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Report to the Chairman, Committee on
Government Operations, House of
Representatives

January 1993

GSA PROCUREMENT

Public Utilities' Plans for Small and Small Disadvantaged Subcontractors



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556332 RELEASED

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General Government Division

B-229245

January 29, 1993

The Honorable John Conyers, Jr.
Chairman, Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

This report responds to your request that we follow up on our 1989 report concerning the refusal of certain utility firms to enter into written contracts with the General Services Administration (GSA)¹ and to submit subcontracting plans for the maximum practicable use of small and small disadvantaged businesses.² You asked us to provide updated information on the number of utilities that supply service to GSA, how many utilities had entered into contracts with GSA, and how many had submitted subcontracting plans.

Our objectives, scope, and methodology are described in appendix I, and the details of our analysis are presented in appendix II.

Results in Brief

The number of utilities providing service to GSA, about 1,000, has not changed since 1989. GSA's policy is to purchase utility services by written contract when the annual cost of such services is estimated to exceed \$25,000.

According to GSA, 365 of the 1,000 utilities meet this criterion. Most of the remaining utilities—including many municipalities—provide low-valued water/sewerage services and do not meet the written contract criteria.

GSA has increased the number of utilities under contract. We reported in 1989 that GSA had entered into 67 areawide written utility contracts, under which service is provided to several agencies in a certain area. As of November 1992, GSA had increased this number to 82. In addition, as of

¹Procurement: Public Utilities' Compliance with Subcontracting Plan Requirements (GAO/GGD-89-32, January 26, 1989).

²Federal Acquisition Regulation (FAR) defines a small business as a concern, including its affiliates, that is independently owned and operated; not dominant in the field of operation in which it is bidding on government contracts; and qualified as a small business under the criteria and size standards set by the Small Business Administration (SBA). According to the Small Business Act, as amended, contractors are to presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the SBA.

November 1992, GSA had entered into 164 single-point written contracts—under which service is provided to one facility.³

The total number of utilities under written contract, 246, represents 67 percent of the 365 utilities requiring a written contract. The remaining 119 utilities (or 33 percent) declined to sign contracts. Some of these utilities said they declined because they believe federal regulations do not apply to utilities that are regulated by state and local regulatory boards.

The Small Business Act, as amended, generally requires contractors with contracts over \$500,000 (\$1 million for construction contracts) that have subcontracting possibilities to submit subcontracting plans setting forth percentage goals for subcontracting with small and small disadvantaged businesses. GSA said 146 of the 1,000 utilities meet this threshold and are required to submit such plans. As of November 1992, 80 of the 146 utilities (or about 55 percent) had submitted current plans, and 66 had not.

Although 107 of the utilities that signed contracts and that were required to submit subcontracting plans did so when they initially executed the contracts, 31 have failed to update their plans annually as required by federal regulations. Some utilities complained that procedural changes GSA made in 1992, including the requirement for utilities to submit an entire plan annually instead of an annual update of subcontracting goals, are too burdensome.

Also, 39 of the 119 utilities that declined to execute written contracts are nonetheless required to submit subcontracting plans. However, 35 of these 39 utilities had not submitted plans as of November 1992. In addition to maintaining that legislation requiring submission of subcontracting plans does not apply to utilities, some of these utilities also said that they already have plans to promote purchases from small and small disadvantaged businesses.

GSA has been persistent in its efforts to have utilities sign contracts and submit subcontracting plans—pursuing some utility firms for several years until it either succeeded or concluded its efforts had reached a deadlock. GSA's efforts have included visiting utilities on-site, corresponding with utilities in writing and by telephone, requesting assistance from state regulatory commissions and SBA, and participating in utility seminars. GSA is also considering the pursuit of administrative enforcement under the

³Although GSA said the number of single-point written contracts had also increased, we could not determine the amount of increase because information on the number of contracts obtained by GSA regions that were in effect in 1989 was not readily available.

Contract Disputes Act. However, it has not adopted our suggestion in the 1989 report that GSA pursue the issue in court by seeking an injunctive order directing utilities to comply with the statutory requirements.

Background

Under the Federal Property and Administrative Services Act of 1949, as amended, GSA is authorized to enter into contracts with public utility firms for a maximum term of 10 years for the purchase of utility services for federal agencies.⁴ Contracts may be either areawide—providing service for several agencies in a service territory—or single point—providing service for one facility. GSA's policy is to obtain services under a formal, written contract if the estimated annual cost of the services will exceed \$25,000.

In addition, the Small Business Act, as amended, generally requires that federal contracts exceeding \$500,000 (\$1 million for construction contracts) that have subcontracting possibilities contain subcontracting plans providing for the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.⁵ Under the act, failure to comply in good faith with subcontracting plan requirements will be considered a material breach of contract. Further, legislation stipulates that when a contractor fails to make a good faith effort to comply with a subcontracting plan, the contractor must pay damages to the government. On the basis of the legislative history, overall congressional intent for the subcontracting plans was to improve opportunities for small and small disadvantaged businesses to do business with the federal government.

At the request of the House Small Business Committee, we reported in 1989 that a number of utilities providing services to the federal government declined to sign formal contracts because, among other things, they objected to statutory requirements for subcontracting plans. We reported that in most instances, federal agencies have no choice but to accept and pay for these utility services without a contract because alternative sources are not available.

In conjunction with our 1989 report, in July 1988 we issued an opinion that a public utility that sells services under tariff to the federal government but declines to sign a formal contract is nonetheless legally required to comply

⁴FAR 8.301 defines utility services as services such as electricity, gas, water, steam, and sewerage that are available to the general public and performed by governmental entities or private companies. Under FAR, "utility service" does not include telecommunications services.

⁵Small business concerns are exempt from this requirement.

with the subcontracting plan requirements.⁶ In agreement with a Department of Justice (DOJ) opinion, we said that (1) the statutory requirements are implied in contracts meeting the threshold amounts and providing subcontracting opportunities, whether or not they are expressly included in a written agreement; and (2) the subcontracting plan requirements applied regardless of the utilities' status as regulated monopolies and regardless of whether the utilities had specifically consented to the relevant contract provisions.

GSA's Approach to Increasing Subcontracting Plans

Noncompliance with subcontracting plan requirements does not necessarily mean that utilities are not subcontracting with small and small disadvantaged businesses. However, without the plans, GSA can neither confirm that utilities have plans to use small and small disadvantaged businesses nor monitor compliance with such plans.

To increase the number of subcontracting plans, GSA said it is contemplating the use of an administrative approach under the Contract Disputes Act. GSA's approach presumes that implied-in-fact contracts exist with utilities that refuse to enter into written contracts and that those utilities should submit subcontracting plans as required by law.⁷ GSA would set subcontracting goals for utilities refusing to submit subcontracting plans, and if these utilities failed to show good-faith attempts to meet the goals, GSA would assess damages.

We believe the drawback to this approach, however, will be determining the damages, because the utility would not have submitted a plan setting goals from which damages could be determined. GSA has tried in the past to estimate goals for a noncomplying utility and concluded that goals for noncomplying utilities cannot be estimated with an acceptable level of confidence and that subjective estimation methods may not lead to persuasive results under its planned approach. We agree that without convincing goal estimates, GSA may have difficulty making requests for damages under the Contract Disputes Act.

One avenue that GSA has not used in its efforts to obtain contracts and subcontracting plans from utilities is the suggestion in our 1989 report to pursue this issue in court. We said that the most appropriate remedy available in cases in which there are no written contracts would be to seek

⁶B-229245, July 5, 1988.

⁷An implied-in-fact contract is a contract not created by explicit agreement, but rather inferred from the parties' acts and conduct.

judicial enforcement of the subcontracting plan requirements by obtaining an injunctive order, directing utilities to comply with the statutory requirements. Although the probability of success in obtaining an injunction is uncertain, the pursuit of an injunction does not involve the added difficulty of estimating goals.

GSA's legal officials said that GSA had not pursued the issue in court and to their knowledge neither had any other agency. The officials said they viewed this approach as a last resort and potentially damaging because failure could result in a disintegration of the progress GSA has already made. They also said they had not pursued this approach because an action in U.S. District Court seeking injunctive relief would require proving that all administrative remedies, including those under the Contract Disputes Act, have been exhausted. As previously mentioned, the officials said that because of the problem in estimating subcontracting goals, they have been hesitant about taking this action.

Because of a recent expansion of the United States Court of Federal Claims' (formerly United States Claims Court) jurisdiction to include nonmonetary disputes, GSA said that along with its other approaches, it is now consulting DOJ to determine the most prudent course of action. Under the United States Court of Federal Claims' expanded jurisdiction to cover nonmonetary disputes, GSA has the option to seek injunctive relief from the Court directing utilities to submit subcontracting plans, which, as previously mentioned, would not entail estimating goals.

Agency Comments

On December 17, 1992, we discussed this report with GSA officials, who agreed with the information in this report. GSA officials said the report did not reflect that they have been more aggressive than the Department of Defense in efforts to obtain written contracts and subcontracting plans from utilities. Since our review was limited to GSA, we were unable to substantiate this assertion. GSA also clarified some technical points that we incorporated where appropriate.

As arranged with the Committee, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Administrator of GSA, the Director of the Office of Management and Budget, interested congressional committees and subcommittees, and other interested parties.

The major contributors to this report were John S. Baldwin, Sr., Assistant Director; Lucy M. Hall, Evaluator-in-Charge; and Kathleen A. Gilhooly, Senior Attorney. If you have any questions about this report, please contact me on (202) 275-8676.

Sincerely yours,

A handwritten signature in cursive script that reads "L. Nye Stevens". The signature is written in black ink and is positioned above the typed name.

L. Nye Stevens
Director, Government Business
Operations Issues

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Abbreviations

DOJ	Department of Justice
FAR	Federal Acquisition Regulation
GSA	General Services Administration
SBA	Small Business Administration

Objectives, Scope, and Methodology

Our objective was to determine the number of utilities providing services to GSA and of that universe determine the number of utilities that

- have signed contracts with GSA,
- are required to submit subcontracting plans, and
- have submitted updated subcontracting plans.

You also requested that we determine whether any federal agency sought judicial enforcement of subcontracting plan requirements. As agreed with the Committee, our work did not include utility acquisition that GSA does for agencies that are not in GSA-controlled buildings.

We did our work by reviewing pertinent legislation, federal regulations, and GSA files. We also interviewed appropriate GSA officials. To determine GSA's efforts directed toward obtaining contracts and subcontracting plans from utilities, we reviewed GSA's correspondence to utilities and other efforts, such as documentation of travel by GSA officials to utilities. We also reviewed examples of utility contracts and subcontracting plans and reviewed SBA's 1990 and 1991 Fiscal Year Annual Reports on Subcontracting Plans Determined to be Unacceptable.

To determine the number of utilities providing service to GSA, we reviewed GSA's listing of payments to utilities for services provided during calendar year 1991. We also reviewed regional reports on the number of utilities doing business with GSA under regional jurisdiction. To obtain information on the reasons some utilities declined to enter into contracts with GSA, we reviewed correspondence between utility companies and GSA headquarters and regional offices.

We did our work at GSA headquarters from August to November 1992 in accordance with generally accepted government auditing standards. We received oral comments from GSA and incorporated them into this report, where appropriate.

Utility Contracts Have Increased but Some Utilities Still Decline to Sign Contracts and to Submit Subcontracting Plans

According to GSA, while the number of utilities providing service to GSA, about 1,000, has remained the same since 1989, GSA has increased the number of utilities under contract. We reported in 1989 that GSA had entered into 67 areawide written contracts with utilities. As of November 1992, GSA had increased this number to 82. In addition, according to GSA officials, the number of single-point written contracts in effect as of November 1992—164—is also an increase since 1989. However, because of the lack of readily available data on the number of regional contracts in effect during 1989, the amount of increase could not be determined.

Table II.1 provides detailed information on the utilities providing services to GSA. This information concerns the number of utilities under written contract and the utilities that have submitted subcontracting plans, whether or not they had entered into contracts with GSA.

**Appendix II
Utility Contracts Have Increased but Some
Utilities Still Decline to Sign Contracts and
to Submit Subcontracting Plans**

**Table II.1: Number of GSA Utilities
With Written Contracts and
Subcontracting Plans**

Categories	Number of utilities
Provide service to GSA	1,000
Meet written contract criteria	
Have entered into written contracts with GSA	246
Have not entered into contracts	<u>119</u>
	365
Are required to submit subcontracting plans	
Have entered into written contracts	107
Have not entered into contracts	<u>39</u>
	146
Submitted updated 1992 subcontracting plans	
Have entered into contracts	76
Have not entered into contracts	<u>4</u>
	80
Submitted updated 1992 subcontracting plans that were approved by GSA	
Have entered into contracts	66
Have not entered into contracts	<u>2</u>
	68
Had not resubmitted plans as of November 1992 that GSA initially disapproved	
Have entered into contracts	10
Have not entered into contracts	<u>2</u>
	12
Had not submitted required subcontracting plans as of November 1992	
Have entered into contracts	31
Have not entered into contracts	<u>35</u>
	66

Source: GSA data.

In its comments on our 1989 report, GSA said it would follow up on 23 utilities we identified as declining to sign contracts. As a result of GSA's follow-up efforts, 9 of the 23 utilities have since signed contracts (see table II.2). As of November 1992, seven of the nine utilities had also submitted 1992 subcontracting plans, which GSA had approved.

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**Table II.2: Nine of 23 Declining Utilities
in 1989 That Have Since Signed
Contracts**

Name of utility	Location
The Cleveland Electric Illuminating Company	Cleveland, OH
Consumers Power Company	Jackson, MI
The East Ohio Gas Company	Cleveland, OH
Louisville Gas and Electric Company	Louisville, KY
Oklahoma Gas and Electric Company	Oklahoma City, OK
Potomac Electric Power Company	Washington, DC
Public Service Company of NC ^a	Gastonia, NC
San Diego Gas and Electric Company	San Diego, CA
Tucson Electric Power Company	Tucson, AZ

Note: Twelve of the remaining 14 utilities that have not signed contracts are listed in appendix III along with other utilities that have declined to sign contracts and that are required to submit but have not submitted subcontracting plans. One of the 14 submitted a subcontracting plan, and the other is a small business and is not required to submit a plan.

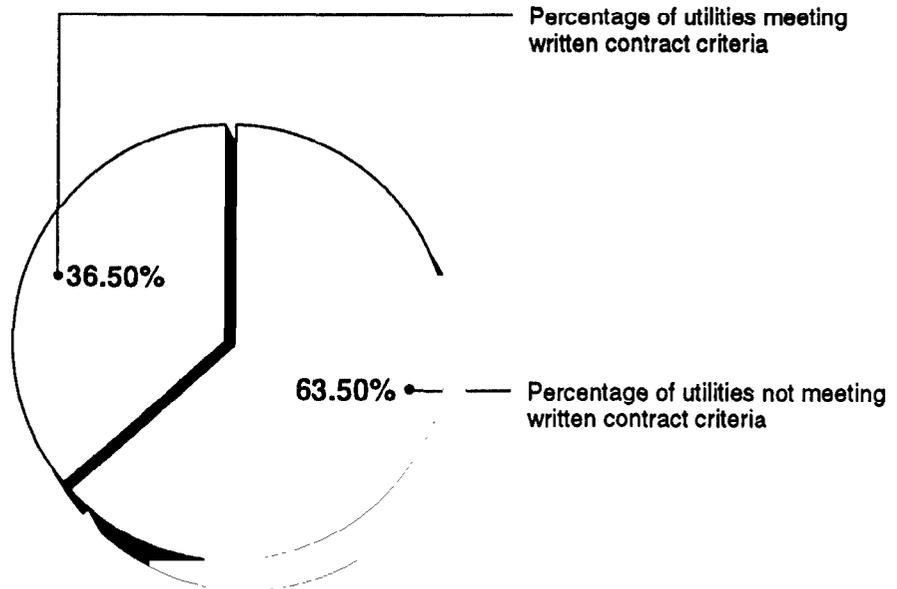
Source: GSA data.

GSA attempts to enter written contracts with utilities when the annual costs of their services or connection fees are estimated to exceed \$25,000. Even if GSA obtained written contracts from utilities providing service valued at \$25,000 or less a year for a 10-year period—the maximum time allowed for the duration of utility contracts—the total value of the service would not reach the \$500,000 threshold for a subcontracting plan.

As figure II.1 shows, 365 of the 1,000 utilities providing service to GSA (about 36 percent) meet the \$25,000 criterion for a written contract. About 45 percent of the 1,000 utilities—including many municipalities—provide mostly low-valued water/sewerage services and do not meet the written contract criteria.

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Utility Contracts Have Increased but Some
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**Figure II.1: Percentage of Utilities That
Should Have Written Contracts**



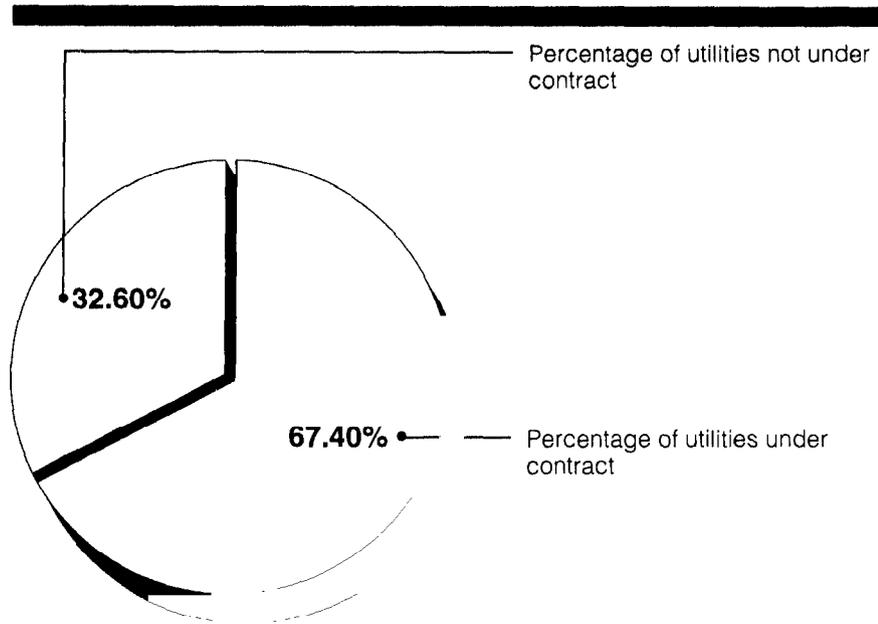
Note: According to GSA data, about 1,000 utilities provide service to GSA. Of those, 365 meet the criteria for a written contract, and 635 do not.

Source: GSA data.

As shown in figure II.2, 246 (about 67 percent) of the 365 utilities that meet the criteria for a written contract have signed contracts with GSA.

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Utility Contracts Have Increased but Some
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Figure II.2: Percentage of Utilities Meeting Written Contract Criteria That Have Written Contracts



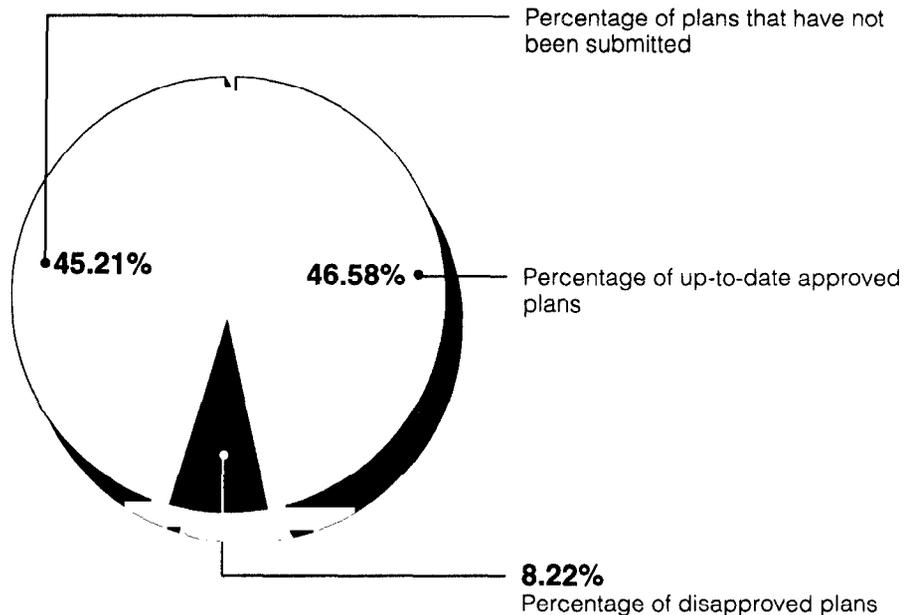
Note: Out of 365 utilities that meet GSA's criteria for a written contract, 246 are under contract; 119 are not.

Source: GSA data.

Despite the increase in the number of utilities under contract with GSA since 1989, potential exists for both more contracts with utilities and more subcontracting plans for use of small and small disadvantaged businesses. For example, 66—about 45 percent—of the utilities required to submit subcontracting plans had not done so by November 1992, as shown in figure II.3. Because some utilities decline to sign contracts and to submit subcontracting plans, GSA cannot document that these utilities are complying with statutory subcontracting plan requirements.

**Appendix II
Utility Contracts Have Increased but Some
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to Submit Subcontracting Plans**

**Figure II.3: Percentage of Utilities
Submitting Subcontracting Plans**



Note: 146 utilities are required to submit subcontracting plans. Of these, 68 submitted approved 1992 plans, 12 submitted plans that GSA initially disapproved and as of November 1992 had not resubmitted the plans, and 66 have not submitted subcontracting plans.

Source: GSA data.

The outstanding plans are due from both utilities with written GSA contracts and those with no written GSA contracts. For example, 39 of the 119 utilities that have declined to enter into written contracts are required to submit subcontracting plans. As of November 1992, 35 of these 39 utilities had not submitted plans. Another 31 plans are due from utilities that have written contracts. Appendix III contains a listing of utilities that declined to sign contracts and are required to submit subcontracting plans.

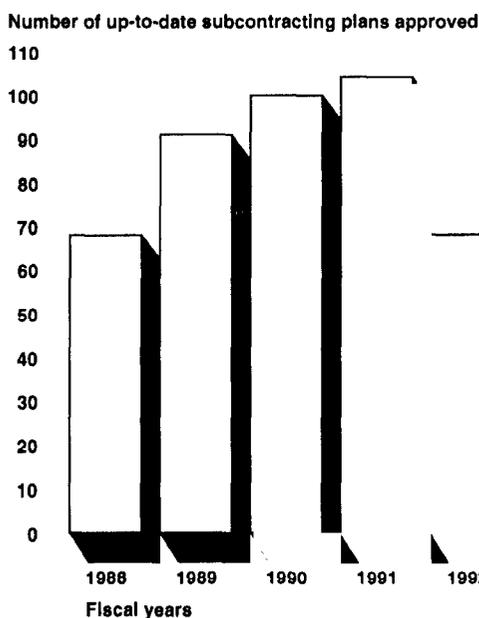
According to GSA officials, 107 of the 246 utilities with written contracts that are also required to submit subcontracting plans did so when they executed the contracts. However, 31 of the 107 utilities had not submitted updated 1992 plans, as required by federal regulations. GSA changed its procedures in 1992 from allowing utilities to update subcontracting goals annually to requiring them to submit an entire subcontracting plan annually. GSA also suggested a format for utilities to use to establish

Appendix II
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subcontracting goals. GSA officials said they made these changes to ensure strict adherence to federal regulations. After GSA made these changes, however, some utilities complained that the requirements placed undue hardships on them.

As figure II.4 shows, the number of up-to-date subcontracting plans approved by GSA in 1992 was at the same level as it was in 1988, despite increases made between 1988 and 1991.

Figure II.4: Number of Up-To-Date Approved Utility Subcontracting Plans, Fiscal Years 1988 Through 1992



Source: GSA data.

In addition to the 68 approved plans, GSA also received and disapproved plans from 12 additional utilities that had not resubmitted their plans as of November 1992.

Even though the failure to submit a subcontracting plan does not in itself mean that utilities are not awarding subcontracts to small and small disadvantaged businesses, it does prevent GSA from monitoring and determining the extent that utilities comply with the plans.

GSA's Efforts to Increase Contracts and Subcontracting Plans

GSA's approach for obtaining contracts and subcontracting plans from utilities is to work on cases until GSA staff members believe their efforts have reached a stalemate. The agency has been persistent in its efforts directed toward obtaining contracts from some utilities. These efforts have included

- visiting utilities on-site,
- corresponding with utilities in writing and by telephone,
- requesting assistance from state utility regulatory commissions and SBA, and
- participating in utility seminars.

GSA's headquarters Public Utilities Division, consisting of 12 employees within the Office of Procurement, is responsible for negotiating and administering utility contracts; providing contract assistance to other agencies; developing governmentwide policy for the acquisition and management of utility services; and intervening, on behalf of the federal government, in public utility proceedings before federal and state regulatory boards. Six of the 12 staff members work on obtaining and monitoring contracts and subcontracts from utilities. Although most public utility contracts that require subcontracting plans are awarded at GSA headquarters, regional procurement offices also have responsibility for utility service under regional jurisdiction.

According to GSA, even though three of the six headquarters staff members and regional office leaders assigned to increasing the number of contracts and monitoring subcontracting plans have been trained as contracting officers, because of staffing constraints, staff members cannot continually work on a case. However, GSA documents show that in some cases, GSA's procurement staff continued to work with some utilities for several years following the initial attempt to obtain a contract. In addition, GSA's legal staff has sent letters to utilities citing relevant legislation and regulations, explaining DOJ's opinion that concluded that the statutory subcontracting plan requirements included utilities, and listing the names of similar utilities that have complied with the subcontracting plan requirements. GSA has also requested assistance from state utility public service commissions and SBA; both responded that they did not have the authority to assist GSA.

To increase the number of subcontracting plans, GSA said it is contemplating the use of an administrative approach under the Contract Disputes Act. GSA's approach presumes that implied-in-fact contracts exist with utilities that refuse to enter into written contracts and that those

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utilities should submit subcontracting plans as required by law. GSA would set subcontracting goals for utilities refusing to submit subcontracting plans and if these utilities failed to show good faith attempts to meet the goals, GSA would assess damages.

We believe the drawback to this approach, however, will be determining the damages, because the utility would not have submitted a plan setting goals from which damages could be determined. GSA has tried in the past to estimate goals for a noncomplying utility by using goals set by complying utilities. However, GSA staff found no statistically significant relationship between the characteristics of complying companies and the subcontracting goals they typically set. GSA officials concluded that the subjective subcontracting goal estimation methods may not lead to persuasive results under its planned approach. We agree that without convincing goal estimates, GSA may have difficulty making requests for damages under the Contract Disputes Act.

One avenue that GSA has not used in its efforts to obtain contracts and subcontracting plans from utilities is the suggestion in our 1989 report to pursue this issue in court. We said that the most appropriate remedy available in cases in which there are no written contracts would be to seek judicial enforcement of the subcontracting plan requirements by obtaining an injunctive order, directing utilities to comply with the statutory requirements. Although the probability of success in obtaining an injunction to effect this remedy is uncertain, seeking an injunction does not involve the added complexity of estimating goals.

GSA's legal officials said that GSA had not pursued the issue in court and to their knowledge neither had any other agency. The officials said they viewed this approach as a last resort and potentially damaging because failure could result in a disintegration of the progress GSA has already made. They also said they had not pursued this approach because an action in U.S. District Court seeking injunctive relief would require proving that all administrative remedies, including those under the Contract Disputes Act, have been exhausted. As previously mentioned, the officials said that because of the problem in estimating subcontracting goals, they have been hesitant about taking this action.

Because of a recent expansion of the United States Court of Federal Claims' jurisdiction to include nonmonetary disputes, GSA said that along with its other approaches, it is now consulting DOJ to determine the most prudent course of action. Under the Court's expanded jurisdiction, GSA has

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the option to seek injunctive relief from the United States Court of Federal Claims directing utilities to submit subcontracting plans, and obtaining an injunction would not entail estimating goals.

Utilities Required to Submit Subcontracting Plans That Have Not Signed Contracts Nor Submitted Plans

This list contains 35 of the 119 utilities that have not signed contracts and are required to submit a subcontracting plan. Four other utilities are omitted from this list because, although they have not entered into written contracts, they have submitted subcontracting plans to GSA.

Table III.1: Utilities That Declined to Sign Contracts and Are Required to Submit but Have Not Submitted Subcontracting Plans

Name of utility	State or service area
Arkansas Power and Light Company ^a	AR
Arlington County, VA ^a	VA
Brooklyn Union Gas	NY
Carolina Power and Light Company	NC
Central Illinois Public Service Company	IL
Cincinnati Water Works	OH
Cincinnati Gas and Electric	OH
City of Lakewood, CO	CO
City of Austin, TX	TX
City and County of Denver, CO	CO
City of Newport News, VA ^a	VA
City of Alameda, CA	CA
Consolidated Edison of NY ^a	NY
District of Columbia Dept. of Public Works	DC
Florida Power and Light Company ^a	FL
Florida Power Corporation ^a	FL
Indianapolis Power and Light	IN
Johnson City Power Board ^a	TN
Kentucky-American Water Company ^a	KY
Lone Star Gas Company	TX
Long Island Lighting Company ^a	NY
Memphis Light, Gas and Water ^a	TN
Mississippi Power and Light Company	MS
New Orleans Public Service Company ^a	LA
Northeast Utilities	CT
Peoples Gas System, Inc.	FL
Portland General Electric	OR
Public Service Company of Indiana	IN
Puerto Rico Water and Electric	PR
Puerto Rico Electric Energy	PR
Saint Paul Municipal Electric	AK
Savannah Electric and Power	GA

(continued)

**Appendix III
Utilities Required to Submit Subcontracting
Plans That Have Not Signed Contracts Nor
Submitted Plans**

Name of utility	State or service area
Southwest Gas Corporation	NV
The Port Authority of NY and NJ	NJ
Washington Suburban Sanitation Commission ^a	MD

^aThis is one of the 14 remaining utilities listed in our 1989 report that still declines to sign contracts. We do not include 2 of the 14 utilities because according to GSA, 1 is a small business and is not required to submit a subcontracting plan and the other has submitted a plan that GSA has approved.

Source: GSA data.

In refusal letters to GSA, utilities gave the following reasons or arguments why they object to entering into contracts and/or submitting subcontracting plans:

- A contract is not required since utilities are required to provide services to all ratepayers according to tariffs filed with and regulations approved by state public service commissions.
- The proposed contract would impose a large number of burdensome recordkeeping and reporting requirements on utilities.
- Subcontracting plan requirements conflict with local government procurement policies governing municipalities providing utility services.
- The utility already has a plan to promote purchases from small and small disadvantaged businesses and assist minority businesses.
- If government officials determined that utilities failed to meet contract obligations, utilities would be subject to the risk of having payments withheld and the imposition of damages.
- Remedies for noncompliance make it clear that subcontracting plan requirements do not apply to utilities.
- Legislation requiring subcontracting plans was not intended to include state agencies and if it did, it merely requires a subcontracting plan—not a contract.

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