comment on the subject draft report. If you have any questions or require additional information regarding this response, please contact Sholainka Martyn at (301) 286-4679.

Sincerely,

Karla Smith Jackson

Assistant Administrator, Office of Procurement



## Appendix V: Comments from the Small Business Administration



WASHINGTON, DC 20416

October 5, 2023

Mr. William B. Shear  
Director, Financial Markets and Community Investment  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, DC 20548

Dear Mr. Shear:

Thank you for providing the U. S. Small Business Administration (SBA) with a copy of the Government Accountability Office (GAO) draft report titled “*Small Business Contracting: Some Contracting Officers Face Challenges Assessing Compliance with the Good Faith Standard*,” GAO-24-106225. The draft report examined how contracting officers assessed contractors’ compliance with the good faith standard and the extent to which they found contractors noncompliant, as well as the benefits and challenges associated with good faith standard assessments. SBA appreciates the role GAO plays in working with management in ensuring that SBA’s programs are administered effectively and understands the importance of the work you do to support risk mitigation for the agency.

In its draft report, GAO reports that, “In this office, staff are responsible for assisting small businesses in meeting requirements for receiving government contracts as subcontractors.” (page 10, paragraph 2). **SBA requests GAO update the final report to correct this statement. SBA would like to clarify that SBA does not assist small businesses in meeting contracting requirements but works to create an environment for maximum practicable participation by small and socioeconomic small businesses in Federal prime and subcontract awards.**

GAO made the following two recommendations directed to the Administrator of SBA and SBA’s responses to the recommendations in the draft report are noted as follows:

**GAO Recommendation 10:** The SBA Administrator should develop and implement actionable steps to ensure compliance with the statutory requirement to include agency-level data in its annual report to Congress on status of small business subcontracting plan goals.

**SBA’s Response to Recommendation 10:** SBA partially agrees with this recommendation.

SBA would like to clarify that SBA extracts the information to prepare this report from reports that contractors with subcontracting plans submit in the eSRS.gov system, which is managed by

the U.S. General Services Administration. As stated in the report, only companies with individual subcontracting plans, not commercial or comprehensive subcontracting plans, submit their subcontracting plan goals into eSRS. Due to this limitation, SBA's report to Congress can only contain subcontracting plan goal accomplishment for contractors with individual subcontracting plans. SBA expects to be able to provide this information, by executive agency, to Congress in its next submission.

**GAO Recommendation 11:** The SBA Administrator should analyze the risk of having a limited understanding of federal contractors' noncompliance with their subcontracting plans, based on current practices, and determine whether the Office of Government Contracting should conduct additional reviews.

**SBA's Response to Recommendation 11:** SBA partially agrees with the recommendation.

SBA does not believe that it has a limited understanding of contractors' noncompliance with their subcontracting plans. SBA is able to examine subcontracting achievement reports for any contractor, at any time, in eSRS. From a goal achievement perspective, SBA can see which contractors are meeting their small business and socioeconomic goals through the reporting functionality of eSRS (except for the limitation of the eSRS not containing goals for commercial and comprehensive subcontracting plans). In addition, SBA conducts hundreds of Performance Reviews each fiscal year, which reveal whether contractors are meeting their small business goals in their subcontracting plans. SBA also has a prioritization method to determine which contractors will receive an SBA Subcontracting Plan Compliance Review each year. Thus, SBA has an understanding of the extent of contractor noncompliance from a goal achievement perspective. However, SBA can analyze its current prioritization method to include contractors that are at the highest risk of not meeting their goals as one of the factors, and given SBA's limited Commercial Market Representative resources, SBA can determine whether additional reviews can be conducted. SBA would like to note that in fiscal year (FY) 2023, SBA nearly doubled the number of Subcontracting Plan Compliance Reviews over what was conducted in FY 2022 and FY 2021 (the years included in the audit).

Thank you for the opportunity to comment on this draft report. SBA appreciates GAO's consideration of our comments prior to publishing the final report.

Sincerely,

LARRY  
STUBBLEFIELD

Digitally signed by LARRY  
STUBBLEFIELD  
Date: 2023.10.04 13:02:59  
-04'00'

Larry Stubblefield,  
Acting Associate Administrator  
Government Contracting and Business Development

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## Text of Appendix V: Comments from the Small Business Administration

October 5, 2023

Mr. William B. Shear

Director, Financial Markets and Community Investment

U.S. Government Accountability Office 441 G Street, N.W.

Washington, DC 20548 Dear Mr. Shear:

Thank you for providing the U. S. Small Business Administration (SBA) with a copy of the Government Accountability Office (GAO) draft report titled “Small Business Contracting: Some Contracting Officers Face Challenges Assessing Compliance with the Good Faith Standard,” GAO-24-106225. The draft report examined how contracting officers assessed contractors’ compliance with the good faith standard and the extent to which they found contractors noncompliant, as well as the benefits and challenges associated with good faith standard assessments. SBA appreciates the role GAO plays in working with management in ensuring that SBA’s programs are administered effectively and understands the importance of the work you do to support risk mitigation for the agency.

In its draft report, GAO reports that, “In this office, staff are responsible for assisting small businesses in meeting requirements for receiving government contracts as subcontractors.” (page 10, paragraph 2). SBA requests GAO update the final report to correct this statement. SBA would like to clarify that SBA does not assist small businesses in meeting contracting requirements but works to create an environment for maximum practicable participation by small and socioeconomic small businesses in Federal prime and subcontract awards.

GAO made the following two recommendations directed to the Administrator of SBA and SBA’s responses to the recommendations in the draft report are noted as follows:

GAO Recommendation 10: The SBA Administrator should develop and implement actionable steps to ensure compliance with the statutory requirement to include agency-level data in its annual report to Congress on status of small business subcontracting plan goals.

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SBA's Response to Recommendation 10: SBA partially agrees with this recommendation.

SBA would like to clarify that SBA extracts the information to prepare this report from reports that contractors with subcontracting plans submit in the eSRS.gov system, which is managed by the U.S. General Services Administration. As stated in the report, only companies with individual subcontracting plans, not commercial or comprehensive subcontracting plans, submit their subcontracting plan goals into eSRS. Due to this limitation, SBA's report to Congress can only contain subcontracting plan goal accomplishment for contractors with individual subcontracting plans. SBA expects to be able to provide this information, by executive agency, to Congress in its next submission.

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**GAO Recommendation 11: The SBA Administrator should analyze the risk of having a limited understanding of federal contractors' noncompliance with their subcontracting plans, based on current practices, and determine whether the Office of Government Contracting should conduct additional reviews.**

SBA's Response to Recommendation 11: SBA partially agrees with the recommendation.

SBA does not believe that it has a limited understanding of contractors' noncompliance with their subcontracting plans. SBA is able to examine subcontracting achievement reports for any contractor, at any time, in eSRS. From a goal achievement perspective, SBA can see which contractors are meeting their small business and socioeconomic goals through the reporting functionality of eSRS (except for the limitation of the eSRS not containing goals for commercial and comprehensive subcontracting plans). In addition, SBA conducts hundreds of Performance Reviews each fiscal year, which reveal whether contractors are meeting their small business goals in their subcontracting plans. SBA also has a prioritization method to determine which contractors will receive an SBA Subcontracting Plan Compliance Review each year. Thus, SBA has an understanding of the extent of contractor noncompliance from a goal achievement perspective. However, SBA can analyze its current prioritization method to include contractors that are at the highest risk of not meeting their goals as one of the factors, and given SBA's limited Commercial Market Representative resources, SBA can determine whether additional reviews can be conducted. SBA would like to note that in fiscal year (FY) 2023, SBA nearly doubled the number of Subcontracting Plan Compliance Reviews over what was conducted in FY 2022 and FY 2021 (the years included in the audit).

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Thank you for the opportunity to comment on this draft report. SBA appreciates GAO's consideration of our comments prior to publishing the final report.

Sincerely,

Larry Stubblefield,

Acting Associate Administrator

Government Contracting and Business Development

## Appendix VI: Comments from the Department of Veterans Affairs



DEPARTMENT OF VETERANS AFFAIRS  
WASHINGTON

October 10, 2023

Mr. William B. Shear  
Director  
Financial Markets and Community Investment  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Shear:

The Department of Veterans Affairs (VA) has reviewed the Government Accountability Office (GAO) draft report: ***Small Business Subcontracting: Some Contracting Officers Face Challenges Assessing Compliance with the Good Faith Standard*** (GAO-24-106225).

The enclosure contains technical comments and the action plan to implement the draft report recommendations. VA appreciates the opportunity to comment on your draft report.

Sincerely,

  
Cassandra M. Law  
Acting Chief of Staff

Enclosure

Enclosure

**Department of Veterans Affairs (VA)  
Response to the Government Accountability Office (GAO) Draft Report  
*SMALL BUSINESS SUBCONTRACTING: Some Contracting Officers Face  
Challenges Assessing Compliance with the Good Faith Standard*  
(GAO 24-106225)**

**Recommendation 12: The Secretary of Veterans Affairs should periodically review data on the extent to which contractors achieve the goals and objectives of their subcontracting plans.**

**VA Response:** Concur. VA will provide the action plan in the update to the final report for implementation of the recommendation.

Target Completion Date: December 31, 2023.

**Recommendation 13: The Secretary of Veterans Affairs should work with relevant contracting staff, such as small business specialists, to develop and implement just-in-time training for contracting officers related to good faith assessments.**

**VA Response:** Concur. VA will provide the action plan in the update to the final report for implementation of the recommendation.

Target Completion Date: December 31, 2023.

---

## Text of Appendix VI: Comments from the Department of Veterans Affairs

October 10, 2023

Mr. William B. Shear Director

Financial Markets and Community Investment

U.S. Government Accountability Office 441 G Street, NW

Washington, DC 20548 Dear Mr. Shear:

The Department of Veterans Affairs (VA) has reviewed the Government Accountability Office (GAO) draft report: Small Business Subcontracting: Some Contracting Officers Face Challenges Assessing Compliance with the Good Faith Standard (GAO-24-106225).

The enclosure contains technical comments and the action plan to implement the draft report recommendations. VA appreciates the opportunity to comment on your draft report.

Sincerely,

Cassandra M. Law

Acting Chief of Staff

Enclosure

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Department of Veterans Affairs (VA) Response to the Government  
Accountability Office (GAO) Draft Report SMALL BUSINESS  
SUBCONTRACTING: Some Contracting Officers Face Challenges



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Assessing Compliance with the Good Faith Standard (GAO 24-106225)

Recommendation 12: The Secretary of Veterans Affairs should periodically review data on the extent to which contractors achieve the goals and objectives of their subcontracting plans.

VA Response: Concur. VA will provide the action plan in the update to the final report for implementation of the recommendation.

Target Completion Date: December 31, 2023.

Recommendation 13: The Secretary of Veterans Affairs should work with relevant contracting staff, such as small business specialists, to develop and implement just-in-time training for contracting officers related to good faith assessments.

VA Response: Concur. VA will provide the action plan in the update to the final report for implementation of the recommendation.

Target Completion Date: December 31, 2023.

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# Appendix VII: GAO Contact and Staff Acknowledgments

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## GAO Contact

William B. Shear at 202-512-8678 or [shearw@gao.gov](mailto:shearw@gao.gov)

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## Staff Acknowledgments

In addition to the contacts named above, Andrew Pauline (Assistant Director), Kaitlan Doying (Analyst in Charge), Koffi Dogbevi, Garrett Hillyer, Jill Lacey, Elizabeth Leibinger, Marc Molino, and Jessica Sandler made key contributions to this report.

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## Public Affairs

Chuck Young, Managing Director, [youngc1@gao.gov](mailto:youngc1@gao.gov), (202) 512-4800  
U.S. Government Accountability Office, 441 G Street NW, Room 7149  
Washington, DC 20548

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## Strategic Planning and External Liaison

Stephen J. Sanford, Managing Director, [spel@gao.gov](mailto:spel@gao.gov), (202) 512-4707  
U.S. Government Accountability Office, 441 G Street NW, Room 7814,  
Washington, DC 20548



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