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# The Small Businessman and Government Contracts\*

*Jerome J. Shestack† and Gillis W. Long‡*

The endless struggle by small business<sup>1</sup> to maintain its place in our national economy is always a hard one and it becomes accentuated during a period of national emergency. Sixteen per cent of the small businesses of the United States were casualties of the emergency period from Pearl Harbor to 1943.<sup>2</sup> The reason for this lies in the nature of our economy during such periods. The government's immediate need for equipment required the allocation of material from civilian production. Many producers of civilian goods faced with a shortage of material sought government contracts. Comparatively few of these contracts, however,

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1. The Department of Defense defines a small business as one that employs fewer than five hundred people, including its corporate and partnership affiliates. The Selective Service Act of 1948, Pub. L. 759, § 18(a), 80th Cong., 2d Sess., defined a small business as one (1) whose position in its trade or industry is not a dominant one; (2) which does not have more than 500 employees; and (3) which is independently owned and operated. Senator Benton of Connecticut once said that "a small businessman was a guy who could not afford a Washington lobbyist." The primary test, it would seem, is one of numbers. Query, whether 500 employees is too high a criterion to use in defining small business?

2. See Shaver, Scope and Purpose of Small Business Clinic, Report of Proceedings of the Small Business Clinics (mimeograph published by Louisiana Department of Commerce and Industry) (hereafter referred to as S.B.C. Report), 6.

were obtained by small business. Instead they went to the large corporations which had the productive capacity and personnel to make quick changes to wartime production, and the resources to learn about and obtain these contracts. The small businessman left without goods to produce often had no place to go but to the bankruptcy court.

Now again we are engaged in a huge defense effort. A new economy is building up; if not indeed a wartime economy, it may at least be called an economy of readiness. This time Congress has evidenced an intention that small business shall get fair treatment. In 1947 a Senate Concurrent Resolution declared that Congress recognized "the valid claim of the small businessman of America to equal representation as an entity, with labor, agriculture, and other groups on those Government commissions, boards, committees, or other agencies in which the interests of the American economy may be affected."<sup>3</sup> In the Foreign Assistance Act of 1948 the Economic Cooperation Administration is directed to render aid to small business "to participate equitably in the furnishing of commodities and services financed under the Act."<sup>4</sup> The Defense Production Act of 1950 specifically declares: "It is the sense of the Congress that small-business enterprises be encouraged to make the greatest possible contribution toward the objectives of this act."<sup>5</sup> The act further provides that the small

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3. Senate Concurrent Resolution No. 14, 80th Cong., 1st Sess., passed by the House of Representatives July 21, 1947. The complete Resolution is as follows: "Whereas the three million six hundred and fifty thousand small business concerns in the United States are owned and operated, on the average, by two and one-half persons, or a total of nine million one hundred and twenty-five thousand persons, constituting 92 per centum of our entire economy; and

"Whereas these concerns employ about 65 per centum of all commercial and industrial wage earnings and produce about 45 per centum of our entire output of commodities: Therefore be it

*"Resolved by the Senate (the House of Representatives concurring),* That the Congress recognize the valid claim of the small businessmen of America to equal representation as an entity, with labor, agriculture, and other groups, on those Government Commissions, boards, committees, or other agencies in which the interests of the American economy may be affected; and that the President of the United States, the members of the Cabinet, and other officers of the Government be, and hereby are, respectfully urged to accord the small businessmen of America representation on such Government agencies including particularly policy-making bodies created by Executive appointment."

4. Section 112(i)(1) of Foreign Assistance Act of 1948, Act of April 3, 1948. Pub. L. 472, 80th Cong., 2d Sess., as amended by Act of April 19, 1949. Pub. L. 47, 81st Cong., 1st Sess., and the Act of June 5, 1950, Pub. L. 535, 81st Cong., 2d Sess.

5. Defense Production Act of 1950, Act of Sept., 1950, 81st Cong., 2d Sess., hereinafter cited as D.P.A.

businessman be provided with information of benefits and that his requests shall be expeditiously handled, that small business be represented in the advisory committees under the act, and that such exemptions as are feasible shall be provided for small business enterprises.<sup>6</sup> Although some of this legislation will expire before long, the succeeding statutes will undoubtedly contain extensive provisions concerning small business. At this writing Congress is considering a number of bills which will give small business a much larger part in the defense economy than do existing laws.<sup>7</sup>

Both the Senate and the House of Representatives have created Select Committees on Small Business in order to safeguard the interests of small business and to help see that congressional policy directives are fulfilled. The Committees have held and are continuing to hold numerous investigations<sup>8</sup> and have been active in calling the attention of the defense program to the needs of small business. In addition the Senate Committee has sponsored a series of small business clinics held throughout the country.<sup>9</sup> These clinics bring top procurement representatives from

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6. D.P.A. § 701(b) provides: "In order to carry out this policy—

"(i) the President shall provide small-business enterprises with full information concerning the provisions of this Act relating to, or of benefit to, such enterprises and concerning the activities of the various departments and agencies under this Act;

"(ii) such business advisory committees shall be appointed as shall be appropriate for purposes of consultation in the formulation of rules, regulations, or orders, or amendments thereto issued under authority of this Act, and in their formation there shall be fair representation for independent small, for medium, and for large business enterprises, for different geographical areas, for trade association members and nonmembers, and for different segments of the industry;

"(iii) in administering this Act, such exemptions shall be provided for small-business enterprises as may be feasible without impeding the accomplishment of the objectives of the Act; and

"(iv) in administering this Act, special provision shall be made for the expeditious handling of all requests, applications, or appeals from small-business enterprises."

7. See, e.g., S. 533 (Jan. 17, 1951), introduced by Senators Sparkman, O'Connor, Long, Gillette, Humphrey, Hunt, Benton, Tobey, Saltonstall, Thye, Hendrickson and Schoepel, all members of the Small Business Committee. The purpose of this bill is to create the Small Defense Plants Corporation and to preserve small business institutions and free, competitive enterprise. See also H. 1600, 1601, 1602, 1603, 1604, 1605 (Jan. 17, 1951); S. 141 (Jan. 8, 1951), S. 833 (Feb. 8, 1951).

8. See Report of the Select Committee on Small Business of the United States Senate (1951). Presumably the Joint Committee on Defense Production set up by Section 712 of the D.P.A. will also be available to prevent abuses in carrying out the policies of the act.

9. In Louisiana, clinics were held in Shreveport on Feb. 5, 1951, in Alexandria on Feb. 6, and in New Orleans on Feb. 6. A list of scheduled clinics is available from the Senate Small Business Committee.

the military, general services, commerce and other departments to explain how to do business with the federal government. The topics dealt with by the clinics concern small business and sources of information on government contracts, financing of contracts, the General Services Administration, military procurement, and the Economic Cooperative Administration. This article will discuss the same topics, attempting to cover only the points likely to be of greatest interest to the small businessman.

### I. SOURCES OF INFORMATION

The inability of the small businessman to acquire information as to governmental procurement has long placed him at a disadvantage. He had the product to sell, and the government undoubtedly needed and desired it, but the small producer seldom had the resources to unravel the complicated government procurement procedure. To a large extent it seems likely that the five per cent influence peddler received his start as a result of the desire of the small (and the large) businessman to get government contracts and his inability to obtain information on how to go about it.<sup>10</sup>

Attempting to correct this situation, the government has developed a number of information programs. For one thing, the Department of Commerce, with the cooperation of other agencies, began consolidating procurement information so as to make it available to all who desired it. The result was the Consolidated Synopsis of United States Government Procurement Information, published daily by the Field Service of the Department of Commerce from information submitted to it daily by the procurement officers of the various agencies, including the military establishment.<sup>11</sup> This synopsis contains a description of each commodity that the various agencies wish to buy currently, the quantity, the closing date for bids and the federal agency or department wishing to purchase the item.

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10. It should be pointed out that there is a legitimate place for the long-term manufacturers' agent or Washington counsel or attorney. There is not a legitimate place for the one-shot operator or influence peddler. See Elliott, *Federal Supply Requirements*, S.B.C. Report, 22.

11. E.g., every day at the close of business, each of the 55 military procurement offices prepares a brief or synopsis of invitations for bids that they approved that day. These are telegraphed to a central office in Chicago where they are published in the Department of Commerce's Consolidated Synopsis and distributed.

Fearing that this alone would not satisfy the needs of the businessman, especially those who felt that they were too small to deal directly with the government, the Department of Commerce began issuing a Consolidated Synopsis of Contract Award Information. This synopsis is published weekly and lists all unclassified contracts of twenty-five thousand dollars or more, whether allocated or negotiated. It lists the person or firm getting the contract and the item to be furnished.<sup>12</sup> This information should be especially useful to the small businessman who wishes to subcontract from a larger firm that has acquired a large government prime contract. The Louisiana Department of Commerce and Industry reproduces both of these lists and makes them available to Louisiana firms upon request.<sup>13</sup>

Specific information concerning military procurement can be obtained from the Central Military Procurement Information Office which was established by the Department of Defense for the sole purpose of assisting businessmen in their dealings with the military services.<sup>14</sup> They have received requests for information on almost every conceivable type of product.<sup>15</sup> To the manufacturer who inquires about an item not assigned to any type of coordinated procurement,<sup>16</sup> CMPIO will supply a list of products

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12. Formerly this synopsis contained information as to how many items were to be made under the contract and the total contract price, but this information is no longer included, for security reasons.

13. Write to Department of Commerce and Industry, State of Louisiana, State Capitol, Baton Rouge, Louisiana.

14. The address of this office is: Central Military Procurement Office, Department of Defense, Munitions Board, Room 3-D-760, The Pentagon, Washington, D.C.

15. An example would be an inquiry concerning procurement from a manufacturer of hospital equipment. CMPIO will tell the manufacturer that the equipment he wants to sell is purchased by a general agency, and that he needs only register with one activity in order to receive consideration on requirements of all military services. Again, a manufacturer may inquire about the military purchase of lumber. CMPIO will tell him that the lumber is the responsibility of the United States Army and through its Corps of Engineers it purchases the lumber for use by all three services. The manufacturer would be advised to write the St. Louis office of the Engineers and have his firm registered as a supplier and placed on the bidders' list. See Phillips, S.B.C. Report, 72.

16. Coordinated procurement is a type of unified procurement that has come about with unification of the services. Under this program certain items are purchased by joint agencies which are maintained by all of the military services. Another type of coordinating is what we call coordinated aircraft procurement, whereby the Navy buys all of a certain type aircraft, regardless of its ultimate user, and the Air Force all other types aircraft, regardless of the ultimate user. Still another type coordination is single service procurement, whereby the Army buys certain items for all three

made from that item and check the procurement offices which buy it.

In addition to specific information on various kinds of products, CMPIO furnishes the procurement guides of the three services. These guides outline the expansion program and explain how facilities can be surveyed and registered under that program. In general, problems that cannot be answered locally should be sent to the Central Military Procurement Office.<sup>17</sup>

## II. FINANCING

In the financing field are several items that should be of aid to the small businessman. One of the most important is the provision found in the Defense Product Act authorizing agencies engaged in procurement for national defense to guarantee loans for defense contractors.<sup>18</sup> In an executive order the President has authorized the departments of the Army, Navy, Air Force, Commerce and Agriculture and the General Services Administration as guaranteeing agencies to prescribe regulations setting up maximum limits and rates of interest.<sup>19</sup> The certifying officer of the guaranteeing agency is charged with the responsibility of determining whether a proposed loan is "necessary to expedite production and deliveries or services" for the national defense.<sup>20</sup>

In addition, direct loans to private business enterprises are authorized in order to expedite defense contracts for the expansion of capacity, the development of technological processes, or

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elements and the Navy certain items and the Air Force certain items for all three elements.

17. It should be noted that CMPIO does not answer questions that relate to items in which the military service is not interested. However, the office will quite often refer people to the Atomic Energy Commission, Federal Power Service, Department of Agriculture, or any agency that might be interested in the product offered.

18. D.P.A. § 301. The program is similar to the V-loan program operated by the Federal Reserve System during World War II. See Second War Powers Act, 56 Stat. 177 (1942), as amended, 50 U.S.C.A. § 633 (Supp. 1949). The first regulation of the Federal Reserve System concerning these powers states that it will follow procedures developed from experience obtained in the V-loan and T-loan programs of the last war. See Reg. V, Federal Reserve System § 223.2 (Oct. 2, 1950), 15 Fed. Reg. 6630, 6631 (1950).

19. As of April 1, 1951, 167 companies have participated in the guaranteed loan programs, receiving a total of \$128 million in such loans, mainly for working capital. See Report to the President, Building America's Might, by the Director of Defense Mobilization, 11 (April, 1951).

20. This, of course, raises the danger of arbitrary actions of certifying officers. Some safeguards are discussed in Frey, Maintaining Economic Freedom under the Defense Act of 1950, 18 U. of Chi. L. Rev. 218, 227, 262 (1951).

the production of essential materials.<sup>21</sup> It should be cautioned that such financial aid may be extended only to the extent that it is not otherwise available on reasonable terms.<sup>22</sup> Along the same lines is the power of the government to make advance payments on contracts so that the manufacturer does not have to carry too heavy a financial load.<sup>23</sup>

Another aid is found in the program of accelerated tax amortization under which companies investing in defense facilities may apply for the privilege of deducting plant costs, for tax purposes, at the rate of twenty per cent per year in lieu of the normal depreciation rate.<sup>24</sup> The acceleration is applied to that portion of the new facilities determined by the Defense Production Administrator to be attributable to defense purposes.<sup>25</sup> It is true that so far, the tax advantages of this program have largely been utilized by big business,<sup>26</sup> but there is no reason why small business could not take advantage of it as well.

### III. GENERAL SERVICES ADMINISTRATION

The Hoover Commission pointed out the tremendous inefficiency of government agencies in acquiring needed items. In-

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21. D.P.A. § 302. As of April 1, 1951, a total of \$44 million had been loaned directly to 21 firms—exclusive of \$5.35 million loaned by the Reconstruction Finance Corporation, in partnership with defense agencies, from its own funds. These loans were mainly for expansion of capacity. See Report to the President, *supra* note 19, at 11.

22. Elliot, *supra* note 10, at 29.

23. *Ibid.*

24. Revenue Act of 1950, § 1246 (§ 216 Pub. L. 814, 81st Cong., 2d Sess. [1950]).

25. The Chairman of the NSRB has been named as the certifying authority for the accelerated amortization procedure. The regulation issued by the NSRB attempts to provide criteria for determination of defense necessity of any proposed plant expansion. Among the criteria included are the relation of such expansion to national defense, the economic usefulness of the facility for other than defense purposes after five years, promotion of competitive enterprise, and *opportunity for participation by small business*. See NPA Order MO5 (Oct. 27, 1950), 15 Fed. Reg. 7264 (1950). It should be noted that most cases of amortization will not be one hundred per cent, but of a scale type. If, for example, a plant is built for emergency purposes, but after five years it is put to regular commercial use requiring conversion, perhaps only fifty per cent accelerated amortization will be granted.

26. Report to the President, *supra* note 19, at 11: As of March 16, a total of 660 certificates was issued covering private capital investment of nearly \$4 billion in added productive capacity. The average proportion of plant costs allowed for accelerated tax amortization was 69 per cent; this means that approximately \$2.7 billion can be written off for tax purposes at the 20 per cent rate.

Expansion of steel capacity was the first object of the tax amortization program. The iron and steel industry received 50 per cent of the total of \$4 billion certified, with 124 projects of 50 separate companies approved. Rail transportation and the aluminum industry accounted for 14 and 6 per cent, respectively. A wide range of defense activities was represented in the remainder.

stead of the existing plethora of procurement departments, the Commission recommended one housekeeping agency to acquire all items that the government would need. Carrying out this recommendation, Congress established the General Services Administration.

The largest phase of the work of the General Services Administration is general responsibility for procurement of commonly used items for all government agencies. Among other things, GSA is responsible for the purchase and stockpiling of strategic and critical materials and the management of buildings used for government agencies all over the country. Thus, the General Services Administration plays a large role in getting a fair share of government business for the small businessman.

GSA has developed a number of aids to the small businessman. A very important one is the standardization of forms. GSA has recently introduced an invoice purchase order that is small and simple, and which employs carbon copies that should save the government paper work by one-third. This innovation will be especially suitable for the man who is making a small sale to the government.<sup>27</sup>

A second project being undertaken by GSA that will aid small business is the revamping of specifications for commonly used supplies.<sup>28</sup> In the past there developed government specifications that were not at all in line with the standard specifications found throughout the industry. For example, in one area the government has been using cans of one size whereas private industry used cans of another. Such inconsistent specifications hurt the small businessman since he could not afford to get special machinery to meet the peculiarities of government specifications. GSA now intends to gear specifications to the standard ones used in commerce. In some cases such as special military items, that will not be true, of course. But it will be true as to items used regularly.

In this connection General Services is authorized to set up an acceptable products list and to make tests. If a manufacturer believes that his product is what the government wants in that

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27. See Elliot, note 10 at 26. Another noteworthy recent innovation is that invitations to bid now have a place for check of 500 or less, or 500 or more, employees of bidder and affiliates. This will help obtain statements on the number of contracts going to small business. See note 28 at 172-174, 259.

28. See Hearings Before the Subcommittee on Study of Monopoly Power of the Committee on the Judiciary, House of Representatives, 81st Cong., 1st Sess. (1949) (Serial No. 14, Part 2-A), 186-187.

field, he can have it tested by GSA. And if the product is found to meet the government requirements, it will be put on an "acceptable" list. The manufacturer will then be able to supply his product without further red tape as to meeting specifications except for the normal inspections on delivery of the item to see that it conforms to the standards of the sample.

Third, GSA is prepared to help the financing of the businessman with defense contracts<sup>29</sup> through means of the loan guarantee plan previously discussed.<sup>30</sup> These guarantees are available for the subcontractor and sub-subcontractor as well as for the prime contractor.<sup>31</sup> It should be noted, however, that it will first be necessary to make an honest effort to get finances without any government guarantee. If this is impossible and the businessman wants the GSA guarantee, he should get approval from his general procurement agency, then go to his bank and the bank will in turn process the application to the local Federal Reserve Bank.<sup>32</sup> If a private loan is not available even with a government guarantee, an RFC loan may be available, or if borrowing appears undesirable, GSA does have authority in a very limited number of cases to install equipment in privately owned plants.<sup>33</sup>

Fourth, and perhaps the most valuable aid to the small businessman, is the regionization program of GSA. In the past, bids were asked and received in Washington for various items to supply the whole country. GSA is trying to break that down. For example, the Dallas office will survey the annual requirements of the government in this region for toothpicks. The purchases will be broken down into small lots and bids will be taken in Dallas. The small businessman will have an opportunity in that he can compete on small lots. In addition, bids are permitted on less than the total amount, and if a small manufacturer bids a price equal or lower he gets the contract for that portion bid.<sup>34</sup> Still another result of the regionization program is that the local

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29. GSA is prepared to guarantee loans not only for working capital but for plant expansion. See Elliot, *supra* note 10, at 31.

30. See p. 431, *supra*.

31. See Elliot, *supra* note 10, at 30.

32. D.P.A. § 303(d). It should be cautioned that under the regulations of the Federal Reserve Board there is a sliding scale for division of interest. For seventy per cent, the government takes ninety and the bank ten; and for one hundred per cent, the government takes fifty and the bank fifty; since there is an overall ceiling of five per cent, the bank will get only two and one-half per cent. So it is in the interest of the borrower to hold the guarantee down to seventy per cent and not attempt a hundred per cent government guarantee.

33. D.P.A. § 303(d).

34. See Elliot, *supra* note 10, at 28.

manufacturer will be helped. Of course, bidding is open to all parts of the country. However, since the supply of the local manufacturer will be closer to the point of use, the local man will be able to take advantage of the transportation differential. This should help the small southern businessman who under the current delivered price system has been unable to take advantage of proximity to sources of supply.<sup>35</sup>

#### IV. MILITARY PROCUREMENT

The demands of the military services today are not as multifarious as they were during the last war. In 1944, the peak year of the war, the Army and Navy spent just short of one hundred billion dollars. During 1951 the Department of Defense will not spend over forty-two billion dollars, including all supplemental appropriations.<sup>36</sup> This necessarily means that the impact on the national economy will not be as great as it was during World War II. Nevertheless, the volume of military procurement is certainly so substantial that small business will be seriously damaged unless it can share in military procurement to a greater extent than it did in the last war.

Let us assume that a businessman wants to obtain a prime contract with a defense agency. How does he go about getting such a contract? Three or four months ago the answer was relatively simple. He obtained one of the commercial lists and found out what the military was buying. If interested, he wrote for a bid and sent in his proposal. If he had submitted the low bid and had been responsible financially he would have been awarded the job. The presidential declaration of a national emergency in December caused an acceleration in procurement by the three military departments.<sup>37</sup> The Secretary of Defense authorized these military departments to purchase by negotiation as well as by advertising for bids.<sup>38</sup> This makes it more imperative than ever that the small businessman not sit back and wait for military contracts to come to him. If he wants either to negotiate

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35. See Machlup, *The Basing Point System* (1949). See note 28, *supra* at 197-198, and especially 260-271.

36. See Ashler, *Industrial Mobilization and Purchasing by the Military Establishment*, S.B.C. Report, 8, 9.

37. *Id.* at 9.

38. Negotiation of contracts means that the departments contact only those businesses that they know from past performance or national reputation can produce the desired product by the time they need it. The order is placed and production is started. The matter of price is discussed later. Some valuable information on military negotiation and bidding practice is found in *Hearings Before the Subcommittee on Study of Monopoly Power of the Committee on the Judiciary, House of Representatives, 81st Cong., 1st Sess. (1949) (Serial No. 14, Part 2-A), 170-199.*

contracts with the military or to secure contracts through bidding, the small businessman must convince the procurement officer that he can deliver the goods.

The following is a suggested procedure:<sup>39</sup>

1. A determination should be made as to what the businessman wants to produce and sell to the government.
2. The producer should find out which of the military procurement offices buys the item that he has to sell. Usually this information can be obtained from three sources: the local chamber of commerce; the regional office of the United States Department of Commerce and the Central Military Procurement Information Office in the Pentagon.<sup>40</sup> This information will most probably consist of from ten to twenty different procurement points that must be contacted.
3. A brochure should be presented to these offices showing the complete picture concerning the producer's operation. This will serve as his letter of introduction to the government. This brochure should state the businessman's qualifications including such facts as what labor or potential labor force is available, the equipment and facilities available, and so on. The special qualifications should likewise be set forth. If, for example, there is available a machine of which there are only three in the country, or a graduate engineer who is a specialist in this field, these matters should be mentioned. In addition, a general financial report should be submitted. The military services will not do business with anyone unless they know that he is financially dependable. This point should be established at the first contact with the procurement officers. In short, the brochure should include any pertinent information which shows why the producer is better qualified to get the business than another.
4. In presenting this brochure to the proper procurement agencies, experts should be available to answer any questions concerning the product, estimated time of production, and the like.
5. These contacts must be kept alive, of course. This is a selling job that is done by letters, telephone calls and personal visits.<sup>41</sup>

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39. See Ashler, *supra* note 36, at 16-20.

40. See note 14, *supra*.

41. But not from "five percenters." The recent scandals have made pro-

In the case of a businessman interested in subcontracting, there are some additional considerations. Many firms do not feel that they are participating in the defense effort or getting government business unless they deal directly with the government. This is not true. Much of the business done for the armed forces is performed by subcontractors. Indeed, it would appear that the position of subcontractor has some advantages over that of prime contractor. If the subcontractor has production trouble the prime contractor will assist him in supplying technical experts that may be needed, in securing scarce materials and in meeting pressing financial obligations. Of course, government assistance is available to the subcontractor, but help from the prime contractor is likely to be much faster, since his own performance will depend on that of his subcontractor.

The technique used for securing subcontracts is similar to that used for obtaining prime contracts. It is chiefly the points of contact that are different. Valuable information as to prime contractors can be obtained from the Department of Commerce's Consolidated Synopsis of Contract Award Information previously discussed. These should prove excellent leads from which to seek subcontracting work. Reestablishment of contact with firms for whom work was done in the past, either civilian or military, would be advisable. It must be remembered that there is no easy way to do business with the government. Whether a prime contract or a subcontract is desired, the businessman must be willing to exercise the initiative, salesmanship and enterprise necessary for doing business with private industry.<sup>42</sup>

curement officers wary of the Washington "five percenter" and in the future use of the "five percenter" is likely to lose business rather than gain it. See, e.g., *Mitchel v. Flintkote Co.*, 185 F. 2d 1008 (2d Cir. 1951), noted in 64 *Harv. L. Rev.* 1200 (1951).

42. The latest figures concerning military procurement, by size of business, are not available. Below are the figures for 1949. These figures do not include small business participation in subcontracting. The complete accuracy of these figures has been questioned. See *Hearings Before the Subcommittee on Study of Monopoly Power*, supra note 27, at 173-197.

*Procurement of the Military Departments, by size of business, fiscal year 1949.*

NUMBER OF PURCHASE ACTIONS

Department	Total number	Small business		Other	
		Number	Per cent	Number	Per cent
Total.....	1,357,068	974,072	72	382,996	28
Army.....	507,705	371,443	73	136,262	27
Navy.....	522,661	364,618	70	158,043	30
Air Force.....	325,467	237,403	73	88,064	27
Armed Services Petroleum Purchasing Agency..	1,235	608	49	627	51

## V. THE ECONOMIC COOPERATION ADMINISTRATION

As is well known, under the Economic Cooperation Administration, better known as the Marshall Plan, the American people committed themselves to the expenditure of some fourteen billion dollars to aid war-torn Europe.<sup>43</sup> This money is administered by the ECA under the Foreign Assistance Act. The accomplishments of the Marshall Plan in bringing new hope to the people of Europe and in withstanding Soviet influence is well known. Not so well known, however, are the advantages to small business in the Marshall Plan.

Before going into the special aids to small business in the ECA program, it might be wise to point out some things about doing business with ECA in general.<sup>44</sup> First, ECA is not a procurement agency, but a banking agency. It extends earmarked dollar credits to the participating European governments which, in turn (with some exceptions), grant subauthorizations to their private importers.

Second, exporting under the ECA-financed programs is virtually the same as it would be without ECA. The supplier still has to find a taker for his goods. Once an order is ECA-financed, he is assured of currency convertibility by the establishment of loans of credit. To obtain payment, he must submit a simple voucher with the rest of his papers which contain much of the information shown on his invoice.

Third, requests for the commodities to be financed originate with the participating governments. ECA will finance only those

VALUE OF PROCUREMENT ACTIONS

Department	Total amount	Small business		Other	
		Amount	Per cent	Amount	Per cent
Total.....	\$5,456,898,000	\$1,497,065,000	27	\$3,959,833,000	73
Army.....	2,005,646,000	846,116,000	42	1,159,530,000	58
Navy.....	1,472,688,000	470,874,000	32	1,001,814,000	68
Air Force.....	1,437,895,000	153,017,000	11	1,284,878,000	89
Armed Services Petroleum Purchasing Agency.....	540,669,000	27,058,000	5	513,611,000	95

(For the purposes of this report, concerns which employ less than 500 persons are considered small business. Interdepartmental procurement is excluded. Data in this report are limited to procurement in the continental United States except for Navy and the Armed Services Petroleum Purchasing Agency which include overseas procurement.)

43. The Foreign Assistance Program is scheduled to end in July, 1952, but is likely to be renewed.

44. See McCormick, S.B.C. Report, at 60-66.

items which contribute to the viability of their economies. Luxury items are not eligible for financing. Under the law, ECA may not finance those goods which can be procured from other participating countries for currencies other than dollars.

Fourth, the bulk of ECA-financed business is conducted through businessman-to-businessman relationships.<sup>45</sup> Only in a few instances are goods bought by government purchasing missions or the General Services Administration of the United States government.

Fifth, each potential exporter must exert sales effort on prospective importers abroad. Many have their own export offices in the participating countries; most conduct their business through agents, particularly the smaller firms. The greater part of ECA-financed contracts are negotiated, although in a few instances bid systems prevail.

And now for the salient features of the ECA program of assistance to small business.<sup>46</sup> In April, 1949, Congress passed the Small Business Amendment to the Foreign Assistance Act.<sup>47</sup> The administrator of ECA was, in brief, required to assist American small business to participate equitably in ECA-financed business by causing to be made available advance information about proposed purchases; by making available to foreign purchasers information about the commodities and services supplied by small American firms; and by otherwise assisting small firms in participating in Marshall Plan business.

Consequently, there was established the Office of Small Business of the ECA. A comprehensive and vigorous program has been set up to fulfill the objectives established by the amendment. Under this program:<sup>48</sup>

1. A series of aids to the small exporter has been published and is available to the small businessman without cost.
2. The Office of Small Business of the ECA publishes, on a daily basis, small business circulars containing advance procurement information, trade leads, prospect lists and

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45. *Id.* at 6. It is pertinent to note that the foreign importer does not receive ECA financed goods at no cost to himself. He pays in his local currency, i.e., francs, lira, drachma, etc., which is put into a special fund, known as the Counterpart Fund, over which ECA has joint jurisdiction except for five per cent, which is used for administrative and strategic materials purposes. Counterpart funds are then used for important economic rehabilitation purposes.

46. See generally notes 4 and 43, *supra*.

47. See note 4, *supra*.

48. See McCormick, *supra* note 43, at 63-65.

country trade manuals. Anyone interested in such a trade manual can procure one from ECA as to any particular country and may be placed on the mailing list for the asking.

3. The ECA Office of Small Business maintains in Washington an Inquiry and Export Counseling Service. Some 10,000 letters of inquiry have been received to date, involving almost every conceivable question about exporting under ECA.<sup>49</sup> Well over 1,500 small businessmen have come to the ECA office in Washington for information and guidance from its export adviser.
4. The Office of Small Business of ECA has also developed a unique method for bringing on-the-spot counsel to the small businessman right in his own community. Over 700 field counselors, bankers, chamber of commerce and trade association officials, serving without pay, located in nearly every state, assist ECA in counseling small businessmen on ECA-financed export business. These men have been of inestimable value in carrying out the ECA small business program. They not only disseminate procurement information, but give sound advice and assistance on export problems.
5. The Department of Commerce field offices are authoritative sources of ECA information and have assisted greatly in the implementation of the small business program.
6. The Office of Small Business has had prepared, in four languages, a directory containing the names of 15,000 small American exporters, which is being distributed to importers in the participating countries. This directory also lists some 61,000 materials and items which the exporters desire to distribute to importers in the participating countries.
7. In addition to engaging in direct export sales, an American businessman may also enter into agreements with foreign firms to license their patents, techniques and processes. ECA's Guaranty Program enables him to convert his earnings from such investments into dollars. Congress, in reconsidering the act last year, decided to broaden the Guaranty Program. In addition to getting dollar converti-

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49. E.g., how goods are procured, how to find prospective buyers, procedure, complaints of discrimination and unfair trade practices, etc.

bility, he may now get dollar convertibility on tangible processes. For example, if the businessman has a patented machine (and he is not participating in export trade because of the dollar shortage), he can enter into an arrangement with a manufacturer in the United Kingdom to manufacture and sell that machine under a patent arrangement, and any currency earned will be guaranteed dollar convertibility under the guaranty clause. All that is necessary is to contact the Office of Small Business or the Industrial Division of ECA and apply for a guaranty contract, which is for the life of the contract, and it will be passed over to the Import-Export Bank who will administer it. In order to stimulate and facilitate this attractive form of doing foreign business, the ECA Office of Small Business has established a contact clearing house for bringing together interested firms in the United States and the participating countries.

It is extremely difficult to determine precisely how much ECA business is going to small firms, since they ordinarily rely on agents to whom the payments are made. However, ECA conducted a survey, based on four typical months, of payments made directly to manufacturers and found that 20.2 per cent of all money paid to manufacturers went to firms employing fewer than 500 people. It should be emphasized that subcontracting in particular offers attractive opportunities for small business to participate in Marshall Plan business.<sup>50</sup>

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50. Analyses have been made of certain selected projects (a project involves authorization of one million dollars or more) which show that small firms have shared remarkably as subcontractors. See McCormick, *supra* note 43, at 65, 66.