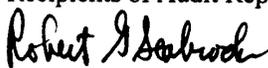




U.S. SMALL BUSINESS ADMINISTRATION  
OFFICE OF INSPECTOR GENERAL  
WASHINGTON, D.C. 20416

**Date:** October 3, 2000

**To:** Recipients of Audit Report # 0-31

**From:**   
Robert G. Seabrooks  
Assistant Inspector General for Auditing

**Subject:** Management Response to Audit Report # 0-31 (Boscart Construction, Inc.)

Attached is the written SBA management response to the findings and recommendations of the subject audit report. This response was received on October 2, 2000, after the final audit report was issued.

The response is consistent with the comments we received during meetings with SBA management prior to issuing the final report and with our summary of management comments included in the report itself.

Should you have any questions about the attached information, please contact me at (202) 205-7204.

Attachment



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, DC 20416

DATE: October 2, 2000

TO: Phyllis K. Fong  
Inspector General

FROM: Kerry L. Kirkland *Kerry L. Kirkland*  
Associate Deputy Administrator for Government  
Contracting and Minority Enterprise Development

Thomas A. Dumaresq *Thomas A. Dumaresq*  
Assistant Administrator for Administration

David R. Kohler *David R. Kohler*  
Designated Agency Ethics Official

SUBJECT: Draft Audit Report, Boscart Construction, Inc.

We are responding to the draft audit report referenced above.

This draft report was provided to SBA officials a few days ago. You asked for the Agency's response by September 27, 2000. This period of time was not adequate to respond in detail to the findings made in this draft. We gave you a quick response on that date and we have had some further discussion.

The Agency is normally given at least 30 days by your office to comment on a draft audit report before its issuance in final form, and OMB audit procedures specify at least this period of time when GAO performs an audit and provides a draft. (OMB Circular A-50, par. 8b.) The attached comments reflect our latest views but they are not as complete as they otherwise could be, and therefore we request that your draft document, and any final version you may issue before receiving further comment from us, be treated confidentially. There are a number of important issues touched upon in this document in ways which could reflect adversely upon the Agency, and the Agency believes it may be able to provide additional information.

Attachment:

Comments on Draft Audit Report, Boscart Construction, Inc.

Comments on Draft Audit Report, Boscart Construction, Inc.

Finding 1. It is not clear that knowledge of significant debt owed by Boscart's owner would have led to a different eligibility determination. Business prospects for success are not the same as an individual's credit history. And business financial capacity is not the same as an owner's borrowing potential. This personal debt does not necessarily show a lack of business integrity.

We of course are troubled by false information submitted to us. We understand that program termination proceedings have commenced against Boscart.

Recommendation 1A. We will consider whether suspension may be appropriate along with termination.

Finding 2: These regulatory requirements are procedural in nature, for SBA's benefit, and can be waived when appropriate. Sole source contracting opportunities can be extended to firms delinquent in submitting financial statements. Boscart was not given unusual or special treatment.

Recommendation 2A. We agree with this recommendation to the extent of reviewing and clarifying the provisions relative to the appropriate handling of non-compliance with these provisions.

Finding 3. We agree.

Recommendation 3A. We agree.

Finding 4. We agree that the DAEO's advice was based upon a misunderstanding of contracting facts. The SBA's regulations deal only with receipt of agency assistance, not with conflict of interest cases covered by OGE regulations. It should remain within the discretion of the ethics officials when to insist on those conditions.

Recommendation 4A. We agree to review our regulations on this point, but we may elect to treat a separated spouse differently from the OGE regulations

Finding 5. We believe our contract administration was not flawed. Boscart did an exceptional job in meeting our design requirements, in fact performing work that exceeded the value of the contract. We obtained an amicable solution to cost overrun problems, and agreed to increase the value of the design contract by \$70,000.

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**Recommendation 5A. We agree to complete documentation of the contract files.**

**AUDIT OF BOSCAR CONSTRUCTION, INC.**

**AUDIT REPORT NUMBER 0-31**

**SEPTEMBER 30, 2000**

**This report may contain proprietary information subject to the provisions of 18 USC 1905 and must not be released to the public or another agency without permission of the Office of Inspector General.**



**U.S. SMALL BUSINESS ADMINISTRATION  
OFFICE OF INSPECTOR GENERAL  
WASHINGTON, D.C. 20416**

**AUDIT REPORT**

**Issue Date: September 30, 2000**

**Number: 0-31**

**To:** Kerry L. Kirkland, Associate Deputy Administrator for Government  
Contracting and Minority Enterprise Development

Thomas A. Dumaresq, Assistant Administrator for Administration

David R. Kohler, Deputy General Counsel

**From:** Robert G. Seabrooks, Assistant Inspector General for Auditing

**Subject:** Audit of Boscart Construction, Inc. (Boscart)

We completed an audit of SBA's (1) evaluation of Boscart's initial eligibility for the 8(a) program, (2) process for ensuring the company's continuing compliance with 8(a) program requirements, and (3) award and administration of contracts with Boscart. The 8(a) program was created to assist small business concerns owned and controlled by socially and economically disadvantaged individuals develop their business skills and become viable business firms. To be certified by SBA for participation in the program, applicants must show that their firms are owned by socially and economically disadvantaged individuals, meet SBA's small business size standards, and have a reasonable potential for success, as defined in SBA regulations. Firms in the program are eligible for contracts that Federal agencies set aside for 8(a) firms and may receive SBA technical assistance and management training. In fiscal year 1999, about 6,000 small businesses participated in the program, and \$6 billion was awarded in 8(a) contracts.

SBA's Office of Procurement and Grants Management is responsible for administering and acquiring contractual services for SBA in accordance with applicable Federal requirements. The Office of Government Contracting and Minority Enterprise Development (GC&MED) is responsible for determining the eligibility of firms for the 8(a) program.

In September 1997, SBA certified Boscart Construction Inc., a general contracting company, solely owned by its president, for participation in the 8(a) program. In October 1997, SBA appointed Boscart's owner to its National Small Business Development Center (SBDC) Advisory Board. In May 1998, SBA hired Boscart's owner's spouse as a GS-15 Schedule C (political appointee) in the Office of Capital Access. Between February and September 1998, SBA awarded six contracts to Boscart that ultimately totaled \$658,310 in value, as shown in the table below.

<u>Contract No.</u>	<u>Date</u>	<u>Amount</u>	<u>Description</u>
SBAHQ-98-M-0324	2/3/98	\$ 3,910	5 <sup>th</sup> floor build out
SBAHQ-98-V-0021	2/19/98	1,980	4 <sup>th</sup> floor conf. room doors
SBAHQ-98-M-0468	3/25/98	2,378	Fabricate door
SBAHQ-98-V-0068	6/19/98	122,900	Design Wash. Design Ctr.
SBAHQ-98-C-0012	8/17/98	36,434	Demolition, etc
SBAHQ-98-C-0014	9/1/98	<u>490,708</u>	8 <sup>th</sup> floor renovations
Total		\$ 658,310	

The last three contracts were funded by the Small Disadvantaged Business (SDB) program.

### **OBJECTIVES AND SCOPE**

The objectives of our audit were to determine whether SBA (1) properly evaluated Boscart's initial eligibility for the 8(a) program and ensured its continuing compliance with 8(a) program requirements, and (2) awarded and administered its contracts with Boscart in accordance with its internal procedures and applicable regulations. We reviewed SBA's files related to Boscart, its owner and the owner's spouse, and interviewed various SBA and contractor personnel. We also analyzed accounting information and amounts paid to Boscart for services rendered and contract performance. We conducted fieldwork during the period February to August 2000. The audit was conducted in accordance with Government Auditing Standards.

### **RESULTS OF AUDIT**

SBA's process for evaluating Boscart's initial 8(a) program eligibility was flawed because it relied on inaccurate and unverified financial information. Subsequently, the agency did not ensure the company's compliance with 8(a) program requirements by accepting a contract on the company's behalf for which it was not eligible. In addition, SBA did not comply with (1) its standards of conduct regulations by awarding contracts without required approvals and (2) Federal Acquisition Regulations (FAR) by not documenting significant contract actions. As a result, the Agency has reduced assurance that its programs and operations are achieving their intended purposes, in accordance with prescribed policies, procedures and ethical requirements.

SBA managers provided comments to a draft of this report during several meetings. They also stated that they had insufficient time to provide a full response. A summary of their comments along with the OIG evaluation is presented after each finding.

## **Finding 1: Eligibility for Admission to the 8(a) Program**

SBA's process for determining Boscart's initial 8(a) program eligibility was flawed because it relied on inaccurate and unverified financial information. On the Personal Financial Statements submitted with the company's 8(a) application, the company's owner and her spouse did not disclose significant amounts of unpaid Federal taxes. Nor did they disclose another significant debt, a defaulted loan, which resulted in a judgment against them for \$133,000 plus interest in 1992.

Had SBA known of these liabilities, it could have impacted on the determination that Boscart was eligible for program entry. Companies must possess reasonable prospects for success in order to be eligible for the program. One of the factors SBA evaluates in assessing potential for success is financial capacity. The undisclosed liabilities, although personal, could have had a material impact on Boscart's financial capacity because a small business concern can be significantly impacted by the owner's financial capability. SBA may have declined Boscart had it known of the undisclosed liabilities.

SBA relies partly on unverified information provided by applicants in making initial eligibility determinations, e.g. personal liabilities. Had SBA obtained a personal credit report on Boscart's owner, SBA would, in all probability, have known that the owner significantly understated her personal liabilities. The assessment of potential for success would have been based on a more accurate picture of the firm's financial capacity, which was significantly worse than what SBA thought was the case when it made its determination.

Under current regulations, if a credit report had been obtained, SBA could have found Boscart ineligible for program entry for three reasons: (1) providing false information to SBA, (2) lacking business integrity as demonstrated by the civil judgment, and (3) failure to pay significant financial obligations to the Federal government.

### **Recommendation**

- 1A. We recommend that the Associate Deputy Administrator for GC&MED, suspend Boscart from the 8(a) program based on the owner's non-disclosure of significant personal liabilities.

### **SBA Management's Response**

SBA management stated that it is not clear that knowledge of significant debt owed by Boscart's owner would have led to a different eligibility determination. SBA management further stated that business prospects for success are not the same as an owner's borrowing potential and the personal debt of Boscart's owner does not necessarily show a lack of business integrity. SBA management did, however, agree to consider whether suspension might be appropriate along with termination.

## **OIG Evaluation of Management's Response**

We agree that it is not clear that knowledge of the undisclosed personal debts would have led to a different 8(a) program eligibility determination in 1997. Under current regulations, however, the non-disclosure of those debts would preclude the company's acceptance into the program. SBA management's proposed action of considering whether to suspend Boscart from the 8(a) program is responsive to our recommendation.

## **Finding 2: Compliance with 8(a) Program Requirements**

Although Boscart did not submit 1997 financial statements in accordance with SBA requirements, and was, therefore, ineligible for 8(a) contract awards, SBA accepted on the company's behalf a sole source 8(a) contract ultimately valued at \$490,708.

Under Title 13 CFR § 124.602 (b),

*[8(a)] Participants with gross annual receipts between \$1,000,000 and \$5,000,000 must submit to SBA reviewed annual financial statements prepared by a licensed independent public accountant within 90 days after the close of the concern's fiscal year.*

Title 13 CFR §124.503 (c) provides further that

*Once SBA determines that a procurement is suitable to be accepted as an 8(a) sole source contract, SBA will normally accept it on behalf of the Participant . . . provided that . . . the Participant has submitted required financial statements to SBA.<sup>1</sup>*

On June 25, 1998, SBA's Washington District Office (WDO) sent a letter notifying the company that it needed to provide reviewed financial statements for 1997. The letter also stated:

*Firms whose financial statements are overdue and/or incomplete cannot be awarded 8(a) contracts and may be subject to termination from the 8(a) program.*

In September 1998, although Boscart still had not submitted the required statements, the WDO accepted on Boscart's behalf a sole source 8(a) contract ultimately valued at \$490,708. As of May 2000, Boscart still had not submitted required financial statements, and SBA was taking steps to terminate the company from the 8(a) program.

## **Recommendation**

- 2A. We recommend that the Associate Deputy Administrator for GC&MED, in conjunction with the Associate Administrator for Field Operations, reinforce the need for staff involved in the acceptance of 8(a) awards to ensure that program participants are in compliance with program requirements before accepting awards on their behalf.

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<sup>1</sup> 8(a) program contracts involve three party agreements through which SBA accepts the contract on behalf of the 8(a) participant, enters into a contract with the procuring government agency and subcontracts to the 8(a) participant. In this case, SBA was also the procuring government agency, so the contract was between SBA's Office of Procurement and its Washington District Office.

## **SBA Management's Response**

SBA management stated that these regulatory requirements are procedural in nature, for SBA's benefit, and can be waived when appropriate. Also, sole source contracting opportunities can be extended to firms that are delinquent in submitting financial statements. SBA management further stated that Boscart was not given unusual or special treatment. SBA management agreed with the recommendation to the extent of reviewing and clarifying the provisions relative to the appropriate handling of non-compliance with these provisions.

## **OIG Evaluation of Management's Response**

The Agency responded that the "regulatory requirements are procedural in nature, for SBA's benefit, and can be waived when appropriate." We believe that (a) the Agency's acceptance of a contract for which the company was ineligible and (b) its response to the audit undermine the integrity of the 8(a) program and weaken the agency's control environment. We also believe the regulations are clear regarding (a) the requirement for 8(a) companies to submit annual financial statements and (b) the acceptance of sole-source contracts on a company's behalf – provided the company has submitted the required financial statements. The agency's June 1999 letter was also clear that the company was ineligible for 8(a) contract awards until it submitted the required statements.

We do not agree with the implication that the procedural nature of the regulations reduces the need for compliance with them. Nor do we agree with the implication that because the regulations are for SBA's benefit, the need for compliance is reduced. Firstly, the regulations are not only for SBA's benefit. They are also for the benefit of 8(a) program participants, other procuring agencies, Congress, and the taxpayer. Secondly, even if the regulations were only for SBA's benefit, without a justified and documented decision waiving the requirements by someone with appropriate authority, they should be complied with. In this case, there is no indication that SBA intended to waive the requirement. Instead, the agency subsequently began termination proceedings against the company for not submitting required statements.

We are also concerned with management's statement that "Boscart was not given unusual or special treatment." This appears to say that non-compliance with 8(a) program regulations is a common and usual occurrence.

Lastly, if SBA had complied with and enforced its regulations, the outcome for the company may have been more favorable. As it turned out, the award of the construction contract appears not to have benefited the company. Cost overruns, claims against the surety, etc. indicate that the contract may have actually damaged the company's prospects for success. If SBA had required Boscart to submit the required statements before accepting the contract, the agency may have determined that the company was not financially prepared for such a large contract and that it needed other forms of business development assistance.

### **Finding 3: Standards of Conduct and Advisory Board Procedures**

SBA did not comply with its Standards of Conduct regulations, by awarding Boscart contracts without obtaining required Standards of Conduct Committee approvals. All of the Boscart contracts were awarded while the company's owner was a member of the National SBDC Advisory Board<sup>2</sup> and therefore, required the approval of the Standards of Conduct Committee. In addition, the Agency did not comply with its Advisory Board procedures, because it did not obtain Standards of Conduct Committee approval for Boscart's owner's appointment to the SBDC Advisory Board.

Title 13 CFR § 105.302, (Assistance to employees or members of quasi-government organizations) provides:

*The Standards of Conduct Committee must approve SBA assistance<sup>3</sup>, other than Disaster loans . . . to a person if its sole proprietor, general partner, officer, director or stockholder with a 10 percent or more interest (or a household member) is a member or employee of a Small Business Advisory Council<sup>4</sup> or is a SCORE volunteer.*

In October 1997, the SBA Administrator appointed Boscart's owner to a three year term on the National SBDC Advisory Board, and subsequently the Agency awarded the company six sole source contracts. The Agency did not, however, obtain Standards of Conduct Committee approval for any of these awards.

In addition, when Boscart's owner was appointed to the SBDC Advisory Board, SBA did not comply with its Standard Operating Procedure 90 54 4 (SBA Advisory Councils) which states:

*No person can be appointed to an Advisory Council if he or she already is an applicant for or recipient of SBA assistance (other than disaster loans . . .) without prior written approval of the Standards of Conduct Committee, which will determine if there is any significant conflict of interest or the appearance of a conflict of interest . . . .*

Boscart was accepted into the 8(a) program in September 1997, prior to the owner's appointment to the SBDC Advisory Board. Under 13 CFR § 105.201, the owner was, therefore, a recipient of SBA assistance. SBA's Standards of Conduct Committee did not, however, approve her appointment to the Advisory Board.

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<sup>2</sup> This board was established by law to advise and confer with SBA on SBDC policy matters.

<sup>3</sup> SBA assistance is defined in 13 CFR § 105.201 as "financial, contractual, grant, managerial or other aid, including size determination, section 8(a) participation, licensing, certification, and other eligibility determinations made by SBA."

<sup>4</sup> Under the Federal Advisory Committee Act, "an advisory committee means any committee, board, commission, council . . . established . . . in the interest of obtaining advice. . . ."

## **Recommendation**

3A. We recommend that the Designated Agency Ethics Official review the Agency's policies and procedures for ensuring compliance with the Agency's Standards of Conduct Regulations and revise those policies and procedures as necessary. The Agency should as part of this process develop means for sharing and accessing essential information between Agency offices, e.g., a more effective "vetting" process.

## **SBA Management's Response**

SBA management agreed with the finding and recommendation.

#### **Finding 4: Ethics Opinion Regarding Boscart Contracts**

An ethics opinion regarding SBA contracts with Boscart was inconsistent with the facts and with the Office of Government Ethics' government-wide treatment of spouses for purposes of conflict of interest analyses. After SBA's Assistant Administrator for Administration became aware that Boscart's owner's spouse was a SBA employee, he requested advice from the Designated Agency Ethics Official (DAEO), asking whether Boscart's "continued performance of the contract violated any ethics laws, regulations or policies."

The DAEO responded in a memorandum dated September 2, 1998: "*Based on the facts presented, it is our opinion that neither the award or the performance of the Boscart contract violates ethics laws, regulations, or policies.*" The DAEO provided the following rationale for this conclusion:

*The contract was awarded prior to [his] SBA employment, he is not an owner, officer, or director of Boscart, and he has no official Agency duties that relate to Boscart or the 8(a) program.*

This statement "*the contract was awarded prior to [his] SBA employment*" was inaccurate for two reasons. First, SBA awarded Boscart three contracts, not just one, related to the "design and construction of new office space for the SDB and HubZone programs" – the subject of the DAEO's memorandum. Second, Boscart's owner's spouse began employment at SBA on May 25, 1998, and the first of the three subject contracts was awarded on June 19, 1998, three weeks later.

Accordingly, the facts suggest that contractual assistance to Boscart may have needed the prior approval of the Standards of Conduct Committee in accordance with 13 CFR §105.204 (Assistance to SBA employees or members of their household) which states:

*Without the prior written approval of the Standards of Conduct Committee, no SBA assistance, other than Disaster loans . . . shall be furnished to a person when the sole proprietor, partner, officer, director or significant stockholder of the person is an SBA employee or a household member.*

The DAEO's memorandum also stated:

- *[Boscart's owner's spouse] states that he and his wife are legally separated and planning a divorce. They no longer share a household.*
- *. . . future assistance to Boscart, if [he and his wife] reconcile their differences and she becomes a member of his household, will require standards of conduct approval.*

In the latter statement, the DAEO indicated that contracts with Boscart did not require standards of conduct approval, because the company's owner and her spouse were separated and did not share a household. Title 13 CFR § 105.201 provides:

*Household member means spouse and minor children of an employee, all blood relations of the employee and any spouse who resides in the same place of abode with the employee.*

The DAEO's opinion indicated that Boscart's owner was not a "household member" for standards of conduct purposes, because she and her spouse were separated. According to an attorney at the Office of Government Ethics (OGE), however, for purposes of both 18 USC § 208 (actual conflicts of interest) and 5 CFR § 2635.502 (appearance of conflicts) (both government-wide authorities), OGE views a legal separation as having no impact on the definition of "spouse," when determining whether there is an actual conflict or an appearance of a conflict of interest. In other words, even when two married individuals have a legal separation agreement and are living apart, they are treated as a married couple by OGE for purposes of performing conflict of interest analyses.

### **Recommendation**

- 4A. We recommend that the Deputy General Counsel revise 13 CFR §105.201 to clarify that an employee's spouse should be considered a "household member," whether or not the spouse resides in the same place of abode with the employee, so long as they are legally married.

### **SBA Management's Response**

SBA management stated that SBA's regulations deal only with receipt of Agency assistance, not with conflict of interest cases covered by OGE regulations. SBA management agreed to review its regulations on this point, but stated that it may elect to treat a separated spouse differently from the OGE regulations.

### **OIG Evaluation of Management's Response**

Management's comments are responsive to the recommendation.

## **Finding 5: Contract Administration**

SBA did not properly administer two of its contracts with Boscart. It is not clear from the files that contract requirements were completed in accordance with the statements of work. Certain aspects of the administration of Boscart's contracts did not comply with various provisions of the Federal Acquisition Regulations (FAR). Also SBA increased one of the contracts by \$70,000, more than eight months after the contract completion date, without any rationale in the file to justify the amount of the increase.

### *Contract No. SBAHQ-98-V-0068*

On June 19, 1998, SBA awarded Boscart a fixed-price contract in the amount of \$17,250 for design of 15,000 square feet of office space on the 8<sup>th</sup> floor of the Washington Design Center. The work was to be completed by July 31, 1998. On August 11, 1998, SBA modified this contract to extend the completion date to October 30, 1998, and increase the scope of work. Under the modified contract, the price was increased to \$52,900, and Boscart was to design an additional 31,000 square feet of office space on the 2<sup>nd</sup>, 5<sup>th</sup> and 8<sup>th</sup> floors of the Washington Office Center. It is not clear from the contract files whether Boscart completed all of the work specified.

### *Contract No. SBAHQ-98-C-0014*

On September 1, 1998, SBA awarded Boscart a \$406,029 contract for construction of new office space on the 8<sup>th</sup> floor of the Washington Design Center. The contract required the company to complete the project by September 30, 1998. On September 28, 1998, the SBA program office (GC & MED) approved a requisition to add \$70,000 to the contract for "unforeseen construction increases." On September 30, 1998, the SBA Contracting Officer sent Boscart a letter (see Attachment 1) that appears to be a change order under the changes clause of the contract (FAR clause 52.243-4). The letter authorized Boscart "to proceed" and "to incur costs in an amount not to exceed \$70,000." The letter also stated that "the contract will be increased by that amount."

Paragraph (d) of FAR Part 52.234-4 Changes clause provides, in part

*If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing.*

Despite the Contracting Officer's letter stating the contract price will be increased and the requirement of FAR 52.242-4(d), the construction contract was not modified for the \$70,000 increase.

The contract also required Boscart to obtain payment and performance bonds within 10 days of the contract award. Under FAR § 52.228, Boscart should have provided the bonds

before work began. Boscart did not, however, provide the bonds until October 6, 1998, over a month after work had started and the company had been paid about \$144,000. In order to obtain the bonds, Boscart signed an agreement providing for SBA to make subsequent contract payments through a lockbox for the benefit of the bonding company.

The project encountered a series of delays and difficulties, including cost overruns, a mechanics lien and claims of more \$178,000 by subcontractors against the surety company that bonded the contract. On March 3, 1999, SBA sent Boscart a letter (see Attachment 2) stating: “effective immediately, you are hereby directed to cease all further work toward completion of the punchlist items.”<sup>5</sup> The letter cited the company’s failure to complete 80 percent of the punchlist, and stated “another contractor will complete the punchlist items, and the cost will be deducted from your contract.” Subsequently, in June 1999, the company submitted a request to SBA for an additional \$322,000 – based on cost overruns, modifications, etc.

Although the March 1999 letter directing the company to cease work on the punchlist and the Agency’s subsequent interactions with the company had many of elements of a contract termination, the agency did not follow the procedures described in FAR Part 49 - Termination of Contracts. Instead, according to agency officials, all open issues were settled in a negotiation using procedures authorized by FAR 33.214 - Alternative Dispute Resolution (ADR).<sup>6</sup>

Specifically, in July 1999, according to SBA officials, “SBA settled all open issues in controversy by:

- (1) *Increasing the amount of the design contract<sup>7</sup> and paying Boscart an additional \$70,000, and*
- (2) *Not requiring Boscart or the surety company to complete the items on the punchlist. (SBA subsequently paid other contractors over \$15,000 to complete some of these items.)*
- (3) *Determining that all contracts were completed in a satisfactory manner.”*

Under FAR Part 33.214, “the objective of using ADR is to increase the opportunity for relatively inexpensive and expeditious resolution of issues in controversy.” Under FAR Part 33.201, “Issue in controversy” means a material disagreement between the Government and the contractor which

- (1) *May result in a claim or*
- (2) *Is all or part of an existing claim.*

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<sup>5</sup> A punchlist is a list of discrepancies that need to be corrected by the contractor. In this case, the three page punchlist described such items as HVAC system, millwork, doors, and finish work that needed to be completed.

<sup>6</sup>Under FAR Part 33.201, “Alternative Dispute Resolution” (ADR) means any type of procedure or combination of procedures voluntarily used to resolve issues in controversy.

<sup>7</sup> All design contract funds had been either expended or deobligated in September 1998.

There was, however, no evidence in the contract files to support the need for ADR. Although SBA officials informed us they did not agree with Boscart's \$322,000 request, there was no evidence of a review or analysis of the request to specify the basis for a "material disagreement." There was also no documentation to support that the agency's actions involved a settlement. The \$70,000 increase to the design contract, which more than doubled the contract price, was supported by the September 1998 requisition to modify the construction contract – for "unforeseen construction increases." The payment of the \$70,000 was supported by a request for payment from Boscart for unspecified work performed on the design contract. The construction contract file had no documentation relating to (a) Boscart's request for a \$322,000 increase, (b) the resolution of the punchlist items, or (c) the justification for "determining that the contracts were completed in a satisfactory manner." In fact, the last evidence of communication with Boscart in the construction contract file was the letter directing the company to cease work on the punchlist items.

The lack of documentation describing and supporting these actions and circumstances did not comply with FAR Part 4.801(b) requirements that:

*The documentation in the files (see 4.803) shall be sufficient to constitute a complete history of the transaction for the purpose of –*

- (1) Providing a complete background as a basis for informed decisions at each step in the acquisition process;*
- (2) Supporting actions taken;*
- (3) Providing information for reviews and investigations; and*
- (4) Furnishing essential facts in the event of litigation or congressional inquiries.*

Without documentation describing and supporting the circumstance and actions related to the administration of these contracts, we were not able to fully evaluate their propriety.

## **Recommendation**

- 5A. We recommend the Assistant Administrator for Administration take appropriate actions and complete the documentation of the contract files, for the two Boscart contracts discussed above, to comply with the requirements of the FAR.

## **SBA Management's Response**

SBA management did not believe its contract administration was flawed. SBA management further stated that Boscart did an exceptional job in meeting SBA's design requirements, and in fact performed work that exceeded the value of the contract. SBA also obtained an amicable solution to cost overrun problems, and agreed to increase the value of the design contract by \$70,000. SBA management did, however, agree to complete documentation of the contract file.

## **OIG Evaluation of Management's Response**

We do not agree with management's assertion that the contract administration was not flawed. We believe the absence of documentation supporting actions taken and the resolution of various issues is a significant deficiency. Without adequate documentation, the propriety of various actions and resolution of issues can not be determined. At best, this leaves open the possible appearance of impropriety.

\* \* \* \*

The findings and recommendations in this audit report are based on the conclusions of the Auditing Division. The recommendations are subject to review, management decision and corrective action by your office in accordance with existing Agency procedures for audit follow-up and resolution.

Please provide us your management decision for each recommendation within 30 days. Your management decisions should be recorded on the attached SBA Forms 1824, Recommendation Action Sheet, and show either your proposed corrective action and target date for completion, or explanation of your disagreement with our recommendations.

Should you or your staff have any questions, please contact Robert Hultberg, Director, Business Development Programs Group at (202) 205-7204

Attachments.



U.S. Small Business Administration  
Washington, D.C. 20416

September 30, 1998

Barbara Turner  
Boscart Construction, Inc.  
1080 Wisconsin Ave., NW, Suite 300  
Washington, DC 20007

Subject: Contract SBAHQ-98-C-0014, Eight Floor Renovations

Dear Ms. Turner.

The Small Business Administration's Office of Procurement and Grants Management has reviewed and approved your proposal for the estimated additional amount of \$70,000.00 under the subject contract. The contract will be increased in that amount. Therefore, you are hereby authorized to incur costs in an amount not to exceed \$70,000.00.

All services rendered should be in accordance with your proposal. Any variation should be discussed with the Contracting Officer immediately prior to making any changes. Your Contracting Officer Technical Representative for this effort is Michelle Hodges. She can be contacted at (202) 205-7018.

This notification is authorization to proceed. However, please note that acceptance of your proposal is subject to final negotiations, which should take place within the next 30 days. Please refer to the requisition number 8.6368.0356 in all correspondence relative to this action.

If you have any questions, please call me at (202) 205-7051.

Sincerely,

Deborah M. Woods  
Contracting Officer



U.S. Small Business Administration  
Washington, D.C. 20416

Attachment 2

March 3, 1999

Barbara Turner  
Boscart Construction, Inc.  
1080 Wisconsin Ave., NW, Suite 300  
Washington, DC 20007

Subject: Contract SBAHQ-98-C-0014, 8<sup>th</sup> Floor Renovations

Dear Ms. Turner:

This letter is in reference to the punchlist items for the subject contract.

In our letter of December 16, 1998, the prompt and timely completion of the punchlist was stressed. In addition, in our meeting of December 17, 1998, you stated that completion of the punchlist items would begin on January 4, 1999. To date, approximately 80 percent of the punchlist items have not been completed.

Therefore, effective immediately, you are hereby directed to cease all further work towards completed of the punchlist items. Another contractor will complete the punchlist items, and the cost will be deducted from your contract.

If you have any questions regarding this matter, please contact me at (202) 205-7051.

Sincerely,

Deborah M. Woods  
Contracting Officer

cc: Michelle Hodges, COTR

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