

REPORT NO. 577
FEBRUARY 28, 2023

OFFICE OF
**INSPECTOR
GENERAL**

OFFICE OF AUDITS

The SEC Supported Federal Small Business
Contracting Objectives, Yet Could Make Better
Use of Data and Take Other Actions To Further
Promote Small Business Contracting

This report contains non-public information about the U.S. Securities and Exchange Commission's small business contracting. We redacted the non-public information to create this public version.

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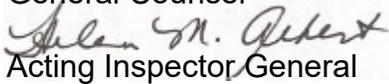
OFFICE OF
INSPECTOR GENERAL

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

M E M O R A N D U M

February 28, 2023

TO: Kenneth Johnson, Chief Operating Officer
Megan Barbero, General Counsel

FROM: Helen M. Albert, Acting Inspector General 

SUBJECT: *The SEC Supported Federal Small Business Contracting Objectives, Yet Could Make Better Use of Data and Take Other Actions To Further Promote Small Business Contracting, Report No. 577*

Attached is the Office of Inspector General (OIG) final report detailing the results of our audit of the U.S. Securities and Exchange Commission's (SEC) small business contracting. The report contains seven recommendations addressed to the Office of Acquisitions, and one recommendation addressed to the Office of the General Counsel that should help (1) enhance the SEC's processes for encouraging small business participation in agency contracting, (2) better leverage the role of the Office of Small and Disadvantaged Business Utilization, and (3) ensure the SEC accurately reports small business awards and consistently maintains reliable small business contracting data.

On January 27, 2023, we provided management with a draft of our report for review and comment. In its February 17, 2023, response, management concurred with our recommendations. We have included management's response as Appendix IV in the final report.

Within the next 45 days, please provide the OIG with a written corrective action plan that addresses the recommendations. The corrective action plan should include information such as the responsible official/point of contact, timeframe for completing required actions, and milestones identifying how management will address the recommendations.

We appreciate the courtesies and cooperation extended to us during the audit. If you have questions, please contact me or Rebecca L. Sharek, Deputy Inspector General for Audits, Evaluations, and Special Projects.

Attachment

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EXECUTIVE SUMMARY

The SEC Supported Federal Small Business Contracting Objectives, Yet Could Make Better Use of Data and Take Other Actions To Further Promote Small Business Contracting

REPORT NO. 577 | FEBRUARY 28, 2023

WHY WE DID THIS AUDIT

The Small Business Act seeks to improve small businesses' access to federal procurement contracts and establishes government-wide statutory small business contracting goals, including goals for socioeconomic subgroups. Within the U.S. Securities and Exchange Commission (SEC or agency), the Office of Acquisitions (OA) develops and executes programs for the agency's acquisitions policy and contract administration. The Director of OA has been designated as the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) and, in that capacity, is responsible for implementing and executing programs to assist small businesses at the SEC.

Our objectives were to (1) assess the SEC's processes for encouraging small business participation in agency contracting, in accordance with federal laws and regulations; and (2) determine whether, in fiscal year (FY) 2020 and FY 2021, the SEC accurately reported small business awards.

WHAT WE RECOMMENDED

We made eight recommendations to (1) enhance the SEC's processes for encouraging small business participation in agency contracting, (2) better leverage the role of the OSDBU, and (3) ensure the SEC accurately reports small business awards and consistently maintains reliable small business contracting data. Management concurred with our recommendations, which will be closed upon completion and verification of the proposed actions. This report contains non-public information about the SEC's small business contracting. We redacted the non-public information to create this public version.

WHAT WE FOUND

The SEC has committed to maximizing small business participation in agency contracting and to advancing diversity and inclusion in the SEC's supplier base. During the period we reviewed, the SEC (1) exceeded government-wide statutory small business contracting goals for prime contract awards; (2) took steps to encourage small business contracting and supplier diversity and inclusion, such as hosting monthly vendor outreach days and maintaining a supplier diversity business management system (SDBMS); and (3) maintained a designated OSDBU Director responsible for implementing and executing programs to assist small businesses at the SEC. However, the SEC can better identify and, as appropriate, respond to trends in its small business contracting activities by:

- analyzing its small business contracting data at the transaction level;
- leveraging SDBMS data, as appropriate;
- evaluating the effectiveness of vendor outreach events and data collected from such events; and
- monitoring and reporting subcontracting achievements for socioeconomic subgroups.

In addition, we reviewed select Small Business Act and Federal Acquisition Regulation requirements applicable to OSDBUs and OSDBU Directors. Generally, the SEC's OSDBU functioned as intended; yet, opportunities exist to better leverage the role of the OSDBU. Specifically, the Director could better perform certain activities including annually assessing aspects of the SEC's small business contracting and providing relevant training reports to appropriate authorities; in addition, some agency contracting officials were unaware of the SEC's OSDBU. Improvements in these areas may help the OSDBU further ensure small businesses with various socioeconomic statuses have a fair opportunity to compete and be selected for SEC contract dollars. We also noted that the SEC's OSDBU Director reports to the SEC's Chief Operating Officer and not the SEC Chair. The OSDBU reporting to the Chief Operating Officer is a matter under review by the agency's Office of the General Counsel.

Lastly, we found that OA could maintain better records to support and enhance the accuracy of the SEC's reported small business awards, and improve the completeness of contract files. Specifically, OA did not maintain sufficient documentation to support the SEC's small business achievements reported to the U.S. Small Business Administration in FY 2020 and FY 2021, or identify some inaccuracies in SEC reported small business information in the Federal Procurement Data System-Next Generation (FPDS). As a result, OA may not be able to identify, explain, or correct discrepancies in various external reports containing SEC small business contracting information, or inaccuracies in the SEC's small business contracting data in FPDS. Such inaccuracies potentially decrease the reliability of the reported information, although we determined they did not significantly impact the SEC's achievement of statutory small business contracting goals. In addition, OA did not consistently include documents describing the acquisition history and demonstrating contracting officials' validation of vendors' small business size status in the SEC's contract files, which increases the risk that key processes and regulations may not be followed.

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Abbreviations

8(a) program	8(a) Business Development Program
COO	Chief Operating Officer
eFile	Electronic Contract Filing System
FAR	Federal Acquisition Regulation
FPDS	Federal Procurement Data System-Next Generation
FY	fiscal year
GAO	U.S. Government Accountability Office
GWAC	government-wide acquisition contracts
GSA	U.S. General Services Administration
HUBZone	Historically Underutilized Business Zone
OA	Office of Acquisitions
OIG	Office of Inspector General
OMB	Office of Management and Budget
OMWI	Office of Minority and Women Inclusion
OSDBU	Office of Small and Disadvantaged Business Utilization
SAM	System for Award Management
SBA	U.S. Small Business Administration
SBCR	Small Business Coordination Record
SBS	Small Business Specialist
SDB	small disadvantaged business
SDBMS	supplier diversity business management system
SDVOSB	service-disabled veteran-owned small business
SEC or agency	U.S. Securities and Exchange Commission
VOSB	veteran-owned small business
WOSB	women-owned small business

Background and Objectives

BACKGROUND

The Small Business Act, as amended, seeks to improve small businesses' access to federal procurement contracts.¹ Among other things, the Small Business Act:

- requires federal agencies to establish annual small business contracting goals that provide small businesses with contracting opportunities to the maximum extent practicable; and
- establishes the federal government's small business contracting goals, to include the minimum government-wide statutory contracting goals for small businesses and specific small business socioeconomic sub-groups.

The Federal Acquisition Regulation (FAR) 19.201, *General policy*, also states that it is the policy of the government to provide maximum practicable opportunities in its acquisitions to small businesses, including small businesses from various socioeconomic sub-groups.² The small business socioeconomic sub-groups are: (1) small disadvantaged business (SDB), (2) 8(a) Business Development Program (8(a) program), (3) veteran-owned small business (VOSB), (4) service-disabled veteran-owned small business (SDVOSB), (5) women-owned small business (WOSB), and (6) Historically Underutilized Business Zone (HUBZone) small business. Appendix II of this report provides a description of these small business socioeconomic sub-groups.

Pursuant to the Small Business Act, small business contracting goals address prime contract awards, and both prime and subcontract awards for small business socioeconomic sub-groups.³ As Table 1 shows, there are five government-wide statutory small business contracting goals—including goals for socioeconomic sub-groups—set by Congress.

TABLE 1. Government-wide Statutory Small Business Contracting Goals

Type of Concern	Minimum Goal	Measure of Contract Awards
Small Business	23%	Dollar value of prime contract awards
SDB	5%	Dollar value of prime and subcontract awards
WOSB	5%	
SDVOSB	3%	
HUBZone Small Business	3%	

Source: Office of Inspector General (OIG)-generated based on 15 U.S.C. § 644(g)(1)(A).

¹ Pub. L. 85-536; 72 Stat. 384 (July 18, 1958), as amended.

² The Small Business Act and, therefore, the FAR generally define "small business" as a concern 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 certain criteria and size standards established in 13 C.F.R. Part 121. Determination of size varies by industry and is generally based on the number of employees or the amount of annual receipts of the business.

³ The Small Business Act does not establish goals for the VOSB and 8(a) program socioeconomic sub-groups; however, prime contract awards for those sub-groups are included in the calculation of the small business contracting goal.

The Small Business Act also created the U.S. Small Business Administration (SBA). The SBA's mission is to aid, counsel, assist, and protect the interests of small business concerns; preserve free competitive enterprise; and maintain and strengthen the overall economy of our nation. As part of these duties, the SBA implements the government's small business goaling program and negotiates with the 24 agencies subject to the Chief Financial Officers Act of 1990⁴ to create individual agency small business contracting goals that, in the aggregate, constitute government-wide goals. For each of these 24 agencies, the SBA produces an annual Small Business Procurement Scorecard, which measures agency achievement of small business and socioeconomic prime contracting and subcontracting goals. The SBA uses agencies' data, including data from the Chief Financial Officers Act agencies and other federal agencies, extracted from the U.S. General Services Administration's (GSA) Federal Procurement Data System-Next Generation (FPDS)⁵ and electronic Subcontracting Reporting System⁶ to annually report on agencies' achievements toward meeting those goals.⁷ As of October 2020, reports based on FPDS data are available through GSA's System for Award Management (SAM) at sam.gov. Additional information about federal small business contracting can be found on the SBA's website and from the Congressional Research Service.⁸

Roles and Responsibilities. The U.S. Securities and Exchange Commission (SEC or agency), is not one of the 24 agencies subject to the Chief Financial Officers Act, and therefore, does not have agency-specific small business contracting goals negotiated with the SBA. However, the SEC is subject to the government-wide statutory goals and other general requirements established by the Small Business Act. Information on the SEC's public website (www.sec.gov), including its potential contracting opportunities forecast, expresses the agency's commitment to maximize its collaboration with small business concerns in reaching the government-wide statutory goals, and to use the small business socioeconomic subgroups to the maximum extent practicable. The SEC has also committed to advancing diversity and inclusion in its supplier base by promoting the use of minority-owned, women-owned, and veteran-owned businesses, including small businesses.

Office of Acquisitions. The SEC's Office of Acquisitions (OA) develops and executes programs for the agency's acquisitions policy, procurement and contract administration, acquisitions workforce training and certification, and government purchase cards. OA is responsible for procuring all goods and services—

⁴ Pub. L. 101-576, 104 Stat. 2838 (November 15, 1990), as amended.

⁵ As required by the FAR, executive departments and agencies are responsible for collecting and reporting procurement data to FPDS, which is the government repository for information on government contracts and contains data used to create recurring and special reports.

⁶ The electronic Subcontracting Reporting System is an internet-based tool managed by GSA to streamline the process of reporting on subcontracting plans and provide agencies with access to analytical data on subcontracting performance.

⁷ Each year, the SBA provides guidelines for calculating small business procurement goals. Based on the guidelines, agencies can take credit in every category that is applicable to the recipient of a contract. For example, a contract awarded to a service-disabled veteran-owned, women-owned small business concern would be counted toward the SDB goal, the SDVOSB goal, and the WOSB goal. Similarly, SDBs include participants of the 8(a) program, which are, by definition, both socially and economically disadvantaged businesses.

⁸ See www.sba.gov and Congressional Research Service, *An Overview of Small Business Contracting* (R45576; Updated July 29, 2022).

except real property—for the SEC. OA provides certification programs for OA staff, the SEC’s contracting officers’ representatives, and program/project managers. OA responsibilities also include managing contracts and contractors; monitoring contractor performance; and implementing and enforcing specific Congressional legislation, executive mandates, and other directives relating to procurement. In addition, OA tracks and reports to federal systems (including FPDS) and SEC financial systems a broad range of information on expenditures and contract-related data, including small business data necessary to ensure transparency and accountability for federal programs. OA uses an online system of record called Electronic Contract Filing System (eFile) for current contracts, agreements, orders, and calls. The Director of OA serves as the SEC’s head of the contracting activity.⁹

Office of Small and Disadvantaged Business Utilization. Section 15(k) of the Small Business Act establishes in each federal agency with procurement powers an Office of Small and Disadvantaged Business Utilization (OSDBU). The SEC Director of OA has been designated as the OSDBU Director and, in that capacity, is responsible for implementing and executing programs to assist small businesses at the SEC. The SEC’s Small Business Specialist (SBS) supports the OSDBU Director by (1) coordinating with small business vendors, interagency organizations, program and acquisition teams, and the business community regarding small business activities; (2) serving as the primary contact for prospective small businesses; (3) collaborating with SEC contracting officials and program offices to ensure the inclusion of small businesses in upcoming agency requirements; and (4) publicizing outreach and training opportunities.

Office of Minority and Women Inclusion. The SEC’s Office of Minority and Women Inclusion (OMWI) works closely with OA to meet the agency’s obligations under Section 342(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.¹⁰ Specifically, OMWI seeks to advance diversity and inclusion in the SEC’s supplier base by promoting the increased use of minority-owned and women-owned businesses (including WOSBs) in SEC business activities and by establishing and maintaining a diverse supplier base to maximize the agency’s ability to procure the best goods and services to meet its contracting needs. OMWI’s Supplier Diversity Officer and OA’s SBS collaborate on outreach activities designed to increase small businesses’ (specifically, minority-owned and women-owned businesses) awareness of SEC requirements and opportunities for participating in agency contracting.

OBJECTIVES

The overall objectives of this audit were to (1) assess the SEC’s processes for encouraging small business participation in agency contracting, in accordance with federal laws and regulations; and (2) determine whether, in fiscal year (FY) 2020 and FY 2021, the SEC accurately reported small business awards.

⁹ FAR 19.201(b) states that heads of the contracting activities are responsible for effectively implementing small business programs within their activities, including program goals, and ensuring that contracting and technical personnel maintain knowledge of small business program requirements. Additionally, each federal agency is responsible for ensuring the quality of its own contracting data.

¹⁰ 12 U.S.C. § 5452. Under this section, the SEC, and other federal financial agencies, were required to establish an OMWI to be responsible for all matters of the agency relating to diversity in management, employment, and business activities.

The scope period for specific tests we performed included small business contracts the SEC funded in FY 2020 and FY 2021 (that is, October 1, 2019, through September 30, 2021). We focused on prime contract awards made directly between the SEC and small businesses, and did not assess subcontract awards.

To address our objectives, we (1) met with representatives from OA and OMWI (including the SEC's OSDBU Director, SBS, and Supplier Diversity Officer); (2) interviewed 17 contracting officials (including contracting officers and contract specialists);¹¹ (3) sent to program officials questionnaires related to small business contract actions; and (4) reviewed OA policies and procedures addressing small business contracting. In addition, we analyzed SEC small business transaction level contracting data reported in FPDS for FY 2017 through FY 2021. We also performed tests and assessments using judgmental or nonstatistical samples. Specifically, we selected a judgmental sample of 29 SEC contracts (awarded to 26 distinct small business concerns during our scope period) valued at about \$372.2 million in obligations, and reviewed the associated contract files for attributes based on the FAR and OA internal policies and procedures. In addition, we selected a judgmental sample of five contracts awarded to "other than small" businesses and assessed whether each contract file demonstrated that the agency considered small businesses, as appropriate.

Appendix I of this report includes additional information about our scope and methodology, including sampling methodologies, our review of relevant internal controls, and prior coverage.

¹¹ According to the SEC's annual congressional budget justifications, OA was composed of 53 and 55 full-time equivalents in FY 2020 and FY 2021, respectively. As of November 2022, OA had 36 contracting officials (27 contract specialists and 9 contracting officers).

Results

FINDING 1. THE SEC HAS DEMONSTRATED ITS COMMITMENT TO FEDERAL SMALL BUSINESS CONTRACTING OBJECTIVES, BUT COULD MAKE BETTER USE OF AVAILABLE INFORMATION AND DATA

Overall, we found that the SEC has committed to maximizing small business participation in agency contracting and to advancing diversity and inclusion in the SEC's supplier base, and has demonstrated this commitment in several ways. During the period we reviewed, the agency (1) exceeded government-wide statutory small business contracting goals for prime contract awards; (2) took steps to encourage small business contracting and supplier diversity and inclusion; and (3) maintained a designated OSDDBU Director responsible for implementing and executing programs to assist small businesses at the SEC. Notably, the agency's prime contract obligations to small businesses increased from FY 2017 to FY 2021. However, over the same period, the number of small businesses that received SEC prime contract awards declined—a trend we also observed for the number of other than small businesses that received SEC prime contract awards. In addition, although the SEC reported exceeding the statutory small business contracting goals for the socioeconomic sub-groups identified in the Small Business Act, agency reports to SBA addressed only the SEC's achievements of contracting goals for prime contract awards and did not include the SEC's achievements of subcontracting goals related to the socioeconomic sub-groups.

The shrinking pool of small business contractors is a government-wide concern. To help address this issue, meet Administration policy and Federal guidance for maximizing small business participation in agency contracting and broadening participation from underserved communities, and ensure the SEC efficiently and effectively determines whether existing processes improve small businesses' access to SEC contracts, the SEC can make better use of available information and data. Specifically, the agency can better identify and, as appropriate, respond to trends in its small business contracting activities by (1) analyzing its small business contracting data at the transaction level; (2) leveraging supplier diversity business management system (SDBMS) data, as appropriate; (3) evaluating the effectiveness of vendor outreach events; and (4) monitoring and reporting subcontracting achievements for socioeconomic sub-groups.

The SEC Exceeded Statutory Small Business Contracting Goals for Prime Contract Awards, and Took Steps to Encourage Small Business Contracting and Supplier Diversity and Inclusion, Yet the Number of Small Businesses Receiving SEC Awards Decreased

As previously stated, the Small Business Act and the FAR encourage agencies to provide maximum practicable opportunities in acquisitions to small businesses, including small businesses from various socioeconomic sub-groups. The Small Business Act includes the various government-wide small business contracting goals (summarized in Table 1 of this report), and states that individual agency small business goals shall separately address prime contract awards and subcontract awards for each category

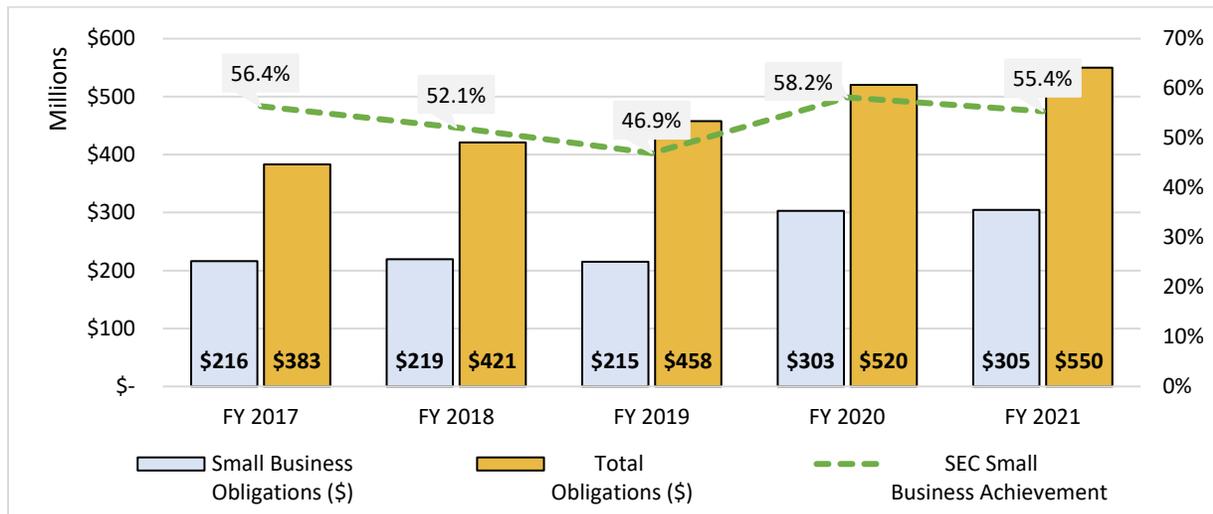
of small business covered.¹² In addition, Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (dated January 20, 2021), directs agencies to make Federal contracting and procurement opportunities more readily available to all eligible vendors and to remove barriers faced by underserved individuals

Executive Order 13985 directs agencies to make opportunities more available to eligible vendors and to remove barriers faced by underserved individuals and communities

and communities. Independent agencies, such as the SEC, were strongly encouraged to comply with the provisions of this order. To implement the commitments made in the Executive Order, in December 2021, the Office of Management and Budget (OMB) issued Memorandum M-22-03, *Advancing Equity in Federal Procurement*.¹³ OMB Memorandum M-22-03 includes five management actions to increase baseline spending for socioeconomic small businesses and traditionally underserved entrepreneurs recognized in the Small Business Act (including WOSBs, SDVOSBs, and HUBZone small businesses), and to broaden participation from within these communities, among other things.

SEC Efforts to Support Small Business Participation and Supplier Diversity and Inclusion in Agency Contracting. As Figure 1 shows, between FY 2017 and FY 2021, the SEC exceeded the government-wide statutory small business goal of 23 percent of its prime contract awards.

FIGURE 1. SEC Small Business Achievements for Prime Contract Awards (FY 2017 – FY 2021)



Source: *OIG-generated based on FPDS small business goaling reports for FYs 2017 through FY 2021, available through SAM (retrieved on July 5, 2022).*

¹² 15 U.S.C. § 644(g)(1)(A) and (g)(2)(A).

¹³ OMB Memorandum M-22-03 is addressed to all heads of executive departments and agencies. According to SEC management, although the memorandum generally does not appear mandatory for the SEC, the agency is following the spirit of the memorandum by aligning SEC activities with the memorandum’s management actions.

In each of those years, the SEC also exceeded the statutory contracting goals for prime contract awards to the socioeconomic sub-groups identified in the Small Business Act. (See Appendix III.) In addition, SEC management stated it intends to follow OMB Memorandum M-22-03 and anticipates achieving the Administration's goal to increase spending to SDBs from 5 percent to 15 percent by FY 2025.¹⁴

Moreover, OA and OMWI took steps to encourage the SEC's small business contracting and supplier diversity and inclusion, and each of the contracting officials we interviewed confirmed the SEC's commitment to encouraging small business participation in the acquisition process. In coordination with OA, OMWI hosted monthly vendor outreach days, which allow interested vendors (including minority-owned, WOSB, and other small business socioeconomic sub-groups) to learn about upcoming SEC contracting opportunities; present their businesses to interested program offices and exchange information on their capabilities, goods, and services; and receive technical assistance. In FY 2020 and FY 2021, a total of 49 and 58 businesses (including small businesses), respectively, participated in at least one of the agency's monthly vendor outreach days.

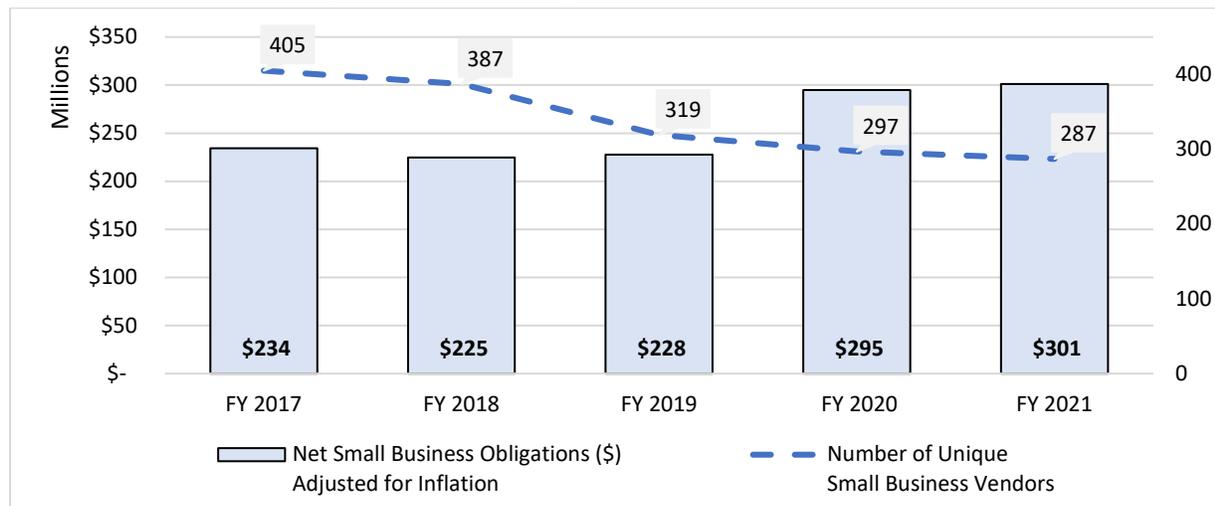
OMWI also maintained the SDBMS, which serves as the central repository of general business information and statements of capabilities provided by minority-owned, women-owned, and/or small businesses (including 8(a)-certified, SDB, WOSB, SDVOSB, and HUBZone small businesses) interested in doing business with the SEC. OMWI used the SDBMS to send vendors information about SEC supplier diversity initiatives, and invited vendors to create profiles in the SDBMS. SEC staff members interested in finding a vendor for their program, or contracting officers conducting market research, can coordinate with OMWI to search the profiles. According to OMWI, SDBMS can also be a tool for SEC prime contractors seeking subcontracting assistance, as information on registered businesses can be disseminated to promote partnerships. As of November 2022, 372 businesses (including 287 small businesses) had submitted SDBMS vendor profiles.

Finally, as Finding 2 further discusses, the SEC designated the Director of OA to serve as the OSDBU Director. OSDBU offices play a significant role in fostering the use of small and disadvantaged businesses as federal contractors, and help advance equity by, among other things, working with agency acquisition officials to increase the probability of participation by small businesses.

Decline of Small Business Supplier Base. We analyzed the SEC's small business transaction level contracting data from FPDS and found that, notably, the agency's contract obligations to small businesses increased from about \$234 million in FY 2017 to about \$301 million in FY 2021 (an increase of about 29 percent). However, as Figure 2 shows, over the same period the number of small businesses that received SEC awards steadily declined from 405 to 287 (a decrease of about 29 percent). Similarly, the agency's contract obligations to other than small businesses increased from about \$184 million in FY 2017 to about \$249 million in FY 2021 (an increase of about 35 percent) and, over the same period, the number of other than small businesses that received SEC awards also declined from 258 to 205 (a decrease of about 21 percent).

¹⁴ As Figure 4 in Appendix III shows, between FY 2017 and FY 2021, the SEC consistently exceeded the statutory goal for prime contract awards of 5 percent, as well as the anticipated 15 percent goal.

FIGURE 2. SEC Net Obligations to Small Businesses (Adjusted for Inflation) Vs. Number of SEC Small Business Vendors (FY 2017 – FY 2021)



Source: OIG-generated based on FPDS data from FY 2017 to FY 2021, accessed on March 11, 2022.

Note: We adjusted FY 2017 to FY 2020 obligations for inflation using the Consumer Price Index from the U.S. Bureau of Labor Statistics. As discussed in Finding 3, because the SEC did not maintain transaction level details for its small business achievements, we used transaction level data from FPDS as of March 11, 2022. Therefore, SEC net obligations for FY 2017 to FY 2021 in Figure 2 may be different from the amounts presented in Figure 1.

OMB Memorandum M-22-03 highlights the general decline in the small business supplier base across the federal government, citing the following:

- A recent report found the number of new small business entrants to federal procurement decreased by 79 percent from 2005 to 2019.¹⁵
- Trends in FPDS data indicated a loss of 49,000 small businesses in the federal supplier base since 2010.
- An OMB study concluded that difficulties new and recent entrants face navigating the federal marketplace are because of inadequate government outreach and a lack of visibility into available opportunities, which creates “unfair advantages for incumbent contractors, complicating efforts to diversify the Federal supplier base.”¹⁶

To address these challenges, OMB Memorandum M-22-03 established several government-wide and agency steps, including improved data management, identification of barriers, and data-driven outreach.

The SEC Could Make Better Use of Available Information and Data. Although the general decline in the small business supplier base across the federal government likely contributed to the decrease we observed in the number of small businesses that received SEC awards during the period we reviewed, the SEC can make better use of available information and data (from FPDS and from OMWI resources and programs) to identify and, as appropriate, respond to trends in its small business contracting

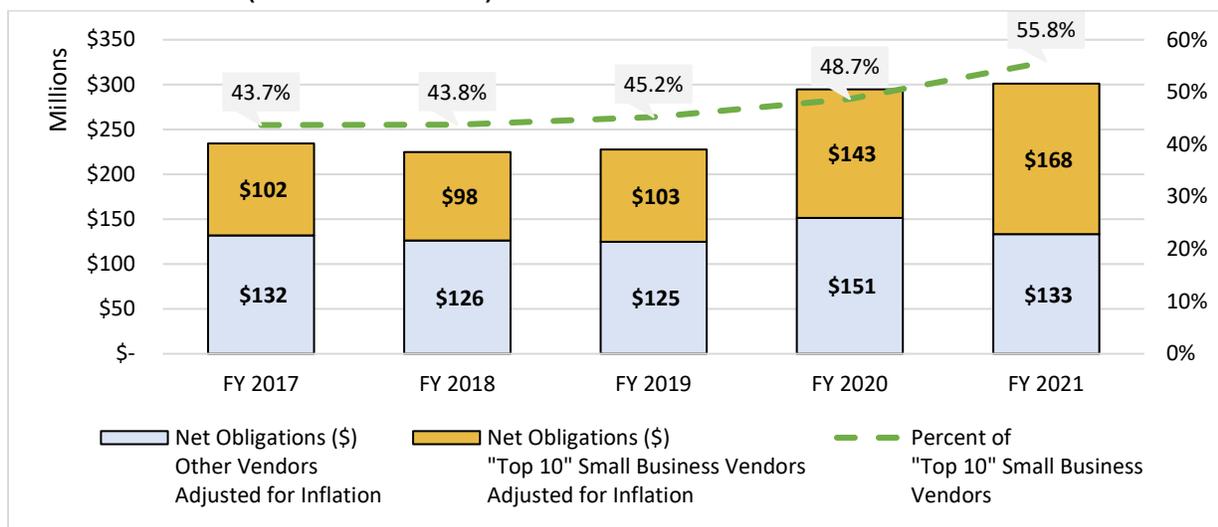
¹⁵ The Bipartisan Policy Center, *Supporting Small Business and Strengthening the Economy Through Procurement Reform* (June 22, 2021).

¹⁶ Office of Management and Budget, *Study to Identify Methods to Assess Equity: Report to the President* (July 20, 2021).

activities. Taking such actions could help the agency meet Administration policy and federal guidance, and ensure the SEC maximizes small business participation in agency contracting.

For example, in addition to the analysis that supports Figure 2, we analyzed the SEC’s small business transaction level contracting data from FPDS and identified trends regarding the agency’s “Top 10” small business vendors by fiscal year.¹⁷ As Figure 3 shows, the percentage of obligations related to the SEC’s “Top 10” small business vendors increased between FY 2017 and FY 2021, from about 44 percent to about 56 percent. Furthermore, we found that two small businesses were in the “Top 10” in each of the 5 years we reviewed, and another three small businesses were in the “Top 10” for 4 of the 5 years we reviewed.

FIGURE 3. SEC Net Obligations (Adjusted for Inflation) Related to the Agency’s “Top 10” Small Business Vendors (FY 2017 – FY 2021)



Source: OIG-generated using FPDS data from FY 2017 to FY 2021, accessed on March 11, 2022.

Note: We adjusted FY 2017 to FY 2020 obligations for inflation using the Consumer Price Index from the U.S. Bureau of Labor Statistics. As discussed in Finding 3, because the SEC did not maintain transaction level details for its small business achievements, we used transaction level data from FPDS as of March 11, 2022. Therefore, SEC net obligations for FY 2017 to FY 2021 in Figure 3 may be different from the amounts presented in Figure 1.

To identify any regional trends and potential geographic opportunities and/or barriers, we assessed the location of small business vendors with SEC contracts in FY 2020 and FY 2021, as reported in FPDS. As Table 2 shows, both the number of unique small business vendors with SEC contracts and the dollars the SEC obligated to small business contracts were heavily concentrated in Virginia. When considering Maryland and the District of Columbia, the data shows that in FY 2020 and FY 2021 about 45 percent of all small business vendors with SEC contracts (170 of 380) were located in the D.C. metropolitan area, where the SEC’s headquarters is also located. Moreover, those 170 vendors received about 77 percent of all dollars the SEC obligated to small business contracts in those 2 years (more than \$452 million out of a total \$586 million). Each of the remaining states with more than 10 SEC small business vendors in

¹⁷ For the purposes of this report, we defined “Top 10” small business vendors as those small businesses that received the largest amount of SEC obligations each fiscal year.

FY 2020 and FY 2021 is also home to at least one SEC regional office, as well as major population centers.¹⁸

TABLE 2. U.S. Geographic Concentration of SEC Small Business Vendors and Small Business Contract Obligations (FY 2020 – FY 2021)

A. U.S. State/Location	B. No. of Small Business Vendors	C. % of Total Column B	D. FY 2020 and FY 2021 Small Business Obligations	E. % of Total Column D
Virginia	110	28.95%	\$354,310,548	60.42%
Maryland	42	11.05%	\$ 86,657,489	14.78%
New York	37	9.74%	\$ 14,368,223	2.45%
California	29	7.63%	\$ 20,589,943	3.51%
District of Columbia	18	4.74%	\$ 11,321,777	1.93%
Illinois	15	3.95%	\$ 2,662,816	0.45%
Texas	14	3.68%	\$ 64,353,869	10.97%
Florida	11	2.89%	\$ 2,280,841	0.39%
Massachusetts	11	2.89%	\$ 2,426,619	0.41%
Other States (under 10 vendors each)	93	24.47%	\$ 27,485,739	4.69%
<i>Total</i>	<i>380</i>	<i>100%</i>	<i>\$586,457,864</i>	<i>100%</i>

Source: OIG-generated using FPDS data from FY 2020 to FY 2021, accessed on March 11, 2022.

Note: As discussed in Finding 3, because the SEC did not maintain transaction level details for its small business achievements, we used transaction level data from FPDS as of March 11, 2022. Therefore, SEC net obligations for FY 2017 to FY 2021 in Table 2 may be different from the amounts presented in Figure 1.

We also noted that the SEC can better leverage OMWI resources and programs (such as the SDBMS and vendor outreach events) to potentially further increase small businesses participation. Specifically, the supplier diversity data in the SDBMS could be better used to source diverse vendors for market research purposes when developing agency business requirements.¹⁹ Most of the SEC contracting officials we met with had not used the SDBMS or were unaware of its capabilities. In addition, although OA and OMWI conducted outreach events to connect with diverse businesses, OA and OMWI staff did not analyze the unique suppliers that participated, or otherwise assess the effectiveness of these events in enhancing small business contracting. OMWI officials provided a list of FY 2020 and FY 2021 vendor outreach events, along with additional data, including the socioeconomic status of the participating businesses (or entities). However, no further analysis was provided for this data, and OMWI did not conduct post-event surveys.²⁰ According to OMWI officials, although OMWI did not formally analyze the outreach event data, OMWI periodically reviews and assesses the socioeconomic status of participating businesses, and may receive feedback from businesses on the usefulness of vendor outreach events on

¹⁸ The SEC's regional offices are located in Atlanta, Georgia; Boston, Massachusetts; Chicago, Illinois; Denver, Colorado; Fort Worth, Texas; Los Angeles, California; Miami, Florida; New York, New York; Philadelphia, Pennsylvania; Salt Lake City, Utah; and San Francisco, California.

¹⁹ According to OMWI officials, in FY 2023 OMWI and the SEC's Office of Information Technology will be expanding SDBMS access by offering OA additional licenses for their contracting staff.

²⁰ OMWI officials anticipate regular supplier diversity analyses to include business category and socioeconomic status, based on a new vendor outreach day site, launched in May 2022.

an ad hoc basis. According to OA officials, during the vendor outreach events, participating businesses receive information about the federal procurement process, including potential opportunities in the SEC and in other federal agencies, which may help support the overall federal supplier base.

When we discussed our observations with agency personnel, OA officials stated that they are considering market research template changes to include the use of the SDBMS. OMWI officials stated that, although OMWI does not currently conduct any post-event surveys, they are considering engaging in post-event surveys to the extent permissible. Finally, as Finding 2 further discusses, as part of the duties of the OSDBU, OA conducted monthly goal tracking reviews and reviewed progress in specific socioeconomic areas.

(b) (5) In February 2022, OA briefed OMWI on (b) (5)

According to OMWI officials, OA (b) (5)

We also found OA could better identify and explain equity indicators, and perform further data-driven analysis beyond the agency's small business contracting goal achievements to identify barriers to equity in the SEC procurement process. Analysis of agency small business contracting data at the transaction level and the effectiveness of the vendor outreach events, as previously discussed, could assist OA in continuing its equity assessment efforts.

Agency Reports Did Not Include the SEC's Achievements of Subcontracting Goals Related to Socioeconomic Sub-groups

In addition to using the small business contracting data in FPDS and from OMWI resources and programs, the SEC could better use subcontracting data from the electronic Subcontracting Reporting System to monitor and report the SEC's achievements of small business subcontracting goals. Although we did not assess SEC subcontracting data, we found that the SEC's FY 2020 and FY 2021 *Annual Report on Small Business Participation* submissions to the SBA did not include the agency's achievements in relation to the small business subcontracting goals for the socioeconomic sub-groups identified in the Small Business Act. This occurred because the SEC goaling reports are based on FPDS data, which does not include subcontract awards, and the SEC did not have a process to track its achievement of small business subcontracting goals for the socioeconomic sub-groups.

The Small Business Act establishes minimum statutory contracting goals on a government-wide basis for small businesses and socioeconomic sub-groups, and requires each agency to annually submit to the SBA a report describing whether the agency achieved established goals, among other things. The Small

²¹ (b) (5)

Business Act further explains that, to assist in the reporting requirements, the SBA shall have access to information collected through both FPDS and the electronic Subcontracting Reporting System.

As previously stated, because the SEC is not one of the 24 agencies subject to the Chief Financial Officers Act, the SEC does not negotiate with the SBA to establish annual small business goals, including goals for each of the socioeconomic sub-groups. According to OA officials, the SEC uses the statutory goals as its goals, and annually submits to the SBA a report capturing its achievements, based on data from the *Small Business Goaling Standard Report*.²² However, these reports include only prime contract awards and do not separately address subcontract awards. When asked about the agency's process for monitoring and reporting subcontracting goals, OA officials explained that they establish subcontracting goals at the contract level as required, and they do not prepare separate analyses addressing the agency's achievement of the statutory goals for subcontract awards.

We commend the SEC for exceeding statutory small business contracting goals for prime contract awards and taking other meaningful steps to support federal small business contracting objectives. Nonetheless, without (1) analyzing its small business contracting data at the transaction level; (2) leveraging SDBMS data, as appropriate; (3) evaluating the effectiveness of vendor outreach events; and (4) monitoring and reporting subcontracting achievements for socioeconomic sub-groups, the SEC may not be able to efficiently and effectively determine whether existing processes improve small businesses' access to SEC contracts. In addition, the SEC may miss opportunities to broaden participation from underserved communities, and promote greater small business supplier diversity across business categories.

RECOMMENDATIONS, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE

To enhance the SEC's processes for encouraging small business participation in agency contracting, we recommend that the Office of Acquisitions:

Recommendation 1:

Establish processes to periodically analyze the SEC's transaction level small business contracting data and other procurement data, as appropriate, for trends to ensure the SEC's existing processes are efficiently and effectively maximizing small business participation in agency contracting, identifying and addressing barriers to contracting and procurement equity, and broadening participation from underserved communities.

Management's Response. Management concurred with the recommendation. According to the Chief Operating Officer, the SEC will implement a recurring review focusing on transaction level data for accuracy of reported information as it relates to small business actions, and a periodic review of trend information on the SEC's supplier base. Management's complete response is reprinted in Appendix IV.

²² The *Small Business Goaling Standard Report* is one of the contract data reports generated from SAM, formatted to meet government and public user needs and provide information on contract actions required to be reported by federal agencies. The data in standard reports is presented in summary form, and an individual accessing these reports can filter, sort, and drill down to access information of particular interest, which can then be exported.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

Recommendation 2:

In coordination with the Office of Minority and Women Inclusion, establish processes to periodically (a) assess the effectiveness of vendor outreach events; and (b) further analyze outreach event data to identify trends (including socioeconomic sub-group participation) and encourage targeted outreach of underrepresented groups.

Management's Response. Management concurred with the recommendation. According to the Chief Operating Officer, the Office of Acquisitions and the Office of Minority and Women Inclusion will work together to establish an ongoing process for identifying opportunities for capturing and assessing information obtained following Vendor Outreach Days to determine effectiveness, participation, and opportunities for improvement. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

Recommendation 3:

Review and update, as appropriate, acquisition guidance related to market research to ensure the guidance encourages the use of Office of Minority and Women Inclusion resources, such as supplier diversity business management system data.

Management's Response. Management concurred with the recommendation. According to the Chief Operating Officer, the Office of Acquisitions will update its market research guidance and template to more clearly encourage the use of available resources including the Office of Minority and Women Inclusion's supplier diversity business management system. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

Recommendation 4:

Establish processes to monitor and report subcontracting goal achievements for the socioeconomic sub-groups established by the Small Business Act.

Management's Response. Management concurred with the recommendation. According to the Chief Operating Officer, the SEC will conduct periodic reviews of Electronic Subcontracting Reporting System reporting at the agency level for reporting to SEC management. Starting with fiscal year 2023, the SEC will also include its small business subcontracting goal achievements in its Annual Report on Small Business Participation to the U.S. Small Business Administration. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

FINDING 2. OPPORTUNITIES EXIST TO BETTER LEVERAGE THE ROLE OF THE OSDBU

The Small Business Act and the FAR establish requirements regarding the role, responsibilities, and reporting structure of OSDBUs and OSDBU Directors. As previously stated, each federal agency with procurement powers is required to have an OSDBU responsible for advocating for small businesses in federal contracting processes. We reviewed select Small Business Act and FAR requirements applicable to OSDBUs and OSDBU Directors, and found that, generally, the SEC's OSDBU functioned as intended. Nonetheless, opportunities exist to better leverage the role of the OSDBU. Specifically, the OSDBU Director could better perform certain activities (including annually assessing aspects of the SEC's small business contracting and providing relevant training reports to appropriate authorities), and some agency contracting officials were unaware of the SEC's OSDBU. As an independent agency with limited resources, the SEC consolidated its OSDBU and related functions within the position of the Director of OA, who is assisted by the SBS. Additionally, as Finding 1 discusses, the SEC exceeded statutory small business contracting goals for prime contract awards during the period we reviewed. However, addressing all required OSDBU functions, offering additional training, and communicating the role of the OSDBU, to the maximum extent practicable, may help further ensure that small businesses, SDBs, WOSBs, SDVOSBs, and HUBZone small businesses are treated fairly at the SEC and that they have an opportunity to compete and be selected for a fair amount of agency contract dollars. Lastly, we noted that SEC's OSDBU Director reports to the SEC's Chief Operating Officer (COO) and not the SEC Chair. The OSDBU Director reporting to the COO is a matter under review by the agency's Office of the General Counsel.

The SEC's OSDBU Director Could Better Perform Certain Activities, and Some Agency Contracting Officials Were Unaware of the OSDBU

Pursuant to Public Law 95-507, the Small Business Act was amended to add section 15(k), requiring each agency with procurement powers to establish an OSDBU to foster the use of small and disadvantaged businesses as federal contractors. We reviewed select section 15(k) requirements related to bundling, training, and reporting, as well as the applicable section of the FAR, and found that, generally, the SEC's OSDBU functioned as intended.

According to section 15(k) of the Small Business Act, OSDBU Directors' statutory functions include, but are not limited to:

- identifying proposed solicitations that bundle contract requirements, and working with agency acquisitions officials to revise such solicitations where appropriate to increase the probability of small business participation;²³
- assisting small businesses in a variety of ways, including obtaining payments from agencies and finding resources for education and training on compliance with contracting regulations;

²³ Combining separate, smaller contracts into fewer, larger contracts can sometimes achieve cost savings, but exclude potential contractors which can only perform or deliver smaller requirements. When small businesses are not capable of performing the larger, consolidated contracts, this is referred to as "bundling." Agencies must justify their actions for bundled requirements.

- providing senior agency officials with advice and comments on acquisition strategies and market research;
- reviewing subcontracting plans;
- providing training to small business concerns and contract specialists, provided such training does not interfere with other OSDBU responsibilities; and
- annually submitting to the House Committee on Small Business and the Senate Committee on Small Business and Entrepreneurship a report describing the training provided, the percentage of the OSDBU Director's budget used for such training and for travel, and any failure of the agency to comply with certain sections of the Small Business Act.

In addition, FAR 19.201(c)(11) requires OSDBU Directors to conduct annual reviews of specific aspects of agency small business contracting activities, and FAR 19.201(c)(12) states that the assessment should be provided to the agency head and SBA Administrator. Specifically, the annual reviews should assess:

- the extent to which small businesses are receiving a fair share of federal procurements at the SEC;
- the adequacy of the SEC's consolidated or bundled contract documentation and justifications; and
- actions taken to mitigate the effects of the SEC's necessary and justified consolidation or bundling on small businesses.

Although the SEC's OSDBU generally functioned as intended, the OSDBU Director could better perform certain activities specified in the Small Business Act and the FAR, such as conducting annual reviews, providing and reporting training. OA officials explained that, to satisfy the reporting requirements set by FAR 19.201(c)(12), the COO has access to the report submitted to the SBA Administrator, via an SEC internal site. As this section further explains, the SEC considers the COO role as "deputy of the head of the agency."

Annual Reviews of the SEC's Small Business Contracting Activities. According to the SEC's SBS, to satisfy the FAR 19.201(c)(11) requirement for OSDBU Directors to conduct annual reviews, an annual small business goaling report is prepared and the OSDBU conducted ongoing reviews (including monthly goal tracking), reviews of progress in specific socioeconomic areas, and (on an *ad hoc* basis) separate analyses in response to specific questions or conditions. In addition, according to the SBS, no bundling information was reported to the OSDBU during the period we reviewed. However, we found that OA's annual small business goaling report and ongoing reviews could include more detail to better meet the intent of the annual review requirements established in FAR 19.201(c)(11), specifically with respect to addressing the extent to which small businesses are receiving a fair share of SEC procurements.

For example, OA's annual small business goaling report generally related to the agency's progress in meeting the statutory small business goals for prime contract awards (as Finding 1 discusses). These reports and ongoing reviews did not include OA's analysis of the agency's subcontracts and how

subcontracts contributed to the goal achievement for the various socioeconomic sub-groups of SDB, WOSB, SDVOSB, and HUBZone small businesses.

Furthermore, statutory small business goal achievements can include businesses that have naturally outgrown their size status, and therefore may not be completely representative of an agency's current small business pool. For example, when reviewing the SEC's "Top 10" small business vendors for FY 2020 and FY 2021 (as Finding 1 discusses), we noted that one business for FY 2020 and two businesses for FY 2021 were designated as other than small businesses at the end of the respective reporting periods.²⁴ In addition, although OA staff did not identify any contracts that required justifications for consolidation or bundling within our scope period, the agency uses enterprise-wide vehicles and long-term contracts to streamline procurement. Indeed, our analysis of the agency's "Top 10" small business vendors in FY 2020 and FY 2021 showed all but one were SEC enterprise-wide contract holders. Even when awarded to small businesses, these contract vehicles can take the place of prior contracts awarded to a greater number of small businesses. (b) (5)

Although OA officials explained that they performed ongoing reviews for one of their enterprise-wide vehicle contractor pools to determine when to solicit more small business vendors, OA did not document these reviews and the OSDBU did not mention these actions in the annual small business goaling reports.

Finally, OA's annual small business goaling report and ongoing reviews did not include additional data that may help provide insight on procurement equity, such as the unique number of small businesses the SEC contracts with, or the various industries or locations receiving SEC awards, as Finding 1 discusses.

Providing Training and Submitting Training

Reports. Section 15(k)(13) of the Small Business Act states OSDBU Directors "may provide training to small business concerns and contract specialists, except that such training may only be provided to the extent that the training does not interfere with the Director carrying out other responsibilities under this subsection." During FY 2020 or FY 2021, the OSDBU Director did not provide small business-specific training to SEC contracting officials.

*Small Business Act section 15(k)(16)
requires OSDBU Directors to submit
annual reports describing training
provided*

Additionally, section 15(k)(16) of the Small Business Act states OSDBU Directors "shall submit, each fiscal year, to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report."²⁶ This report is expected to include a description of training provided by the OSDBU Director under section 15(k)(13), the percentage of budget

²⁴ This may occur because contractors generally do not have to rerepresent size status under long term contracts until before the end of the fifth contract year; therefore, the small business size status in FPDS for award obligations may not be representative of the actual size of contractors that have grown.

²⁵ (b) (5)

²⁶ The SBA facilitates this reporting by compiling agency reports on training and travel costs each fiscal year in a report to Congress.

used for travel and training, and any failure of the agency to comply with certain sections of the Small Business Act. We found that OA officials did not submit a report describing any OSDBU provided training, and the related budget used for training and travel for each of the FYs reviewed, as required by section 15(k)(16). OA officials explained that the SEC provides information and resources to small businesses through monthly vendor outreach days, engagement at small business conferences and industry days, ad hoc informational sessions via a number of enterprise agreements, and through the SEC's public website. OA officials also stated that training opportunities and information is shared with contracting staff, including recent topical developments in the area of small business, via various methods, including (1) SBA's First Wednesday training Series, (2) OA "roundtables,"²⁷ (3) small business review process and sourcing discussions, and (4) various training resources available for contracting officials.

Some of the 17 agency contracting officials we interviewed told us that they received sufficient small business training through either required trainings,²⁸ OA "roundtables," or ad-hoc training they attended based on their work assignments. However, almost half of the contracting officials interviewed (8 of 17) expressed an interest in additional small business training, one official noting that the SBA website and FAR requirements do not always align and SBA guidance is fast-changing. Additionally, 12 of 17 agency contracting officials stated that SEC program officials could also benefit from training, specifically to clarify (1) OA's goal in supporting small businesses to the maximum extent practicable, and (2) documentation requirements and program officials' input in researching and awarding small business contracts. Moreover, from their questionnaire responses, 6 out of 11 program officials expressed an interest or said it would be helpful to receive additional training to gain further understanding of the acquisition process and/or contracting with small businesses. Lastly, although providing such training is in the purview of the OSDBU, 7 of the 17 agency contracting officials were unaware of the SEC's OSDBU.

The SEC Consolidated OSDBU Functions Within the Director of OA Position

As an independent agency with limited resources, the SEC consolidated its OSDBU and related functions within the position of the Director of OA,²⁹ who is assisted by the SBS. We acknowledge that performing comprehensive reviews and providing training, in addition to other important priorities and activities, is dependent on available resources. Additionally, as Finding 1 discusses, the SEC exceeded statutory small business contracting goals during the period we reviewed. However, addressing all required OSDBU functions, offering additional training, and communicating the role of the OSDBU, to the maximum extent practicable, may help further ensure that small businesses, SDBs, WOSBs, SDVOSBs, and HUBZone small businesses are treated fairly at the SEC and that they have an opportunity to compete and be selected for agency contract dollars.

²⁷ According to SEC Office of Acquisitions Procedures, the purpose of OA's roundtable is to provide a forum for all SEC stakeholders to "discuss and share knowledge and best practices, discuss and plan various aspects of projects, ideas, or business models that may lead to acquisitions, and capture lessons learned for applied improvements." The procedures note that this forum is not an approval process, and it typically meets each Wednesday (with the first Wednesday of the month serving as a mandatory OA staff meeting).

²⁸ To maintain federal acquisition certifications in contracting, contracting professionals are required to earn 80 continuous learning points every 2 years.

²⁹ Pursuant to 41 U.S.C. § 1702, the Director of OA has also been designated the role of Senior Procurement Executive.

Reporting Structure of the SEC's OSDBU

The Small Business Act provides that the Director of OSDBU “shall be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, the head of such agency or to the deputy of such head.” Because the Director of OA has been designated as the OSDBU Director, the position reports to the agency's COO, and not the SEC Chair. According to OA officials, this designation was made around March 2014 based on discussions from 2013. During these discussions, management assessed the following:

- The SEC's COO role can be considered the “deputy of the head of the agency” (and, therefore, meet the OSDBU reporting requirement).
- The Director of OA was in the best position to execute supplier sourcing as OSDBU Director.

OA officials informed us that (1) the SEC's Office of the General Counsel is analyzing whether adjustments are needed to current COO designations, including those related to the OSDBU, and will then propose any needed changes for the SEC Chair's consideration; and (2) the SEC is researching how other agencies have complied with section 15(k) requirements, including those related to reporting lines.³⁰ There is no known timeframe for completing either of these projects.

RECOMMENDATIONS, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE

To better leverage the role of the Office of Small and Disadvantaged Business Utilization, we recommend that the Office of Acquisitions:

Recommendation 5:

In coordination with the Office of Small and Disadvantaged Business Utilization Director, address all required Office of Small and Disadvantaged Business Utilization functions, such as reporting and training, to the extent practicable, and clearly communicate the role of the Office of Small and Disadvantaged Business Utilization to contracting officials.

Management's Response. Management concurred with the recommendation. According to the Chief Operating Officer, the Office of Acquisitions will conduct training for staff on specific areas informed by prior year activity as part of our annual review of the SEC's small business program. The Office of Acquisitions will also increase awareness of the role and function of the Office of Small and Disadvantaged Business Utilization by sharing additional information on its SEC Supplier Diversity SharePoint site accessible by SEC contracting officials. Lastly, the SEC, in coordination with the U.S. Small Business Administration, will plan to submit an annual report on training in accordance with

³⁰ GAO was asked to review compliance with selected 15(k) requirements and, in response, examined, among other things, the extent to which selected federal agencies demonstrated compliance with 13 requirements for OSDBUs, including the reporting requirement for OSDBU Directors. GAO found that demonstrated compliance with selected section 15(k) requirements for OSDBUs varied across the 24 agencies GAO surveyed. See U.S. Government Accountability Office, *SMALL BUSINESS CONTRACTING Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocate* (GAO-17-675; August 25, 2017).

section 15(k)(16) of the Small Business Act. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. We are pleased that management concurred with the recommendation. To fully meet the intent, management should address all required Office of Small and Disadvantaged Business Utilization functions, discussed in section 15(k) of the Small Business Act and in section 19.201 of the Federal Acquisition Regulation. We will review the agency's corrective action plan when management submits it to the OIG to determine whether the planned corrective action is fully responsive to the recommendation.

To clarify the reporting structure of the Office of Small and Disadvantaged Business Utilization, we recommend that the Office of the General Counsel:

Recommendation 6:

Finalize its assessment of whether adjustments are needed to Chief Operating Officer designations related to the Office of Small and Disadvantaged Business Utilization, and coordinate with the Office of Acquisitions to implement any changes resulting from its assessment.

Management's Response. Management concurred with the recommendation. According to the Chief Operating Officer, the Office of the General Counsel will finalize its review of the Chief Operating Officer designations related to the Office of Small and Disadvantaged Business Utilization, assess whether any changes are needed, and coordinate with the Office of Acquisitions on any such changes. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

FINDING 3. OA COULD MAINTAIN BETTER RECORDS RELATED TO THE SEC'S SMALL BUSINESS CONTRACTING

Federal guidance and standards, including those specific to government contract files, emphasize the importance of properly managing and maintaining documents and records. Overall, OA could maintain better records and documentation to support and enhance the accuracy of the SEC's reported small business awards, and improve the completeness of the SEC's contract files. Specifically, OA did not maintain sufficient, transaction level data to support its small business reported achievements submitted to the SBA in FY 2020 and FY 2021, or identify some inaccuracies in SEC reported small business information in FPDS. In addition, OA did not consistently include documents describing the acquisition history and demonstrating contracting officials' validation of vendors' small business size status in the SEC's contract files (that is, in eFile).

As a result, OA may not be able to identify, explain, or correct discrepancies between the SEC's *Annual Report on Small Business Participation* submitted to the SBA and other SEC reports containing small business contracting information, or inaccuracies in the SEC's small business contracting data. Such inaccuracies potentially decrease the reliability of the reported information and, in some cases, may have impacted the SEC's reported small business numbers during the period we reviewed, but did not significantly impact the SEC's achievement of statutory small business contracting goals. Additionally, maintaining sufficient, transaction level reports would allow the agency to analyze small business contracting data, as Finding 1 discusses. Finally, incomplete contract files or inconsistent documentation in contract files increases the risk that key processes and regulations may not be followed.

OA Did Not Maintain Transaction Level Data, and Some Reported Information Was Inaccurate

The U.S. Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government* instructs management to properly manage and maintain documentation and "clearly document internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination."³¹ In addition, OMB has stated that complete, accurate, and timely federal procurement data are essential for ensuring that the government has the right information when planning and awarding contracts, and that the public has reliable data to track how its tax dollars are being spent.³² Also, the FAR Subpart 4.6, *Contract Reporting*, prescribes the uniform reporting requirements for FPDS. According to the FAR, the Senior Procurement Executive in coordination with the head of the contracting activity³³ is responsible for developing and monitoring a

³¹ GAO-14-704G; Principle 10, *Design Control Activities*. Control activities are the policies, procedures, techniques, and mechanisms that enforce management's directives to achieve the entity's objectives and address related risks. "Appropriate documentation of transactions and internal control" is an example of a control activity.

³² Office of Management and Budget, *Improving Federal Procurement Data Quality - Guidance for Annual Verification and Validation* (May 31, 2011).

³³ As previously stated, at the SEC, the Senior Procurement Executive and head of the contracting activity positions are designated to the Director of OA.

process to ensure timely and accurate reporting of contractual actions to FPDS, while the contracting officer is responsible for the completion and accuracy of the individual contract action report.

Each year, in accordance with policy issued by the Office of Federal Procurement Policy on small business procurement goals,³⁴ the SEC submits its *Annual Report on Small Business Participation* to the SBA, which includes information about the SEC's small business prime contract awards. The SEC's FY 2020 and FY 2021 submissions to the SBA reported a total of about \$302.8 million and \$301.6 million in small business prime contract awards, respectively. However, OA did not maintain transaction level data to support its annual submissions. Furthermore, based on our review of FY 2020 and FY 2021 transaction level SEC small business contracting data from FPDS, we identified some inaccuracies in the data, although these inaccuracies did not significantly impact the SEC's reported small business achievements.

OA Did Not Maintain Transaction Level Data To Support Agency Small Business Achievements.

When we requested supporting data for the agency's FY 2020 and FY 2021 *Annual Report on Small Business Participation* submissions, OA provided a summary level *Small Business Goaling Standard Report* showing the agency's total number of small business awards and dollars for the various socioeconomic sub-groups for FY 2021. OA could not provide transaction level information to support the reported small business awards for FY 2020 and FY 2021. Maintaining transaction level data, such as detailed reports with information on individual contract actions, would allow the agency to better analyze small business contracting data, as Finding 1 discusses. Additionally, without such transaction level data, OA may not be able to explain or correct discrepancies between the SEC's *Annual Report on Small Business Participation* submitted to the SBA and other SEC reports containing small business contracting information. For example, we noticed differences in reconciling the information submitted to the SBA for FY 2020 and FY 2021, and information covering the same period from (1) FPDS *Small Business Goaling Static Reports*,³⁵ (2) FPDS *Small Business Goaling Standard Reports* we generated, (3) SEC FPDS annual verification and validation reviews,³⁶ and (4) OA annual performance reports. Specifically, we identified:

1. a difference (totaling about \$37,200 in FY 2020 and about \$3,223,480 in FY 2021) between the information submitted to the SBA and the SEC's reported small business actions and obligations in the FPDS *Small Business Goaling Static Reports* covering the same period;
2. a difference in obligation amounts (totaling about \$17,481,256 for FY 2020 and about \$3,223,480 for FY 2021) between the information submitted to the SBA and the information covering the

³⁴ OMB Office of Federal Procurement Policy Letter 99-1 on Small Business Procurement Goals (October 8, 1999). According to this policy letter, at the end of each fiscal year, each agency must submit a narrative report to SBA analyzing its achievements and any failures to achieve its small business goals for the year.

³⁵ The *Small Business Goaling Static Report* is one of the contract data reports available through SAM that is prepared on a fiscal year basis for the public to aggregate data across the federal government. Specifically, the *Small Business Goaling Static Report* is a department-level report that displays small business data for a specified date range by funding/contracting agency. It includes the SEC's small business goaling achievements at a summary level.

³⁶ FAR 4.604, *Responsibilities*, requires agencies to certify their previous fiscal year data for accuracy and completeness. Additionally, OMB Memorandum *Improving Federal Procurement Data Quality - Guidance for Annual Verification and Validation* (May 31, 2011) outlines the steps agencies are expected to take to ensure that FPDS data are reported correctly in accordance with FAR 4.604. According to OA, staff completes FPDS annual verification and validation reviews to support these requirements.

same period from FPDS *Small Business Standard Reports* we generated (as well as differences in various socioeconomic sub-group actions and obligations in the FY 2020 reports);

3. a difference of about \$185,043 between the information submitted to the SBA for FY 2021, and actions and obligations included in the agency's FPDS verification and validation report for FY 2021; and
4. a difference in obligation amounts (totaling about \$15,569,353 for FY 2020 and about \$2,314,736 for FY 2021) between the information submitted to the SBA and the information in the SEC's annual performance reports covering the same period.

Some SEC Small Business Contracting Data Were Inaccurate. Although the SEC employs automated tools to check the accuracy of its contracting data, performs business clearance reviews,³⁷ and annually certifies its FPDS data as accurate and complete,³⁸ we noted some inaccuracies in the SEC reported small business contracting amounts when (1) analyzing SEC small business contracting data in FPDS; and (2) testing a judgmental sample of 29 small business contract files. Specifically, as part of our data reliability assessment, we reviewed the transaction level FPDS *Small Business Goaling Standard Reports* for FY 2020 and FY 2021 (obtained in March 2022) to determine the accuracy and completeness of the data. Based on our review of fields with blanks and potential anomalies, and by performing comparison and logical testing of key FPDS fields related to calculations of small business goals, we identified some inaccuracies in the population of FY 2020 and FY 2021 SEC FPDS data we reviewed. Furthermore, we identified some inaccuracies in our population of FPDS data based on our testing of selected SEC contract files, such as review of SAM representations and certifications, FPDS contract action reports, and other contractor eligibility documentation. None of the inaccuracies, described below, significantly impacted the SEC's overall small business achievements in those 2 years. However, the lack of transaction level SEC contracting data and some supporting contract file documents made it challenging to verify whether the inaccuracies impacted the SEC's goaling achievements.

Inaccuracies Related to Vendor Information. We identified the following inaccuracies in contract action information, such as contractor size and socioeconomic status:

- Twenty-five contract actions totaling about \$5 million associated with six vendors that were small businesses were incorrectly labeled as other than small businesses, which may have resulted in an underreporting of the SEC's small business achievements for these actions.
- Seventeen contract actions valued at \$10.4 million had the wrong vendor and associated business type information listed. Therefore, the SEC may have received credit under the WOSB goal, when the credit should have been counted as SDVOSB.
- Two contract actions valued at \$3.2 million had a contractor's size status incorrectly labeled as a small business, even after the vendor rerepresented itself as an other than small business. As the

³⁷ According to OA's FPDS verification and validation reports, OA instituted the business clearance review process on October 1, 2018. The process applies to most contract actions and involves a Team Leader review of the FPDS data, with any errors found corrected by the user.

³⁸ In its FPDS verification and validation reports for FY 2020 and FY 2021, the SEC reported accuracy rates of 99.0 percent and 99.5 percent, respectively.

change was made in January 2022, before the government-wide small business goaling data were reported the following month, these inaccuracies may have slightly affected the SEC's FY 2021 small business achievements.

Inaccuracies Related to Set-Aside Information. We identified contract actions that contained the following inaccuracies related to set-aside information, such as local area set-asides or type of set-asides related to the 8(a) program:

- Three contract actions associated with a deobligation amounting to \$37,200 were mislabeled as a local area set-aside in the FY 2020 small business goaling report, which may have led to an erroneous doubling of this amount based on the report's calculation methodology.
- Sixteen contract actions totaling \$2.5 million were not labeled as 8(a) program set-asides, though they should have been. While not impacting any statutory small business contract goal, this may have resulted in an underreporting of these actions for the SEC's 8(a) program achievements included in the annual FPDS *Small Business Goaling Static Reports* publicly available through SAM.

Inaccuracies Related to Continued Use of a Certain Contract Type. We identified contract actions that contained the following inaccuracies related to the continued use of a certain contract type:

- Three contract actions valued at \$7.9 million were awarded to an other than small business that the SEC claimed as a small business. This occurred because the SEC continued to use a Flexible Ordering Agreement,³⁹ which is a type of contract vehicle that GAO found in 2015 to be inconsistent with Federal contracting requirements. By continuing to place orders under this contract type in 2019 and 2020, after the contractor had rerepresented itself as other than small, the agency should not have received small business credit for related actions in its achievement reports.

As a result, the agency's FY 2020 small business goaling achievements totaling about \$302.7 million (or 58.2 percent of the agency's awards), could potentially be overstated by about \$6.8 million (totaling 56.9 percent of the agency's awards after recalculation), for a difference of about 1.3 percent. In addition, the FY 2021 goaling achievements totaling about \$304.8 million (or 55.4 percent of the agency's awards) could potentially be understated by about \$0.6 million (totaling 55.5 percent of the agency's awards after recalculation), for a difference of about 0.1 percent.⁴⁰ Although the inaccuracies found did not significantly impact the SEC's achievement of statutory small business contracting goals, inaccuracies in the SEC's small business contracting information potentially decrease the reliability of the FPDS data used to report the agency's small business goaling achievements.

³⁹ GAO describes Flexible Ordering Agreements as a type of single, second-tier indefinite-delivery, indefinite-quantity instrument, under which a contracting agency will place subsequent task orders, without providing the government-wide acquisition contract holders a subsequent, fair opportunity to compete for those task orders.

⁴⁰ Based on the SEC's achievements in the FY 2020 and FY 2021 *FPDS Small Business Goaling Static Reports* available through SAM. Overstated and understated percentages were calculated using the difference between the SEC small business goaling dollars (about 58.2 percent in FY 2020 and about 55.4 percent in FY 2021) and the OIG's re-calculated SEC small business goaling dollars after adjusting for the noted inaccuracies (about 56.9 percent in FY 2020 and 55.5 percent in FY 2021).

OA Could Improve the Completeness of Contract Files for Small Business Awards

OA maintains contracting records or contract files (including documentation to support small business awards) in eFile. FAR Subpart 4.8, *Government Contract Files*, states the documentation in the files shall be sufficient to constitute a complete history of the transaction for the purpose of providing a complete background as a basis for informed decisions in the acquisition process, supporting actions taken, and providing information for reviews, among others. The FAR lists contents that contract files normally contain, to include acquisition planning information and other presolicitation documents, set-aside decisions with the type and extent of market research conducted, and the contractor's representations and certifications in SAM (with the date of verification by the contracting officer).⁴¹ Regarding acquisition planning, the FAR⁴² states that, as part of the acquisition plan's background and objectives, planners should include the statement of need, in which the technical and contractual history of the acquisition should be summarized. It also states that, when including information about sources, the impact of any consolidation or bundling that might affect participation of small businesses in the acquisition should be considered. Regarding contractor eligibility for small business set-asides, FAR 19.301-1, *Representation by the offeror*, states that an offeror is required to represent its size and socioeconomic status at the time of initial offer.⁴³

We reviewed 29 contract files for compliance with federal and SEC requirements to encourage small business participation in agency contracting, including 8 contract actions associated with indefinite delivery vehicles, or "parent contracts."⁴⁴ We found that contracting officials did not consistently describe the acquisition history and maintain documentation demonstrating their validation of vendors' small business size status. Information regarding acquisition history helps to support whether a contract will involve consolidation and/or bundling, which require additional actions by the agency, in accordance with the FAR acquisition planning requirements.⁴⁵ Additionally, verification of a business's size status during pre-award ensures vendors are eligible for any small business set-asides and that data are accurately reported in FPDS. Upon review of contract files, and based on interviews with contracting officials, we noticed there

Contracting officials did not consistently describe the acquisition history and maintain documentation demonstrating their validation of vendors' small business size status

⁴¹ FAR 4.803, *Contents of contract files*, and FAR Subpart 4.12, *Representations and Certifications*, 4.1201(c).

⁴² FAR 7.105, *Contents of written acquisition plans*.

⁴³ For HubZone awards, eligibility is established both at the time of initial offer and award. The FAR also states that the contracting officer shall accept the offeror's representation unless there is a challenge to the small business representation or the contracting officer has reason to question the representation.

⁴⁴ An indefinite delivery vehicle is a contract or agreement to one or more entities under which individual orders or purchases can be placed to facilitate the delivery of supplies or services. Indefinite delivery vehicles can include government-wide acquisitions, federal supply schedules, blanket purchase agreements, and multi-agency contracts, among others. See Appendix I for more details on our contract file sample selection.

⁴⁵ FAR 7.107, *Additional requirements for acquisitions involving consolidation, bundling, or substantial bundling*.

is no required or consistent way to document (1) details about acquisition history in the planning documents, or (2) that the contractor's business size status was validated with the appropriate source during pre-award.

Acquisition History. Contracting officials mentioned capturing acquisition history in the market research, acquisition plan, award memorandum, and/or the Small Business Coordination Record (SBCR).⁴⁶ Although we found these planning documents collectively supported that small business concerns were considered as prospective sources, they could provide more detail regarding the acquisition history, such as background regarding whether the requirement is new or replaces one or more previous contracts, any prior source(s) of the requirement to include size status of vendors, and whether set-asides were used. For example, in multiple contracts we reviewed, the planning documents noted two or more incumbent vendors, or otherwise used terms that suggested consolidation of requirements, without further explanation. In one case, the term "consolidating requirements" was in the planning documents to describe the requirement, yet OA confirmed it was not a consolidated contract. More detailed acquisition history in the files and appropriate use of terms could have better clarified why these requirements did not meet the FAR definitions of consolidated and/or bundled requirements.⁴⁷

We determined the OA acquisition planning guidance and templates used contributed to this issue, as they did not clarify the level of details expected in the acquisition history, such as information regarding prior vendors, size status, and impacts of consolidation/bundling that may affect small business participation. Contracting officials confirmed that there were templates available for use, but the level of details maintained describing the acquisition history is at the discretion of each contracting official. SEC Office of Acquisitions Procedures lists some considerations for acquisition planning and types of information required based on dollar thresholds,⁴⁸ but did not discuss acquisition history or consolidation/bundling of requirements. We also noted that the acquisition plan template did not have a separate section for explaining details about the acquisition history. Instead, one part of the template (Part A) included some check boxes to mark whether the requirement involves bundling or can be consolidated, without any further detail necessary. Another optional part of the template (Part B) included an instruction document that explains that the requirement should be summarized, along with a contractual history of the acquisition, under a "Statement of Need" section, rather than addressing acquisition history in its own section. Accordingly, when reviewing the contract files that included this optional template, we found this section generally contained a description of the requirement, but not the contractual history. The SBCR template used during our scope period also had a section on the

⁴⁶ OA contracting officials use this form to document small business and socio-economic considerations during acquisition planning and for coordination with the SBS. All acquisitions in the scope of our audit required an SBCR. However, as of March 2022, the SBCR was no longer required for small business set-asides.

⁴⁷ FAR 2.101 defines "Consolidation or consolidated requirement" as a solicitation for a single contract, a multiple-award contract, a task order, or a delivery order to satisfy two or more requirements of the federal agency for supplies or services that have been provided to or performed under two or more separate contracts (even small business contracts), each of which was lower in cost than the total cost of the contract for which offers are solicited. "Bundling" is a subset of consolidation that combines two or more requirements for supplies or services, previously provided or performed under separate smaller contracts (performed or suitable for small business concerns) into a solicitation for a single contract, a multiple-award contract, or a task or delivery order that is likely to be unsuitable for award to a small business concern because of a number of factors listed in the FAR.

⁴⁸ Regarding contracts for more than \$250,000, the SEC Office of Acquisitions Procedures states that the acquisition plan, Part A, is required whereas Part B is optional, at the discretion of the contracting officer or management. For contracts at or less than \$250,000, information in the acquisition plan, Parts A and B, is optional.

acquisition history that included check marks to indicate previous set-aside types and small business offers; however, the SBCR template did not require details on the number of previous contracts or specific vendor information. Additionally, OA has changed its requirements for the SBCR and currently requires only an SBCR for acquisitions not planned as small business awards, meaning acquisition history information is no longer available in an SBCR for prospective small business awards.

Maintaining incomplete contract files (or inconsistent documentation in contract files) increases the risk that key processes and regulations may not be followed. Also, the agency may not be considering how its awards, even those set aside for small businesses, could be impacting the overall number of opportunities available for small businesses at the SEC. In addition, without including details of the acquisition history during planning, the SEC may not be reporting FPDS fields on consolidation and/or bundling of requirements accurately. In the universe of FY 2020 and FY 2021 SEC contract actions, we observed four instances of actions mislabeled as consolidated. During the course of our audit, OA took steps to correct the mislabeled actions. The mislabeled actions suggest the need for clearer guidance on consistently documenting an acquisition's history to include details necessary to understand any impacts to small businesses, such as whether requirements involve consolidation and/or bundling. OA officials informed us that they anticipate making updates to the acquisition plan, SBCR, and market research templates to be clearer and easier to use in FY 2023.

Business Size Status. We reviewed 29 small business contracts and, for 5 contracts and 3 orders, we could not locate in the corresponding contract file documentation of vendor business size status from the appropriate source. There is no OA requirement for consistently documenting that contracting officials validated a vendor's business size status and, therefore, small business contractor eligibility. OA officials stated OA relies on the representations made by the offeror, as required by FAR 19.301-1. Moreover, some contracting officials explained that they may pull a contractor's representations and certifications from SAM (though the format of SAM documents we found in eFile varied), and, although some contracting officials captured business size information, others did not. We noted that SEC Office of Acquisitions Procedures states that contracting officers may use a consolidated Contractor Responsibility Assessment report that contains, among other things, contractor business size status and, therefore, may be helpful to support small business contractor eligibility.⁴⁹ However, this document was not required, and contracting officials did not consistently use it to document their validation of a vendor's business size status.

Furthermore, for orders placed on interagency indefinite-delivery contracts, such as federal supply schedules and government-wide acquisition contracts (GWACs), the FAR states that contracting officers should rely on small business representations at the contract level.⁵⁰ Accordingly, OA officials and contracting officials responsible for interagency acquisitions also stated that they rely on other agencies'

⁴⁹ Around October 2019, OA began using the Contractor Responsibility Assessment report, which consolidates vendor representations and certifications, small business certifications, recent award history, past performance data, and other information from systems such as FPDS, SAM, and the GSA eLibrary.

⁵⁰ FAR 8.405-5(b) and 16.505(b)(9), respectively. The federal supply schedule program, also known as the GSA schedule or multiple award schedules program, provides federal agencies with a simplified process for obtaining commercial supplies and services at prices associated with volume buying. GWACs are designed exclusively to streamline federal procurement of information technology.

contracting officials to validate vendors' business size status. As applicable to the contracts we reviewed, the size standards for GSA schedule contracts are reflected in the GSA eLibrary (not SAM), and for GWACs on the various contract websites. However, in some cases, we could not locate evidence in the file that the contracting officials validated vendors' business size or socioeconomic status from these sources, and the size and/or socioeconomic status of the vendors reflected on the websites did not align with what the SEC listed in FPDS. Capturing this information from the proper sources during pre-award would ensure that contracting officials could follow up on any unexpected discrepancies before award and, as necessary, add any other relevant information to the files to support the contract data.

If the validation of small businesses' eligibility is not properly documented before an action obligation, SEC contracting officials may not be able to accurately report small business awards. Maintaining the documentation used by contracting officers to validate vendor business size status would also support the accuracy of small business information reported in FPDS.

RECOMMENDATIONS, MANAGEMENT'S RESPONSE, AND EVALUATION OF MANAGEMENT'S RESPONSE

To ensure the SEC accurately reports small business awards and consistently maintains reliable small business contracting data, we recommend that the Office of Acquisitions:

Recommendation 7:

Implement a process to ensure the SEC's small business reported achievements submitted to the U.S. Small Business Administration are supported (or traceable to detailed transaction level contracting data).

Management's Response. Management concurred with the recommendation. According to the Chief Operating Officer, the SEC will capture and retain transactional level data from SAM.gov reporting that supports both its monthly small business trend data as well as its annually reported small business achievements to the U.S. Small Business Administration. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

Recommendation 8:

Review and update, as appropriate, its acquisition guidance and templates to ensure that contracting officials consistently document in contract files (a) the acquisition history (to include details regarding the contractual history), and (b) the awardee's business size status.

Management's Response. Management concurred with the recommendation. According to the Chief Operating Officer, the Office of Acquisitions is updating its acquisition plan template and related guidance to better capture relevant acquisition history and to promote consistency in documenting the awardee's business size status. Management's complete response is reprinted in Appendix IV.

OIG's Evaluation of Management's Response. Management's proposed actions are responsive. The recommendation will be closed upon completion and verification of the proposed actions.

Appendix I. Scope and Methodology

We conducted this performance audit from March 2022 through February 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.

Objectives and Scope

Our overall objectives were to (1) assess the SEC's processes for encouraging small business participation in agency contracting, in accordance with federal laws and regulations; and (2) determine whether, in FY 2020 and FY 2021, the SEC accurately reported small business awards.

The scope period for specific tests performed included small business contracts the SEC funded in FY 2020 and FY 2021 (that is, October 1, 2019, through September 30, 2021). We focused on prime contracts made directly between the SEC and small businesses, and did not assess subcontracts between prime contractors and small businesses.

Methodology

To address our objectives, among other work performed, we:

- interviewed SEC staff from OA and OMWI, including OA management, the SBS, 17 contracting officials (including contracting officers and contract specialists), and the Supplier Diversity Officer;
- sent written questionnaires to 14 judgmentally selected program officials from SEC divisions and offices (including the SEC's Division of Trading and Markets, Division of Examinations, Division of Enforcement, Office of Information Technology, and Office of Credit Ratings), and received responses from 11 program officials (or about 79 percent of those we contacted);
- reviewed the Small Business Act, applicable federal regulations, and OA policies and procedures addressing small business contracting;
- obtained access to and an understanding of OA's eFile system;
- performed a walkthrough of OMWI's SDBMS; and
- attended a vendor outreach day.

We also performed tests and assessments using judgmental or nonstatistical samples of FPDS data, as described below.

- We selected a judgmental sample of 29 SEC contracts (totaling about \$372.2 million in obligations from a population of small business contract actions totaling about \$586.5 million [or about 63 percent]), awarded to 26 distinct contractors identified as small business concerns

during our scope period.⁵¹ We reviewed the associated contract files for attributes related to encouraging small business participation, primarily during pre-award, based on the FAR and OA internal policies and procedures.

- We selected a judgmental sample of five SEC contracts (totaling about \$1.7 million in obligations from a population totaling about \$484.1 million [or about 0.3 percent]) awarded to contractors identified as other than small businesses, and assessed whether each contract file demonstrated that the agency considered small businesses, as appropriate, during its market research.

In addition, we analyzed transaction level SEC contracting data included in FPDS small business goaling reports for FY 2017 through FY 2021 to identify trends in the agency's vendor pool, such as the number of vendors, location of small business vendors, and top vendors receiving small business awards each year.

Internal Controls

We identified and assessed internal controls, applicable internal control components, and underlying principles significant to our objectives, as described below.

Control Environment. We assessed the control environment established by OA by reviewing its organizational structure and interviewing staff responsible for reviewing and maintaining OA's internal control documentation, including OA's Director and Assistant Director. As previously stated, we also reviewed relevant federal requirements and OA policies and procedures.

Risk Assessment. We obtained and reviewed OA's FY 2020 and FY 2021 management self-assessment and risk control matrices to identify risks and controls related to small business contracting. OA identified risks applicable to our objective, which we considered as we planned and performed our work. Specifically, OA stated that, "If procurement opportunities are not posted as required; then competition can be affected, industry participation in meeting Government requirements can be decreased, and small business concerns may be disregarded."

We also interviewed OA personnel, including contracting officials, to identify risks inherent to small business contracting, and received from OA management responses explaining how each risk was mitigated.

Control Activities. We reviewed federal laws, regulations, and guidance, and SEC policies, procedures, administrative regulations, and guidance related to the SEC's small business contracting processes and data accuracy. We also inquired about applicable control activities in written correspondence to OA personnel and during interviews. Control activities identified included monitoring and reporting of the SEC's small business goaling achievements, use of OA templates, a contract business clearance review, automated tools to validate contract data, and quarterly and annual reviews of FPDS data. Based on the work performed, we determined that the SEC can make better use of available data to identify and respond to trends in small business contracting activities, as well as establish processes to monitor and

⁵¹ There were 377 distinct contractors identified as small business concerns in our population.

report subcontracting data, as Finding 1 discusses. In addition, OA could maintain better records to support and enhance the accuracy of the SEC's reported small business awards, and improve the completeness of contract files, as Finding 3 discusses.

Information and Communication. OA communicates to SEC staff its policies and procedures related to contract administration through the SEC internal site, OA "roundtables," and various training resources available to contracting officials. OA and OMWI also communicate to vendors opportunities and events via the SEC's public website, vendor outreach days, and the SDBMS. However, as Finding 1 discusses, the SEC could better leverage OMWI resources and programs (such as the SDBMS and vendor outreach events) to potentially further increase small business participation. In addition, as Finding 2 discusses, we determined that opportunities exist for OA to better communicate to agency contracting and program officials the role of the OSDBU and small business-related training opportunities.

Monitoring. We reviewed OA's internal control documentation and the SEC's acquisition operating procedures. We also discussed with OA management and the SBS roles and responsibilities for monitoring the SEC's small business goaling achievements through monthly, annual, and/or ad hoc reviews. As Finding 1 discusses, we determined that these OA monitoring activities focus on summary level, SEC prime contract award data in relation to statutory small business contracting goals, and the SEC can make better use of transaction level data to ensure the agency maximizes small business participation in its contracting, especially from a diverse range of suppliers.

Based on the work performed, as noted in this report, we identified areas of potential improvement related to internal control deficiencies that were significant within the context of our audit objectives. Our recommendations, if implemented, should help the SEC maximize opportunities for small business participation in agency contracting and enhance small business contract reporting and recordkeeping.

Data Reliability

GAO's *Assessing Data Reliability* (GAO-20-283G, December 2019) states reliability of data means that data are applicable for audit purpose and are sufficiently complete and accurate. Data primarily pertains to information that is entered, processed, or maintained in a data system and is generally organized in, or derived from, structured computer files. Furthermore, GAO-20-283G defines "applicability for audit purpose," "completeness," and "accuracy" as follows:

"Applicability for audit purpose" refers to whether the data, as collected, are valid measures of the underlying concepts being addressed in the audit's research objectives.

"Completeness" refers to the extent that relevant data records and fields are present and sufficiently populated.

"Accuracy" refers to the extent that recorded data reflect the actual underlying information.

To address our objectives, we relied on computer-processed data from FPDS. To assess the reliability of the data we:

- interviewed knowledgeable OA personnel responsible for (a) ensuring the accuracy of the SEC's contracting data in FPDS; and (b) generating the small business goaling reports;

- reviewed relevant data dictionaries and user manuals, as well as SEC annual FPDS verification and validation reports;
- tested the FPDS small business goaling standard report data generated on March 11, 2022, to determine whether key fields included duplicate entries, potential anomalies, and/or missing data, and reviewed the logical relationships of key fields to identify potential inaccuracies;
- compared the goaling numbers from the SEC's *Annual Report on Small Business Participation* submission to SBA to FPDS small business goaling data and other SEC reports with procurement data; and
- tested a judgmental sample⁵² of 52 contract actions from FPDS, tracing information in key fields related to the small business goaling reports to source documentation to verify FPDS information accuracy and completeness.

Although we identified some inaccuracies in the SEC's contracting data, as Finding 3 discusses, these inaccuracies did not significantly impact the SEC's achievement of statutory small business contracting goals. Moreover, when we alerted OA to these inaccuracies, OA took actions to resolve them internally or through the FPDS service desk. Based on the work we performed, we found the SEC's FPDS data sufficiently reliable for the purpose of this audit.

Prior Coverage

Between 2017 and 2021, the SEC OIG and GAO issued the following reports of particular relevance to this audit:

SEC OIG:

- *Audit of the SEC's Compliance with the Digital Accountability and Transparency Act for Fiscal Year 2021* (Report No. 569, October 28, 2021).

GAO:

- *Small Business Contracting: Actions Needed to Implement and Monitor DOD's Small Business Strategy* (GAO-22-104621; October 14, 2021).
- *Small Business Contracting: Actions Needed to Demonstrate and Better Review Compliance with Select Requirements for Small Business Advocate* (GAO-17-675; August 25, 2017).

These reports can be accessed at <https://www.sec.gov/oig> (SEC OIG) and <https://www.gao.gov> (GAO).

⁵² Our FPDS sample selection was based on the sample of 29 SEC small business contract actions we selected as part of our contract file review to assess the SEC's processes for encouraging participation in agency contracting. Generally, we judgmentally selected contract actions based on high dollar value obligations under a variety of orders, and we also selected nine deobligation actions.

Appendix II. Description of Federal Small Business Contracting Programs

The Small Business Act, SBA, and the FAR describe the small business socioeconomic sub-groups. Table 3 summarizes the small business programs and eligibility requirements.

TABLE 3. Small Business Program Descriptions

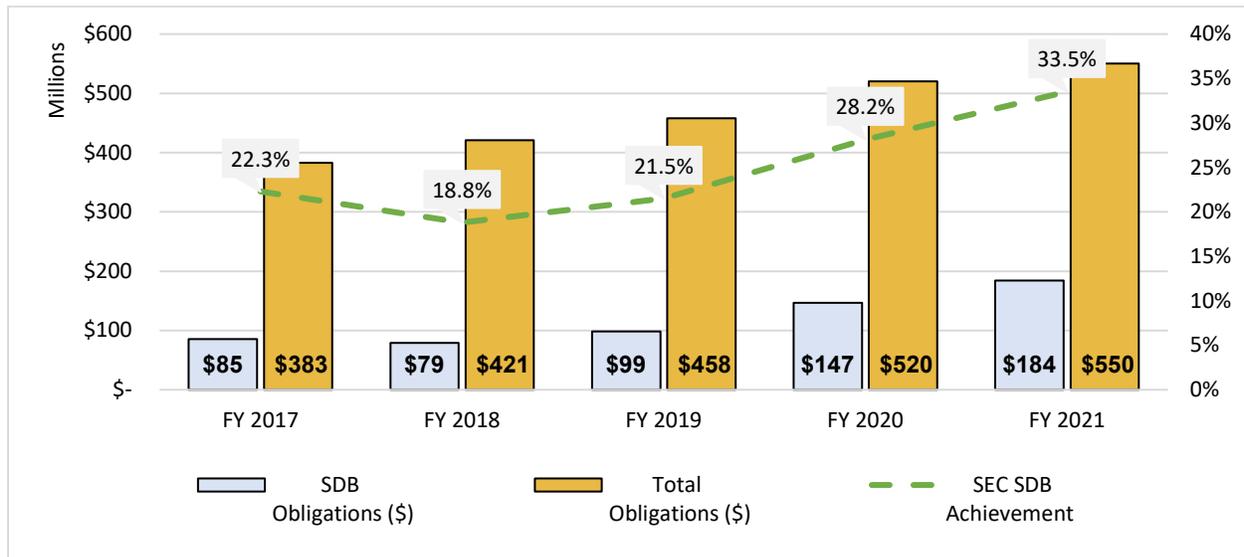
Program	Description
8(a)	8(a) is a business development program that authorizes the SBA to enter into contracts with other agencies and subcontract the work to eligible program participants. The program provides federal contracting preferences, training, and technical assistance over a 9-year term to businesses that are at least 51-percent owned by one or more socially and economically disadvantaged individuals, including individuals who are African American; Hispanic American; Native American (including Alaska Natives, Native Hawaiians, or members of federally or State recognized Indian tribes); Asian Pacific American; or Subcontinent Asian American. The SBA is responsible for certifying eligible participants, who submit certification documents thereafter to SBA as part of an annual review process.
SDB	SDBs are at least 51-percent owned by one or more individuals who are both socially and economically disadvantaged. Firms that are 8(a) certified are SDBs.
HUBZone	To be HUBZone-certified, a company must be a small business that is at least 51-percent owned and controlled by U.S. citizens, an Alaska Native Corporation, a community development corporation, an agricultural cooperative, a Native Hawaiian organization, or an Indian tribe; have its principal office in a HUBZone; and have at least 35 percent of its employees living in a HUBZone.
VOSB	To be VOSB-certified, a company must be a small business that is at least 51-percent owned and managed by one or more veterans.
SDVOSB	To qualify as an SDVOSB, a company must be a small business that is at least 51-percent owned and managed by one or more veterans with a service connected disability.
WOSB	To qualify as an WOSB, a company must be at least 51-percent owned, managed, and controlled by one or more women who are U.S. citizens; a woman must hold the highest officer position and work at the business full time during normal working hours; and the business must be small in its primary industry in accordance with SBA size standards. A concern that is at least 51-percent owned by one or more women who are U.S. citizens and who are economically disadvantaged is an Economically Disadvantaged WOSB and automatically qualifies as a WOSB.

Source: *OIG-generated based on the Small Business Act, FAR, and SBA website.*

Appendix III. SEC Small Business Achievements for Socioeconomic Sub-groups (FY 2017 – FY 2021)

The Small Business Act established government-wide small business contracting goals for four socioeconomic sub-groups. As Figures 4 through 7 show, between FY 2017 and FY 2021, the SEC exceeded the statutory small business contracting goals for prime contract awards for each of these socioeconomic sub-groups.

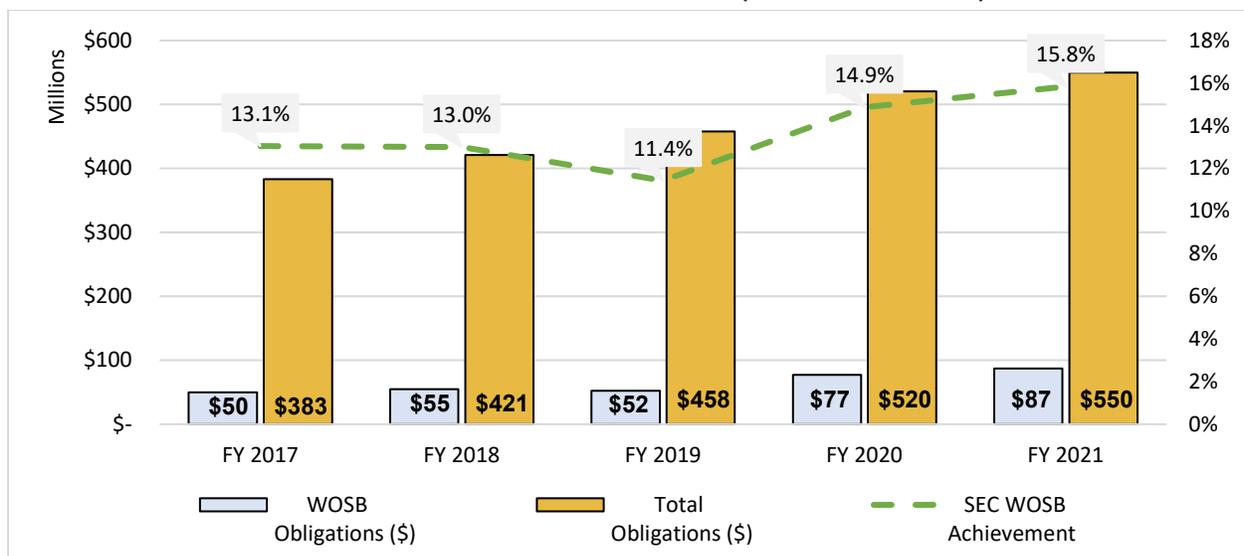
FIGURE 4. SEC SDB Achievements for Prime Contracts (FY 2017 – FY 2021)



Source: *OIG-generated based on FPDS small business goaling reports for FYs 2017 – 2021, available through SAM.*

Note: *The Small Business Act set the annual statutory contracting goal for SDB at 5 percent.*

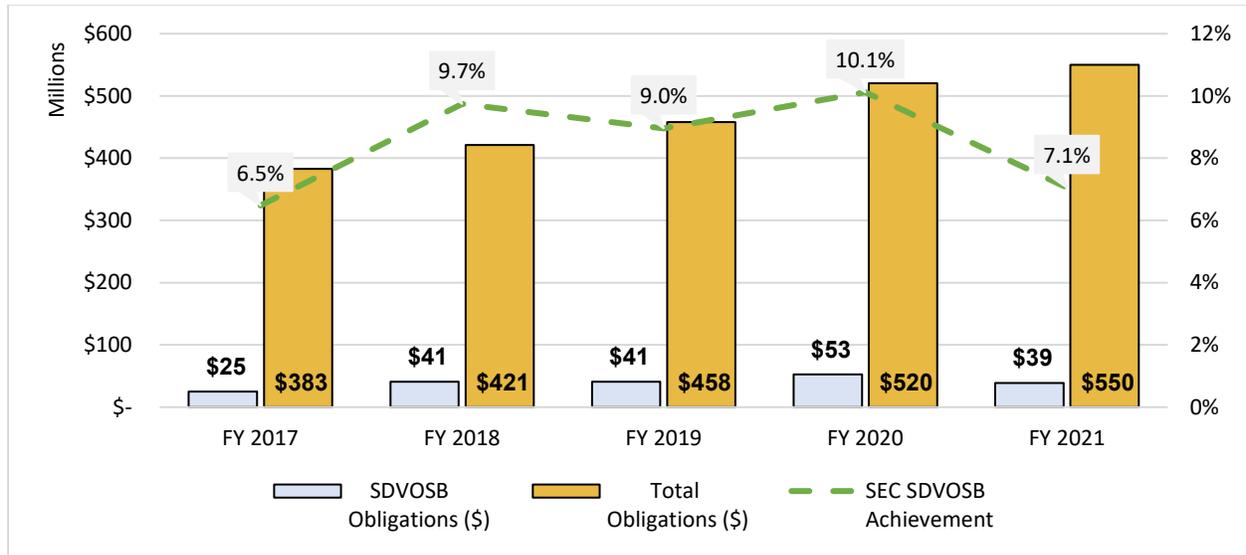
FIGURE 5. SEC WOSB Achievements for Prime Contracts (FY 2017 – FY 2021)



Source: *OIG-generated based on FPDS small business goaling reports for FYs 2017 – 2021, available through SAM.*

Note: *The Small Business Act set the annual statutory contracting goal for WOSB at 5 percent.*

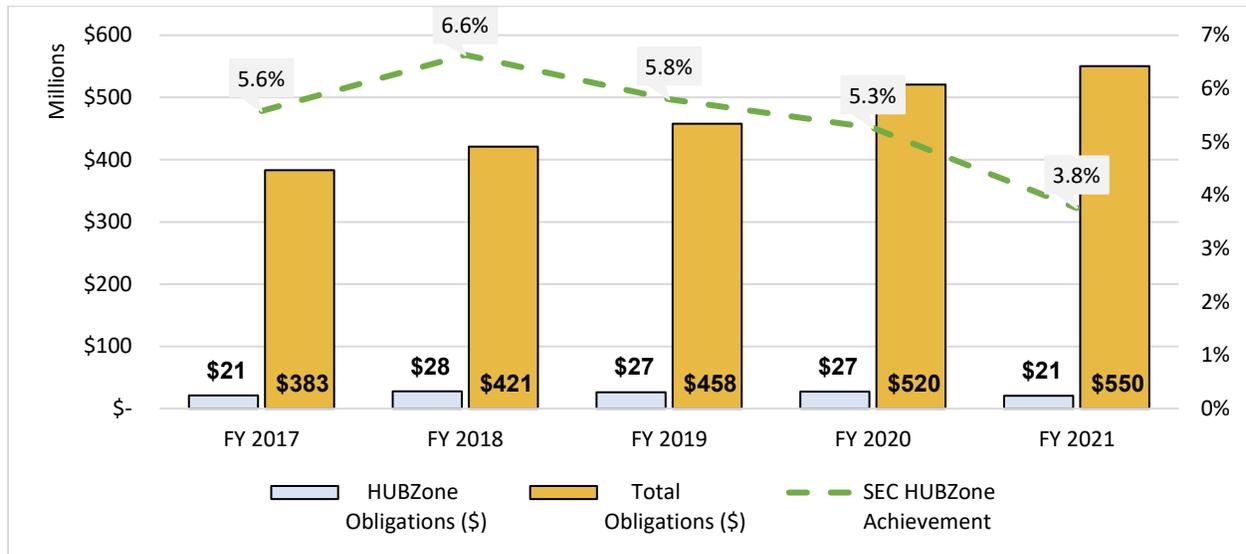
FIGURE 6. SEC SDVOSB Achievements for Prime Contracts (FY 2017 – FY 2021)



Source: *OIG-generated based on FPDS small business goaling reports for FYs 2017 – 2021, available through SAM.*

Note: *The Small Business Act set the annual statutory contracting goal for SDVOSB at 3 percent.*

FIGURE 7. SEC HUBZone Small Business Achievements for Prime Contracts (FY 2017 – FY 2021)

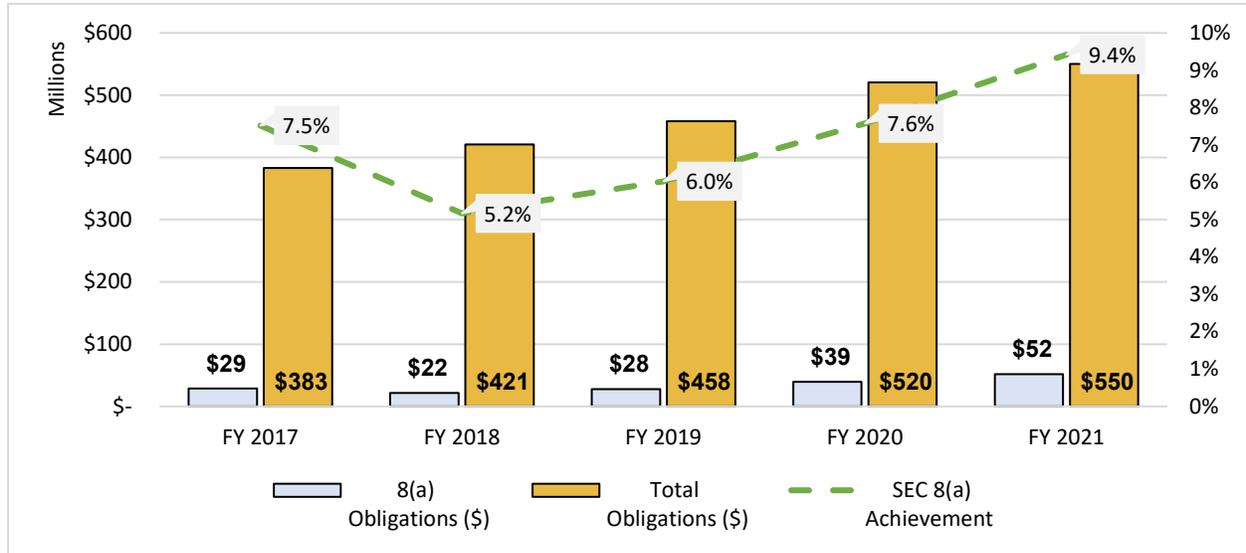


Source: *OIG-generated based on FPDS small business goaling reports for FYs 2017 – 2021, available through SAM.*

Note: *The Small Business Act set the annual statutory contracting goal for HUBZone at 3 percent.*

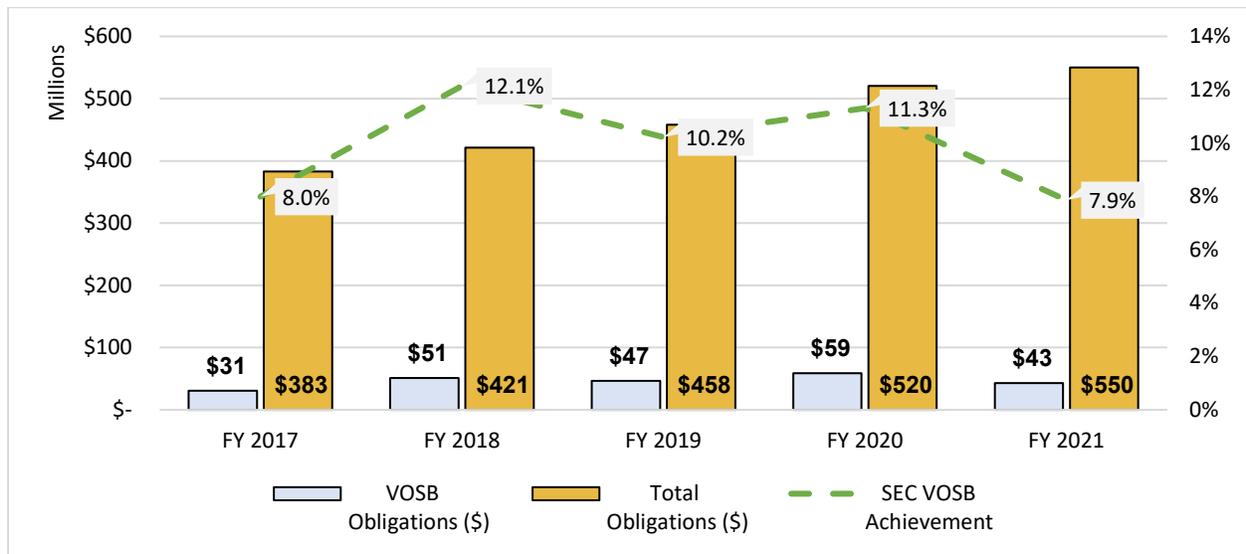
The Small Business Act does not establish goals for the 8(a) program and VOSB socioeconomic sub-groups. We are including the SEC's achievements for these two sub-groups in Figure 8 and Figure 9 for reference.

FIGURE 8. SEC 8(a) Program Achievements for Prime Contracts (FY 2017 – FY 2021)



Source: OIG-generated based on FPDS small business goaling reports for FYs 2017 – 2021, available through SAM.

FIGURE 9. SEC VOSB Achievements for Prime Contracts (FY 2017 – FY 2021)



Source: OIG-generated based on FPDS small business goaling reports for FYs 2017 – 2021, available through SAM.

Appendix IV. Management Comments



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WASHINGTON, D.C. 20549

MEMORANDUM

To: Rebecca L. Sharek, Deputy Inspector General for Audits, Evaluations, and Special Projects, Office of Inspector General

From: Kenneth A. Johnson, Chief Operating Officer

Date: February 17, 2023

Subject: Management Response to *The SEC Supported Federal Small Business Contracting Objectives, Yet Could Make Better Use of Data and Take Other Actions To Further Promote Small Business Contracting*

KENNETH
JOHNSON

Digitally signed by
KENNETH JOHNSON
Date: 2023.02.17
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Thank you for the opportunity to review and comment on the Office of Inspector General (OIG) draft report related to its review of the SEC's small business participation in agency contracting. I am pleased your report identified several areas where the SEC demonstrates its commitment to maximizing small business participation in agency contracting and to advancing diversity and inclusion in the SEC's supplier base. For example, your report notes that the SEC: (1) exceeded all government-wide statutory small business goals for the period reviewed (FY 2017-FY 2021); (2) encourages supplier diversity and inclusion by hosting regular vendor outreach days aimed at learning more about potential vendors, sharing information on SEC contracting, and providing technical assistance; and (3) maintained an OSDBU responsible for implementing and executing programs to assist small businesses at the SEC.

Your report identifies eight recommendations for further improvement, with which we concur. More details on management's responses to these recommendations are found in Appendix 1.

We appreciate the professionalism and courtesies provided by the OIG and during this audit, and we look forward to working with your office to address the areas noted in your report.

Attachment: Appendix 1: Management Responses to Recommendations

cc: Vance Cathell, Director, Office of Acquisitions
Pamela Gibbs, Director, Office of Minority and Women Inclusion
Elizabeth McFadden, Deputy General Counsel, Office of the General Counsel



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Appendix 1: Management Responses to Recommendations

Please find below the actions the SEC has already initiated or intends to take, to address each recommendation:

Recommendation 1: The Office of Acquisitions establish processes to periodically analyze the SEC's transaction level small business contracting data and other procurement data, as appropriate, for trends to ensure the SEC's existing processes are efficiently and effectively maximizing small business participation in agency contracting, identifying and addressing barriers to contracting and procurement equity, and broadening participation from underserved communities.

Response: We concur. The SEC will implement a recurring review focusing on transaction level data for accuracy of reported information as it relates to small business actions. The SEC will also implement a periodic review of trend information on the SEC's supplier base including relative number of awardees at the small and socioeconomic business levels, as well as trend data on the number of unique SEC awardees.

Recommendation 2: The Office of Acquisitions, in coordination with the Office of Minority and Women Inclusion, establish processes to periodically (a) assess the effectiveness of vendor outreach events; and (b) further analyze outreach event data to identify trends (including socioeconomic sub-group participation) and encourage targeted outreach of underrepresented groups.

Response: We concur. The Office of Acquisitions (OA) and the Office of Minority and Women Inclusion (OMWI) will work together to establish an ongoing process for identifying opportunities for capturing and assessing information obtained following its Vendor Outreach Days to determine effectiveness, participation and opportunities for improvement.

Recommendation 3: The Office of Acquisitions, review and update, as appropriate, acquisition guidance related to market research to ensure the guidance encourages the use of Office of Minority and Women Inclusion resources, such as supplier diversity business management system data.



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Response: We concur. OA will update its market research guidance and template to more clearly encourage use of available resources including OMWT's supplier diversity business management system (SDBMS).

Recommendation 4: The Office of Acquisitions establish processes to monitor and report subcontracting goal achievements for the socioeconomic subgroups established by the Small Business Act.

Response: We concur. In alignment with subcontracting reporting cycles, the SEC will conduct periodic reviews of Electronic Subcontracting Reporting System (eSRS) reporting at the agency level for reporting to SEC management. Starting with FY 2023, the SEC will also include its small business subcontracting goal achievements in its Annual Report on Small Business Participation to the Small Business Administration (SBA).

Recommendation 5: The Office of Acquisitions, in coordination with the Office of Small and Disadvantaged Business Utilization Director, address all required Office of Small and Disadvantaged Business Utilization functions, such as reporting and training, to the extent practicable, and clearly communicate the role of the Office of Small and Disadvantaged Business Utilization to contracting officials.

Response: We concur. We will conduct training for OA staff on specific areas informed by prior year activity as part of our annual review of the SEC's small business program. We also will increase awareness of the OSDBU's function and role by sharing additional information on its SEC Supplier Diversity SharePoint site accessible by SEC contracting officials. Lastly, the SEC, in coordination with the SBA, will plan to submit an annual report on training in accordance with section 15(k)(16) of the Small Business Act.

Recommendation 6: The Office of the General Counsel finalize its assessment of whether adjustments are needed to Chief Operating Officer designations related to the Office of Small and Disadvantaged Business Utilization, and coordinate with the Office of Acquisitions to implement any changes resulting from its assessment.

Response: We concur. OGC will finalize its review of the Chief Operating Officer designations related to the Office of Small and Disadvantaged Business Utilization, assess whether any changes are needed, and coordinate with the Office of Acquisitions on any such changes.



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Recommendation 7: The Office of Acquisitions implement a process to ensure the SEC’s small business reported achievements submitted to the U.S. Small Business Administration are supported (or traceable to detailed transaction level contracting data).

Response: We concur. The SEC will capture and retain transactional level data from SAM.gov reporting that supports both its monthly small business trend data as well as its annual reported small business achievements to the SBA.

Recommendation 8: The Office of Acquisitions review and update, as appropriate, its acquisition guidance and templates to ensure that contracting officials consistently document in contract files (a) the acquisition history (to include details regarding the contractual history), and (b) the awardee’s business size status.

Response: We concur. OA is updating its acquisition plan template and related guidance to better capture relevant acquisition history and to promote consistency in documenting the awardee's business size status as required.

Major Contributors to the Report

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Comments and Suggestions

If you wish to comment on the quality or usefulness of this report or suggest ideas for future audits, evaluations, or reviews, please send an e-mail to OIG Audit Planning at AUDplanning@sec.gov.

Comments and requests can also be mailed to the attention of the Deputy Inspector General for Audits, Evaluations, and Special Projects at the address listed below.

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