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SMALL BUSINESSES CONTINUE TO LOSE FEDERAL JOBS BY THE BUNDLE

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

MARCH 18, 2003

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ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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SMALL BUSINESSES CONTINUE TO LOSE FEDERAL JOBS BY THE BUNDLE

TUESDAY, MARCH 18, 2003

UNITED STATES SENATE,
COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP,
Washington, D.C.

The Committee met, pursuant to notice, at 9:30 a.m., in Room 428A, Russell Senate Office Building, Hon. Olympia Snowe, Chair of the Committee, presiding.

Present: Senator Snowe.

OPENING STATEMENT OF HON. OLYMPIA SNOWE, CHAIR, SENATE COMMITTEE ON SMALL BUSINESS, A UNITED STATES SENATOR FROM MAINE

Chair SNOWE. The hearing will come to order. Good morning and welcome to today's hearing, which I have entitled "Small Businesses Continue to Lose Federal Jobs by the Bundle." I especially want to thank all of our witnesses who are here with us today—the SBA Administrator Hector Barreto, the OFPP Administrator Angela Styles, and DOD Defense Procurement Director Deidre Lee. I also want to thank Mr. Cooper from GAO for being here today and all the small business owners who have taken valuable time away from their companies to make invaluable contributions to this hearing, as well as the expert witnesses who I am sure will add extremely helpful information and perspectives to assist us in more clearly understanding the scope and nature of this problem.

We are here because despite the fact that Congress and the Administration have focused over the past several years on concrete measures and legislation to increase small business access to federal procurement contracts, we have instead seen a disturbing trend in the opposite direction. The bottom line is that America's small businesses are being eroded by the practice of so-called bundling by federal agencies when they put contracts out for bid. What I hope to accomplish here today is to focus greater attention on the contract bundling issue, to examine the Administration's actions to address contract bundling, and to identify positive, constructive change that will ensure that the Federal Government continues to provide contracting opportunities for our small businesses and address the obstacles that remain.

Again let us remember these goals are entirely consistent with the recent objectives of Congress and the Administration. What appears not to be consistent, however, is how these goals fit with what may appear to be a competing goal—the legitimate efforts to make government cost less and operate more efficiently. Our chal-

lenge then is to reconcile these two policy objectives. I believe it can be done and must be done if we are to keep the engines that drive the economy, America's small businesses, vibrant, vital and viable.

We have a Federal Government that awarded close to $235 billion in contracts in fiscal year 2001 to procure the products it requires to run its agencies—to support the defense of our nation, to carry out the myriad functions with which it has been charged. With America's small businesses already producing up to 75 percent of our nation's net new jobs, can there be any serious question that we should create an environment in which small businesses can compete fairly for government contracts and be at the forefront of meeting the Federal Government's day-to-day needs for goods and services. Yet small businesses have received less than their fair share. While the statutory government-wide goal is 23 percent in fiscal year 2001, small businesses received a little more than 21 percent.

Why has this occurred? While in the years following procurement reform, federal agencies that have come under increased pressure to spend these dollars efficiently have consolidated or bundled contracts to save time and money because the truth is it's much simpler to call a single vendor to meet multiple agency needs, rather than contract with multiple vendors, which takes time and may cost more money.

The result, unfortunately, has been that small businesses continue to lose federal contract jobs by the bundle as a result of contract bundling, and the impact on small business is anything but small. For every hundred bundled contract there is a decrease of 106 contracts to small businesses. For every additional $100 awarded in bundled contracts there is a decrease of $33 in contracts to small businesses.

So with $109 billion in bundled contracts in fiscal year 2001, small businesses lost out on $13 billion. Indeed, looking at the last 10 years, contract bundling has forced more than 50 percent of small businesses out of the federal marketplace based on cumulative data obtained from the Federal Procurement Data Center.

I am tremendously concerned about this detrimental impact and as I am sure my colleagues would also say, this is an issue that truly hits home. These are not nameless, faceless entities. In fact, I recently learned that one of my constituents has unfortunately become an expert in this situation. Treadstone 71, a small technology company located in Scarborough, Maine, would like to provide the Federal Government with risk assessment and information security solutions. This is a rapidly growing area of need and as usual, small businesses are well poised to take advantage in terms of their tradition of innovation and ability to rapidly respond to shifting market needs.

But while Treadstone 71 has the credentials and the expertise to satisfy certain small contracts, the Federal Government has regrettably bundled these smaller contracts into larger awards that only Treadstone's largest competitors have the resources to satisfy. And to make matters worse, the company has been repeatedly shut out of related subcontracting opportunities.

If small businesses create the majority of new jobs in America, and they do, and they account for half the output of the economy, which they also do, they clearly deserve every possible fair chance to compete for the business of the nation's largest consumer, the Federal Government. That is why I was so pleased when the President brought national attention to this issue last March when he said, "Wherever possible, we are going to insist we break down large federal contracts so that small business owners have a fair chance at federal contracting." Since then, I know the Administration has worked very hard to put together a plan that will help small business access federal contracting opportunities.

But from my extensive review of this critical issue for small business, we can and must do more to ensure they have access to the federal marketplace while at the same time ensuring fiscal responsibility in government. And one of the programs I will be interested to explore further today is the Administration's e-government initiative. This is part of the President's management agenda to make the government operate more efficiently and effectively by using best practices among government procuring offices to purchase goods and services faster and cheaper.

In the final analysis this really is an issue of striking the right balance. Together I believe we can find the solution and find the balance between a small business commitment and fiscal responsibility. And again I look forward to learning more about how we can achieve that goal from our witnesses here today.

I am delighted that we have with us today the Small Business Administrator Hector Barreto, who has been on the front lines for small businesses, has been part of the small business community before assuming his position as SBA Administrator and I know he has had a long history in the corporate and small business sectors of our economy and he is obviously a passionate advocate for the small business community. So I am delighted that you are here today, Administrator Barreto.

And Ms. Styles, we look forward to hearing from you, the Administrator of the Office of Federal Procurement Policy in the Office of Management and Budget. She will be followed by Deidre Lee, director of the Office of Acquisition, the Department of Defense. And we also will conclude this panel with Mr. David Cooper, the Director of Acquisition and Sourcing Management at the General Accounting Office. We hope these witnesses give additional insights in terms of how we can proceed and develop final solutions that can address some of the issues that have arisen as a result of contract bundling.

So I will proceed with the Administrator. You can all summarize your statements and we will include the full text in the record of the Committee.

Mr. Barreto.

STATEMENT OF HON. HECTOR V. BARRETO, ADMINISTRATOR, U.S. SMALL BUSINESS ADMINISTRATION

Mr. BARRETO. Good morning, Chairwoman Snowe. Thank you very much for inviting me to discuss how contract bundling is affecting the ability of small businesses to compete for federal contracts.

As you know, this has been an area of concern and action for our President, George W. Bush, since he took office and there is a good reason why. When small businesses are able to compete for government contracts it can change lives, both those of the business owner and the people that that business employs. A good example is Dr. Adam Macias, a service-disabled veteran who is president of a company called Asamath, incorporated in Morgantown, West Virginia. SBA's procurement center representatives worked with him to acquire government contracts and his company went from one that could barely cover its electric and phone bills to one that now does $7 million in business with federal agencies and prime contractors each year. His business went from employing 12 people to employing over 100 people.

Unfortunately, contract bundling hinders opportunities like the one that Dr. Macias maximized. Contract reforms implemented in the mid–1990s, such as multiple award contracts have exacerbated an already difficult situation for small businesses. Orders under these contracts are not subject to review for contract bundling and small business participation.

The consequences of bundling are serious. Bundling federal contracts puts small businesses at a disadvantage because they are generally unable to supply all of the requirements in the bundled contract. As you said, according to the SBA's Office of Advocacy, for every 100 bundled contracts 106 individual contracts are no longer available to small firms. And for every $100 awarded on a bundled contract, there is a $33 decrease to small businesses.

These acquisition reforms that encourage more bundling have led to the reduction in the number of existing and potential firms available to the government and therefore to a reduction in the amount of contracts awarded to small firms. Data included in my submitted testimony shows that over the course of the past decade significantly fewer small businesses are receiving Federal Government contracts. We believe that contract reforms are a significant part of the reason, because agencies are using these various types of multiple award contracts which reduce new contract opportunities for small businesses.

When small businesses are excluded from federal opportunities, our country suffers. Small business participation is necessary for innovation and cost-savings, not to mention the benefits to our economy when small businesses are able to grow and create more jobs. All of this is why President Bush's small business agenda, which he rolled out last March, included several proposals to ensure full and open competition for Federal Government contracts.

Through leadership, training and accountability, we believe this Administration is making significant headway in reducing bundling and therefore increasing opportunities for small firms. Avoiding bundling whenever possible, ensuring that government contracts are open to all small businesses that can supply the government needs, and streamlining the appeals process for small businesses that contract with the Federal Government are all essential components as we make sure that small businesses get their fair share of federal contracts.

The SBA was honored to participate with OMB in developing the October 2002 report to the President entitled "Contract Bundling:

a Strategy for Increasing Federal Contracting Opportunities for Small Business." The strategy outlined nine specific steps to eliminate unnecessary contract bundling and mitigate the effects of necessary contract bundling. As a result, SBA and the Federal Acquisition Regulatory Council published proposed changes to their respective regulations in January of this year.

The details of SBA's proposed regulations are included in my submitted testimony. They focus on holding agencies accountable and closing the regulatory loopholes that have often resulted in lost opportunities for small businesses. Again leadership and accountability will make the difference for this nation's small businesses.

By implementing these new regulations and holding agencies accountable, a contracting environment will be created where small business owners will have the maximum opportunity to successfully compete for federal contracting and subcontracting. The SBA's current activity that seeks to ensure contract opportunities for small firms includes the work of our procurement center representatives or PCRs and a new and already quite successful matchmaking program that brings contracting opportunities to localities all over the country. The SBA also plans to establish the Small Business Procurement Advisory Council and reinstitute its Surveillance Review Program. Both existing and planned programs are described in more detail in my submitted testimony but I would be happy to discuss either one of these in more detail today if you have any questions about them.

The SBA also recognizes that contract bundling is but one piece of a larger puzzle to provide small businesses with what they want—more business. In addition to facilitating the highly successful matchmaking events just described, increasing access to federal contracting, and marketing the opportunity of federal contracting to small businesses beyond the Washington Beltway, the SBA will also make it easier for small businesses to learn how to do business with the Federal Government with on-line procurement academies.

In undertaking all of these actions, the SBA is demonstrating its commitment to the President's small business agenda and its focus on bringing federal procurement opportunities to America's small business. Since small businesses are the engines that drive the economy, increased opportunities for these firms will result in savings to the taxpayers, a stronger economy, and a stronger America.

This concludes my remarks, Chair Snowe, and I would be happy to answer any of your questions. Thank you.

[The prepared statement of Mr. Barreto follows:]

Statement of Hector V. Barreto
Administrator
U.S. Small Business Administration
Contract Bundling
Senate Committee on Small Business and Entrepreneurship
March 18, 2003

Good morning, Madam Chairwoman Snowe, Ranking Member Kerry and distinguished Members of this Committee. Thank you for inviting me to discuss how contract bundling is affecting the ability of small businesses to compete for federal contracts.

The Small Business Act defines contract bundling as "consolidating two or more procurement requirements for goods or services previously provided or performed under separate, smaller contracts into a solicitation of offers for a single contract that is unlikely to be suitable for award to a small business concern." There are several factors that contribute to contract bundling such as size and projected dollar amount of the requirement, the performance specifications, the geographical dispersion of contract performance sites, or any combination of these criteria.

Each year, the federal government awards over $200 billion in contracts. In FY 2001, small business received about $50 billion dollars, or 22.81 percent. In addition, large businesses subcontracted approximately $35.5 billion in federal work to small businesses.

However, SBA continues to hear from small businesses that contract bundling is one of most critical issues they face in doing business with the government. According to a report prepared for SBA's Office of Advocacy (which did not use the same definition of contract bundling cited on the previous page), for every 100 "bundled" contracts, 106 individual contracts are no longer available to small businesses. For every $100 awarded on a "bundled" contract, there is a $33 decrease to small businesses.

Because bundled contracts tend to run longer and encompass a greater scope, competition is reduced in terms of frequency and in the number of contract opportunities. A review of the data indicates that, even though the overall dollars spent in contracting with small businesses has remained relatively constant, there has been a sharp overall decline in new contract awards. According to OMB's October 2002 Report to the President, "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business," new contract awards declined from a high of 86,243 in fiscal year 1991 to a low of 34,261 in fiscal year 2001. Significantly fewer small businesses are receiving federal government contracts. The number of small business contractors receiving new contract awards, declined from a high of 26,506 in fiscal year 1991 to a low of 11,651 in fiscal year 2000.

This decline in small business participation has been exacerbated by the use of contract vehicles such as multiple award contracts. Orders under these contracts are not

subject to uniform review for contract bundling and small business participation. While there has been a sharp decline in new contract awards, there has been a substantial increase in orders under these contracts. Orders under these types of contracts increased from $21 billion in FY 1990 to a high of $72 billion in FY 2001. With total FY 2001 procurements valued at $235 billion, orders under these existing contracts represent about 31 percent of the total.

Consequently, firms that previously operated in the government arena are no longer able to do so. This is an indication that acquisition reform has unintentionally reduced the number of existing and potential firms available to the government. Excluding small businesses from federal opportunities through contract bundling results in a loss of jobs, which impact our Nation's economy.

Last March, the President announced his small business agenda to reduce regulations and taxes and to expand opportunities for small businesses. In January, the President included in his jobs and growth proposals further measures to reduce the tax burdens on small business and to encourage investment. Together, his proposals give small businesses the jump-start they need to create jobs, support their workers, and improve our economy. Prominent feature of the President's agenda are ensuring full and open competition in government contracts and avoiding unnecessary contract bundling. This measure will create opportunities for small businesses and save taxpayer dollars.

The U.S. Small Business Administration (SBA) was honored to participate with OMB in developing its October 2002 Report to the President. As you know, Madam Chairwoman, when contracts are bundled together, small businesses are at a disadvantage if they are unable to compete for contract requirements that they have previously provided to the government. The strategy outlined 9 specific steps to eliminate unnecessary contract bundling and to mitigate the effects of necessary contract bundling. Two key steps are to hold agencies accountable and to close the regulatory loopholes that may have resulted in lost opportunities for small businesses.

As a result, SBA and the Federal Acquisition Regulatory Council published proposed changes to their respective regulations in January 2003. SBA's regulations, among other things, require:

- contract bundling reviews for orders under multiple award contracts including Federal Supply Schedules;
- agencies to review of proposed acquisitions above a specified dollar thresholds for unnecessary and unjustified bundling;
- agencies to identify alternative strategies that involve less bundling when an agency contemplates a bundled contract; and
- agencies to strengthen compliance with subcontracting plans.

Leadership and accountability will make the difference for this Nation's small businesses. By implementing these regulations and holding agencies accountable, a contracting environment will be created in which small business owners will have the maximum

opportunity to successfully compete for federal contracting and subcontracting opportunities and ultimately achieve their dreams.

SBA Responsibilities

SBA assigns Procurement Center Representatives (PCRs) to major contracting offices to implement small business policies and programs. PCR responsibilities include: reviewing proposed acquisitions and recommending alternative procurement strategies; identifying qualified small business sources; reviewing subcontracting plans; conducting reviews of the contracting office to ensure compliance with small business policies; counseling small businesses; and sponsoring and participating in conferences and training designed to increase small business opportunities. Forty-seven PCRs represent SBA at 255 department and agency contracting offices across the country. PCRs cover 11.6 percent of the 2,200 federal contracting offices. However, the 255 contracting offices award approximately $120 billion of the $200 billion awarded in federal contracts each year.

In the past, SBA has had some success in mitigating instances of contract bundling. Through SBA's involvement of our PCR in New Jersey, we were able to retain over $7 million dollars in the small business community. The Army planned to bundle metal pallets, wood pallets and lift plugs into a contract for metal parts associated with High Explosive Ammunition. Since 1998, the metal pallets and lift plugs have been acquired from small businesses as a result of SBA's recommendation to reserve the contracts for small business competition. The metal parts for this High Explosive Ammunition were previously acquired from large business. The bundled contract would be unsuitable for small business due to the specialized manufacturing equipment and processes required to manufacture the large caliber projectile metal parts.

In December 2001, the Army Project Manager met with SBA to discuss bundling the pallets and lift plugs with the metal parts procurement. The PCR stated that SBA would not concur with the acquisition strategy to bundled requirements. Subsequently, the Army agreed to continue acquiring the pallets and lift plugs directly from the small business community. The contracts for the wood pallets, metal pallets, and lift plugs have performance periods of 5 years with dollar values of $1.4 million, $4.0 million and $2.3 million, respectively.

Agencies Responsibilities

Agencies play a vital role in fostering opportunities for small businesses. Each federal agency must: (1) structure contracting requirements to facilitate competition by and among small business concerns, taking all reasonable steps to eliminate obstacles to their participation; (2) avoid unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors; (3) conduct market research to determine whether contract bundling is necessary and justified; (4) justify contract bundling by demonstrating "measurably substantial benefits," such as cost savings, quality improvements, reduction in acquisition

cycle times, or better terms and conditions; and (5) consult with SBA representatives on their acquisition strategies.

Each major department and agency has an Office of Small and Disadvantaged Business Utilization (OSDBUs) that ensures uniform implementation of small business programs. OSDBUs are responsible for ensuring that small businesses have the maximum practicable opportunity to participate in the performance of federal contracts as both prime contractors and subcontractors. With regard to contract bundling, OSDBUs work with SBA to: (1) identify proposed solicitations that involve bundling; (2) facilitate small business participation as prime contractors; and (3) facilitate small business participation as subcontractors and suppliers where participation by small business concerns as prime contractors is unlikely. The Agency's Small Business Specialists advise contracting officials and program managers on small business issues and identify potential small business sources. They also review large business prime contractors' subcontracting plan and evaluate small business performance under those plans.

SBA Initiatives

SBA continues to use innovative practices to create opportunities for small businesses. SBA is partnering with the U.S. Chamber and Hewlett-Packard to conduct to seven nationwide matchmaking events that will match the capabilities of small businesses with the requirements from Federal agencies, prime contractors and state and local governments. On March 4th and 5th, we held a successful event in Orlando, Florida at which over 500 small businesses participated in over 2500 appointments. A main focus of these events is to assist women-owned small business and veteran-owned small business find contracting opportunities.

SBA also plans to establish the Small Business Procurement Advisory Council that will consist of the OSBDU Directors and the Head of the Minority Business Development Agency. This Council will interact with OMB, the Federal Acquisition Regulatory Council, and other appropriate regulatory authorities on matters affecting small business in Federal procurement.

SBA is re-instituting its Surveillance Review Program which requires the PCRs to monitor the performance of buying activities to which they are assigned to determine compliance with small business policies and programs. We plan to conduct 18 reviews over the next 12 months.

SBA is committed to the President's Small Business Agenda and his proposals to create jobs and growth through the small business sector. We must ensure that small businesses receive their fair share of contract opportunities. Since small businesses are the engines that drive the economy, increased opportunities for these firms will result in savings to the taxpayers, a stronger economy, and a stronger America. This concludes my remarks, and I will be able to respond to any questions that you may have.

Chair SNOWE. Thank you very much, Mr. Barreto.

Ms. Styles.

STATEMENT OF ANGELA B. STYLES, ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY, OFFICE OF MANAGEMENT AND BUDGET

Ms. STYLES. Chair Snowe, I am pleased to be here today to discuss contract bundling.

This Administration is working hard to create an environment where small businesses can flourish. For small businesses the primary issue is access to the federal marketplace and the opportunity to compete. And for us as policy-makers, the issue is a dramatically reduced contractor base and mounting lost opportunity costs of choosing among fewer firms with fewer ideas and innovations to deliver products and services at lower prices.

On March 19th of last year the President unveiled a small business agenda that made several proposals to increase the access of small businesses to federal contracting opportunities. The agenda called upon the Office of Management and Budget to develop a strategy for unbundling federal contracts. My office formed and chaired an interagency working group to develop the strategy requested by the President.

In June, we held a public meeting to give interested parties, especially small businesses, an opportunity to express their views on this important subject. Taking those views into consideration, I submitted a strategy to the President in October 2002. A copy of this strategy entitled "Contract Bundling: A Strategy for Increasing Federal Opportunities for Small Businesses," is attached to my testimony.

We found that although contract bundling can serve a useful purpose, the negative effects of contract bundling over the past 10 years cannot be underestimated. Not only are substantially fewer small businesses receiving federal contracts, but the Federal Government is suffering from a smaller supplier base. As we have broadened the scope of contract requirements into fewer and fewer contract vehicles over the past decade, the pool of small business contractors receiving new contract awards has declined from 26,000 in 1991 to about 11,600 in 2000. When small businesses are excluded from federal opportunities through contract bundling, our agencies, small businesses, and the taxpayers lose.

The strategy outlines nine specific actions the Administration is taking to eliminate unnecessary contract bundling and mitigate the effects of bundling that agencies find to be necessary and justified. These nine recommendations can be divided into three categories: promoting leadership and accountability, closing regulatory loopholes, and mitigating the effects of necessary and justified contract bundling.

In speaking to small businesses throughout the country, it has become clear to me that accountability and leadership are the keys to making progress. With successful implementation of this strategy, we believe that we can reduce a significant barrier to entry and in doing so, allow small businesses to bring their innovation, creativity, and lower cost to the federal marketplace.

We are holding agencies accountable. We have asked agencies to begin reporting on their efforts to reduce contract bundling and to mitigate the effects by increasing the overall access of small businesses to federal contract opportunities. Through the President's Management Council representatives to the 26 major departments and agencies, agencies are now reporting on a quarterly basis to OMB on actions they are taking to implement each of the nine recommendations identified in the strategy.

The second issue: closing regulatory loopholes. Several actions identified in our strategy call for cleaning up regulatory loopholes that have allowed certain types of contracts and contract actions to escape bundling reviews. My office formed and is heading an interagency task force to develop regulations to amend both the Federal Acquisition Regulation and the Small Business Administration bundling regulations to help implement this strategy. The proposed regulations were published on time on January 31, 2003.

In general, these regulations would make clear that multiple award contracts and orders under such contracts are not exempt from regulatory requirements and procedures designed to eliminate contract bundling and mitigate the effects. They would also provide more effective agency and small business contracting review procedures. Finally, they would require agencies to identify alternative strategies that reduce bundling and justify decisions not to use those alternatives.

The third piece of our strategy is mitigating the effects of necessary and justified contract bundling. Our report to the President identifies actions we are taking to mitigate the effects of contract bundling when agencies find it to be necessary and justified.

Specifically, we are counting on agencies to do their part to strengthen prime contractor compliance with subcontracting plans and facilitate the development of small business teams and joint ventures. The proposed regulations would require agencies to assess prime contractor compliance with the goals identified in their small business contracting plans as part of the agency's overall evaluation of a prime contractor's performance. Since this past performance information is often used as a significant factor in agency decisions to award contracts, this regulatory requirement should provide a strong incentive for prime contractors to increase subcontracting opportunities.

Our report to the President recognizes that successful implementation of these mitigating actions relies more on the initiative of the agency than on the issuance of regulations. We are counting on agencies to strengthen their oversight of contractor efforts to comply with subcontracting plans by establishing procedures that designate agency personnel responsible for monitoring contractor compliance. We are also counting on agencies to train and facilitate early development of teams of small business contractors to compete for upcoming agency procurements.

Our office will continue to look for ways to improve the subcontracting practice, including ways in which we can increase small business access to subcontracting opportunities; for example, by providing greater incentive for prime contractors to follow through with their subcontracting plans.

Through my office I look forward to a continued leadership role in implementing the President's strategy. I think we can make a real difference for small businesses and a real difference for the taxpayers.

Thank you again for having me here today.

[The prepared statement of Ms. Styles follows:]

STATEMENT OF ANGELA B. STYLES

ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY

BEFORE THE COMMITTEE ON SMALL BUSINESS AND

ENTREPRENEURSHIP

UNITED STATES SENATE

MARCH 18, 2003

Chairwoman Snowe and Members of the Committee, I am pleased to be here today to discuss contract bundling.

I. Background

This Administration is working hard to create an environment where small businesses can flourish and apply their talents to the many pressing needs facing our government. We are exploring ways to promote greater participation from this underutilized segment of our economy. For small businesses, the primary issue is access to the federal marketplace and the opportunity to compete. And, for us, as policymakers, the issue is a dramatically reduced contractor base, and the mounting lost opportunity cost of choosing among fewer firms with fewer ideas and innovations to deliver products and services at lower prices.

II. Small Business Agenda

On March 19, 2002, the President unveiled a Small Business Agenda that made several proposals to increase the access of small business to federal contracting opportunities. The Agenda called upon the Office of Management and Budget to develop a strategy for unbundling federal contracts. As you know, contract bundling is defined in the Small Business Act as "consolidating two or more procurement requirements for goods or services previously provided or performed under separate, smaller contracts into a solicitation of offers for a single contract that is unlikely to be suitable for award to a small business concern." While statutory and regulatory provisions recognize that contract bundling can have some benefits these provisions address the detrimental effects that this contracting practice can have on small business opportunities. An agency decision to bundle contracts must be justified by a determination that quantifies substantial benefits to be derived from the bundling.

A. Contract Bundling Strategy

My office formed and chaired an interagency working group to develop the strategy requested by the President. In June we held a public meeting to give interested parties - - especially small businesses - - an opportunity to express their views on this important subject. Taking these views into consideration, I submitted a strategy to the President in October 2002. A copy of this strategy entitled "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business" is attached to my testimony. We found that, although contract bundling can serve a useful purpose, the negative effects of contract bundling over the past 10 years cannot be underestimated.

Not only are substantially fewer small businesses receiving federal contracts, but the federal government is suffering from a smaller supplier base. As we have broadened the scope of contract requirements into fewer and fewer contract vehicles over the past decade, the pool of small business contractors receiving new contract awards declined from 26,000 in 1991 to about 11,600 in 2000. When small businesses are excluded from federal opportunities through contract bundling, our agencies, small businesses, and the taxpayers lose.

The strategy outlines nine specific actions the Administration is taking to eliminate unnecessary contract bundling and mitigate the effects of bundling that agencies find to be necessary and justified. These nine recommendations can be divided into three categories: (1) promoting leadership and accountability; (2) closing regulatory loopholes; and (3) mitigating the effects of necessary and justified contract bundling.

1. Promoting Leadership and Accountability

The strategy also seeks to more clearly focus the resources of agency offices of small and disadvantaged business on the President's Small Business Agenda and on implementing the strategy. In speaking to small businesses throughout the country, it has become clear to me that accountability and leadership are the keys to making progress. With successful implementation of this strategy, we believe that we can reduce a significant barrier to entry and, in doing so, allow small businesses to bring their innovation, creativity, and lower costs to the federal marketplace. We are holding agencies accountable. Agencies have begun reporting to OMB on their efforts to reduce

contract bundling and to mitigate the effects by increasing the overall access of small business to federal contracting opportunities. Through their President's Management Council representative, agencies report quarterly to OMB on actions they are taking to implement each of the nine action items identified in the strategy. For the first reporting period, we asked agencies to report on actions taken and planned before issuance of implementing regulations. By doing so, we are sending a message that - - although regulatory change is vital to successful implementation - - several agency actions are not, and should not, be dependent upon issuance of regulations.

2. Closing Regulatory Loopholes

Several actions identified in the strategy call for cleaning up regulatory loopholes that have allowed certain types of contracts and contract actions to escape bundling reviews. My office formed and is heading an interagency task force to develop regulations to amend both the Federal Acquisition Regulation (FAR) and Small Business Administration (SBA) bundling regulations to help implement the strategy. Proposed regulations were published in the *Federal Register* on January 31, 2003.

In general, the proposed regulations would (a) make clear that multiple award contracts and orders under such contracts are not exempt from regulatory requirements and procedures designed to eliminate unnecessary contract bundling and mitigate the effects of bundling, (b) provide more effective agency small business contracting review procedures, and (c) require agencies to identify alternative strategies that reduce bundling and justify decisions not to use those alternatives.

a. Multiple award contracts

Our report to the President found that multiple award contracts and task and delivery orders placed against such contracts are not uniformly reviewed for contract bundling issues. This lack of uniform review is a problem because, while there has been a sharp decline in other contract actions, there has been a significant increase in orders under these types of contracts. To close a loophole that might allow agencies to avoid justification and mitigation procedures that would otherwise guard against unwarranted bundling of task and delivery orders under these contracts, we intend to clarify that contract bundling regulations and procedures apply to various types of multiple award contracts and task and delivery orders placed against such contracts. The proposed regulations would make this clarification by specifically including these types of contracts and orders within the regulatory definition of contract bundling.

b. Small business contracting review procedures

Our report to the President found that, while some agencies may require participation of a small business specialist in the acquisition process, there is no government-wide requirement for participation by a small business advocate (internal or external to the agency) as a member of the acquisition planning team. We believe that more active involvement in agency acquisitions by agency small business specialists and agency offices of small and disadvantaged business will help balance the need to provide small business contracting opportunities with equally legitimate demands for making the acquisition process quicker and less complex. To enable this involvement, the proposed regulations would establish screening procedures, whereby agency small business

specialists would conduct more-thorough reviews of acquisitions for bundling issues and concerns (i.e., bundling reviews). Agency small business specialists would be required to notify agency offices of small and disadvantaged business when an acquisition plan or strategy would, in their opinion, allow unnecessary or unjustified contract bundling.

These proposed bundling reviews would be conducted when contracts are above certain agency-specific acquisition dollar thresholds. The bundling threshold for most agencies would be acquisitions above $2 million. For NASA, GSA, and Energy, the bundling threshold would be acquisitions above $5 million. The bundling threshold for Defense Department acquisitions would be $7 million. I want to emphasize that the proposed bundling reviews would be in addition to current statutory and regulatory requirements for agency contracting officer review and justification of all bundled contracts.

We are also proposing to significantly lower the dollar threshold for "substantial bundling" from $10 million (annual average) to the agency-specific acquisition thresholds identified above. Under SBA regulations, agencies must provide additional justification for bundling that is considered "substantial bundling" - - currently defined as bundled acquisitions that average more than $10 million each year. The additional requirements for justifying substantial bundling include documenting (1) assessments of specific impediments to participation by small businesses as prime contractors, and (2) actions designed to maximize small business participation as prime contractors and

subcontractors at any tier. The proposed regulations would apply these additional justification and documentation requirements to these lower dollar acquisitions.

c. Identification of alternative strategies and justification

Our report to the President recognized that we cannot afford to revert back to the paperwork and labor-intensive acquisition system of the past nor can we pursue operational efficiencies at the expense of reducing small business opportunities. We must find an appropriate balance between operational efficiency, opportunity, and fairness. We must also recognize that bundling decisions should not be an "either or" decision, i.e., a decision to either bundle or not bundle acquisitions. Like any acquisition strategy, analysis of bundling should account for how it would help or hinder the operation of programs within and across agencies. For example, the Administration's E-Government initiatives often require integration that may be facilitated by bundling if the agency demonstrates substantial benefits. However, even in instances where bundling is found to be necessary and justified, agencies should seek alternative acquisition strategies that have less negative impact on small businesses.

We are proposing to add new bundling justification procedures - - at the agency-specific acquisition thresholds identified above - - to require agencies to identify alternative acquisition strategies that would result in less bundling. The rules would also require agencies to justify not choosing those alternatives. Our intent is not to increase agency paperwork but to cause agencies to give more thought to the impact of their bundling decisions and how they might achieve operational efficiencies and increase

opportunities for small business. On a system-wide basis, the proposed regulations would require agency offices of small and disadvantaged business to periodically conduct reviews of their agencies' acquisition offices overall efforts to increase opportunities for small businesses and report their findings to the agency head.

3. Mitigating the Effects of Contract Bundling

Our report to the President identifies actions we are taking to mitigate the effects of contract bundling when agencies find it to be necessary and justified. Specifically, we are counting on agencies to do their part to strengthen prime contractor compliance with subcontracting plans and facilitate development of small business teams and joint ventures. The proposed regulations would require agencies to assess prime contractor compliance with goals identified in their small business subcontracting plans, as part of the agencies' overall evaluation of the prime contractor's performance. Since this "past performance" information is often used as a significant factor in agency decisions to award contracts, this regulatory requirement should provide strong incentive for prime contractors to increase subcontracting opportunities for small businesses. We can also work with agencies to ensure that they properly account for subcontracting activities when addressing goals for small business.

Our report to the President recognizes that successful implementation of these mitigating actions relies more on agency initiative, rather than issuance of regulations. We are counting on agencies to strengthen their oversight of contractor efforts to comply with their subcontracting plans, by establishing procedures that designate agency

personnel responsible for monitoring contractor compliance. We are also counting on agencies to train and otherwise facilitate early development of teams of small business contractors to compete for upcoming agency procurements.

Our office will continue to look for ways to improve the subcontracting process, including ways in which we can increase small business access to subcontracting opportunities by, for example, providing greater incentive for prime contractors to follow through with their subcontracting plans. At some point, we will request public views on this important area.

B. Competitive Sourcing

Although the relevance to small business may not be evident at first glance, we are opening procurement opportunities for small business by opening the government's commercial activities to expanded competition between public and private sources. Today, most of the 850,000 full-time-equivalent employees that agencies have identified as performing commercial activities (i.e., nearly half of all federal employees) are insulated from the dynamics of competition. To improve and expand competition for these activities, OMB has proposed significant revisions to OMB Circular A-76, the process to determine whether commercial activities will be performed by public or private sources. On average, small businesses receive more than 60 percent of the awards made to private sector firms through the A-76 public-private competition process. Increasing competition for commercial activities performed by government personnel increases opportunities for small business.

III. Conclusion

Our office will continue to take a leading role in implementing the President's strategy on contract bundling. Public comments on the proposed regulations are due by April 1. We plan to continue working with our interagency task force to develop the regulations, through resolution of public comments and issuance of final rules to implement appropriate changes to both the FAR and SBA regulations. To further ensure agency accountability, we have asked agencies to report quarterly to the Office of Management and Budget (OMB) on the status of their efforts to address contract bundling issues. Our office will be monitoring agency actions and we will provide additional guidance as necessary. This concludes my prepared remarks. I am happy to answer any questions that you might have.

Contract Bundling

A Strategy for Increasing Federal Contracting Opportunities for Small Business

October 2002

Executive Office of the President
Office of Management and Budget
Office of Federal Procurement Policy

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

October 29, 2002

The President
The White House
Washington, DC 20500

Dear Mr. President:

In March of this year, as part of the Small Business Agenda, you called upon the Office of Management and Budget to prepare a strategy for unbundling federal contracts. On behalf of the Office of Federal Procurement Policy within the Office of Management and Budget, I am pleased to submit the enclosed strategy for increasing federal contracting opportunities for small businesses.

As you know, the number and size of bundled contracts within the executive branch have reached record levels. Although contract bundling can serve a useful purpose, the effect of this increase in contract bundling over the past ten years cannot be underestimated. Not only are substantially fewer small businesses receiving federal contracts, but the federal government is suffering from a reduced supplier base. American small businesses bring innovation, creativity, competition and lower costs to the federal table. When these businesses are excluded from federal opportunities through contract bundling, our agencies, small businesses and the taxpayers lose.

The enclosed report provides an aggressive strategy for holding agencies accountable for eliminating unnecessary contract bundling and mitigating the effects of necessary contract bundling. The recommendations propose a series of regulatory changes to ensure maximum compliance with current contract bundling laws and full use of the resources of the Small Business Administration and agency Offices of Small and Disadvantaged Business Utilization.

With successful implementation of this strategy, we will be making a significant step forward towards ensuring that small businesses and entrepreneurs have access to federal contracting opportunities.

Sincerely,

Angela B. Styles
Administrator

Enclosure

PREFACE

On March 19, 2002, the President unveiled a Small Business Agenda that proposed several substantive steps toward creating a dynamic environment where small businesses and entrepreneurs can flourish. The plan included new tax incentives, health care options, and a reduction in regulatory barriers. And for those small businesses seeking to do business with the federal government, the President announced several proposals to improve the access of small businesses to federal contracting opportunities. Specifically, the President called upon the Office of Management and Budget (OMB) to prepare a strategy for unbundling contracts.

In late March, the Office of Federal Procurement Policy (OFPP), within OMB, created an interagency working group to develop strategies for unbundling contracts. This group, chaired by Michael Gerich from OFPP, met on many occasions during the summer and early fall and was instrumental in creating the final report.

OMB and the interagency working group sought significant public comment. On May 6, 2002, OMB issued a notice in the Federal Register requesting public comments. We received 27 public comments on contract bundling and issues related to the access of small businesses to federal contracting opportunities. On June 14, 2002, OMB held a public meeting where interested parties were given an opportunity to express their views. Fourteen individuals made presentations at that public meeting. Comments received from the public, both in writing and at the public meeting, were considered in the preparation of this report.

Special thanks should be given to the following people for their participation in the development of this report: Janis Coughlin, OMB; Luz Hopewell, SBA; Janet Koch, DOD; Karyn Richman, OMB; and Linda Williams, SBA.

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I. Executive Summary

A strategy for unbundling contracts must recognize the combined challenges and benefits of a reduced acquisition workforce and the need to maintain an overall acquisition system that is fair, efficient, and transparent. We cannot afford to revert back to the paperwork and labor-intensive system of the past. Nor can we pursue operational efficiencies at the expense of reducing small business opportunities. The challenge is to strike an appropriate balance between operational efficiency, opportunity, and fairness.

To address contract bundling in the executive branch, the following actions will be taken:

1. Ensure accountability of senior agency management for improving contracting opportunities for small business.

2. Ensure timely and accurate reporting of contract bundling information through the President's Management Council.

3. Require contract bundling reviews for task and delivery orders under multiple award contract vehicles.

4. Require agency review of proposed acquisitions above specified thresholds for unnecessary and unjustified contract bundling.

5. Require identification of alternative acquisition strategies for the proposed bundling of contracts above specified thresholds and written justification when alternatives involving less bundling are not used.

6. Mitigate the effects of contract bundling by strengthening compliance with subcontracting plans.

7. Mitigate the effects of contract bundling by facilitating the development of small business teams and joint ventures.

8. Identify best practices for maximizing small business opportunities.

9. Dedicate agency Offices of Small and Disadvantaged Business Utilization (OSDBUs) to the President's Small Business Agenda.

II. Background

Each year, the federal government awards over $200 billion in contracts. In fiscal year 2001, there were 11.4 million contract actions valued at $234.9 billion. Federal

agencies state that they generally award nearly 23 percent of the total dollars spent on federal procurements each year to small businesses. In addition, in fiscal year 2001, large businesses subcontracted approximately $35.5 billion in federal work to small businesses.

A. What is Contract Bundling?

The Small Business Reauthorization Act of 1997 defines contract bundling as "consolidating two or more procurement requirements for goods or services previously provided or performed under separate, smaller contracts into a solicitation of offers for a single contract that is unlikely to be suitable for award to a small business concern." The Act lists several factors that might cause unsuitability for award to a small business. These are - -

- the diversity, size, or specialized nature of the elements of the performance specified;
- the aggregate dollar value of the anticipated award;
- the geographical dispersion of contract performance sites; or
- any combination of these criteria.[1]

The Act requires each federal department and agency, to the maximum extent practicable, to: (1) structure contracting requirements to facilitate competition by and among small business concerns, taking all reasonable steps to eliminate obstacles to their participation; and (2) avoid unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors.

Prior to bundling any contracts, agencies are required to conduct market research to determine whether contract bundling is necessary and justified. To justify contract bundling, agencies must demonstrate "measurably substantial benefits," such as cost savings, quality improvements, reduction in acquisition cycle times, or better terms and conditions.[2] The Small Business Administration's implementing regulations further define "measurably substantial benefits" by requiring agencies to demonstrate - -

- for contracts of $75 million or less - - benefits equivalent to 10 percent of contract value (including options), or

[1] The definitions of "bundled contract," "bundling of contract requirements," and "separate smaller contract" are codified in section 3(o) of the Small Business Act (15 U.S.C. § 632(o)).

[2] The statutory requirements for agencies to conduct market research to determine whether consolidation of procurement requirements is necessary and justified, including identification of "measurably substantial benefits," are codified in section 15(e) of the Small Business Act (15 U.S.C. § 644(e)).

- for contracts over $75 million - - benefits equivalent to 5 percent of contract value (including options) or $7.5 million, whichever is greater.[3]

Several provisions of the Federal Acquisition Regulation (FAR) establish responsibilities for agency personnel who are considering contract bundling. The FAR places responsibility on agency acquisition planners to structure requirements, to the maximum extent practicable, to facilitate competition by and among small business concerns, and avoid unnecessary and unjustified bundling. Agency contracting officers are required to: (1) perform market research to determine whether bundling is necessary and justified; (2) justify their determinations in acquisition strategy documentation that identifies measurably substantial benefits that meet the statutory and regulatory requirements; and (3) consult with SBA representatives on their acquisition strategies.[4]

B. Why Are Contracts Bundled?

Increased demands to make the acquisition process quicker and less complex coupled with reductions in the overall acquisition workforce have driven acquisition managers to bundle requirements. To meet these demands and increase customer satisfaction, agencies have increasingly consolidated contractual requirements into larger contracts and used limited and simplified competition procedures for acquiring products and services.[5]

C. What is the Impact of Contract Bundling on Small Businesses?

According to a report prepared for SBA's Office of Advocacy, for every 100 "bundled" contracts, 106 individual contracts are no longer available to small businesses. For every $100 awarded on a "bundled" contract, there is a $33 decrease to small businesses.[6] Because these types of contracts "run longer and encompass a greater scope, competition is reduced in terms of frequency and the number of opportunities."[7] Analysis

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[3] SBA's bundling regulations are codified at 13 C.F.R. § 125.2.

[4] See FAR sections 7.103 and 7.107 (48 C.F.R. § 1, 7.103 and 7.107) for more information on acquisition planning. Also see FAR Part 10 (48 C.F.R. § 1, 10) and FAR Subpart 19.4 (48 C.F.R. § 1, 19.4) for more information on agency responsibilities to conduct market research and cooperation with SBA.

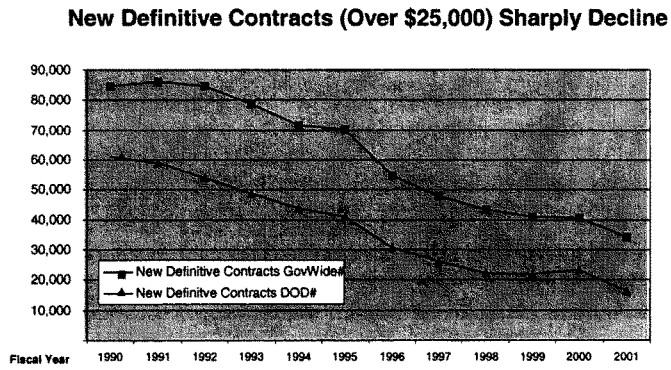
[5] For a more detailed description of the reasons for agency contract consolidation, see Case Studies in DOD Contract Consolidations: A Study for the Office of Small and Disadvantaged Business Utilization, Appendix C, Logistics Management Institute (LMI), December 2000.

[6] The Impact of Contract Bundling on Small Business FY 1992 - FY 1999 (Eagle Eye Publishers for the U. S. Small Business Administration, Office of Advocacy, September 2000). In Small Business: Limited Information Available on Contract Bundling's Extent and Effects (GAO/GGD-00-82, March 2000), GAO questioned the probative value of an earlier report by Eagle Eye, because the definition of contract bundling used by Eagle Eye did not correspond with the statutory definition. The later Eagle Eye report (cited above) relies on a similar definition, and thus is subject to the same scrutiny. Nevertheless, we use these figures as anecdotal evidence of the impact of contract bundling and similar practices that may not meet the statutory definition.

[7] LMI report, *supra*, note 5, pages 4-5 and 4-6.

of the data indicates that, even though the overall dollars spent in contracting with small businesses remained relatively constant, there has been a sharp overall decline in new contract awards. Figure 1 shows a decline in new contract awards (i.e., new contracts rather than contract modifications or orders under existing contracts), from a high of 86,243 in fiscal year 1991 to a low of 34,261 in fiscal year 2001.[8]

Figure 1: New Definitive Contracts (over $25,000)



We also found that significantly fewer small businesses are receiving federal government contracts. Figure 2 shows a dramatic decline in the number of small business contractors receiving new contract awards, from a high of 26,506 in fiscal year 1991 to a low of 11,651 in fiscal year 2000.[9] The significant reductions in new contract awards and the number of small business contractors receiving contract awards signals an increase in contract bundling and a decline in small business opportunities.

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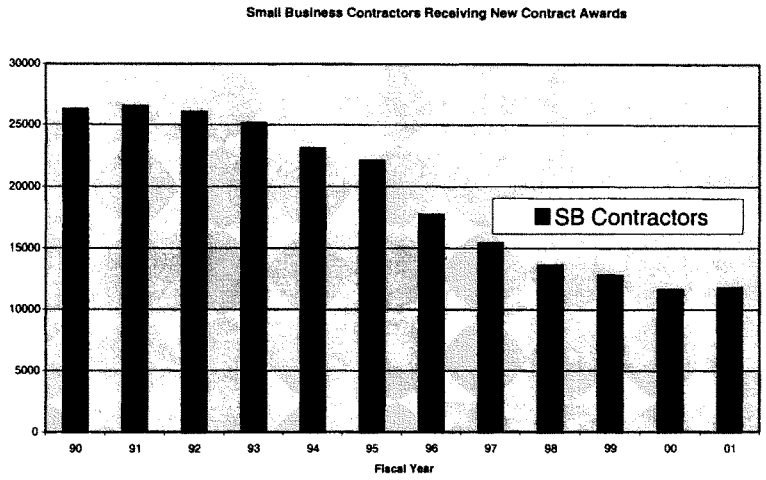
[8] GAO concluded in 2001 that ". . . small businesses received a higher share in fiscal year 1999 of expenditures in new contracts for most categories of goods and services than they did in fiscal year 1993." (Small Business: Trends in Federal Procurement in the 1990s, GAO-01-119, January 2001, page 12). However, as indicated in Figure 1, the total number of new contract awards declined significantly from fiscal year 1990 to fiscal year 2001. Figure 3 indicates that, during the same period, there was a substantial increase in orders under contracts.

[9] These figures are based on cumulative data obtained from the Federal Procurement Data System (FPDS).

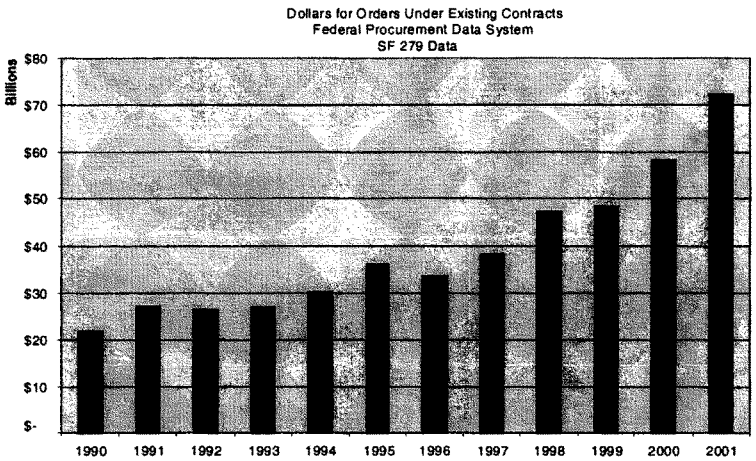
Figure 2: Small Business Contractors Receiving New Contract Awards



This decline in small business participation has been exacerbated by the use of contract vehicles that are not uniformly reviewed for contract bundling. Orders under agency multiple award contracts (MACs), multi-agency contracts, Government-Wide Acquisition Contracts (GWACs), and GSA's Multiple Award Schedule Program are not subject to uniform reviews for contract bundling issues. This lack of uniform review is a problem because, while there has been a sharp decline in other contract actions, there has been a significant increase in orders under these contracts.

Figure 3 shows an increase in department and agency expenditures for orders under existing contracts, from $21 billion in fiscal year 1990 to a high of $72 billion in fiscal year 2001. With total fiscal year 2001 procurements valued at $234.9 billion, orders under existing contracts represent about 31 percent of the total.

Figure 3: Dollars for Orders Under Existing Contracts



D. What Sectors of the Workforce are Responsible for Contract Bundling Issues?

A wide range of agency contracting personnel have responsibilities for fostering small business contracting opportunities and addressing contract bundling issues. For example, the Small Business Act assigns responsibility to agency Offices of Small and Disadvantaged Business Utilization (OSDBUs) to identify proposed solicitations that involve significant contract bundling requirements, and to work with agency contracting personnel and the SBA on procurement strategies to increase the participation by small businesses as prime contractors and subcontractors.[10] By regulation, agency contracting personnel must identify and report to SBA the bundled contracts that the agency has determined are necessary and justified and the small businesses that would be displaced by contract bundling.

1. Agency Acquisition Workforce

The acquisition workforce is composed of numerous career fields. Contracting and purchasing personnel are just a part of the overall acquisition workforce, but they hold

[10] See section 15(k)(5) of the Small Business Act, 15 U.S.C. § 644(k)(5).

primary responsibility for meeting various agency small business contracting goals. In addition, they perform a wide range of duties including: conducting market research; planning acquisitions; soliciting potential contractors; negotiating costs, prices, and terms of contracts; and awarding and administering contracts.

2. Offices of Small and Disadvantaged Business Utilization

The Small Business Act (15 U.S.C. § 631, et seq.) requires each department and agency with contracting authority to establish an OSDBU, with reporting authority to the head of the agency. These offices promote contracting opportunities for small businesses, including small business concerns owned and controlled by veterans, service-disabled veterans, women, and socially and economically disadvantaged individuals, as well as those small businesses located in Historically Underutilized Business Zones (HUBZones). OSDBUs are responsible for ensuring that small businesses have the maximum practicable opportunity to participate in the performance of federal contracts as both prime contractors and subcontractors.

With regard to contract bundling, OSDBUs work with SBA to: (1) identify proposed solicitations that involve bundling; (2) facilitate small business participation as prime contractors; and (3) facilitate small business participation as subcontractors and suppliers where participation by small business concerns as prime contractors is unlikely. OSDBU staff assigned to agency contracting offices, known as small business specialists, advise agency contracting and requirements personnel on small business issues and identify potential small business sources. They also review small business subcontracting plans and evaluate contractor performance under those plans. While some agencies may require participation of a small business specialist in the acquisition planning process, there is no government-wide requirement for participation by a small business advocate (internal or external to the agency) as a member of the acquisition planning team.

3. Procurement Center Representatives (PCRs)

SBA assigns Procurement Center Representatives (PCRs) to major contracting offices to implement small business policies and programs. PCR responsibilities include: reviewing proposed acquisitions and recommending alternative procurement strategies; identifying qualified small business sources; reviewing subcontracting plans; conducting reviews of the contracting office to ensure compliance with small business policies; counseling small businesses; and sponsoring and participating in conferences and training designed to increase small business opportunities. Forty-seven PCRs represent SBA at 255 department and agency contracting offices across the country. PCRs cover 11.6 percent of the 2,200 federal contracting offices. However, the 255 contracting offices award approximately $120 billion of the $200 billion awarded in federal contracts each year.

III. Strategy: Action Plan

To address contract bundling in the executive branch, the following actions will be taken:

1. Ensure accountability of senior agency management for improving contracting opportunities for small business.

Senior agency management will be held accountable for eliminating unnecessary contract bundling and mitigating the effects of necessary and justified contract bundling. Agencies will be required to report to OMB's Deputy Director for Management on a periodic basis on the status of agency efforts to address contract bundling issues. This approach will provide high-level accountability for contract bundling while maintaining a proper balance with mission critical issues. The first agency status reports will be due January 31, 2003.

2. Ensure timely and accurate reporting of contract bundling information through the President's Management Council.

Recording and distributing timely and accurate information on contract bundling is the key to accountability. OMB, agencies and the SBA can use this information to monitor contract bundling trends and adjust practices as warranted. The President's Management Council (PMC), composed of deputy secretaries and administrators from the 26 major executive branch departments and agencies, will ensure agency accountability for timely and accurate reporting on contract bundling efforts and statistics. The PMC will be tasked with assisting OMB's Deputy Director for Management with monitoring the status of agency efforts to address contract bundling.

3. Require contract bundling reviews for task and delivery orders under multiple award contract vehicles.

The definition of contract bundling in the FAR and SBA regulations will be clarified to require contract bundling reviews by the agency OSDBU for task and delivery orders under multiple award contract vehicles. Because contract bundling reviews are not specifically required by the FAR or SBA regulations for agency multiple award contracts (MACs), multi-agency contracts, Government-Wide Acquisition Contracts (GWACs), or GSA's Multiple Award Schedule Program, these contracts and the orders placed under these contracts effectively escape review. Recent and significant increases in this type of contracting make contract bundling review essential. Proposed regulatory changes will be prepared by January 31, 2003.

4. Require agency review of proposed acquisitions above specified thresholds for unnecessary and unjustified contract bundling.

SBA regulations and the FAR will be modified to require contract bundling reviews of proposed acquisitions above agency-specific dollar thresholds. Individual agency review thresholds for acquisitions between $2 million and $7 million should be established based on an agency's volume of contracts and in consultation with the SBA and agency OSDBU. The review will be conducted by the agency OSDBU under guidelines established by the SBA before an agency finalizes a specific acquisition plan. However, appropriate time limits will be established to ensure expeditious consideration. Proposed regulatory changes will be prepared by January 31, 2003.

5. Require identification of alternative acquisition strategies for the proposed bundling of contracts above specified thresholds and written justification when alternatives involving less bundling are not used.

SBA regulations and the FAR will be modified to require agencies to specifically identify alternative acquisition strategies that involve less bundling when an agency contemplates a bundled contract above a threshold between $2 million and $7 million. Where a bundled contract is used for an acquisition above the specified threshold, a written justification for using a bundled contract should identify these alternative strategies and the rationale for choosing a particular strategy over alternatives that could involve less bundling. Individual agency thresholds will be established based on an agency's volume of contracts and in consultation with the SBA and agency OSDBU. Proposed regulatory changes will be prepared by January 31, 2003.

6. Mitigate the effects of contract bundling by strengthening compliance with subcontracting plans.

In acquisitions where contract bundling is determined to be necessary and justified, actions will be taken to mitigate the effects of bundling by increasing subcontracting opportunities for small businesses. Federal contractors that receive contracts of $500,000 for products or services or $1 million for construction are generally required to prepare plans for subcontracting with small businesses.[11] Compliance with these subcontracting plans and agency oversight of contractor compliance with the plans has been inconsistent.[12] To encourage greater small business participation as subcontractors in bundled acquisitions, the FAR will be amended to require agencies to use contractor compliance

[11] See FAR Subpart 19.7 (48 C.F.R. § 1, 19.7).

[12] For an examination of agency oversight of contractor compliance with small business subcontracting plans, see Small Business Subcontracting Report Validation Can Be Improved, GAO-02-166R Subcontracting Data, December 13, 2001.

with sub-contracting plans as an evaluation factor for future contract awards. Agencies also will strengthen oversight of contractor efforts to comply with subcontracting plans by establishing procedures that designate personnel responsible for monitoring contractor compliance with subcontracting plans, delineate responsibilities of such personnel, and monitor their performance. These procedures will include specific requirements for agency monitoring of contractor efforts to comply with subcontracting plans for agency multiple award contracts (MACs), multi-agency contracts, Government-Wide Acquisition Contracts (GWACs), and GSA's Multiple Award Schedule Program contracts and orders under all of these types of contracts. Proposed regulatory changes will be prepared by January 31, 2003.

7. Mitigate the effects of contract bundling by facilitating the development of small business teams and joint ventures.

In acquisitions where contract bundling is determined to be necessary and justified, actions will be taken to mitigate the effects of bundling by encouraging the development of teams of small businesses to effectively compete for bundled or consolidated contracts that might be too large or diversified for individual small businesses to perform. SBA bundling regulations encourage the formation of teams of small business contractors to compete for bundled contracts.[13] However, small businesses face obstacles to forming these teams due to relatively limited time available to respond to agency procurement solicitations, time that could otherwise be used to prepare a proposal in response to the solicitation. Agencies will train and otherwise facilitate early development of teams of small business contractors to compete for upcoming procurements. Also, SBA will determine if regulatory changes are appropriate to encourage the development of these teams and joint ventures.

8. Identify best practices for maximizing small business opportunities.

Some agency acquisition plans and justifications for bundling contracts include successful strategies for maximizing prime and subcontracting opportunities for small businesses. In cooperation with department and agency procurement executives and OSDBU directors, SBA will collect and disseminate these examples and incorporate them in appropriate training courses and materials.

9. Dedicate agency OSDBUs to the President's Small Business Agenda.

In accordance with these recommendations, agency OSDBUs are expected to significantly increase reviews of proposed acquisitions for contract bundling as well as monitor contractor compliance with subcontracting plans. Heads of departments and agencies will ensure that agency OSDBU resources are dedicated to the President's Small Business Agenda by issuing guidance, training personnel, and reallocating resources as necessary.

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[13] See SBA's bundling regulations, *supra*, note 3.

Chair SNOWE. Thank you, Ms. Styles.
Ms. Lee.

STATEMENT OF DEIDRE LEE, DIRECTOR, OFFICE OF ACQUISITION, DEPARTMENT OF DEFENSE

Ms. LEE. Chair Snowe, as you mentioned, small businesses are important to our government-wide economy, but small businesses are a critical component to the defense industrial base. Eighty-two percent of all DOD prime contractors are small businesses. Small business prime contractors performing on DOD contracts increased to 33,000 in fiscal year 2002 compared to 24,000 in 2001. The DOD accounted for an unprecedented $59 billion to small business firms in 2002, with $33 billion going to small business prime contractors and $26 billion to small business subcontractors, yet that is not enough. There is still more to be done.

The Department is fully committed to fostering small business prime contractors, subcontractors and vendors. The department fully supports the President's small business agenda and his initiative to avoid unnecessary contract bundling.

The acquisition environment has changed considerably within DOD over recent years as a result of increased mission requirements, acquisition reform, organizational realignment, base closures, downsizing, and competitive sourcing.

In some instances, DOD combines or restructures mission requirements as a means to gain efficiencies or realign organizations to meet mission demands. In cases where the mission needs are consolidated and small businesses can no longer compete, the consolidation is referred to as a bundled contract. The Department is committed to avoiding contract consolidations that result in bundling unless market research and a benefit analysis support that there are measurably substantial benefits. In cases where bundling is warranted, the Department is committed to ensuring vigorous small business participation at the subcontract level.

There have been numerous reports on the impact of contract bundling on small businesses with differing conclusions, and I know the GAO is going to talk about some of those today. The Office of Federal Procurement Policy issued a report in October 2002 entitled "Contract Bundling." We have discussed it previously here today. And the Department of Defense participated in the development of the report and had members on the implementation working group that developed the Federal Acquisition Regulations and the SBA regulations, which are currently out for public comment, with closure on April 1st. Once the comments are considered, final rules will be issued and the coverage will be effective.

I would like to briefly discuss five areas that the Department sees as key emphasis from these reports. The first is, as Ms. Styles mentioned, the emphasis that orders placed previously under GSA schedules or other contracts which were not in the definition are now an area we must focus on.

We also must focus on early involvement of the small business specialist. We are going to have more small business specialists thinking about the acquisitions in the early planning stages. We think that will be a considerable boost to thinking how small business can be part of the acquisition strategy.

Third, is the case where we have lowered the dollar threshold that signifies a bundled contract and what is considered a substantial bundle. Also, at the Department when people do consider bundling, they are required to come up with alternate strategies so we can say how this could be avoided, or what could be done differently.

Fourth, there are several changes for the agency Office of Small and Disadvantaged Businesses. First, the SADBU or the specialists are going to have a better connection with the OSDBUs, as we call them, so that when, in fact, they feel in their workplace there are some issues to be discussed, they can do that. Also, the agency OSDBU will receive copies of any reports on bundling so they are advised in advance and can work the issue.

In addition, as required by the report, Mr. Frank Ramos, our Office of Small and Disadvantaged Business representative, is going to establish a procedure to conduct periodic reviews and assess how small businesses supporting the Department of Defense are faring in our activities.

And fifth, we are going to go ahead and strengthen the compliance with the Small Business Subcontracting Plans. Again as Ms. Styles mentioned, we do have a rich area for small businesses to do subcontracting and we want to make sure that is emphasized in the Department of Defense.

Finally, there is an additional key recommendation of the OFPP report that is not implemented in regulation but is vital to implementation of the President's initiative. That is the accountability of senior agency management for improving contracting opportunities for small businesses. The department leadership fully supports this recommendation.

With this in mind, the Department of Defense has prepared a supplemental policy letter to our January 17th memo that was issued and we will include emphasis on these new areas. In that memorandum Mr. Aldridge reminded the program managers and other officials responsible for acquisition planning that we must ensure small business participation is considered from acquisition planning through program execution. A benefit analysis guidebook has been prepared and we are educating our community on how to use these tools.

I would like to reaffirm the Department of Defense's commitment to small business and its support of the President's small business agenda and would be happy to answer any of your questions.

[The prepared statement of Ms. Lee follows:]

TESTIMONY OF THE

DIRECTOR, DEFENSE PROCUREMENT & ACQUISITION POLICY

OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION,

TECHNOLOGY & LOGISTICS

BEFORE THE UNITED STATES SENATE

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

MARCH 18, 2003

Madam Chairman and Members of the Committee:

Good morning. I am Deidre Lee, Director, Defense Procurement and Acquisition Policy, in the Office of the Under Secretary of Defense for Acquisition, Technology & Logistics. I am here today to discuss the Department of Defense (DoD) small business program and contract bundling.

Small business is a critical component of the Defense industrial base. Eighty-two percent (82%) of all DoD prime contractors are small businesses, which demonstrates how important the small business world is to this Department. Further, small business prime contractors performing on DoD contracts increased to 33,936 in FY 2002 compared to 24,130 small business prime contractors in FY 2001.

DoD accounted for an unprecedented $59 billion to small business firms in FY 2002, with $33 billion of this going to small business prime contractors and $26 billion to small business subcontractors[1]. Additionally, DoD dollars going to small disadvantaged businesses, woman-owned small businesses, service-disabled veteran owned small businesses, and in HUBZones increased both at the prime and subcontract level in FY 2002 and achieved record highs. These are significant accomplishments since many of DoD's large dollar procurements are for major defense systems which require the resources of large business prime contractors.

The Department is fully committed to fostering the use of the small business community as prime contractors, subcontractors and vendors; to structuring its requirements to facilitate competition by and among small business concerns; and to avoiding unnecessary bundling of contract requirements that precludes small business participation as prime contractors.

[1] This represents 21.2% of prime contract award dollars and 34.1% of subcontracts.

With regard to contract bundling, the President unveiled a Small Business Agenda in March 2002 that included an initiative for federal agencies to avoid unnecessary contract bundling and directed the Director of the Office of Management and Budget to prepare a strategy for unbundling contracts wherever practicable.

The Department fully supports the President's Small Business Agenda and his initiative to avoid unnecessary contract bundling. The acquisition environment has changed considerably within DoD over recent years as a result of acquisition reform, organizational realignments, base closures, downsizing, and outsourcing. In some instances, DoD combines or restructures mission requirements as a means to gain efficiencies or realign its organization to meet mission demands, resulting in consolidated contracts. In cases where the mission needs are consolidated and small businesses can no longer compete, the consolidation is referred to as a bundled contract[2]. The Department is committed to avoiding contract consolidations that result in bundling unless market research and a benefit analysis

[2] Bundling is defined in the Small Business Reauthorization Act of 1997 (P.L. 105-135) as the combination of previously separate requirements into a single contract that is unsuitable for award to small business.

support that there are measurably substantial benefits[3]. In cases where bundling is warranted, the Department is committed to ensuring vigorous small business participation at the subcontract level.

There have been many reports done on the impact of contract bundling on small business, with differing conclusions. The General Accounting Office (GAO) has accomplished several reviews and is just beginning another that will review contract bundling in the Department[4]. We look forward to working with the GAO on this review.

The Office of Federal Procurement Policy (OFPP) issued a report in October 2002 entitled "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business" that includes recommendations to implement the President's initiative to unbundle contracts. The Department participated in the development of the report and had four members on the implementation working group that developed the

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[3] Measurably substantial benefits is defined in FAR 7.107 as 10 percent of the estimated contract value of $75 million or less, or 5 percent of the estimated contract value or $7.5 million, whichever is greater, if the value exceeds $75 million.

[4] GAO Reports GGD-00-82 of March 2000; GAO-01-119 of January 2001; GAO-01-746 of June 2001 and new review GAO Code 120220.

Federal Acquisition Regulation (FAR) and the Small Business Administration Regulations coverage. The proposed coverage was published for public comment as proposed rules in the Federal Register on January 31, 2003, with comments due by April 1, 2003. Once comments are considered, final rules will be issued and the coverage will be effective.

I would like to discuss five key changes proposed in the rules that the Department helped develop to implement the OFPP report recommendations. DoD is fully supporting these actions.

New definition. The definition of contract bundling is proposed to be expanded to include orders under a Federal Supply Schedule contract and orders placed against another agency's contract. This is a key change, as use of these types of contractual instruments is increasing and are not currently reviewed by our small business specialists.

Early involvement of the small business specialist. The proposed rules establish thresholds for contracts or orders that require the early involvement of the small business specialist in acquisition planning, unless the acquisition is entirely reserved or set-aside for small business. Involving the small business specialist as part of the acquisition planning team,

will ensure that alternative strategies are considered when consolidation of requirements is likely to have an adverse impact on small business.

Substantial Bundling. The proposed rules revise downward the dollar threshold that signifies when a bundled contract is considered to be a substantial bundle[5] and adds a requirement that acquisition strategies for substantial bundling identify alternative strategies that would reduce or minimize the scope of bundling and explain why these strategies where not chosen. This change ensures that alternative strategies are seriously considered in acquisition strategies on smaller dollar bundles.

Emphasizes Agency Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities. The proposed rules require small business specialists to notify its agency OSDBU if an acquisition strategy involves contract bundling that is unnecessary, unjustified, or not identified as bundled by the agency. The agency OSDBU will also receive copies of justification packages for warranted bundles, at the same time

[5] FAR 7.107 currently defines substantial bundling to be a bundled contract with an average annual value of $10 million or more. The proposed rule revises this downward to a total contract value of $7 million for the DoD.

the justification is submitted to the Procurement Center Representative of the Small Business Administration. Finally, agency OSDBUs are tasked with establishing procedures for small business reviews and conducting periodic reviews to assess whether small businesses are receiving a fair share of procurement opportunities and to assess the adequacy of bundling justification and actions to mitigate its impact on small businesses. The Department's Director, Small and Disadvantaged Business Utilization is developing the procedures the agency OSDBUs will use to conduct these reviews. All these changes will increase the influence of the small business community.

Strengthening Compliance with Small Business Subcontracting Plans. The proposed FAR change requires agencies to modify past performance procedures to require assessment of contractor compliance with goals when a small business subcontracting plan is required. The Department has several initiatives on-going to strengthen its oversight of contractor compliance. Specifically, we are working with the Defense Contract Management Agency to link its assessments of defense contractors participating in the comprehensive subcontracting program to the DoD past performance database. Additionally, the Department is revising its past performance procedures to address the

evaluation of contractor performance to individual small business subcontracting plans.

Finally, there is an additional key recommendation of the OFPP report that is not implemented in regulation, but is vital to implementation of the President's initiative. That is the accountability of senior agency management for improving contracting opportunities for small business. The Department leadership fully supports this recommendation.

With this in mind, the Department is preparing a supplement to the USD(AT&L) memorandum of January 17, 2002[6] that will be issued once the final rules to implement the report recommendations become effective. In the January 2002 memorandum, the Under Secretary stated his commitment to small business and levied the responsibility on program managers, or other officials responsible for acquisition planning, to ensure small business participation is considered from acquisition planning through program execution. A Benefit Analysis Guidebook was disseminated with the memorandum that includes practical advice on avoiding bundling, outlines how to perform a benefit analysis, and addresses how to mitigate the adverse

[6] USD(AT&L) memorandum of January 17, 2002 and Benefit Analysis Guidebook can be found at: http://www.acq.osd.mil/sadbu

impact upon small businesses when the bundled action has been determined to be necessary and justified. This memorandum is being updated to address the key tenants of the report recommendations.

I would like to reaffirm the DoD commitment to small business and its support of the President's Small Business Agenda. I am available to answer your questions.

Chair SNOWE. Thank you very much, Ms. Lee.

Mr. Cooper.

STATEMENT OF DAVID E. COOPER, DIRECTOR, ACQUISITION AND SOURCING MANAGEMENT, U.S. GENERAL ACCOUNTING OFFICE

Mr. COOPER. Good morning, Madam Chair. Thank you for inviting me to participate in today's hearing on the Administration's plan to address federal contract bundling issues. We believe the plan, if successfully implemented, and that is a big if, could be a positive step toward addressing long-standing concerns about the effects of contract bundling on small businesses.

Specifically, we are concerned about the measures and information that will be used to monitor agencies' efforts to achieve the objectives of the plan and to hold senior managers accountable for those results. Our concerns stem from long experience in trying to look at a number of acquisition reforms over the last several years and to make such assessments.

Unfortunately, all too often when we went to look at whether those reforms and initiatives were producing the desired outcomes, we were not able to find the measures or the information to make that judgment. We believe that without reliable measures and information, the Congress and the President will not be able to ensure agency accountability for improving small business participation in federal procurement.

Accordingly, we believe it would be wise to establish and clearly communicate what measures and information will be collected and used to monitor agencies' progress in implementing the plan.

We are also concerned about whether the Small Business Administration and agency offices of Small and Disadvantaged Business Utilization will be able to meet the added responsibilities envisioned by the plan.

In January of this year, proposed rules to implement the plan were published for public comment. The rules establish new expectations and expand the responsibilities assigned to those offices. We agree that both are key players and that their involvement is critical to ensuring successful implementation of the Administration's bundling plan. However, based on several reports we have issued to this Committee in recent times, we are concerned that the added responsibilities will further burden staff that is already struggling to accomplish their missions. The reports I am referring to are reports we have issued on the procurement center representatives and the commercial marketing representatives.

Given our findings in those areas, we recommended that SBA strategically assess, evaluate and plan their staff needs, including assessing the impact of assigning multiple roles to its staff, identifying training needs, and assessing the effectiveness of its compliance monitoring efforts. We believe that applying a similar strategic planning approach would benefit SBA and the agency offices of Small and Disadvantaged Business Utilization as they approach the challenge of implementing the Administration's plan.

Madam Chair, that concludes my remarks. I will be glad to answer any questions.

[The prepared statement of Mr. Cooper follows:]

United States General Accounting Office

GAO

Testimony
Before the Senate Committee on Small Business and Entrepreneurship

For Release on Delivery
Expected at 9:30 a.m. EST
Tuesday, March 18, 2003

SMALL BUSINESS CONTRACTING

Concerns About the Administration's Plan to Address Contract Bundling Issues

Statement of David E. Cooper
Director
Acquisition and Sourcing Management

GAO-03-559T

Madam Chair and Members of the Committee:

Thank you for inviting me to participate in today's hearing on the Office of Federal Procurement Policy's (OFPP) October 2002 plan to increase federal contracting opportunities for small businesses. OFPP's plan is aimed at eliminating unnecessary contract bundling and mitigating the effects of necessary contract bundling.[1] Specifically, it calls for a series of actions to

- hold federal agency managers accountable for improving small business contracting opportunities;
- strengthen the Federal Acquisition Regulation and Small Business Administration (SBA) regulations governing contract bundling; and
- use SBA and agency small business resources to improve oversight and mitigate the effects of bundling.

If successfully implemented, OFPP's plan could be a positive step toward addressing longstanding concerns about opportunities for small businesses to compete for federal contracts. My comments today will focus on two implementation concerns: (1) the measures and information that will be used to monitor agencies' progress in eliminating unnecessary contract bundling and mitigating the effects of necessary bundling and (2) the ability of SBA's Procurement Center Representatives and agencies' Small and Disadvantaged Business Utilization offices to meet the added responsibilities laid out in the plan. My testimony is based primarily on prior GAO reports.

Measures and Information Needed to Monitor Agencies' Contract Bundling Efforts Not Identified

Over the last several years we have been asked to review acquisition reforms and initiatives to determine whether they are achieving desired outcomes. All too often, we have been unable to make such assessments because measures and information requirements were not established. Without reliable measures and information, the Congress and the President will not be able to ensure agency accountability for improving small business participation in federal procurement.

OFPP's plan calls for holding senior agency managers accountable for improving contracting opportunities for small businesses. According to the plan, agencies will be required to periodically report to the Office of Management and Budget's (OMB) Deputy Director for Management on the status of agency efforts to address contract bundling issues. While the plan recognizes that timely and accurate reporting of contract bundling information is needed to monitor agency efforts to address contract bundling, it is unclear at this time what information will be reported and how the information will be used to measure agencies' progress in meeting the plan's goals. The first reports were

[1]The Small Business Reauthorization Act of 1997 defines contract bundling as "consolidating two or more procurement requirements for goods or services previously provided or performed under separate, smaller contracts into a solicitation of offers for a single contract that is unlikely to be suitable for award to a small business concern."

due January 31, 2003, but we understand there has been a delay by many agencies in submitting the reports.

To ensure OMB, agencies, and SBA can monitor the status of agency efforts to address contract bundling concerns, we believe that OFPP should establish and communicate the measures and information that are required for such monitoring. For example, measures and information on the number of consolidated contracts subject to bundling reviews and the results of those reviews would greatly support monitoring efforts. Measures could also include some quantitative analysis of how mitigation efforts (teaming arrangements and subcontract opportunities) have affected small business participation in agency acquisitions.

SBA and Agency Offices of Small and Disadvantaged Business Utilization May Have Difficulty Meeting Added Responsibilities

On January 31, 2003, SBA proposed to amend its regulations governing small business contracting assistance to implement the recommendations in OFPP's plan. SBA's proposed rule would expand responsibilities assigned to agency Offices of Small and Disadvantaged Business Utilization and SBA Procurement Center Representatives.[2] While the expanded requirements are critical to ensuring successful implementation of OFPP's bundling plan, we are concerned that they will further burden a workforce that is already struggling to accomplish its mission.

In line with the plan's call for more oversight over agencies' contract bundling activities, agency Offices of Small and Disadvantaged Business Utilization would be required under the proposed rule to conduct periodic reviews and submit their assessments to the heads of their agencies and the SBA Administrator. These reviews are to include assessments of

- the extent to which small businesses receive their fair share of federal procurements;
- the adequacy of bundling documentation and justification; and
- the adequacy of actions taken to mitigate the effects of necessary and justified contract bundling, including the agency's oversight of prime contractor compliance with subcontracting plans.

With respect to Procurement Center Representatives, SBA's proposed rule calls for them to have greater involvement in agency acquisition planning activities and in efforts to mitigate the effects of agency contract bundling. Specifically, the proposed rule would require Procurement Center Representatives to

[2]SBA assigns Procurement Center Representatives to major contracting offices to implement small business policies and programs. Responsibilities include reviewing proposed acquisitions and recommending alternative procurement strategies, identifying qualified small business sources, reviewing subcontracting plans, conducting reviews of the contracting office to ensure compliance with small business policies, counseling small businesses, and sponsoring and participating in conferences and training designed to increase small business opportunities.

- identify alternative strategies early in the acquisition process to maximize small business participation for acquisitions not set-aside for small businesses,
- work with cognizant small business specialists and Offices of Small and Disadvantaged Business Utilization to identify opportunities for small business teams to participate as prime contractors, and
- review an agency's subcontracting program to ensure that small business participation is maximized.

These expanded requirements, while necessary to ensuring successful implementation of OFPP's bundling plan, will likely burden SBA's small business contracting workforce, which we have found is already struggling to accomplish their missions. For example:

- In March 2000,[3] we reported to this Committee that SBA lacked assurance that Procurement Center Representatives were reviewing all proposed contracts to identify possible bundling. According to SBA officials, budget constraints prevented SBA from having sufficient staff (Procurement Center Representatives) at government procurement centers to conduct required bundling reviews on proposed acquisitions.
- In November 2002, we provided this Committee information on the number of small business set-asides issued and successfully challenged over the past 10 years.[4] We found that the number of small business set-asides recommended by Procurement Center Representatives has declined by almost one-half since fiscal year 1991.[5] SBA officials attributed the decline to several factors, including (1) the overall downsizing of the number of Procurement Center Representatives and (2) the assigning of Procurement Center Representatives to other roles, such as Commercial Marketing Representatives.

We found similar conditions when we reviewed SBA's Subcontracting Assistance Program, which aims to increase subcontract awards to small businesses and to provide maximum practicable business opportunities to small businesses. The program is also one of the key aspects of OFPP's plan to mitigate the effects of contract bundling. However, we reported in December 2001 and November 2002 that declines in staffing and travel funds have affected the way SBA monitors prime contractors' compliance with subcontracting plans.[6] For example:

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[3] *Small Business: Limited Information Available on Contract Bundling's Extent and Effects* (GAO/GGD-00-82, Mar. 31, 2000).

[4] *Information on the Number of Small Business Set-Asides Issued and Successfully Challenged* (GAO-03-242R, Nov. 1, 2002).

[5] SBA's Procurement Center Representatives work on federal agency procurement activities by reviewing proposed acquisitions to determine whether they can be set aside for small businesses. If the Procurement Center Representative believes that the agency or activity should set aside the procurement for small business, the representative may issue a formal request to the contracting officer. Should the contracting officer reject the recommendation, the representative may appeal the rejection to the Head Contracting Authority for the agency or activity.

[6] *Small Business Administration: The Commercial Marketing Representative Role Needs to Be Strategically Planned and Assessed* (GAO-03-54, Nov. 1, 2002), and *Small Business Subcontracting Validation Can Be Improved* (GAO-02-166R, Dec. 13, 2001).

- We found that instead of conducting on-site reviews to validate how well contractors are implementing their subcontracting plans, SBA personnel were conducting "desk reviews" which consisted of only reviewing reports submitted by the contractors. There are varying views within SBA about which method is the most effective.
- We also found that SBA personnel responsible for conducting the reviews were assigned substantial additional roles and responsibilities that often took priority over their subcontract surveillance duties.

Given our findings, we recommended that SBA strategically assess, evaluate, and plan the number of staff needed to meet their contract bundling and subcontract surveillance responsibilities—including assessing the impact of assigning multiple roles to its staff, identifying training needs, and assessing the effectiveness of its compliance-monitoring methods.

Applying a similar strategic planning approach would benefit SBA and agency Offices of Small and Disadvantaged Business Utilization as they approach the task of implementing OFPP's plan to address contract bundling issues. Successful implementation of the plan will depend on SBA and agency Offices of Small and Disadvantaged Business Utilization staff playing a significant role early in the acquisition process to promote small business contracting opportunities, ensure contractors' compliance with subcontracting plans, and provide effective oversight of agency efforts to address contract bundling issues.

Madam Chair, this concludes my prepared testimony. I would be happy to respond to any questions you or other Members of the Committee may have at this time.

Contact and Acknowledgments

For further information regarding this testimony, please contact David E. Cooper at (617) 788-0500. Ronald J. Salo, Enemencio Sanchez, Karen Sloan, Hilary Sullivan, and Ralph O. White also made key contributions to this testimony.

Chair SNOWE. Thank you very much, Mr. Cooper. We will start with some of the issues that you have raised here to the panel, because I do think it is important to explore some of the recommendations that you are suggesting that ultimately would demand accountability and reliability Government-wide.

I think one of the things that I have learned from all of this is that there is a lack of uniformity and a lack of consistency, even with the Administration's new approach in the nine-point plan, which I certainly want to commend the Administration and the President for advancing. I do believe that we are going to have systematic problems ultimately from agency to agency if we do not have some kind of systematic and uniform standard by which we can measure results at the onset of the process, not years later.

So let me start with what Mr. Cooper raised, and I would like to ask the panel to address this question. In terms of reliability of measurements and standards and accountability, how exactly will that come about in this process? Because, Ms. Styles, you mentioned the fact that the proposal by your office would demand quarterly reporting. As I understand, a majority of the agencies have not submitted their quarterly reports that are required to be submitted in January. Is that true?

Ms. STYLES. No, we have reports from more than half at this point in time.

Chair SNOWE. More than half. But what happened to the others?

Ms. STYLES. We are still working with them to get their reports.

Chair SNOWE. Well, that is bothersome because that seems to be an indication that an agency is not taking this requirement seriously.

Ms. STYLES. Right.

Chair SNOWE. So again it gets back to how we are going to demand accountability and compliance. If that is the first step in the process and that is not achievable, then obviously we have some problems. I would like to know how we could demand that they submit those reports in a timely fashion and certainly according to the regulations.

Ms. STYLES. I share your concerns. We have had discussions with the agencies that have not submitted their plans. I am meeting with the Executive Committee of the President's Management Council to address that issue.

It is an early stage for the agencies. I think it is an early stage in reporting. I had a conversation with Mr. Cooper several days before this hearing, and I agree with his concerns about metrics and measures and we are very willing to work with GAO and others to make sure that we have the appropriate metrics and measures in place.

From a perspective of the Administration, we decided to require quarterly reports, much like we do for other items on the President's management agenda. We have a scorecard process right now for most of the President's management agenda. These reports will be submitted in the same time frame as our scorecard process to our budget shops. It is a good way to hold people accountable at the lower level within the agency, but also requiring the report to be signed off on by the representative of the President's Manage-

ment Council. So you are getting it from the top and from the bottom.

I do think the key is the metrics here. We began with a report with some of the basic information that we need. We anticipate in the future to have more extensive reporting requirements for the agencies on a quarterly basis. It is very important for us to determine on the front end here, and this is the front end, what the appropriate metrics are so we are not two years into this and we are not quite sure if we have achieved success.

Chair SNOWE. First of all, on the reports, I would be interested in having a list submitted to this Committee of the agencies that responded and those that did not.

Ms. STYLES. I can tell you right now if you would like.

Chair SNOWE. Yes, I would be glad to hear it.

Ms. STYLES. In fact, the ones that have not submitted are probably the easiest for me to give, although I can give you the ones that have. We do not have reports yet from Commerce, Education, Interior, Justice, State, AID, EPA, GSA, HHS or OPM.

Chair SNOWE. And they have obviously been contacted?

Ms. STYLES. Yes, they have.

Chair SNOWE. And their response has been?

Ms. STYLES. They will be getting us reports.

Chair SNOWE. Does that require a statutory change? I mean would it to require submitted reports?

Ms. STYLES. No.

Chair SNOWE. I hesitate to do that, but if we are going to make a system and the process work, we have to be assured that there will be compliance by the agencies. I mean that is not just for one year, it will be systematically every year.

Ms. STYLES. OMB is usually good on a year-to-year basis at getting information from the agencies. This being a new report, I think it is taking a little bit longer at some of the agencies.

Certainly if you wanted it in place for the long term that would require a statutory change. This is a requirement of this Administration and will only remain in place as long as the Administration in office is committed to it.

Chair SNOWE. Mr. Barreto, I would like to hear your response to Mr. Cooper with respect to having insufficient resources to do the kind of monitoring that will be required and especially because as I understand it, you have just 47 procurement center representatives.

Mr. BARRETO. Yes.

Chair SNOWE. And there are 255 department agency contracting offices, so that would mean that about 80 percent of the federal contracting offices have no oversight. So could you explain to the Committee how exactly the SBA is going to go about providing effective oversight and monitoring?

Mr. BARRETO. Absolutely. You are absolutely right. We have 47 procurement center representatives and they are located all across the country. Many of them are on major military bases or where major civilian buying activities are occurring. Those 47 PCRs, as we call them, are responsible for 255 of the largest federal procurement activities in the country and that represents about 60 percent of all federal procurement. They do a pretty good job.

Now that does not mean that there is not more to do and that we cannot find ways to reach some of those others where there is actually less activity. It is still very important to do that. We are exploring ways right now, using technology as a way of having a broader coverage area.

But some of the recommendations that were articulated by Angela Styles and that were in that nine-point plan give us an opportunity to really engage the OSDBUs at the agencies, and we think that that is a very important component, as well, because this focus and this diligence really needs to be occurring at the agency level and also, as Angela said, from the top to the bottom.

So our PCRs are going to play a critical role, but they are part of an overall solution that is being articulated right now and one of the roles that we believe that we have is to work even closer with the OSDBUs and also provide the proper training of folks that are going to be really engaged in these kinds of activities.

Chair SNOWE. So do you believe that you would need additional resources and personnel to do an effective job?

Mr. BARRETO. I think with the PCRs that we have, what our intention to do is to support them more. We are not looking for additional PCRs at this time. Again, one of the things that we believe very strongly is that the PCRs could do a great job, and they have done a great job, but we really need to drill down even more at the agency level, and that is why we think the OSDBUs have such a very important role to play in identifying procurement opportunities and mitigating some of the issues when there is contract bundling.

Chair SNOWE. I know Mr. Cooper, in his recommendations, would suggest that SBA evaluate the number of people and resources that would be required in order to oversee these contract responsibilities and to effectively assess the implementation of this plan. Have you done any kind of assessment in that regard?

Mr. BARRETO. We are continuously doing it. Especially every year as we are preparing budgets for the next year we are identifying how our people are doing and what kind of tools that they need, so this is kind of an ongoing issue. We are looking at it even more closely now that we have this plan that we are going to be executing.

One of the things that we are very clear about and I think it comes up over and over again is that part of the teeth, if you will, the accountability, really is at the agency level and there is absolutely no substitute for this commitment being at the agency head level, going through the organization to the OSDBU. We want to support that and we feel that that is a very effective way of approaching this challenging issue and really making the changes that need to be made.

Chair SNOWE. Ms. Lee, the Department of Defense is critical to the procurement process. You represent about two-thirds of the procurement budget at the federal level.

You said in your testimony the Department of Defense awards 21 percent of its prime contracts to small businesses and how did you calculate this? Does SBA agree with that calculation?

Ms. LEE. Yes, I believe they do. We take it out of the federal procurement database and it is a matter of dollars spent and the per-

cent of those or the dollars that went to small business from that base. There are a few adjustments to the base. The particular one is the foreign military sales, which is not U.S. dollars; it is foreign military that is buying something and we actually do the buying for them, so it is not in the DOD base.

Chair SNOWE. You mentioned that you were planning to or have lowered the threshold for small business, so what would that threshold be?

Ms. LEE. One of the things in this report was the Department of Defense previous threshold for reviewing bundling was $10 million. It has been lowered to $7 million in this report.

Chair SNOWE. And to that question, it is $7 million and I understand that the average size of a prime contract is about $1.2 million. The average small business contract size government-wide is $410,000. The average small business contract size for the Department of Defense is $424,000.

So, is this threshold not high? I mean in other words, for a justification of what is considered to be substantial bundling above $7 million, that seems to be a very high threshold.

Ms. STYLES. We have actually lowered it from the statutory threshold.

Chair SNOWE. I understand that, but the question is whether or not $7 million is too high—

Ms. STYLES. We had extensive discussions with the Department of Defense before we set those thresholds.

Chair SNOWE. Well, even with the Department of Defense and other agency consultation, the $5 million—

Ms. STYLES. And the $2 million for other agencies.

Chair SNOWE. Right.

Ms. STYLES. Considering the Department of Defense mission, we think the $7 million threshold is appropriate. Now that would be bundled requirements, so it would not be one contract. I mean the reason that we are looking at that is because it would be too large for any small business to bid on that particular requirement and we do believe $7 million is the appropriate level.

Chair SNOWE. Well again, I think that I would be interested in knowing how you reached that determination because ultimately the threshold is high for the kind of justification that would allow for substantial bundling.

Ms. STYLES. We looked at statistics and the number of contracts that would be reviewed based on that level and I would be glad to get that for you because we did go through agency by agency and compare what the effect would be, how difficult it would be to actually implement. We wanted to set thresholds that we could actually fulfill.

I am glad to get you the data on the number of contracts that would be reviewed as a result of moving it from $10 to $7 million and that is different at the Department of Defense than it is at other agencies, which is the reason you find different thresholds.

Chair SNOWE. Mr. Cooper, could you respond to what you think they are not doing that they should be doing? You mentioned having reliable measurements and demanding accountability. What are they not recommending at this point that should be incorporated in their approach?

Mr. COOPER. When we looked at the reports that are being submitted they contained more process-related kinds of information, like who is accountable, have they issued regulations, has training been conducted, have policy memos been written, things like that.

The point that I am trying to make is that if we are really going to hold agencies accountable for achieving the two key aims of this plan—that is to eliminate unnecessary bundling and to mitigate the consequences of justified bundling—we really need to have output measures, things like how many contracts were subjected to bundling reviews? If it was justified, determined to be justified, what actions were taken and how did those actions translate into business opportunities for small businesses, either subcontractors, or as members of small business teams, whatever the mitigating actions were?

So we would like to see more quantitative analysis to really get at how are small businesses affected by the actions and decisions that are made?

Ms. STYLES. If I can address that, we actually in our first draft of the contract bundling reports, we sent it out to the agencies for comments. It included extensive data requests for information. Based on the comments from the agencies in the very short time frame that we were giving them to report, which was about a four-week time frame at that point, they asked that the first report be process-oriented and then subsequent reports include extensive data. And before we go out with that, I am very happy to share that with GAO and others so we can ensure that we are asking for the right data, that we can actually at the end of the day measure our success.

Chair SNOWE. What time frame would be required to measure success for agencies? What would you think would be an adequate time frame, Mr. Cooper? I see what you are saying, they have identified the process, but the question is now what are the results?

Mr. COOPER. I agree with Ms. Styles that not a lot of time has passed and what we are seeing right now are some preliminary indicators of actions being taken by the agencies. I will take a guess. I would like to see in six months from the time the plan was announced what actions have really been taken and try to measure whether those actions are producing the desired outcomes.

Chair SNOWE. Is it your impression that these contracts are getting larger and larger?

Mr. COOPER. There is no question that the federal procurement environment has changed dramatically in the last 10 years. I think the Office of Federal Procurement policy's report did a really good job of describing those changes. We have much, much larger contracts, they are lasting much, much longer, and small businesses are not able to compete for many of those new contract vehicles.

The plan is designed to address that. As Ms. Lee said, the task orders and GWACs and GSA schedule contracts will be included now but we need some time to see how they are going to be addressed.

Chair SNOWE. Will they be required to provide a justification or are they going to be restricted by the need for unnecessary bundling?

Ms. STYLES. They will have the same requirements.

Chair SNOWE. All accountable to the same regulations?

Ms. STYLES. Yes.

Chair SNOWE. Are they going to be subjected to these nine points?

Ms. STYLES. Yes.

Chair SNOWE. So no one is escaping that requirement?

Ms. STYLES. No.

Mr. COOPER. And the effect of that is a much larger number of contracts and dollar value of contracts will be subject to the requirements.

Chair SNOWE. Would you say that there is anything omitted in this nine-point plan?

Mr. COOPER. No, I think the plan is very positive. It is the first federal-wide plan to address the issue of contract bundling, so I think the Office of Federal Procurement Policy and all the agencies that supported that should be complimented for trying to come up with a constructive way to address the issue.

Chair SNOWE. Are there best practices that could be identified that could be adopted government-wide? I think that is the other issue. I know you are talking about alternative strategies and having joint ventures, and so on, but if it is done on an ad hoc basis it is very difficult to institutionalize.

When you see the trends in procurement in government, it is almost a disincentive to work in small business. I mean the way the system is designed now, to be faster and less expensive; I disagree with that because I think you are never going to maximize the savings by consolidating so many contracts into very large contracts. You never know whether you could get a cheaper contract right here, for example, in the District of Columbia than you can nationwide because you are eliminating small businesses in the local communities. The reduction in acquisition personnel, has made this a very difficult process.

So I would think that a good approach would be to identify those best practices and adopt them uniformly. It makes it easier and you synchronize the entire Federal Government, rather than just saying well, on an ad hoc basis this might work, that might work, depending on what you do. If you could sort of make it far more systematic, knowing what does work for alternatives so that they could be adopted within the agencies.

Mr. COOPER. There is a provision in the plan for identifying best practices and disseminating those to the federal agencies. Again we are so early in the process.

Ms. STYLES. And a key area of that for me is in the subcontracting arena. We really have ad hoc procedures from agency to agency dealing with prime contractors, subcontracting plans, and compliance with those plans, as well as incentivizing prime contractors to follow their plans. I think it is one area that we can really make a difference, share best practices among agencies, and make sure that there is not a difference from agency to agency, it is not different at the Department of Defense than it is at Veterans, that if you are a prime contractor you go in, you know what the requirements are for your subcontracting plan without regard to what industry you are in and that you are incentivized to follow that plan.

Chair SNOWE. Mr. Barreto, do you know of any practices that you think would be beneficial to adopt government-wide that would help small businesses?

Mr. BARRETO. As a matter of fact, we have also requested from the agencies their best practices. We are asking them to submit that to us this month. So that is something that we are evaluating.

I agree. I think there needs to be some consistency. At the same time we need to also understand that different agencies have different issues that they are dealing with, the DOD, for example, at this point in time, as opposed to other agencies. We have seen some great leadership in certain agencies that we work with. The Department of Housing and Urban Development has a 50 percent goal for small business procurement. In other words, they want 50 percent of all their procurement to go to small business, and they have been very aggressive about championing that.

I know that we have worked very closely with NASA, the head of NASA in the months prior on identifying best practices and there is a real commitment there.

I can also tell you that one of the big complaints that we get from small businesses all the time is the fact that not only is it complicated and cumbersome and there are disincentives but also it is very difficult to access these decision-makers. Oftentimes they feel that the only opportunity that they have to really compete for federal contracts is if they are based here in Washington, D.C. Well, that is impossible. Most small businesses cannot afford to have offices in Washington, D.C.

That is one of the reasons that we at the SBA have instituted the very exciting initiative that I mentioned, the matchmaker, where we are actually taking federal agencies all across the country to meet one on one with small businesses. Contract Bundling is really a big issue for them. Not only are they concerned about the percentages that we are talking about but also the decline in the actual number of contracts that have been let over the last 10 years. I can see the drastic drops from the charts that are behind you.

So that is one of the reasons that we have been proactive in engaging some of these agencies and also giving them opportunities to be able to do this kind of outreach. It takes one more challenge away from both the federal agencies which sometimes have difficulty identifying what firms are qualified to do the kinds of contracting they need, and also from the small businesses who find it very difficult and very expensive to do business with the government.

We have already had three sessions. They have been very successful. We plan on doing about another seven more this year. This is one way that I think that we can contribute to the solution. We also would be glad to share the best practices we receive from the agencies at the end of this month.

Chair SNOWE. Well, what did you learn from small businesses at these procurement forums? What did you hear most frequently in terms of doing business with the Federal Government?

Mr. BARRETO. We have heard a lot of horror stories about what it is like doing business with the government. One lady said to me, "I tried to get a government contract for years and years and

years." And she said, "I finally got a government contract." She said, "It cost me $50,000 to get this contract and it was a contract for $25,000. So that is not a good return on investment."

What they have told us is that they are very excited about some of the things that they are seeing. They are excited about the leadership that they see coming from Washington. They tell us it is the first time in a long time that this kind of focus, this kind of attention has been placed on small business contracting and they do not take that for granted. Oftentimes they have felt that when we talk about federal procurement, that it is kind of a stepchild of the things that we do. In other words, it is not a high priority.

The things that we are doing right now are the beginning of our renewed focus. Small business oweners also tell us when we meet with them in the field that whenever you can put them in a room with 10 or 15 decision-makers and their products and services have been qualified as being acceptable to those agencies that the chances for them doing business are incredible. They tell us when we see them in these procurement matchmaking sessions, it would take them a year if they were lucky enough to get those same kinds of quality appointments.

I think we are taking some very significant steps in the right direction. Again, it is early in the process and a very determined and vigilant focus on this issue, a continuous focus, is going to be required for us to really make the change that is required.

Chair SNOWE. Mr. Cooper and Ms. Styles, is there anything wrong with the definition of contract bundling in statute? I know it has been changed on six different occasions but do you think that the definition as it stands is currently acceptable?

Ms. STYLES. Well, the definition certainly did not cover multiple award contracts like the schedules. It did not preclude us covering them in the regulation, but it was not specific enough in the first place to cover those types of contract vehicles, which is why you see us out with a recommended change to the definition in the regulations.

Mr. COOPER. I would just add to that that I know there are concerns about the definition, but I think what this plan is really aimed at is good management and accountability and leadership. And I think if you can get that in place it will go a long way to addressing some of the concerns that we have been talking about.

Chair SNOWE. Do you think that this plan is inclusive of the direction that would be successful for opening the doors to small business?

Mr. COOPER. Yes, I believe it can be.

Chair SNOWE. It can be.

Mr. COOPER. The real test here, though, is getting this message down to the contracting officers and the program people who establish the requirements and that is where it all starts. Those are the people you have to influence. If you can reach that level and get information about whether it is making a difference, then I think it has a chance of success.

Chair SNOWE. To that point, Ms. Lee, since you represent the Department of Defense which has approximately two-thirds of the federal procurement budget, how does the Department of Defense go

about doing that and getting that message down to the acquisition offices and procurement officials?

Ms. LEE. I agree that is absolutely fundamental. We so frequently talk about the contracting officer doing this and certainly they are key, but you are absolutely right; it is the program official; it is the people who define the requirements that need to be aware and conscious of small business and that is where some of the matchmaking helps because they get to meet those people and see their capabilities and their ideas and their innovations.

So getting that together at the requirement stage and then making sure we carry it through contracting is absolutely essential. We are doing things like the authority, the commitment, some training, and then, of course, metrics and measuring how we do that. So it has to be a broad scope across the department.

Chair SNOWE. Is the definition too open-ended in terms of judgment, that is, in terms of scope and geography and size and so on? Does it create any problems with assessing what constitutes bundling and what does not?

Ms. STYLES. I think it all depends on the regulatory implementation of the definition. We consider it to be workable and something that we can apply in the regulatory environment and then take that from there in terms of management accountability.

Chair SNOWE. I definitely think the plan that has been presented by the Administration is very important and I certainly want to applaud the Administration's leadership under, Mr. Barreto and Ms. Styles, of the for offering this proposal. I think the key is trying to find the easiest, most consistent, most workable, most effective path to incorporating small business into the procurement process and how best that can be accomplished. Obviously we want to support what is working. We need to identify what will work and we want to be vigilant in addressing those things that cannot work the sooner the better. When we can get that snapshot of the effect of this nine-point plan we can move forward in ensuring that small business is part of the procurement process.

When do you think we can get an accurate snapshot?

Ms. STYLES. We are measuring most things that we are doing right now in the President's management agenda as of July 1, 2004. So my guess is that we will have metrics in place before July of this year and we will be able to measure it over that period of a year before July of next year. But we will have it on a quarterly basis, so we will have a good idea of the trends before then.

Chair SNOWE. Obviously I can use the Small Business reauthorization as a vehicle, as well, to address the issues that I can within my legislative jurisdiction with respect to that reauthorization. I am certainly going to use that as a vehicle for doing so, so those things that we think could strengthen the process that has been offered by the President on this issue, will move in a uniform direction to try to address this government-wide.

Again, I just want to thank all of you and I will be looking forward to working with you in the future on this issue.

Mr. BARRETO. Thank you very much.

Chair SNOWE. Our second panel this morning will provide testimony for and about the small business community trials and travails with contract bundling. Leading this panel will be Mr. Eric

Adolphe, the Chief Executive Officer for OPTIMUS Corporation in Silver Spring, Maryland. Mr. Paul Murphy of Eagle Eye Publishers will testify about the impact of contract bundling from a statistical standpoint in the small business community.

Also, we have Mr. Robinson, who is a Defense Logistics Manager for the Massachusetts Manufacturing Extension Partnership and he is appearing today at the invitation of Senator Kerry. His background includes 25 years working in the defense industry and also with Maine's Procurement Technical Assistance Center. I welcome you, Mr. Robinson.

In addition, we have Ms. Kuc here to represent Women Impacting Public Policy, an organization with more than 300,000 women-owned small businesses.

I welcome all of you here this morning to provide testimony on contract bundling. I appreciate your insights on this critical issue to the small business community.

Mr. Adolphe, why don't I begin with you. You can summarize your statements and I will include your entire statement for the record.

STATEMENT OF ERIC A. ADOLPHE, CHIEF EXECUTIVE OFFICER, OPTIMUS CORPORATION

Mr. ADOLPHE. Madam Chair, I would like to thank you for your leadership in helping to strengthen America's small business community and for focussing today's hearing on contract bundling, which is a key contractual challenge we in small business face.

As founder and CEO of a rapidly growing 8(a) business, I am honored for the opportunity to testify before you today. My company, OPTIMUS Corporation, is a strong example of the entrepreneurial spirit that built this nation. As a leading public safety technology company founded in 1992, we employ approximately 150 people today. I founded OPTIMUS after several years of technology development for the FAA when I received a Small Business Innovative Research Grant that led to the creation of an award-winning safety inspection software system for NASA. We now have a half a dozen products focussed on public safety and we provide a significant amount of information technology services for a number of federal agencies.

Of course, our success did not come overnight. Along the way I faced homelessness and near bankruptcy. And although this is not a hard knocks story, it is important to point out that small disadvantaged businesses simply confront a lot of obstacles. Unfortunately, current contract bundling practices can add even more burdens because they do not enable a level playing field for small businesses. To make matters worse, even though many large omnibus contracts are awarded partly on the pledge to subcontract a certain amount of work to small business, for all practical purposes there is no legal recourse for small contractors when these pledges are not upheld.

Due in large part to these factors, small businesses like OPTIMUS are essentially shut out of numerous federal contracts and each time this happens we lose between $50-$75,000 in bid and proposal funds. We have faced the situation many times and we now find ourselves competing against large contractors for tasks

that are valued at less than $2 million, traditionally the bread and butter of most small businesses.

Because of our ongoing efforts to partner with many of these large firms, there are certain recent examples that would not be appropriate for me to cite today so I am going to detail a situation that occurred several years back which clearly illustrates the negative repercussions of contract bundling.

A number of years ago the EPA bundled all of its software development requirements into one omnibus contract. Thus one large government contractor handles millions of dollars worth of work whether or not they are the right firm to do the job. The EPA informed this omnibus contractor they were not meeting their goals for small business allocations by a very large margin and needed to do so to ensure exercise of the next option year on their contract. This firm complained that they could not find small contractors qualified for the job.

However, the EPA was familiar with OPTIMUS and recommended us to this company. We subsequently expended our limited resources pursuing business with this firm. They agreed we were a perfect fit and we were offered a $200,000 subcontract. As a result of our progress report back to the EPA small business advocate there was a recommendation to exercise the option year of that contract. They did this because they believed the contractor had upheld its end of the small business promise but after the option was exercised we never heard back from them.

Moreover, because the option year was exercised, the EPA told us that there was not much they could do at that point. Now we are pretty much locked out of doing software development work for the EPA despite our expertise. We can manage call centers for them but we cannot deliver innovative cost-effective systems like we did for NASA.

And, as this example illustrates, this practice does not just affect small business growth. It can keep government from getting the best technology for the job and cause agencies to settle for less at higher prices.

I want to conclude by saying that there have been great strides of improvement and solid examples of contracting best practices; for example, the Broad Information Technology Services II, BITS II, SPIRIT and Hub Zone GWAC contracts being contemplated by the FAA, Coast Guard and GSA respectively. The SPIRIT procurement provides the same scope of services for small and large businesses. Thus everyone has an opportunity to participate. And the FAA and GSA have taken it even further by reserving their competition for small businesses only, helping to ensure that small businesses are not in reality competing against large business subcontractors.

I have several other comments with regard to best practices and accountability I would like to share if time permits. At this time I would like to conclude by saying that I look forward to many more similar changes to help small businesses continue to grow and expand and I thank you for the opportunity to share this important information with you today.

[The prepared statement of Mr. Adolphe follows:]

UNITED STATES SENATE COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP
Hearing:
"Small Businesses Continue to Lose Federal Jobs by the Bundle."

Eric A. Adolphe
Chief Executive Officer
OPTIMUS Corporation
March 18, 2003

Madame Chair, Ranking Member Kerry and Members of the Committee, I would like to thank you for your leadership in helping to strengthen America's small business community and for focusing today's hearing on contract bundling, which is the key government contractual challenge that we face. As founder and Chief Executive Officer of a rapidly growing 8(a) firm and small disadvantaged business, I am honored for the opportunity to testify before you today.

My company, OPTIMUS Corporation, is a strong example of the entrepreneurial spirit that built this nation. As a leading public safety technology company founded in 1992, we employ approximately 150 people, with a fast-growing revenue base. I founded OPTIMUS after several years of technology development for the FAA, when I received a Small Business Innovative Research Grant that led to the creation of an award winning safety inspection system for NASA. We now have half a dozen products focused on public safety. We provide a significant amount of government information technology services and work with a number of federal agencies.

Of course our success didn't come overnight. Things have certainly changed from the days when I paid my employee salaries with my credit cards, and when I incurred more then $200,000 of debt to try to keep the company afloat. I was used to difficult times. In fact, I had faced homelessness in college and many initial setbacks.

And although this is not about a hard knocks story, it is important to point out that small disadvantaged businesses simply confront a lot of obstacles. Unfortunately current contract bundling practices can add even more burdens, because they don't enable a level playing field for small businesses. To make matters worse, even though many large contracts are awarded partly on the pledge to subcontract a certain amount of work to small businesses, there is no legal recourse for small contractors when these pledges are not upheld. Due in large part to these factors, OPTIMUS has been essentially shut out of numerous federal contracts that could have turned things around for us and significantly eliminated the amount of financial hardship we initially faced. And each time this happens, we invest a minimum of fifty to seventy-five thousand dollars to assist with proposal writing, pulling executive staff off of other important work.

We have faced this situation many times. And we find ourselves fighting to compete with large contractors that should be our allies. Because of our continual effort to do our best to work effectively with these firms, there are certain recent examples that would not be appropriate for

me to share today. So I am going to detail a situation that occurred several years back, which clearly illustrates the negative repercussions of contract bundling.

A number of years ago, the Environmental Protection Agency bundled all of its software development requirements into one omnibus contract. Before that, small businesses could have competed directly for the work, based on their expertise. Now, one large government contractor handles millions of dollars worth of work – whether or not they are the right firm for the job. The EPA informed this firm that they had not met their 35 percent goal for small business allocations – by a very large margin – and needed to do so to exercise the next contract option year. This firm complained that there weren't qualified small contractors for the job. The EPA was familiar with OPTIMUS and recommended us to this company. We subsequently spent many meetings with them, and utilized many valuable resources. They agreed we were a perfect fit and we were offered a $200,000 subcontract to start, with an opportunity to significantly increase that if we did a good job. As a result of our relationship with this contractor, the EPA recommended that the option year of the contract be exercised. They did this because they believed that the contractor had upheld their end of the small business promise. But after the option was exercised, we never heard from them again. The EPA had worked hard to enforce small business goals and told us that they shared our concerns, but there wasn't much that could be done at that point. Now we're pretty much locked out of doing software development work for the EPA, despite our expertise. We can manage call centers for them but we can't deliver innovative and cost effective systems like we did for NASA.

And as this example illustrates, this practice doesn't just affect small business growth; it can keep government from getting the best technology for the job, and cause agencies to settle for less – at higher prices.

I want to conclude by saying that there have been great strides of improvement and solid examples of contracting best practices are in place. For example, the Broad Information Technology Services II (BITS II) and SPIRIT contracts being contemplated by the FAA and Coast Guard/Department of Homeland Defense respectively. These contracts provide the same scope of services for both small and large businesses, thus everyone has an opportunity to participate. More importantly however, small businesses compete against like companies of their size and resources. And the FAA has taken it even further by reserving their competition for small businesses only, helping to spur further innovation and growth.

This is only the beginning. And we look forward to many more, similar changes, to help small business continue to expand and succeed. Thank you again for the opportunity to share this information with you today and for your time and attention to this important matter.

Chair SNOWE. Thank you, Mr. Adolphe. I am sorry I mispronounced your name earlier.

Mr. Murphy.

STATEMENT OF PAUL MURPHY, PRESIDENT, EAGLE EYE PUBLISHERS

Mr. MURPHY. Good morning, Madam Chair, and thank you for this opportunity to address this critical issue to small businesses in the federal marketplace.

The number and size of bundled contracts issued by federal agencies has now reached record levels. The small businesses are receiving disproportionately small shares of the work on bundled contracts. Most bundling is occurring as a result of the accretion of dissimilar tasks on existing task and delivery order-type contracts, and this trend is favoring large businesses.

Between 1992 and 2001 federal agencies reporting to the U.S. General Services Administration's Federal Procurement Data Center issued a combined 1.25 million prime contracts worth nearly $2 trillion. Eagle Eye's measure of bundling has determined that $106,000 or 8.6 percent of these contracts were bundled and that they accounted for $840 billion or 44.5 percent of reported prime contract dollars during this period.

Over this same 10-year period, 8(a) minority- and women-owned businesses, small and disadvantaged firms, and other small businesses won a combined 60.7 percent of the 1.25 million prime contracts. However, their share of bundled awards was 48 percent, nearly 13 percentage points lower. Similarly, the small firm dollar share of all prime contracts was 18.1 percent again over this 10-year period, but it dropped to 13 percent for all bundled contract dollars. And by contrast, large firms won 27 percent of all prime contracts and 37 percent of the bundled contracts. This translated into large firms winning 67 percent, two-thirds of all prime contract dollars and 75 percent of all bundled dollars.

In fiscal year 2001 both the number of bundled contracts and the amount of bundled contract dollars were the highest in 10 years. During fiscal year 2001 agencies awarded 105,000 out of 177,000 prime contracts to small businesses or 59.3 percent. However, the small business share of bundled contracts was 52.7 percent and the small business share of all bundled dollars just 16.7 percent. Overall, the government reported awarding 20 percent of all prime contract dollars to small firms in 2001.

The larger number of tasks required to fulfill bundled contracts and the consequent increase in the dollar size of these contracts favors large firms and larger small businesses while inhibiting the ability of small or new firms to bid for and win new federal contracts.

Our regression analysis shows that for every increase of 100 bundled contracts there was a decrease of 60 contracts to small business and for every additional $100 awarded on bundled contracts there was a decrease of $12 to small business. At a level of $109 billion in fiscal year 2001, bundled contracts cost small businesses $13 billion. This is making it increasingly difficult for small firms to compete and survive in the federal marketplace.

We found that bundling is being driven by growth in bundled contracts in the other services sector. Just over one-half of manufacturing awards came on bundled contracts during the 10-year study period even though only 6.4 percent of the sector's contracts officially were classified as bundled. Bundled contracts accounted for 46 percent of the R&D spending and 43 percent of obligations for other services.

It was the construction sector, though, that showed the biggest growth in bundling, 157 percent between 1992 and 2001. It also showed a significant 10 percent decline in small business participation. Both sectors showing overall declines in bundled dollar shares, R&D and manufacturing, showed moderate sustained growth in small business participation. Other services grew significantly in bundled dollar share and in the share of small business market participation.

The most frequently used contract vehicles for bundling are GSA schedules, multiple award contracts, BOAs and indefinite delivery/indefinite quantity contracts, IDIQs. Over the 1992-2001 period, 59 percent of all GSA scheduled contracts were bundled, accounting for 97 percent of the dollars awarded on schedules. Sixty-four percent of the dollars on BOAs and 60 percent of the dollars on IDIQs, 57 percent of the dollars on multiple award contracts, and 47 percent of the dollars on mods to those IDIQs were obligated on bundled contracts.

The new official bundled contract indicator collects a small fraction of the information about bundling. We strongly encourage you to consider broadening the definition of bundling to include a process that we call accretive bundling, the addition of dissimilar tasks to multiple-award IDIQ-type contracts. This new bundled contract indicator is based on a narrow definition of bundled contracts adopted as part of the 1999 Small Business Reauthorization Act and we think that it needs to be broadened. Instead of exclusively focussing on the bundled historical contract requirements, it needs to look forward and deal with the issue of accretive bundling. Thank you.

[The prepared statement of Mr. Murphy follows:]

The Impact of Contract Bundling on Small Business

Testimony Presented to the
Senate Small Business Committee
March 18, 2003

by Paul Murphy, President
Eagle Eye Publishers, Inc.
10560 Main St., PH-18, Fairfax VA 22030
March 18, 2003

Introduction

The number and size of bundled contracts issued by federal agencies has reached record levels, and small businesses are receiving disproportionately small shares of the work on bundled contracts. Most bundling is occurring as a result of the accretion of dissimilar tasks on existing task and delivery-order type contracts. This trend is favoring large firms.

Overall Assessment

Between FY 1992 and FY 2001 federal agencies reporting to the U.S. General Services Administration's (GSA's) Federal Procurement Data Center (FPDC) issued a combined 1.24 million prime contracts worth a total $1.89 trillion. Eagle Eye's measure of bundling has determined that 106,387 or 8.6 percent of these contracts were bundled and that they accounted for $840.3 billion, or 44.5 percent, of reported prime contract dollars during this period.

Over this same 10-year period 8(a) Minority- and Woman-Owned Businesses, Small Disadvantaged Businesses (SDBs) and Other Small Businesses (OSBs) won a combined 60.7 percent of the 1.24 million prime contracts, however their share of bundled contracts was 48 percent, nearly 13 percentage points lower. Similarly, the small firm dollar share of all prime contracts was 18.1 percent, dropping to 13 percent of all bundled dollars. By contrast, large firms won 27 percent of all prime contracts and 37 percent of the bundled contracts. This translated into large firms winning 67 percent of all prime contract dollars and 75 percent of all bundled dollars.

Annual Figures

In FY 2001 both the number of bundled contracts and the amount of bundled contract dollars were the highest in 10 years. The annual bundled contract count of 28,916 was up 8 percent from FY 2000 and up 19 percent since 1992. In FY 2001 bundled contracts accounted for 16.4 percent of the reported 177,000 prime contracts and 51 percent of all reported prime contract spending.

During FY 2001, agencies awarded 105,000 out of 177,000 prime contracts to small businesses, or 59.3 percent. However, the small business share of bundled contracts was 52.7 and the small business share of all bundled dollars was just 16.7 percent. Overall, the government reported awarding 20 percent of all prime contract dollars to small business in FY 2001.

Between FY 1992 and FY 2001 prime contracts grew annually in size, breadth of work required and in numbers of locations where work was performed. The average size of a prime contract grew 32.5 percent, from $915,000 in FY 1992 to $1.2 million in FY 2001. Average bundled contract size grew from $3.3 to $3.8 million, or 13.8 percent. By FY 2001, an average bundled contract was over three times larger than an average contract and over five times larger than an average unbundled contract.

The larger number of tasks required for fulfilling bundled contracts and the consequent increase in dollar size of these contracts favors large businesses and larger small businesses while inhibiting the ability of small or new firms to bid for and win federal contracts.

A regression showed that for every increase of 100 bundled contracts there was a decrease of 60 contracts to small business; and for every additional $100 awarded on bundled contracts there was a decrease of $12 to small business. At a level of $109 billion in FY 2001, bundled contracts cost small businesses $13 billion annually. This is making it increasingly difficult for small businesses to compete and survive in the federal marketplace.

The distribution of bundled dollars is skewed toward the largest firms. A deciles analysis shows that the largest 10 percent of all firms that won bundled contracts in FY 2001 received 92 percent of the bundled dollars. Of the 1,484 firms in the top 10 percent, 703 were small businesses. These 703 small businesses, representing just 7.3 percent of all small firms that were awarded bundled contracts in FY 2001, accounted for 67 percent of all small firm bundled dollars.

Other Factors Driving Bundling

Bundling is rooted in the Defense sector, where 10 percent of the contracts and 55 percent of the $1.2 trillion spent on defense contracts were bundled between FY 1992 and FY 2001. Although dollar totals and rates of bundled contracts are as high or higher in some branches of the General Services Administration (GSA), Health and Human Services (HHS), Social Security and Treasury the combined, high level of spending by the Army, Navy, Air Force and the Office of the Defense Secretary focus attention on defense contracts as the primary source of bundling.

Bundling is being driven by the growth in bundled contracts in the Other Services sector. Just over one-half of the Manufacturing sector's $695 billion in awards came on bundled contracts during the FY 1992 – FY 2001 period even though only 6.4 percent of the sector's contracts officially were classified as bundled. Bundled contracts accounted for 46 percent of the $271 billion in obligations made for Research and Development and 43 percent of the obligations for Other Services.

The Construction sector, which showed a 157 percent growth in the share of bundled contract dollars between FY 1992 and FY 2001, also showed a significant 10 percent decline in small business participation. Both sectors showing overall declines in bundled dollar shares, R&D and Manufacturing, showed moderate, sustained growth in small business participation. Other Services grew significantly in bundled dollar share and in the share of small business market participation

The most frequently used contract vehicles for bundling are GSA Schedules, Multiple Award Contracts, Basic Ordering Agreements (BOAs) and Indefinite Delivery / Indefinite Quantity (IDIQ) Contracts. Over the FY 1992 – FY 2001 study period, 59 percent of all GSA Schedule contracts were bundled, accounting for 97 percent of the dollars awarded on Schedules. Sixty-four percent of the dollars on BOAs, 60 percent of the dollars on IDIQs, 57 percent of the dollars on Multiple Award Contracts and 47 percent of the dollars on Modifications to all of the non-Schedule contracts were obligated on bundled contracts.

Official Government Bundling Measure

The new, official federal bundled contract indicator, collected as part of the FPDC's SF-279 and DD-350 data collection process, masks the harm to small business caused by contract bundling. It shows only $2 billion in bundled, prime contract dollars awarded in FY 2001, or just 1 percent of total

reported federal prime contract dollars. According to this indicator, small businesses received $240 million, or 11.8 percent of the bundled contract dollars.

This new indicator is based on a narrow definition of bundled contracts adopted as part of the 1999 Small Business Re-authorization Act. This definition focuses exclusively on the bundling of historical requirements and fails to address the phenomenon of "accretive bundling." Accretive bundling occurs when contract officers add new tasks to existing GSA Schedule, Indefinite Delivery/Indefinite Quantity (IDIQ), Government Wide Acquisition Contracts (GWACS) and other multiple award-type contracts. Accretive bundling has become the more widely practiced form of bundling since the procurement reforms of the mid-1990s, and bundling has risen significantly since these reforms were implemented.

March 31, 2003

Ms. Laurie Duarte
General Services Administration
FAR Secretariat (MVA)
1800 F St. NW, Room 4035
Washington, DC 20405

Dear Ms. Duarte,

I am responding to the request for comments on Far Case 2002-029. This concerns proposed changes to the FAR to implement anti-bundling measures that will enhance the competitive stance of small businesses bidding on government contracts. These proposed changes are contained in the OMB's October 2002 report titled, *Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business*.

As the author of the SBA's recent study, *The Impact of Contract Bundling on Small Business FY 1992 – FY 2001* I strongly favor efforts by the federal government to mitigate the negative impacts of contract bundling on small firms. However I generally find the proposed changes to the FAR don't go far enough to ensure adequate levels of small business contracting.

Contract bundling is a symptom of a bigger problem: overall, government agencies do not meet their established small business prime contracting goals. In my opinion, small firms might tolerate a certain level of bundling if small firms were receiving their fair share of bundled and unbundled prime and sub-contracts.

However, as my recent bundling study shows, bundled contracts harm the competitive position of small firms in the marketplace. The main culprit is the phenomenon I call "accretive bundling." This occurs when dissimilar tasks are added onto GWACs, IDIQs, Schedules, and Multiple Award-type contracts, making them so large and complex that small firms are precluded from bidding or forced into a sub-contractor role.

Some people argue that sub-contracting is the answer to small firms' bidding problems, but nothing could be further from the truth. Ask any small business owner. When a small firm is forced into a secondary role, small firms lose control over key decisions about what rates get charged and how work gets divided. It is commonly understood in the small business community that small firms are regularly used as "window dressing" to help large firms win contracts and then don't receive the proposed level of work once the contract is awarded. All large firms have strategies to maximize their "take" from

each contract they win, often to the disadvantage of their teaming and subcontracting partners.

So, the proposed FAR changes requiring more levels of agency bundling reviews and threshold monitoring don't address the real money problem head-on. As a whole they are simply too passive and too bureaucratic. The recommendation with the most promise in my opinion is Recommendation 6 to strengthen compliance with and monitoring of subcontracting plans. However, the Form 295 submission process is a disaster despite current reporting requirements and I don't see how it will change anything as written.

The OMB needs to take a more pro-active, Jerry McGuire-like "show me the money" approach to improving the competitive stature of small firms. Here are my suggestions:

1. Broaden the official definition of bundling to include "accretive bundling" that occurs on GWACs, IDIQs, Schedules and other Multiple Award-type contracts.
2. Allocate contracts to small firms as part of each agency's annual budgeting process. Implement stiff procedures and/or penalties for deviation from the plan. Require OSDBU participation in this budgeting process and require the OSDBUs to sign off on the annual plan. Require that any changes in the small business plan over the course of the year be offsetting -- if something has to come out of the plan, something else has to be inserted. Contracts that are allocated to small businesses can be competed or set-aside as needed to meet each agency's SDB, OSB, WOB and Veteran-owned business goals.
3. Insert a clause in each contract *requiring* a prime contractor to prove it has met its original subcontracting plan and require a prime's subcontracting partners to sign off on a joint statement of compliance *before* the prime gets paid.
4. Insure timely delivery of contract opportunity information to OSDBUs so that they can do their job. Contract officers and OSDBU offices often find themselves competing rather than cooperating. If OSDBUs had a clear understanding what was and was not being considered for small business allocation they could advocate better and get better small firm participation in the agency bidding process.
5. Strictly enforce full and timely Form 295 reporting by companies. The subcontract reports as they are currently submitted are next to worthless. They are often not submitted and, when they are, they are often incomplete. Require 295 report submission for payment.
6. Do not raise the $2,500 open market threshold.
7. Require strict compliance with the Form 1057 reporting (with full socioeconomic business detail) for all purchase card buys. Current small business purchase card statistics are virtually non-existent. $14 billion is being spent annually with little or no accountability for agency small business utilization.
8. Strictly enforce provisions calling for all contracts worth between $2,500 and $100,000 be set aside for small firms. Currently, billions of dollars of contracts in this range are being awarded to large firms.

9. Strictly enforce small business size standards. Require annual re-certification of small firms, along with annual agency reviews and stiff penalties for noncompliance and fraud.
10. Study how much money is truly saved by bundled contracts. My sources tell me that prime contractor mark-ups of sub-contractor rates vastly outweigh any savings in the procurement and administration of bundled contracts. Just because bundled contracts involve less administration on the government side doesn't mean the work is being performed more efficiently or cost-effectively.

In short, small businesses will be better served in the long run if agencies take aggressive, pro-active steps to insure that money goes to small businesses and that agencies achieve their small business contracting goals. The proposed OMB rule changes will require more meetings, reviews and reports and may well wind up not changing anything.

Please call or write me with questions.

Sincerely,

Paul Murphy, President
Eagle Eye Publishers, Inc.

Chair SNOWE. Thank you, Mr. Murphy.

Mr. Robinson.

STATEMENT OF MICHAEL E. ROBINSON, DEFENSE LOGISTICS MANAGER, MASSACHUSETTS MANUFACTURING EXTENSION PARTNERSHIP

Mr. ROBINSON. Thank you, Madam Chair.

A great obstacle to small businesses is contract bundling and there are two approaches that I would like to talk about. One is the current Administration approach and the other is a bill, S. 2466, that Senator Kerry offered up on May 7, 2002.

In contrasting the two approaches, one area that deserves comment involves the amount of the thresholds at which unbundling actions are initiated. The Administration proposal would begin these actions at $7 million for DOD, $5 million for NASA and $2 million for the civilian agencies. While this is far better than the current $10 million level, it is a substantial increase from those listed in S. 2466, introduced by Senator Kerry on May 7, which would require actions commencing at any consolidated or bundled contract in excess of $2 million, regardless of agency.

The difference in thresholds may seem inconsequential. However, if you look at a small machine shop with 10 employees, average sales perhaps $300-$800,000 a year, if they look at a contract of $2 million over two years they effectively have to double their sales. They can do this by adding a shift and a little bit of overtime and they can make this work. A $7 million threshold is almost a tenfold increase in sales. This prohibits the small manufactures from bidding on a contract of that magnitude. Two-thirds of all the machine shops in Massachusetts have less than 20 employees.

The Administration proposal does provide for small businesses to work together in an activity known as teaming. S. 2466 had some desirable specific protections to small business teaming arrangements.

The six New England MEPs have formed a nonprofit Manufacturing Supply Chain Consortium to assist DOD in tapping into New England's underutilized manufacturing community through teaming arrangements. The six-state integrated virtual manufacturing model will continue the program's success by increasing both the quantity and quality of teaming arrangement opportunities, providing a larger, more diverse cross-section of small and medium enterprises from which to draw for the purpose of forming the teaming arrangement scenarios. A large and diverse cross-section of SMEs is necessary to satisfy the broad range of DOD procurement requirements in the critical areas of cost savings, high quality, quantity and on-time delivery across a broad range of the DOD demand spectrum.

Now defense work is very important for the manufacturing sector. In Massachusetts alone we have experienced a 44 percent decline in DOD orders and lost thousands of manufacturing jobs. The Metropolitan Boston Statistical Area boasts the third largest manufacturing employment in the country, higher than Cleveland, Pittsburgh and Detroit.

In the past two years Massachusetts has lost 20 percent of its manufacturing jobs, the highest attrition rate in the nation. Con-

tinuation of this trend may lead to a point where the small manufacturing sector is unable to support surge demand and rapid ramp-ups such as are being experienced at this moment when we are at the brink of war in the Middle East.

Not only is defense work vital to SMEs but in turn, the capacity to support our war-fighters with our domestic industrial base should be of equal importance to the DOD. If the United States had off-loaded manufacturing capacity to China in the 1930s it is very likely we would have lost the Second World War. We find ourselves in a world of shifting alliances and uncertain partners. With that backdrop, do we not want to control the means to our own national defense?

The shrinking small manufacturing base will support our national policies, will answer the call to arms. As advocates for small business, now it is our turn to respond to support small manufacturers and answer the call to keep this sector, which is vital to the economic health of the nation, from being buried in an avalanche of contracts that are so large that they are unable to participate.

Regardless of the language chosen to modify contract bundling activities, it is going to take time and effort to ensure small business participation. We applaud that Senator Kerry and the Administration have offered inputs to begin to address the problem. We, the Mass MEP, stand ready to deliver the solutions to small manufacturers in the field.

Thank you for the opportunity to testify before the Committee.

[The prepared statement of Mr. Robinson follows:]

Testimony before the Committee on Small Business and Entrepreneurship of the United States Senate, March 18, 2003.

Submitted by: Michael E. Robinson
Defense Logistics Manager
Massachusetts Manufacturing Extension Partnership

Ms. Chairman, Senator Kerry, Honorable members of the committee:

Please accept my thanks for the opportunity to once again testify before the committee.

Before I begin, perhaps it would be helpful for you to know something about my background. I spent twenty-five years working in the defense industry, for Raytheon Company, and General Electric Company, in the areas of contract administration and cost estimating. Following that, I joined the Market Development Center, Maine's Procurement Technical Assistance Center for six years, the three as Director. During my tenure, the aggregate client awards to Maine Companies grew from $28 million per year, to in excess of $100 million per year. Following that, I joined the Massachusetts Procurement Technical Assistance Center as their initial Program Manager. That program assisted commonwealth firms in obtaining in excess of $80 million during its first three years. Late last year I joined the Massachusetts Manufacturing Extension Partnership, with the goal of helping stem the loss of manufacturing jobs by assisting firms in joining the Defense supply chain.

One of the greatest obstacles to small firms is contract bundling. It is gratifying that both the administration proposal and S. 2466 are addressing this problem.

In contrasting the two approaches, one area that deserves comment involves the amount of the thresholds at which unbundling actions are initiated. The administration proposal would begin these actions at $7 million for the Department of Defense, $5 million for NASA, and $2 million for the civilian agencies. While this is far better than the current situation, where there are no actions at any level, this a substantial increase for the levels listed in S. 2466, introduced by Senator Kerry, on May 7, 2002. S. 2466 would require actions commence at any consolidated or bundled contract in excess of $2 million, regardless of agency. While this difference in thresholds might seem inconsequential to some, the differences are substantial to the affected small businesses. For example, for a machine shop of ten employees the average sales are approximately $300,000-$800,000 per year. To contemplate a contract of $2 million, delivered over two years, effectively requires the owner to double his sales for that period. This is within the capabilities of most machine shops, many of which are currently running below capacity. It can be accomplished by adding a shift, and moderate overtime. However, the $7 million threshold represents an increase of almost ten-fold in sales. This would prohibit smaller manufacturers from bidding a contract of this magnitude. Two thirds of all the machine shops in Massachusetts have less than 20 employees.

The administration proposal does provide for small businesses to work together in an activity know as teaming, as does S 2466. S 2466 has desirable specific protections to small business teaming arrangements. Six New England organizations, Maine MEP, CONNSTEP, Massachusetts MEP, New Hampshire MEP, Rhode Island Extension Services (RIMES) and Vermont Manufacturing Extension Center (VMEC), with extensive knowledge and experience in working directly with small/medium enterprises (SMEs) joined efforts to establish the non-profit Manufacturing Supply Chain Consortium (MSCC) to assist DoD in tapping into New England's underutilized manufacturing community through SME teaming arrangements. This six-state integrated virtual manufacturing model will contribute to the program's success by increasing both the quantity and quality of SME teaming arrangement opportunities, by providing a larger and more diverse cross-section of SMEs from which to draw for the purpose of forming effective teaming arrangements scenarios. This large and diverse cross-section of SMEs is necessary to satisfy the range of DoD procurement requirements in the critical areas of cost savings, high quality, sufficient quantity and on-time delivery, across the broad range of the DoD demand spectrum.

Defense work is vitally important to the small manufacturing sector. In Massachusetts alone, we have experienced a 44% decline in DOD orders, and lost thousands of manufacturing jobs. The metropolitan Boston Statistical area boasts the third largest manufacturing employment in the country, higher than Cleveland, Pittsburg and Detroit. In the past two years, Massachusetts has lost 20% of its manufacturing jobs, the highest attrition rate in the nation. Continuation of this trend may lead to a point where the small manufacturing sector is unable to support surge demand and rapid ramp-ups in supply requirements such as being experienced at this moment, when we are at the brink of war in the Middle East. Not only is defense work vital to SMEs, but in turn the capacity to support our war fighters with our domestic industrial base should be of equal importance to the DoD. If the United States had offloaded manufacturing capacity to China in the 1930s, it is very likely we might have lost the Second World War. We find ourselves in a world of shifting alliances and uncertain partners. With that backdrop, don't we want to control the means to our own national defense?

The shrinking small manufacturing base will respond, will support our national policies, will answer the call to arms. As advocates for small business, now it is our turn to respond, to support small manufacturers, and answer the call to keep this sector, which is vital to the economic health of the nation, from being buried in an avalanche of contracts that are so large that they are unable to participate.

Regardless of the language chosen to modify contract bundling activities, it is going to take time and effort to insure small business participation. We applaud that Senator Kerry and the Administration have offered inputs to begin to address the problem. We of the Massachusetts MEP stand ready to deliver these solutions to small manufacturers in the field.

Thank you for the opportunity to testify before the committee.

Chair SNOWE. Thank you, Mr. Robinson.
Ms. Kuc.

STATEMENT OF CAROL KUC, REPRESENTING WOMEN IMPACTING PUBLIC POLICY

Ms. KUC. Good morning, Madam Chair. I am testifying today on behalf of Women Impacting Public Policy, which represents 430,000 women and minorities in business nationwide. I serve as WIPP's procurement chair and am pleased to appear before the Committee on this very important issue.

We commend the Committee for holding this hearing because our WIPP members have told us that federal contracting is a top priority. A recent survey we conducted found 94 percent of respondents are ready and capable to bid on federal contracts. The survey also revealed nearly a 95 percent gap between actual Federal Government contracts awarded to women-owned businesses and those businesses willing to bid in the procurement arena. Our survey respondents stated that if the federal contract process were simplified with more realistic and attainable opportunities, they would submit bids. In addition, a growing percentage, from 80 percent a year ago to 90 percent, believes the current system does not offer equal opportunities for women-owned and minority-owned businesses.

WIPP's survey also found that 98 percent of our members believe federal contracting unbundling would encourage women-owned businesses to compete for contracts. After all, women-owned businesses are the fastest growing segment of all small business. Contracts awarded to women-owned enterprises have only minimally increased from a 1992 benchmark of 1.3 percent while women-owned companies have grown 14 percent.

In the year 2000, Public Law 106-554 authorized federal agencies to designate contracts for women-owned businesses. This law was designed to assist agencies in reaching the 5 percent goal of awarding federal contracts to women-owned businesses. To date that law has not been implemented. Our 430,000 members are still waiting.

WIPP's membership has run head into a new way of bundling by the Air Force by its e-procurement site, AFWay. This is a good example of the problems small businesses incur while trying to compete for federal business. In short, it is a Catch–22. If you want to do business with the Air Force you have to be in the AFWay system as a vendor, but the Air Force has to choose you as a vendor. In order to be chosen as a vendor you have to have had a previous contract with the Air Force and there is no mechanism by which you can apply to get into the AFWay system.

Can AFWay be fixed? Of course it can. The Air Force could decide to designate a portion of its business as women-owned, SDB, 8(a) certified, et cetera. The Air Force could decide to require substantial subcontracting to those same groups from its primes.

Another story we would like to share with you from one of our members addresses a culture among contracting offices within agencies that even unbundling cannot fix. As the Committee knows, a company, if not awarded the winning contract, is entitled to an inquiry. Through this process the company who bid but was not awarded the contract can find out from the agency the winning

price and design of the winning bid. When our woman-owned company asked for the information, the contracting officer said, "If you challenge this you will never see another RFP come your way."

We would be remiss if we also did not share with you a story from an information technology company with regard to working with a prime contractor. This unfortunately is not an isolated case and must be addressed with increased oversight.

A very large prime contractor solicited a woman-owned company to be a subcontractor on a sizable contract with the Federal Government. However, to be an eligible subcontractor, the company needed to secure a security clearance for an employee. This subcontractor was told that a contract was waiting for the subcontractor when the security clearance was obtained. As the Committee knows, securing a security clearance is not a short and easy process. This small company of 15 employees spent considerable time planning for implementation of the contract, such as budget and employee time, and resources were spent obtaining the security clearance. When the security clearance came through the subcontractor called the prime—ready for work—but there was silence on the other end. The prime will not even return the subcontractor's calls.

We offer the above examples, and there are many more, to highlight the fact that reform is long overdue. WIPP has made a number of recommendations to our policy-makers with regard to federal contracting and offer them to the committee for its consideration.

We urge the Office of Federal Procurement Policy to publish a monthly scorecard on awards to small businesses. Reward prime contractors who use small businesses by using incentives. WIPP would be pleased to host a forum with contractors from across the country to encourage incentives. Let us give the SBA and the OSDBUs the authority and the resources they need to review subcontracting plans. We suggest creation of an influence credit for prime contractors who actively influence their lower-tier subcontractors to pursue small business subcontracting.

Clean up the CCR, Pro–Net and GSA small business databases. The Federal Government should require verification of those claiming to be small businesses. We suggest that all contracts over $100,000 be reviewed for small business participation.

We advocate that a federal certification should also be created and accepted by states and localities, as well. This will save small businesses significant time and money.

In closing, we want to commend Chair Snowe for holding this hearing and the Administration's leadership on this critical issue. WIPP also commends the leadership of Senator Kerry on these issues.

It is clear, Madam Chair, that contract bundling must be eliminated and changes made to the current way federal agencies treat multiple award contracts. This government must be held accountable to the people it serves.

I would be pleased to answer questions.

[The prepared statement of Ms. Kuc follows:]

Testimony Before

U.S. Senate Committee on Small Business and Entrepreneurship

On

"Contract Bundling"

March 18, 2003

Carol Kuc

National Founding Partner
Women Impacting Public Policy
www.WIPP.org

Madame Chairman, my name is Carol Kuc. My business, Complete Conference Coordinators, Inc., is located in Naperville, Illinois. I am testifying today on behalf of Women Impacting Public Policy (WIPP), which represents 430,000 women and minorities in business nationwide. I serve as WIPP's procurement chair and am pleased to appear before the Committee on this very important issue.

We commend the Committee for holding this hearing because our WIPP members have told us that federal contracting is a top priority. A recent survey we conducted found 94% of respondents are ready and capable to bid on Federal contracts.
The survey also revealed nearly a 95% gap between actual Federal government contracts awarded to women-owned businesses and those businesses willing to bid in the procurement arena.

Our survey respondents stated that if the Federal contract process were simplified with more realistic and attainable opportunities, they would submit bids. In addition, a growing percentage – from 80% a year ago to 90% -- believes the current system does not offer equal opportunities for women-owned and minority-owned businesses. The online survey was conducted in January 2003.

While women-owned businesses represent 38% of all U.S. businesses and employ more people than the Fortune 500 companies worldwide, it is disparaging to this dynamic and growing community that the federal woman-owned goal of 5% has never been met.

Contracts awarded to women-owned enterprises have only minimally increased from a 1992 benchmark of 1.3% while women-owned companies have grown 14% (compared to 7% nationwide) between 1997-2002, according to the Center for Women's Business Research. In light of the tremendous growth of women-owned firms, under-

representation of this community in the Federal procurement arena is simply unacceptable.

In the year 2000, Public Law 106-554 authorized federal agencies to designate contracts for women-owned businesses. This law was designed to assist agencies in reaching the 5% goal of awarding federal contracts to women-owned businesses. To date, that law has not been implemented. Our 430,000 members are still waiting.

WIPP's survey also found that 98% of our members believe Federal contract unbundling would encourage women-owned business to compete for contracts. President Bush has called the Federal agencies to task on contract unbundling and to make sure small business owners have a level playing field for bidding on government contracts.

We applaud the President's initiative and the hard work that folks like Angela Styles, Director of the Office of Federal Procurement Policy, have initiated to get federal contracts in the hands of small businesses.

But the President's efforts are thwarted on a daily basis by the culture in the federal government contracting of "doing business as usual" – which is to say, think big -- or in the case of the Air Force-- think "bundling".

WIPP membership has run head into a new way of bundling by the Air Force by its e-procurement site, AFWay. This is a good example of the problems small businesses incur when trying to compete for federal business.

On March 1, 2002, the Air Force announced a new "web-based" method of computer procurement called AFWay. The proposed change was made to facilitate a requirement to report computer spending amounts. Prior to that time, Air Force purchases for Information Technology "IT" goods and services were made through various contract

vehicles or open requests to vendors. AFWay sought to streamline the purchasing process, reporting requirements and offer the best possible prices, by combining all participating vendors into a common website. The Air Force Chief Information Officer said, "The Air Force has made a commitment to current Air Force IT vendors that the initial fielding of AFWay will not decrease their business opportunities…" "The Air Force is working with current Air Force vendors (including those who supply to individual major commands and bases) to include them as suppliers in AFWay..."

The Air Force has not followed through on its commitment to offer fair participation in the AFWay program. In short, it is a Catch –22. If you want to do business with the Air Force, you have to be on the AFWay system as a vendor. But, the Air Force has to choose you as a vendor. In order to be chosen as a vendor, you had to have a previous contract with the Air Force- and, there is no mechanism by which you can apply to get on the AFWay system.

I know you will be surprised to find that in the case of computer systems, such as Desktop, Laptop and Servers, the vendors chosen by AFWay are: CDWG, Dell, Gateway, GTSI, MicronPC—all large businesses. Local bases are already issuing directives that require IT purchases be submitted through AFWay, further excluding small, local businesses from working with the Air Force.

AFWay program personnel state that interested small businesses must win an "AFWay qualifying" open-ended competitive contract. But there are no such "open-ended competitive AFWay contracts" in existence to even bid on. Although small businesses have been promised that they would have an opportunity to participate in the program before it became mandatory, there is simply no avenue.

Regional Small Business Contracting offices have attempted to sponsor their local businesses but no procedure has been established by the AFWay program headquarters for the sponsorship.

. Can AFWay be fixed? Of course, it can. The Air Force could decide to designate a portion of its business as women-owned, SDB, 8(a) certified, etc. The Air Force could decide to require substantial subcontracting to those same groups from its Primes. Local bases can be given reasonable guidelines for submitting sponsored small businesses and a mechanism by which small businesses can become vendors on AFWay can be adopted.

Another story we would like to share with you from one of our members addresses a culture among contracting officers within agencies that even unbundling cannot fix.

As the Committee knows, a company, if not awarded the winning contract, is entitled to an inquiry. Through this process, the company who bid but was not awarded the contract, can find out from the agency the winning price and design of the winning bid. When our woman owned company asked for the information, the contracting officer said, "If you challenge this, you will never see another RFP come your way."

We would be remiss if we did not share with you a story from an information technology company with regard to working with a prime contractor. This, unfortunately is not an isolated case, and must be addressed with increased oversight.

A very large prime contractor solicited a women-owned company to be a subcontractor on a sizable contract with the federal government. However, to be an eligible subcontractor, the company needed to secure a security clearance for an employee. This subcontractor was told that a contract was waiting for the subcontractor

when the security clearance was obtained. As the Committee knows, securing a security clearance is not a short and easy process. This small company of 15 employees, spent considerable time planning for implementation of the contract such as budget and resources and employee time and resources were spent obtaining the security clearance. When the security clearance came through, the subcontractor called the prime – ready for work.

But there was silence on the other end. The prime will not even return the subcontractor's call. We suspect that if the subcontracting plan was checked on this particular contract, our company whom the prime never had any intention of actually awarding work, would be listed as a "small business" and a "women-owned business." In this case, the prime got two checks for working with this sub.

We offer the above examples and there are many more to highlight the fact that reform is long overdue. WIPP has made a number of recommendations to our policy makers with regard to federal contracting and offer them to the Committee for its consideration.

- We urge the Office of Federal Procurement Policy to publish a monthly scorecard on the small businesses percentages each agency awards to small businesses with a breakdown of small business groups within the small business category, such as women-owned, Hub zone, veterans, etc.

- Put some teeth into the Subcontracting Plan (Part 1). Reward Prime Contractors who use small businesses. Incorporate incentives to prime contractors to implement the subcontracting plan they submit as part of the

award. Currently, there is no incentive for a prime contractor to encourage its second tier subcontractors to strive for "maximum opportunity" with women and minority businesses. WIPP would be pleased to host a forum with contractors from across the country to encourage incentives.

- Put some teeth into the Subcontracting Plan (Part 2). The SBA and the OSDBUs have been relegated to "making recommendations" on contracting plans. Let's give them the authority and the resources they need to turn them into the advocates for small business. Why bother having them review plans if no one has to incorporate their suggestions?

- We suggest creation of an "influence credit" for prime contractors who actively influence their lower tier subcontractors to pursue small business subcontracting (women and minority). Our subs can easily tell the contracting officer to what extent they have been utilized in the contract.

- Clean up the small business database. Are the businesses listed on Pro-Net and the GSA schedule really small businesses? We believe an independent group (be it a federal working group or private group) should do an audit of those databases to ensure those claiming to be small businesses are who they say they are. We suggest that all contracts over $100,000 for small business participation be subject to review.

- Time+Money=Certification. Small women and minority businesses spend $7,000 to $10,000 to duplicate their certifications to local and state governments, since there is not one federal certification that establishes a woman or minority owned status. If a federal certification was created and accepted by states and localities, our small businesses would save significant time and money.

In closing, we want to commend Chairwoman Snowe for holding this Hearing, and the Administration's leadership on this critical issue. WIPP also commends the leadership of Senator Kerry who has consistently introduced legislation to make agencies more accountable and increase the federal small business goals. It is our understanding that contract bundling was initiated to save money and to be more efficient. The cost has been too high for small businesses who are leading this country during these economic times. Women-owned businesses are the fastest growing segment of all small business.

It is clear, Madame Chairman that contract bundling must be eliminated and changes made to the current way federal agencies treat multiple award contracts.

This government must be held accountable to the people it serves. I would be pleased to answer any questions.

Chair SNOWE. Thank you, Ms. Kuc, and I thank you for all those recommendations. We will certainly evaluate them. We want to do everything we can to make this process more efficient and more accessible to small businesses.

Obviously, Mr. Murphy, you have indicated based on your analysis, the trends have obviously moved in the opposite direction and they have never been higher in terms of the number of contract bundling that has occurred at the federal level. Is that correct?

Mr. MURPHY. Absolutely. It has especially accelerated since the mid-1990s. With the advent of the procurement reforms it has become a lot easier for this process of accretive bundling to occur on schedules and IDIQs and multiple-award-type schedules and this has worked to the disadvantage of small firms.

Chair SNOWE. Is it your understanding that these contracts are for an even greater period of time? Do you have any analysis that has been done on that? If these contracts are for longer and longer of periods of time for 10 or 20 years, obviously it then would omit smaller businesses these contracts.

Mr. MURPHY. Oh, absolutely. If you look at, for instance, GSA's schedule contracts which get automatically renewed if they are being utilized properly, they can last for 10 or 15 years. The bigger companies have larger sales staffs and can market these contract vehicles aggressively to numerous agencies and just outnumber small businesses in their presence at buying activities around the country.

Chair SNOWE. You were suggesting adjusting the definition of contract bundling because it is more narrowly defined in statute and does not include the whole idea of assembling accretive tasks. I gather that this is becoming much more of a pattern on the part of procurement offices. Is that what is happening? They are just assembling more and more dissimilar tasks?

Mr. MURPHY. Yes. We define a bundled contract as any contract exhibiting different product service codes, different types of contract codes and different places of performance on it and this process of accretion on these contracts is accelerating.

Chair SNOWE. So what would you define as accretion? What makes it different from what is in the current definition?

Mr. MURPHY. The current definition is strictly historical in nature in that it points to this contract and that contract that occurred in the past. They were combined and competed in such a way as to prevent small business from bidding on it. And there are just so many contracts, in our opinion, that can be identified in this manner and once they are identified as bundled, they would never be bundled again, so it seems like over a period of time, the number of bundled contracts could conceivably be reduced, become smaller by that measure.

And in fact, we see, based on this process of accretive bundling that, in fact, bundling is becoming more and more prevalent.

Chair SNOWE. I am certainly going to look at that. I wish I had asked that of the first panel because I think that is certainly something we have to examine if that is becoming much more of a pattern and a practice that is another avenue for excluding small businesses.

Mr. Adolphe, what has your relationship been with the Small Business Administration in terms of your experience?

Mr. ADOLPHE. Actually, my experience with the Small Business Administration has been very good. We found the office in Baltimore to be very helpful. They are very efficient and they often become our advocates when agencies are doing things that we think are detrimental to our business. So we have had a very good relationship with the SBA.

Chair SNOWE. You cited two programs that you thought were excellent in terms of best practices. Do you think that there is more that we ought to be incorporating in terms of best practices in law?

Mr. ADOLPHE. Absolutely.

Chair SNOWE. Ms. Styles indicated that one of the points in the nine-point plan on the part of the Administration is to identify best practices. I think that it would be important to also solicit the views of small businesses and their experience with specific programs that are beneficial and should be adopted as best practices.

Mr. ADOLPHE. Absolutely. Thank you. If we look at what the FAA is doing and we look at, for example GSA and the hub zone GWAC, what they have done is they have limited those bundled contracts to small businesses only and, in fact, large businesses cannot even participate as a subcontractor.

What that means for us is when we compete for a task order, we are not competing with a large subcontractor on somebody else's team. We know when we are competing with a small business, we are competing with a small business, not the resources of a mega-company. We feel that is a best practice.

There are also other things that we have found that we think would be very beneficial. When I looked at the definition of bundling and I looked at what some of the agencies were doing, I found that agencies were doing a lot of things that were being described as bundling and using justifications, like "We need to bundle," or, interoperability or national security. I believe that with today's technology and today's developers, there are enough businesses out there that specialize in developing technologies to make other disparate systems talk.

So, I think it sometimes could be disingenuous when agencies are talking about interoperability as a reason for bundling. Looking at what some of these other agencies are doing to help to unbundle and spur innovation I think would be very helpful.

Chair SNOWE. Mr. Adolphe, you obviously had a bad experience and cannot cite others for fear of retaliation.

Mr. ADOLPHE. Absolutely.

Chair SNOWE. Which is regrettable. And Ms. Kuc, you made reference to the same issue and another example of a woman-owned business, which is really a sad commentary on where we stand today, fear of retaliation. But can you tell me, do you think there is a good way for us to address the issue of where a prime contractor does involve small businesses in the process of submitting a bid to an agency and then, of course, as you found out—and I think you mentioned, as well, Ms. Kuc—the contractor then does not contact the small business after it has received the award.

Mr. ADOLPHE. Thank you for that question. What is interesting is that under FAR 15 USC 637(d)(4)(f), it actually directs the agen-

cy to seek liquidated damages when these firms fail to meet these objectives and are, in fact, willful in that. I understand that the government or these agencies lack the resources but I think the first time an agency actually exercises that option, I think it is going to raise a lot of eyebrows and people are going to be more careful about their teaming agreements and adhering to these goals.

I think secondly, I would advocate—the GSA maintains a website that provides a list of all contractors that are suspended or debarred. I would advocate that a list be generated, as well, for companies that do not meet these small business requirements and have that list be posted so that when other agencies are looking to do business with these companies, they now have a list, similar to the list of debarred firms, and they will know that these folks either are or are not doing what they claim in their proposals.

It will also be an opportunity for small businesses, like OPTIMUS, to go to that site and when the small business is approached by a firm on the site they will know these guys do not do what they claim.

Chair SNOWE. Ms. Kuc.

Ms. KUC. Madam Chair, yes, I know of evidence of women-owned businesses who have found after a contract has been let, found years later that they were listed in the subcontracting plan as subcontractors. These women were never contacted by the primes, never knew that they were listed as a subcontractor. We must find a way that we can verify that those people who are listed as subcontractors are actually subcontractors.

This is quite simple. All these primes have to do is list the e-mail of the subcontractors and perhaps the contracting officers or the small business program managers, whoever is overseeing the subcontracting plans, could then just verify by e-mail that they are indeed a subcontractor of that prime.

Chair SNOWE. Well, I find it rather amazing that they would include the name of subcontractors—

Ms. KUC. Goes on all the time.

Chair SNOWE. [Continuing.]—Which have not been approached by the prime contractor?

Ms. KUC. That is correct.

Chair SNOWE. Mr. Murphy.

Mr. MURPHY. It is a well known fact that small businesses are used a window dressing to win contracts where the agencies are requiring small business participation. And, there may be a simple solution to this and, that is, why not require a contract clause in every contract involving subcontracting that specifies that the prime contractor will not be paid unless and until they can prove they have met their subcontracting goals and make that part of the contract and require an audit of that contract's subcontracting goals if there is any question. Or maybe even have a form that the prime and the sub are both required to sign indicating that they have met their obligations to one another.

Chair SNOWE. Good point. I will certainly look at that. I think that it is a critical issue, not to mention the expense. Even if you get involved in the process at the onset you still may tapped as a subcontractor after the prime contractor receives the award. I am

concerned about all the time and money that is spent just to be part of that process initially and then to be omitted ultimately; or, to have the prime contractor use your name, the name of your company, and then not even to be approached or to be asked by the prime contractor. It's pretty audacious.

Mr. Robinson, I know you strongly back Senator Kerry's legislation and I am interested in the provision about establishing a uniform threshold of $2 million.

Now you heard the response by the earlier panel, Ms. Styles and others—

Mr. ROBINSON. Yes, I did.

Chair SNOWE. [Continuing.]—About lowering that threshold, because I think the current threshold—I do have concerns with the current thresholds and the multiple levels because I do think it does omit—I think the thresholds are far too high, given what the average size of the small business contract is, let alone the average size of the prime contract.

Why do you think $2 million would be a better threshold as a uniform standard government-wide?

Mr. ROBINSON. $2 million would still allow for some efficiencies in buying. I mean we are asking all the buying agencies to do more with less. But it still gives the average small, 10- to 20-person manufacturer a chance to actually be able to meet a two- or three-year contract at $2 million. A two-year contract at $7 million is probably out of his range or her range at that point in time. It just is too big.

The current level, I think, is $10 million and that is far too large. I think you had some statistics about the average size of a contract being $140,000 or something along those lines, so it has to be in relationship to that.

Chair SNOWE. Would others agree? Did anybody have any comments on that in terms of redefining the threshold at a different level? Would it make a difference?

Ms. KUC. Hopefully it will make a difference.

Mr. ROBINSON. It could be an evaluated threshold that each year becomes evaluated based on the size of the contracts and the participation. In other words, if $2 million does not yield a reasonable amount of small business participation, then it goes down and it floats down a year until small businesses are participating in the contracts. That is another approach to this. It is a little bit harder for the Administration or Executive Branch.

Chair SNOWE. You also, in that legislation, have specific protections for teaming arrangements. Could you expand on that about protections for teaming arrangements? I think teaming arrangements are very important and critical to including small businesses. Has it been your experience that those teaming arrangements need that kind of protection in law?

Mr. ROBINSON. Sometimes if you get teaming arrangements between two fairly large small businesses then they start to become treated as a large business. As Senator Kerry indicated in his legislation, regardless of the aggregate mass of the companies, they would remain small businesses and be entitled to the protections that small businesses get and I think that that was significant. I

did not notice those comments in the Administration's proposal when I read it.

Small businesses are kind of at a disadvantage when they are out there competing with companies with a lot more resources and marketing abilities and they need help. Teaming is a great way for them to participate in contracts that might be too large for them to do by themselves and that is what we are working on and trying to develop that.

Chair SNOWE. Is it your experience, Mr. Murphy—would you know, Ms. Kuc—is teaming used consistently government-wide or is it sporadic?

Ms. KUC. First of all, the contracting officers need to understand teaming arrangements. I personally know of some potential contractors who were denied contracts because they did present a teaming arrangement. Contracting officers do not favor teaming arrangements.

Chair SNOWE. Why would that be the case?

Ms. KUC. They seem to see it as a weakness of either one or both of the partners or multiple partners. They do not seem to see it as a strength. And the contracting officers need to be cognizant of the fact that teaming arrangements are encouraged by the agencies. I do not believe that is the case now.

I also would like to state that WIPP supported Senator Kerry's legislation and we will continue to support it.

Chair SNOWE. Mr. Murphy.

Mr. MURPHY. Yes, I think there is an issue of timeliness here, too, that small businesses need more time on a lot of these procurements to put teams together. The problem increasingly is that they do not know about the opportunities and in my conversations with OSDBU representatives, the contract officers in these far-flung purchase offices and buying activities are actively trying to bypass the involvement of the OSDBUs, that there is a view that the OSDBU office provides an odious burden on their ability to get a contract out quickly.

And I have spoken to OSDBUs who are complaining that they do not have timely access to the opportunities their own contract officers out in the field are issuing and they therefore are behind the 8-ball on being able to assist small businesses in developing teaming relationships in the first place.

Chair SNOWE. So there are not sufficient numbers of personnel out in the field to help them with that.

Mr. MURPHY. Well, I think it is part of the dynamic of the current procurement environment, where we are trying to do more with less, we have cut the procurement workforce, they have a lot of requirements on their desks and they are just trying to move them off as fast as possible and they view the small business process as time-consuming and burdensome, so they actively try and bypass it.

So there is this tension between the regions and the central offices in trying to assist small businesses.

Chair SNOWE. There are conflicting dynamics, there is no question, as a result of the trends in the procurement process and you are right about doing more with less. So as a result, people are going to pursue the path of least resistance. I mean bureaucracies

are risk-averse so they are going to do what is going to come easy sooner and faster and ultimately I think they are not going to use their creativity and innovation in making sure that small businesses are going to be part of it.

That is why I think it is so important that the Administration's nine-point plan be a workable one and one that is not only monitored but implemented in a systematic way. I think what Mr. Cooper was saying is going to be critical to making sure we have reliable measurements and the information with which to determine whether or not it is being implemented and ultimately demanding accountability from those who implement the process.

Do any of you have any objections to what the Administration is doing, or, to the nine-point plan? I mean do you see any problems with it? Do you care to comment on it at all?

Mr. Adolphe.

Mr. ADOLPHE. I pretty much agree with everything in the plan. The only thing that does concern me is discussion about recertifying small businesses each year, I think 10 or 20 years is unworkable but I think one year is an undue burden on small businesses and things change too quickly. One year we can have a banner year and the next year could be not so good, and I think to be decertified after a year is going to be burdensome.

I look to how NAICS codes, for example, your participation under NAICS codes are done where it is a three-year rolling average. I think that would be something that would be helpful, either that or a five-year certification I think would be something that would be very helpful to small businesses.

Chair SNOWE. I appreciate that.

Does anybody else care to comment on the Administration's plan?

Ms. KUC. I agree.

Chair SNOWE. Do you think they are moving in the right direction?

Ms. KUC. I do.

Chair SNOWE. It is all-inclusive?

Mr. Murphy and Mr. Robinson.

Mr. ROBINSON. Yes, I do think that thresholds need to be examined because I think that the $7 million threshold is much too large for a small business or even a team to deal with.

Chair SNOWE. Mr. Murphy.

Mr. MURPHY. I think Ms. Styles brings a tremendous breath of fresh air to small businesses and what a relief to have such a vocal advocate on our behalf. I think there are a number of things that could be done to strengthen her effort, if I may.

Chair SNOWE. Yes, go right ahead.

Mr. MURPHY. I think that there is a lot of work that needs to be done in terms of delivering procurement information in a timely manner. As a company that has processed the federal procurement data now for 18 years, I can tell you this is the latest we have ever gotten fourth quarter 2002 data in our history, in our company's history. We are still providing our clients, among whom are several agencies, third quarter 2002 historical contract data and this is simply not timely for a lot of the needs of people who are on the cutting edge of trying to assist small businesses.

Along the same lines of information provision, the 295 form reporting requirements are a disaster. The 295 form is woefully incomplete. It is inconsistently reported. It is poorly monitored and in no way provides any valuable information for assessing whether the small business subcontracting provisions are being met by the large firms. I think we cannot enforce the subcontracting provisions without this kind of information.

I take kind of a Jerry Maguire "show me the money" approach to the small business procurement goals in that initiatives and incentives and reviews are all well and good in enforcement but I think that at some level we need to assess or address the issue of perhaps making the 23 percent goal a part of the budget process so that people have to opt out of the small business goals, rather than passively wait till the end of the year and tally up what we have awarded to small businesses and say oh, gee, we did not meet it this year. Why not make the 23 percent goal part of the budget allocation process and require agencies up front to say these are the programs we are putting in to meet our 23 percent goal and have the OSDBU office as part of that process early on and have them sign off on it?

And if any programs, for one reason or another, are determined not to be allocable to small businesses during the course of the year, force like a zero sum deal where if you take a program out of your small business allotment you are going to have to put another one back in.

I think that there needs to be a lot more focus on the money aspect of this and I think small businesses will be much more reassured that this is not just going to be an exercise in shuffling paper but an actual determination that dollars are reaching small businesses the way they should.

I think that we should not raise the small purchase threshold, the open market $2,500 threshold. I think that would work to the disadvantage of small businesses. It should be kept at $2,500.

I think that we need to strictly enforce the monitoring of purchases between $2,500 and $100,000. We are finding in our data that a tremendous number, billions of dollars of purchases are going to large businesses when, in fact, this is money that is supposed to be reserved for small businesses.

And I am really pleased to see OFPP's and SBA's initiatives with regard to the recertification of small businesses annually and I think this is to be commended, but we have to monitor that carefully. Because of all the acquisition and merger activity that is going on, we are finding in our database that we are identifying large businesses that have acquired—small businesses that have become part of larger businesses months and years in advance of any indication in the CCR and ProNet databases that they are no longer small.

And, as I mentioned, I think that we need to broaden the definition of bundled contracting.

Chair SNOWE. I appreciate it. This has been very helpful to the Committee and I certainly welcome any additional thoughts you have. This has been very constructive and productive here today and I really appreciate all the recommendations that you have all made individually and collectively. I think it will also be very help-

ful to the strengthening of this process to see what we, as I said earlier, are doing that works and to reinforce that.

Certainly I will be looking at the SBA reauthorization process and anything that I can do within that legislative jurisdiction, I certainly will. I will otherwise certainly advance a lot of the suggestions that you have made in terms of being able to bolster the process that ultimately we hope will work in terms of what the Administration has advanced and initiated on behalf of small businesses.

So, again, I just want to thank you for all of your information here today and I think that it does confirm that there is no easy solution to this whole process but I think this is the right step in the right direction. And much has been done and clearly more needs to be done and we hope to work together to make sure that that can happen and become a reality.

So again I want to thank you for your time spent here today.

The record will remain open for two weeks until April 1 for any further submissions that anybody would like to make. Also, if any members of the Committee wish to submit written questions to any of the witnesses, they can file them with the Committee clerk.

The hearing stands adjourned.

[Whereupon, at 11:20 a.m., the hearing was adjourned.]

POST HEARING QUESTIONS

Post-Hearing Questions
Committee on Small Business and Entrepreneurship
to
The Honorable Hector V. Barreto, Administrator,
U.S. Small Business Administration

"Small Businesses Continue to Lose Federal Jobs by the Bundle"
March 18, 2003

Questions submitted by Senator Olympia J. Snowe, Chair

This Committee takes very seriously its responsibility to enhancing small business access to contracting dollars and holding agencies accountable to the 23 percent statutory goals. In your testimony, you state that small businesses received about 22.81 percent of Federal prime contracts. Yet, I hear from small business owners this number may actually be much lower. These small business owners express concerns about the SBA's decision to exclude certain types of contracts from the calculation. In addition, I understand that the SBA Office of Advocacy uses a different approach for calculating goal achievement.

1. Can you further explain the methodology the SBA uses to calculate the 22.81 percent achievement?

- The Small Business Act establishes small business procurement goals as a percentage of the total value of all prime contracts awarded to small businesses.

- As a matter of SBA policy, the goaling baseline includes only prime contracts awarded using appropriated funds in accordance with the Federal Acquisition Regulation.

- Therefore, SBA excludes several categories of procurements from the goaling baseline when establishing goals with the agencies. They are:

  - Non-appropriated fund procurements
  - Mandatory sources of supply (e.g., procurements from the blind and severely handicapped)
  - Contracts for foreign governments or international organizations
  - Contracts not covered by the Federal Acquisition Regulation
  - Transactions that are internal to an Agency (e.g., a DOD component orders from a DOD Supply Depot)

- SBA monitors the agencies goal achievement through procurement data reported to the Federal Procurement Data System (FPDS). The FPDS is primarily applicable to contracts awarded using appropriated funds. Therefore, SBA determined that the goaling baseline should only be applicable to prime contract actions awarded using appropriated funds in accordance with the Federal Acquisition Regulation.

- The August 2001 GAO Report (More Transparency Needed in Prime Contract Goal Program) stated that SBA's decision to exclude certain contracts is within its discretion

under the Small Business Act to administer the Goaling Program.

- At the end of the Fiscal Year, SBA obtains the FPDS data from GSA as a Special Report based on the above methodology. The Report shows each agency's achievements and the aggregate achievements for the Federal Government. There is a delay in receiving timely and accurate year-end FPDS information which makes it difficult to evaluate goal achievements in a timely manner.

- SBA publishes the goals and achievements on SBA's website. Also, we prepare a report to the President and the Congress that includes agencies' achievements against their goals. GSA also includes the data in its Annual Procurement Report.

Follow-up: Although small businesses may not have a reasonable opportunity to compete for certain procurements, isn't it true that small businesses have the ability to perform these procurements?

- Yes.

Follow-up: Wouldn't including these procurements in the calculation more accurately reflect the percentage of small businesses participating in the Federal procurement process?

- SBA does not believe we should include the above transactions in the baseline because small businesses, in most cases, do not have any opportunity to compete for these procurements.

- For example, small businesses probably would not have an opportunity to receive prime contracts for procurements from mandatory sources of supply. However, small businesses may be subcontractors to JWOD non-profit agencies.

- In addition, procurements conducted using non-appropriated funds are not required to follow the FAR. Therefore, those procurements may not follow the procedures for the small business programs.

- Contracts awarded by agencies not covered by the FAR such as the Federal Aviation Administration have flexibility in structuring small business programs that may be inconsistent with the FAR and the Small Business Act.

- Therefore, SBA believes it is the best policy to exclude the above transactions from the goaling baseline to achieve consistency in measuring small business performance in available Federal contracting opportunities.

2. How does the SBA communicate agency goal achievements to senior agency management?

- SBA conducts mid-year reviews of agencies' accomplishments against their goals by sending letters to the Agency Heads of the top 20 agencies and offering to work with them to develop best practices for achieving small business goals.

- In addition, SBA works with the OSDBU Directors and provides quarterly updates on goal achievements. SBA's website has a link to the Federal Procurement Data Center's website which contains the quarterly goal achievements. However, there is a delay in receiving timely and accurate FPDS information which makes it difficult to evaluate goal achievements in a timely manner.

Follow-up: How often does the SBA communicate this information?

- Since Federal Procurement Data System (FPDS) prime contract data is collected on a quarterly basis, SBA communicates the information as soon as the FPDS data are available.

- SBA communicates the goaling information on prime contracts to the OSDBU Directors quarterly and the Agency Heads semi-annually. The subcontract information is collected in the FPDS on an annual basis.

3. What happens when agencies don't meet their goals?

- At the end of the fiscal year, agencies are required to submit a report to SBA that discusses their goals and achievements with an explanation of any small business program where goals were not met.

- Agencies are required to submit this information along with corrective action plans by May 30th. SBA includes this information in our Annual Report to the President and Congress which is included in the Office of Advocacy's State of Small Business Report.

- SBA continues to work with those agencies that fail to meet their goals to develop best practices and procurement strategies that will help them to achieve their goals in the future.

Follow-up: How does the SBA propose to enforce goal achievement without additional legislative action?

The Federal agencies are responsible for achieving the small business goals. SBA's role is to establish individual agency goals to meet or exceed the government-wide goals, monitor achievements, and report results to the President and the Congress. SBA is committed to seeking top level support for our small business programs from each agency and assisting them with developing procurement strategies to increase

opportunities for small businesses. SBA's Deputy Administrator raises procurement issues (including goal achievements) at the President's Management Council meetings and is holding one-on-one meetings with the Senior Leadership at the major Department and Agencies.

Section 15(p)(4)(B) of the Small Business Act currently requires the SBA to annually transmit a report on contract bundling to the Committees on Small Business of the House of Representatives and the Senate. The Senate Committee on Small Business understands that provisions contained in the 2001 Defense Re-authorization Bill may affect the SBA's ability to meet this requirement.

4. Please provide the status of the "Annual Report on Contract Bundling."

We expect to have it completed by April 30th. However, SBA faces limitations in obtaining the contract bundling data requirements set forth in Section 15(p) of the Small Business Act to complete the report. The statute states that SBA must use data collected in existing systems to comply with this statutory requirement. Consequently, SBA is using the limited information available from the Federal Procurement Data System (FPDS) to draft the Annual Report. The FPDS only collects whether an agency indicates the contract action was bundled or not. There is no detailed information on costs savings achieved by bundling, if savings will continue if bundling occurs or the impact of bundling on small businesses.

Questions submitted by Senator John Kerry, Ranking Member:

1. Given the additional responsibilities assigned to procurement center representatives, small business specialists, and the Offices of Small and Disadvantaged Business Utilization (OSDBU), what personnel and monetary resources are you planning to commit to implementing the SBA's contract bundling rule once it is finalized, and what is your informal cost estimate to implement the full proposal? Please describe these cost estimates by fiscal year.

SBA does not anticipate the need for any additional personnel to implement our bundling rule. Currently, our PCRs review agency procurements that are not set-aside for small business. The proposed rule will also require the PCR to review certain orders placed against multiple award contracts. In addition, the proposed rule places more responsibility on the agencies to be accountable for avoiding unnecessary contract bundling. The Directors, Offices of Small and Disadvantaged Business Utilization will direct additional efforts on bundling reviews. SBA will be able to leverage our existing resources through working with those offices.

2. Explain how the Small Business Administration came to the three-tiered threshold levels ($7 million for the DOD, $5 million for NASA, the GSA, and the Department of Energy, and $2 million for all other agencies) to trigger bundling reviews. When comparing these threshold levels to those in S.633, the Small Business Federal Contractor Safeguard Act, how many more bundled contracts would be reviewed by the DOD, NASA, the GSA, and the Department of Energy, if the thresholds for these agencies were at $2 million? Please describe these estimates in terms of contract dollars, by agency per fiscal year.

The Administration's strategy on contract bundling calls for review of acquisitions for bundling issues at agency-specific dollar thresholds between $2 million and $7 million based on an agency's volume of contracts. These thresholds are especially significant in that they trigger additional documentation and review requirements to ensure high level agency attention to potentially bundled acquisitions. In the proposed regulations, this oversight responsibility is assigned to agency OSDBUs, who work with our PCRs to ensure small business participation. SBA participated in the interagency group that developed the proposed regulations. The Interagency Group reviewed contract data from the Federal Procurement Data System (FPDS). They determined that the most efficient and effective way to implement this strategy would be to establish in the regulations three thresholds for agency review (i.e., $7 million for DOD, $5 million for NASA, GSA, and DOE, and $2 million for all other agencies). These reviews require allocation of scarce agency resources and, thus, the need for the reviews must be balanced against the perceived benefits. The Administration believes that agency reviews at these thresholds will increase opportunities for small businesses without imposing unreasonable burdens on the agencies.

The levels set forth in the proposed regulations reflect a greater commitment of SBA and agency resources to increase opportunities for small businesses and avoid unnecessary contract bundling. It is not possible to provide the full impact of lowering the threshold to $2 million for DOD, NASA, GSA, and DOE. These federal agencies already review planned acquisitions that are not set-aside for small business. In the case of NASA and GSA, they review all planned acquisitions

over $100,000 and for DOD the current threshold is $10,000. Therefore, the largest impact would be a review of certain orders under multiple award contracts, Federal schedule contracts, and other indefinite quantity contracts which are not being uniformly reviewed by the agencies. SBA believes the proposed regulations should be given an opportunity to succeed at the established thresholds.

Based on FY 2001 FPDS data, the below table shows estimated actions and dollars using the thresholds in the proposed rule compared to lowering thresholds as proposed in S.633. The figures cannot answer the question of how many more bundled contracts could be reviewed, but they reflect our best estimate of the potential numbers of actions that could be reviewed for bundling implications. The figures would be reduced for contracts set-aside for small business since these would not be bundled contracts and for orders where the basic contract was already reviewed for bundled. As mentioned above, some of the agencies are already reviewing contracts at lower dollar thresholds for small business participation.

	Actions* >$7 M	Actions* >$5M	Additional Actions* >$2M
DOD	1140 actions $27.7 billion		3,502 actions $9.2 billion
NASA		19 actions 824.4 million	39 actions $90.2 million
GSA		104 actions $2.7 billion	370 actions $1.1 billion
DOE		8 actions $247 million	10actions $31 million

*Actions include: New Definitive Contracts, Orders under Single Award Indefinite Delivery Contracts, Order/Modifications under GSA Schedule Contracts and Other Federal Schedules, and Orders under Multiple Award Contracts.

3. How many more bundled contracts would be reviewed by the DOD, if the threshold were at $5 million, as opposed to the proposed $7 million threshold? Pleased describe the review estimate in terms of the number of contracts and dollars per fiscal year.

Based on FPDS FY 2001 data, the estimated additional actions and dollars for DOD would be as follows.

	Actions* > $7M	Actions* >$5M	Additional Actions*
DOD	1140 actions $27.7 billion	1635 actions $30.6 billion	495 actions $2.9 billion

*Actions include: New Definitive Contracts, Orders under Single Award Indefinite Delivery Contracts, Order/Modifications under GSA Schedule Contracts and Other Federal Schedules, and

Orders under Multiple Award Contracts

4. What measures will you take to ensure that procuring agencies comply with the SBA's proposed rule once it is finalized?

SBA is involved in educating buying activities and the private sector as part of our commitment to ensure that small businesses obtain their share of Federal procurement dollars. For example, SBA staff teaches an advanced training course on small business at the Defense Acquisition University which includes contract bundling. We also participate in Government conferences held by agencies and the private sector where we give an overview of our small business programs. SBA is compiling best practices to share with agencies on maximizing prime and subcontracting opportunities for small businesses in justified bundled contracts.

Our Procurement Center Representatives (PCRs) will continue to review non set-aside procurements for small business opportunities and for bundling implications. We will continue to work closely with agency contracting offices and OSDBUs to mitigate the effects of contract bundling through small business teaming arrangements and promoting maximum subcontracting opportunities.

In addition, SBA has reinitiated surveillance reviews as one way of holding agencies accountable for complying with small business programs. The PCRs will review and analyze contract files to determine if buying activities made every effort to maximize contract opportunities for small businesses and the buying activities policies and procedures in support of small business programs.

5. Would changing the current definition of contract bundling to incorporate consolidated contracts result in more contracts being awarded to small businesses? Please explain.

The Administration has not formulated a position on changing the definition to include consolidation contracts. SBA believes the proposed regulations should be given a chance to succeed without statutory changes.

Post-Hearing Questions
Committee on Small Business and Entrepreneurship
to
Mr. David Cooper, Director
Acquisition and Sourcing Management
U.S. General Accounting Office

"Small Businesses Continue to Lose Federal Jobs by the Bundle"
March 18, 2003

Questions submitted by Senator John Kerry, Ranking Member

1. Can you quantify the number and dollar amount lost to small businesses because the definition of contract bundling does not incorporate all consolidated contracts?

2. Would changing the current definition of contract bundling to incorporate consolidated contracts result in more contracts being awarded to small businesses? Explain your response.

1. Can you quantify the number and dollar amount lost to small businesses because the definition of contract bundling does not incorporate all consolidated contracts?

No, there is currently no database that reliably captures the number of "consolidated" contracts that would be required before we could quantify the number of consolidated contracts not reserved for small businesses. Office of Management and Budget's report on contract bundling[1] indicated an increase in consolidated contracts and a resulting decline in small business participation, based on the number of small business contractors and contracts. Quantifying the number and dollar amount lost to small businesses is further complicated because the effects of consolidated contracts on small businesses cannot be easily isolated. Other changes in the last ten years also have a potential effect on small businesses, both positively and negatively. These changes include shifts in expenditures in the types of goods and services purchased, the emergence of new contracting vehicles, and the changes in dollar thresholds for contracts reserved for small businesses.

2. Would changing the current definition of contract bundling to incorporate consolidated contracts result in more contracts being awarded to small businesses? Explain your response.

Changing the definition of contract bundling to incorporate consolidated contracts would increase the number of contract actions that would have to be either reserved for small businesses, or justified over current levels. In addition, it appears this change would increase the number of contract actions reserved or justified under the regulations that were proposed on January 24, 2003, to implement the recommendations of the Office of Management and Budget in its report entitled "A Strategy for Increasing Federal Contracting Opportunities for Small Business."

The reason for the conclusions above is that under either the current scheme, or the scheme anticipated by the draft regulations, no requirement to justify the use of a consolidated contract arises until the agency concludes that the contract meets the definition of a "bundled contract" in the Small Business Act. This definition requires a finding that the agency is consolidating 2 or more procurement requirements for goods

[1] Executive Office of the President, Office of Management and Budget, Office of Federal procurement Policy, Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business (October 2002).

or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business concern due to-

> (A) the diversity, size, or specialized nature of the elements of the performance specified;
> (B) the aggregate dollar value of the anticipated award;
> (C) the geographical dispersion of the contract performance sites; or
> (D) any combination of the factors described in subparagraphs (A), (B), and (C).

15 U.S.C. § 632(o)(2).

If a contract fails to meet any of the conditions specified in the statutory definition—for example, if the consolidated requirements were not previously contained in separate smaller contracts, or if the consolidated contract will nonetheless be suitable for award to a small business concern—then agencies and legal forums have concluded that the requirement to either set-aside or justify the contract does not apply.

By changing the definition to capture all consolidated contracts (as anticipated by S. 633, introduced by Sen. Kerry on Mar. 17, 2003) one of two things will happen: (1) more contracts will have to meet the various justification requirements anticipated by either the current regulatory scheme, the scheme envisioned by the draft regulations, or the scheme envisioned by S. 633; or (2) those contracts will have to be set aside for small businesses. Since, at this juncture, we do no know whether the contracts will be justified or set-aside, we do not know whether changing the definition as suggested will result in more awards to small businesses. We can conclude, however, that more contracts will be identified under the proposed change as requiring either justification or set-aside, than are identified under the current definition of bundled contracts.

Hearing Date: March 18, 2003
Committee: Senate Committee on Small Business & Entrepreneurship
Member: Senator Snowe
Witness: Ms. Lee
Question #1

IMPLEMENTATION OF RULES

Question: What assurances do you have that your acquisition workforce understands and implements Federal acquisition rules and regulations to achieve their intended objectives, especially in the context of small business?

Answer: The acquisition workforce follows the Federal Acquisition Regulation (FAR) and its supplements in the award of contracts. The DoD has a continuous training requirement intended to ensure the acquisition workforce stays current on policy changes. Also, approximately 700 small business specialists assigned throughout DoD review acquisitions to ensure small businesses are afforded the maximum practical opportunity to compete. In addition, there are many audit agencies that conduct reviews to assess the extent of compliance with particular FAR requirements. For example, as addressed in my testimony, the General Accounting Office has done numerous reviews of various small business topics, including contract bundling.

Hearing Date: March 18, 2003
Committee: Senate Committee on Small Business & Entrepreneurship
Member: Senator Snowe
Witness: Ms. Lee
Question #2

INSPECTOR GENERAL AUDIT REPORT

One of the Action Items contained in the Administration's 9-point plan calls for strengthening compliance with subcontracting plans. A recent Inspector General audit uncovered instances of grossly overstated subcontracting achievements and concluded that "buying offices did not always adhere to best management practices..."

Follow-Up Question: Can you respond to this?

Answer: The audit report in question is Report No. D-2003-019 entitled "DoD Contractor Subcontracting with Historically Underutilized Business Zones (HUBZones) Small Business." The key issue in this audit report was the failure of prime contractors to verify the validity of self-certifications provided by small businesses regarding their HUBZone status. The audit reviewed 16 Defense contractors, of which 8 had reported subcontracts with HUBZone entities. The Office of the Inspector General (OIG) also found that the Defense Contract Management Agency (DCMA) San Francisco failed to identify this shortfall during some reviews, though they do credit DCMA San Francisco for implementing local guidance in September 2001 requiring prime contractors to verify HUBZone certifications. The HUBZONE Empowerment Contracting Program is a relatively new program that was created in December 1997. The OIG recognized that neither the Federal Acquisition Regulation (FAR) nor the Standard Form (SF) 294 and SF 295 reporting forms specified that SBA certifications were required. In fact, FAR 19.7 currently states that "a contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status as a ... HUBZone small business..." As a result of the OIG recommendations, a FAR case has been opened to make changes to clarify the need to verify SBA HUBZone certification. Additionally DCMA has made changes to ensure certification requirements are verified as a part of their compliance reviews.

Hearing Date: March 18, 2003
Committee: Senate Committee on Small Business & Entrepreneurship
Member: Senator Snowe
Witness: Ms. Lee
Question #3

MEANS OF MONITORING COMPLIANCE

Follow-Up Question: How does the DoD currently monitor compliance with subcontracting plans?

Answer: The Defense Contract Management Agency has subcontracting plan oversight for approximately 85% of the subcontract dollars under DoD prime contracts. The military departments maintain responsibility for the oversight of the remaining subcontracting plans. Monitoring a contractor's compliance with its small business subcontracting plan is accomplished by either a small business specialist or a contracting officer. . The frequency of compliance reviews varies, depending upon a risk assessment of the contractor. The review results in a performance assessment and rating of the contractor, with a corrective plan required for performance that is not acceptable. Follow-up reviews are then done to assess progress against the corrective action plan.

Hearing Date: March 18, 2003
Committee: Senate Committee on Small Business & Entrepreneurship
Member: Senator Snowe
Witness: Ms. Lee
Question #4

CORRECTIVE ACTION

Follow-Up Question: How does DoD address failure to achieve subcontracting plans?

Answer: The answer to Question 3 addresses how the Department monitors prime contractors compliance with subcontracting plans. A contractor's failure to comply with plan requirements first results in the requirement for a meaningful corrective action plan. Follow-up reviews are performed to ensure the corrective action plan has been implemented. If improvement does not occur and the contractor does not conform to their approved subcontracting plan, the failures are documented and recommendations are forwarded to the Administrative or Procuring Contracting Officer for appropriate contractual action.

Hearing Date: March 18, 2003
Committee: Senate Committee on Small Business & Entrepreneurship
Member: Senator Snowe
Witness: Ms. Lee
Question #5

LIQUIDATED DAMAGES

Follow-Up Question: On how many occasions has DoD imposed liquidated damages on a contractor, for failing to make a good faith effort to comply with the requirements of a subcontracting plan?

Answer: Many of DoD's largest contractors participate in the Comprehensive Subcontracting Plan Test Program. Dollars associated with these comprehensive subcontracting plans represented approximately 41% of all subcontracting plan dollars in fiscal year 2001. By law, participants in the comprehensive subcontracting plan test program are exempt from the application of liquidated damages associated with small business subcontracting performance. It is not possible to provide an exact answer on the remaining subcontracting plans, as this information is not collected in any automated data collection system. A query of the military departments surfaced a few examples of cases where liquidated damages were imposed. Liquidated damages can be imposed only after documenting a contractor's failure to make a good faith effort. This is a standard that goes beyond mere failure to achieve specified goals. In cases where liquidated damages are imposed, contractors frequently appeal the contracting officer's decision which results in time consuming land costly litigation. For these reasons, the government typically tries to work with the contractor to develop a corrective action plan or use other means to encourage small business performance. Once such means the Department uses to incentivize contractor's small business performance is evaluating a contractor's small business past performance in source selections where the solicitation requires a subcontracting plan. The Defense Contract Management Agency (DCMA) assessments and ratings feed into those past performance assessments. DCMA has an initiative underway to automate its assessments and link them to the Department's automated past performance database.

Hearing Date: March 18, 2003
Committee: Senate Committee on
Small Business & Entrepreneurship
Member: Senator Kerry
Witness: Ms. Lee
Question #6

AVERAGE SIZE OF CONTRACTS

Question: What is the average dollar size of 1) a bundled contract and 2) a consolidated contract at the Department of Defense, assuming the definition of a bundled contract incorporates the SBA's proposed changes in the recent contract bundling proposal to include multiple award contracts, multiple agency contracts, Government-wide Acquisition Contracts and the GSA Multiple Award Schedule Program?

Answer: We do not collect data to identify consolidated contracts from the automated data collection system. Further, it is not possible to estimate what the average dollar value of a bundled contract will be if we use the new definition of a bundled contract because we cannot know how many of these multiple award contracts or orders may be determined to be bundled contracts.

Hearing Date: March 18, 2003
Committee: Senate Committee on Small Business & Entrepreneurship
Member: Senator Kerry
Witness: Ms. Lee
Question #7

ANNUAL NUMBER OF CERTAIN CONTRACTS

Question: How many contracts each year does the Department of Defense 1) bundle and 2) consolidate between $2 million and $7 million, between $5 million and $7 million, and between $7 million and $10 million?

Answer: We do not collect data to identify consolidated contracts from the automated data collection system. Consistent with law, the automated data collection system began collecting information on bundled contracts where the estimated value is $5 million or more in FY 2001. In FY 2001, the Department identified 9 such bundled contracts after validating the information from the automated data collection system. It is not possible to estimate how many bundles we do below $5M, because law required data collection and reporting only for bundled contracts estimated to exceed $5M. A review of the bundled contracts identified in FY 2001 indicates that obligations in FY 2001 alone exceeded $7 million on 6 of these bundled contracts. This indicates that at least 67% of these bundled contracts would also exceed a $7 million threshold. The Department is still validating its FY 2002 information and has asked for the total contract value for bundled contracts to be specified.

Hearing Date: March 18, 2003
Committee: Senate Committee on Small Business & Entrepreneurship
Member: Senator Kerry
Witness: Ms. Lee
Question #8

IMPACT OF PROPOSED RULE

Question: How many additional contracts and additional dollars do you estimate will be awarded to small business annually as a result of implementing the SBA's proposed contracting bundling rule?

Answer: It is reasonable to assume that the increased attention of this policy and expansion to certain orders will have a positive impact on the Department's small business performance. It is not possible to reasonably estimate how many additional contracts and dollars would go to small business as a result of implementing the regulatory changes. In FY 2002, DoD prime contract dollars awarded to small business increased to $33 billion, vice $28 billion awarded to small business in FY 2001. This represents 21.2% of total prime contracts dollars awarded in FY 2002, vice 20.8% in FY 2001. Though some of this positive improvement may be attributed to policy initiatives such as the letter identified in the answer to Question 2, we do not collect data to isolate or quantify the impact of any one policy change.

Question from Madame Chairwoman:

1. How dopes the current acquisition process ensure small businesses can participate at the subcontractor level without additional oversight.

The current process offers no assurances that small businesses can participate at the subcontractor level. There are many examples of prime contractors utilizing small disadvantaged businesses (SDB) during the proposal phase of the contract. The SDB is listed in the subcontracting plan of the prime. However, upon award of the prime contract, the prime has no obligation to issue a subcontract to the SDB, and may indeed source the work elsewhere. There are, however things that can be done with additional oversight and regulatory intervention:

1. Strictly enforce agency small business contracting goals, and prohibit bundling of new contracts when an agency's small business goals have not been met.

2. Establish and fund several layers of incentives for prime contractors to utilize small business subcontractors on contracts, including, but not limited to, bundled contracts. Penaltiues might also be enacted when a prime does not utilize a small business that was in his subcontracting plan.

3. Expand the definition of "bundling" to include consolidation of small business set aside (SBSA) contracts to size and/or scope that would restrict ability of small businesses to compete for consolidated SBSA contracts.

4. For contracts where bundling can be justified, incorporate methods for ensuring small business participation either as a prime contractor, e.g., multiple source awards with some awards set-aside for small business categories (including 8(a) firms), or as a subcontractor in a specific task area, i.e., set aside specific statement of work task/subtask areas for small business subcontractor performance only. Again, penalties for violation (triple damages?) would be in order for primes that do not follow though to the small businesses.

5. Actively assist small businesses in identifying and qualifying teaming candidates for pursuing all contracting activities, including, but not limited to, bundled contract opportunities, through industry business opportunity briefings, pre-solicitation conferences, contracting agency web sites.

6. Permit small businesses more time to respond to solicitations for bundled contracts in order for small businesses to form ad hoc teams.

7. Mandate an outside review of all proposed contract bundlings by a Small Business Administration Procurement Center Representative.

8. Standardize threshold for coordination of acquisition strategy with Office of Small and Disadvantaged Business Utilization for all agencies at **$2 million; i.e., Amend FAR section 7.104(d) proposed in Federal Register Vol. 68, No. 21, page 5141, to set contemplated contract award value at $2 million for all agencies.**

9. Simplify the certification requirements for small disadvantaged businesses and HubZone firms to encourage increased participation.

10. Amend the 51% rule, to exclude small business teaming agreements.

These items were developed in a working group, led by members of the Northeast Regional Council for Small Business Advocacy. Specifically, the following individuals comprised the working group:

Facilitator: Dave Krieger
Government Agencies: Leslie Murphy Brazil, NUWCDIVNPT Contracting Officer Lonny Peretz, NUWCDIVNPT Contracting Office Representative (Technical Code 31); and Phil Varney, Defense Contract Management Agency, Boston.
Small Businesses: Russ DeSimone and Ellen McNaught, Aquidneck Management Associates; and Domenic Gargano and Patrick Saxon, McLaughlin Research Corporation.
Large Businesses: Dennis Nichols, EG&G; and John McMullen, General Dynamics Electric Boat Division.
Small Business Advocates: Dave Rego, NUWCDIVNPT Small Business Advocate; Arlene Vogel, Connecticut Procurement Technical Assistance Center; Mike Robinson, Massachusetts Manufacturing Extension Service, and Robert Lobecker, Rhode Island Manufacturing Extension Service.

Thanks you again for the opportunity to testify. I remain at the service of the Committee, the Senate, and the country.

Michael E. Robinson

Post-Hearing Questions
Committee on Small Business and Entrepreneurship
to
The Honorable Angela B. Styles, Administrator
Office of Federal Procurement Policy
Office of Management and Budget

"Small Businesses Continue to Lose Federal Jobs by the Bundle"
March 18, 2003

Questions submitted by Senator Olympia J. Snowe, Chair

In his testimony, Mr. Paul Murphy, Eagle Eye Publishers, Inc., raised concerns about the "new official bundling contract indicator." According to Mr. Murphy, the new indicator shows only $2 billion in bundled prime contract dollars awarded in FY 2001, or just 1 percent of total prime contract dollars.

Mr. Murphy believes the new indicator is based on a narrow definition that focuses exclusively on the bundling of historical requirements and fails to address the phenomenon of "accretive bundling" which occurs when contracting officers add new tasks to existing GSA Schedule, Indefinite Delivery/Indefinite Quantity, Government Wide Acquisition Contracts and other multiple award-type contracts.

1. While the Administration's 9-point clarifies the definition of contract bundling to include task- and delivery-order contracts, how does the proposed definition address Mr. Murphy's concerns?

Our proposed new definition of contract bundling clarifies that a single contract can include multiple award-type contracts and orders placed against a GSA Federal Supply Schedule or another agency's task and delivery order contracts. That definitional change would make it clear that bundling requirements apply to such contracts and orders. The proposed rule would require small business reviews of orders against the GSA schedule or another agency's contract that meet the agency-specific dollar thresholds. We must recognize that these reviews require allocation of scarce agency resources and, thus, the need for the reviews must be balanced against the perceived benefits. It should also be pointed out that these agencies already review planned acquisitions for small business opportunities. In the case of NASA and GSA, they review all planned acquisitions over $100,000 and for DOD the current threshold is $10,000. We believe that agency reviews at the proposed thresholds will increase opportunities for small businesses without imposing unreasonable burdens on the agencies.

Questions submitted by Senator John Kerry, Ranking Member

1. Given the additional responsibilities assigned to procurement center representatives, small business specialists, and the Offices of Small and Disadvantaged Business Utilization (OSDBU), what personnel and monetary resources are you planning to commit to implementing the SBA's contract bundling rule once it is finalized, and what is your informal cost estimate to implement the full proposal? Please itemize your cost estimates according to agency and fiscal year.

The Administration's strategy on contract bundling states that heads of departments and agencies will ensure that agency OSDBU resources are dedicated to the President's Small Business Agenda. No increase in agency budgets is authorized for the additional responsibilities assigned to procurement center representatives, small business specialists, and OSDBUs. It is each agency's responsibility to reallocate agency resources, if necessary, to make sure that this happens.

2. Would changing the current definition of contract bundling to incorporate consolidated contracts result in more contracts being awarded to small businesses? Please explain.

The current definition of contract bundling includes consolidated contracts, but only if the consolidated requirements were previously provided under separate smaller contracts and the solicitation for the consolidated contract(s) is likely to be unsuitable for award to small businesses. Expanding the contract bundling definition to include any consolidation of requirements regardless of whether they had previously been performed by small or large businesses would impose an additional burden on the procurement process without likelihood that it would result in more contracts for small businesses. The current statutory contract bundling definition appropriately focuses on consolidations where small businesses are adversely impacted.

Our proposed rules would significantly increase the number of agency acquisitions reviewed for bundling issues. The rules would also: lower the threshold for "substantial bundling" from an average annual value of $10 million to an estimated individual total contract value that exceeds the specified threshold; and increase justification requirements for these substantial bundles. Overall, we are asking agencies to give more thought to the impact of their bundling decisions, including how they might increase opportunities for small business while continuing to pursue operational efficiencies.

In sum, we think our proposed regulations should be given a chance to succeed, without statutory changes. We think our regulatory proposals strike the right balance between the need to increase opportunities for small businesses and the additional burdens that these acquisition reviews and justification procedures would impose.

3. Explain how the Office of Federal Procurement Policy (OFPP) came to the three-tiered threshold levels ($7 million for the DOD, $5 million for NASA, the GSA, and the Department of Energy, and $2 million for all other agencies) to trigger bundling reviews. When comparing these threshold levels to those in S. 633, the Small Business Federal Contractor Safeguard Act, how many more bundled contracts would be reviewed by the DOD, NASA, the GSA, and the Department of Energy, if the thresholds for these agencies were at $2 million? Please describe these estimates in terms of contract dollars, by agency per fiscal year.

The Administration's strategy on contract bundling calls for departments and agencies to review acquisitions for bundling issues at agency-specific dollar thresholds between $2 million and $7 million based on an agency's volume of contracts. These thresholds trigger additional documentation and review requirements to focus more agency resources and higher-level attention on increasing opportunities for small businesses and avoiding unnecessary contract bundling.

We chair the interagency group that developed the proposed regulations. After reviewing contract data from the Federal Procurement Data System (FPDS), the interagency group determined that the most efficient and effective way to implement the strategy would be to establish in the regulations three thresholds for agency review (i.e., $7 million for DOD, $5 million for NASA, GSA, and DOE, and $2 million for all other agencies). In the proposed regulations, oversight responsibility is assigned to agency small business specialists and OSDBUs, who work with SBA's procurement center representatives to ensure small business participation. In setting these review thresholds, the interagency group recognized that these reviews require allocation of scarce agency resources and, thus, the need for the reviews must be balanced against the perceived benefits.

The Administration believes that agency reviews at the thresholds proposed in the regulations will increase opportunities for small businesses without imposing unreasonable burdens on the agencies. It should be pointed out that these agencies already review planned acquisitions for small business opportunities. In the case of NASA and GSA, they review all planned acquisitions over $100,000 and for DOD the current threshold is $10,000. Thus, the largest impact of these bundling reviews on agency resources may well be the proposed review of orders under multiple award contracts. The Administration's strategy on contract bundling recognized that orders under various agency multiple award contracts were not subject to uniform reviews for contract bundling issues. This lack of uniform review is a real concern because, while there has been a sharp overall decline in other contract actions, there has been a significant government-wide increase in orders under these contracts. To address this concern, the proposed regulations would require review of such orders, including orders under GSA's Federal Supply Schedule contracts, Government-wide acquisition contracts, and other multi-agency contracts.

Based on fiscal year 2001 FPDS data, the table below shows estimated actions and dollars using the thresholds in the proposed rules compared to lowering thresholds as proposed

in S.633. It is not possible to provide the full impact of lowering the "bundling review" threshold to $2 million for DOD, NASA, GSA, and DOE. As indicated earlier, these agencies already review planned acquisitions for small business opportunities. Moreover, available data cannot answer the question of how many more bundled contracts could be reviewed. The data in the table below reflect our best estimate of the potential numbers of actions that could be reviewed for bundling implications. The numbers would be reduced for contracts set-aside for small business since those would not be bundled contracts and for orders where the basic contract was already appropriately reviewed.

	Actions* >$7M	Actions* >$5M	Additional Actions* >$2M
DOD	1,140 actions $27.7 billion		3,502 actions $9.2 billion
NASA		19 actions $824.4 million	39 actions $90.2 million
GSA		104 actions $2.7 billion	370 actions $1.1 billion
DOE		8 actions $247 million	10 actions $31 million

*Actions include: New Definitive Contracts, Orders under Single Award Indefinite Delivery Contracts, Order/Modifications under GSA Schedule Contracts and Other Federal Schedules, and Orders under Multiple Award Contracts.

4. How many more bundled contracts would be reviewed by the DOD, if the threshold were at $5 million, as opposed to the proposed $7 million threshold? Please describe the review estimate in terms of the number of contracts and dollars per fiscal year.

Based on FPDS FY 2001 data, the estimated additional actions and dollars for DOD would be as follows.

	Actions* > $7M	Actions* >$5M	Additional Actions*
DOD	1,140 actions $27.7 billion	1,635 actions $30.6 billion	495 actions $2.9 billion

*Actions include: New Definitive Contracts, Orders under Single Award Indefinite Delivery Contracts, Order/Modifications under GSA Schedule Contracts and Other Federal Schedules, and Orders under Multiple Award Contracts.

COMMENTS FOR THE RECORD

Comments from Senator Christopher S. Bond
on Contract Bundling
March 17, 2003

Thank you, Madam Chair, for giving me the opportunity to say a few words at this hearing today on contract bundling. I applaud your commitment in addressing this issue and in making it a priority on the Small Business Committee's agenda.

For almost a decade, the practice of contract bundling has been a major concern for America's small businesses. The term "contract bundling" came about as a result of Federal acquisition reform in the mid-1990s to facilitate the increased use of consolidated contracts. By consolidating Federal contracts, the intent was to reduce administrative costs of Federal procurement. However, bundling contracts has resulted in the unintended consequence of thwarting competition for small businesses and dramatically decreasing small businesses' Federal contract opportunities.

President Bush has said that "bundling effectively excludes small businesses" and I completely agree with him. He understands this hurts small businesses and has asked the White House's Office of Management and Budget, the OMB, to look for ways to avoid this approach and for opportunities to break up bundled contracts to permit more participation by small business. I welcome the President's support in this cause and I thank Angela Styles, who oversees all federal procurement policy, for her efforts to end this patently unfair practice – once and for all. I also commend SBA Commissioner Hector Barreto and Tom Sullivan, Chief Counsel for SBA's Office of Advocacy, for their efforts in searching for solutions to reduce the practices of contract bundling.

In October 2002, the OMB issued a report responding to the

President's request to address the increasing concerns of contract bundling by Federal agencies. In the report, entitled "Contract Bundling: A Strategy for Increasing Federal Contract Opportunities," the OMB offered a nine-point action item plan to hold agencies accountable for eliminating unnecessary contract bundling and mitigating the effects of necessary contract bundling. This nine-point proposal shows great promise and is evidence of the Administration's strong commitment to addressing small business concerns on this issue.

In addition to the OMB's report, the SBA's Office of Advocacy released a report with Eagle Eye Publishers, Inc., on October 2, 2002, that provided a statistical survey of the impact of contract bundling on small businesses. This report stated that the number of bundled contracts increased 19 percent from fiscal year 1992 to 2001. The report also commented that for every increase of 100 bundled contracts there is a decrease of 60 contracts to small businesses. In addition, the report notes that for every $100 awarded on a bundled contract, there is a $12 decrease to small businesses. To put it simply, small businesses are receiving a substantially disproportionate small share of the work on these bundled contracts.

As a longtime advocate for small businesses, I have stressed continually that they are the backbone of America's economy. They employ half of the private sector workforce and create two-thirds of all new jobs. Small businesses constantly lead the way with innovative and creative approaches to solving our nation's problems. But shutting out small businesses' access to Federal contracting opportunities would stymie such innovation and job growth – a consequence this economy cannot afford during these difficult financial times.

Ultimately, the responsibility for avoiding contract bundling rests in the hands of Federal agencies' contracting officers. One of the largest Federal contracting agencies is the Department of Defense, accounting for 64 percent of all Federal contracting opportunities. The DoD has

frequently participated in contract bundling, which has effectively prevented small businesses from bidding on defense contracting opportunities.

After cosponsoring the "Small Business Homeland Security Expo" last July, it became clear that small businesses have the ability, the technology, and the ingenuity to provide quality products and services that could ultimately identify and destroy our enemies, as well as keep our nation and its citizens safe from harm. Small business participation in achieving national security is vital.

As evidence of this vital role that small businesses play in our defense, in October 2001 the Pentagon's Technical Support Working Group sent out an urgent plea, seeking ideas and technology to assist the military's fight against terrorism. In just two months, legions of small businesses responded to the Pentagon's call. More than 12,500 ideas poured into the Pentagon, most of them from small businesses.

This remarkable response showed that small business remains the most innovative sector of the United States economy, accounting for the vast majority of new product ideas and technological innovations. Unfortunately, the bundling of Federal contracts designed to provide greater national security has prevented these small businesses from bidding on defense contracts. The consequences that could result from this bundling practice are potentially unspeakable. With the prospect of war imminently looming before us, the DoD's participation and commitment to unbundling contracts is, therefore, essential.

I look forward to hearing the testimony today from all of the participating witnesses in response to this call for a solution to the damaging effects of contract bundling on small businesses. As our economy pushes forward in these uncertain times, small businesses deserve the opportunity to compete for contracts and contribute to this country's prosperity and security. I thank you for your time.

Opening Statement of Senator John F. Kerry
Ranking Member
United States Senate Committee on
Small Business and Entrepreneurship
Committee Hearing *"Small Businesses Continue to Lose Federal Jobs by the Bundle"*
March 18, 2003

Good morning and thank you for being here.

Few issues so strongly galvanize the small-businesses community as the practice of contract bundling, a term that means little to the general public, but means billions in lost dollars to the small-business community. And for the past decade, the problem of contract bundling, exacerbated by "so called" procurement reform in the early and mid-90s, has only gotten worse.

The SBA's Office of Advocacy, an independent body within the SBA, estimated that contract bundling costs small businesses an estimated $13 billion annually. The Office of Advocacy arrived at these conclusions using a conservative definition of what constitutes a bundled contract. Therefore, the negative impact on small businesses from contract bundling is likely more severe.

While the law requires an assessment before bundling, most federal agencies don't comply, and there's limited staff for oversight. Many supporters of the practice of contract bundling point to its cost savings. They claim it saves the taxpayer money to lump contracts together. Unfortunately, there is little evidence supporting this claim, and too many contracts are bundled without the required economic research designed to determine if a bundled contract will actually result in a cost savings.

Bundled contracts, while seemingly an efficient and cost-saving means for federal agencies to conduct business, are anti-competitive and anti-small business. Further, they will result in increased costs over time. When a Federal agency bundles contracts, it limits small businesses' ability to bid for the new bundled contract, thus limiting competition. Small businesses are consistently touted as more innovative, providing better and cheaper services than their larger counterparts. But when forced to bid for mega-contracts, at times across large geographic areas, few if any small businesses can be expected to compete. This deprives the Federal government of competition and our economy of possible innovations brought about by small businesses.

Many procurement officers -- already overworked and under tight budgetary constraints -- are looking to bundled contracts as a means to save time and money. However, in order to consolidate procurement requirements into a bundled contract, procurement officers must conduct economic research to prove consolidating requirements will meet a minimum threshold of savings as a bundled contract. Unfortunately, the Procurement Center Representatives (PCRs), responsible for oversight of contract bundling, cannot possibly review every contract. Currently there are 47 PCRs that cover only 255, or just 11.6 percent, of the 2200 federal

procurement centers. As a result, a number of contracts, which many would consider bundled, have been awarded to large firms, without the benefit of economic research.

Given the possible short-term monetary and time savings of bundled contracts, it can be safely assumed that procurement officers will continue to bundle contracts, despite the negative consequences for small businesses and the economy, unless the culture of contract bundling at federal agencies is changed.

More than that, I believe the entire procurement system has turned its back to some degree on small business participation and fails to recognize the benefits of a diverse supplier network and increased competition that expanded small-business contracting opportunities would create. We need a major change within procuring agencies to reverse the decline in small business participation in government procurement. Until the Federal government, at all levels, realizes the importance of doing business with small business, these negative trends will continue, our nation will not have access to a wide range of small business suppliers and small businesses across the country will continue to lose billions of dollars in opportunities year after year.

While there are current laws in place intended to require Federal agencies to conduct market research before bundling a contract, loopholes in the current definition of a bundled contract allow them to often skirt these safeguards. That is why I have reintroduced the Small Business Federal Contractor Safeguard Act, designed to protect the interests of small businesses in the Federal marketplace.

My legislation – which was first introduced last spring with then-Ranking Member Bond and Senators Carnahan and Collins, and was endorsed unanimously by this Committee last July – has one ultimate purpose: to prevent Federal agencies from circumventing small business protections with regard to the practice known as contract bundling.

Small Business Federal Contractor Safeguard Act changes the term "bundled contract" to "consolidated contract," strengthens the definition of a consolidated contract, and closes the loopholes in the existing definition to prevent Federal agencies from circumventing statutory safeguards intended to ensure that separate contracts are consolidated for economic reasons, not administrative expediency.

The new definition relies on a simple premise: if a Federal employee combines contracts, be it new contracts, existing contracts, or a combination thereof, that is contract consolidation and by law, that employee must take the necessary steps to ensure it is justified economically before proceeding.

This legislation also alters the current Small Business Act requirements regarding procurement strategies when a contract is consolidated to include a threshold level for triggering the economic research requirements.

Previously, any consolidated contract would trigger the economic research requirements, something considered onerous by many Federal agencies and often cited as the reason for circumventing the law. The new procurement strategies section of the Small Business Act would require a statement of benefits and a justification for any consolidated contract over $2 million and a more extensive analysis, corresponding to current requirements for any consolidated contract, for consolidations over $5 million.

In order to move forward with a consolidated contract over $2 million, the agency must put forth the benefits expected from the contract, identify alternatives that would involve a lesser degree of consolidation, and include a specific determination that the consolidation is necessary and justified. The determination that a consolidation is necessary and justified may be determined simply through administrative and personnel savings, but there must be actual savings.

In order to move forward with a consolidated contract over $5 million, an agency must, in addition to the above: conduct current market research to demonstrate that the consolidation will result in costs savings, quality improvements, reduction in acquisition times, or better terms and conditions; include an assessment as to the specific impediments to small business participation resulting from the consolidation; and specify actions designed to maximize small business participation as subcontractors and suppliers for the consolidated contract. The determination that a consolidation is necessary and justified may not be determined through administrative and personnel savings alone unless those savings will be substantial for these larger contracts.

By establishing this dual-threshold system, we have placed the emphasis for the economic research on contracts more likely to preclude small business participation, while not ceding smaller contracts to the whims of a Federal agency. This change, coupled with a clear definition of a consolidated contract, should be enough to garner compliance.

Today, small business owners are increasingly frustrated that the practice of contract bundling continues to run rampant within the federal government, and the small-business contracting community is discouraged and disappointed by the federal government's lack of action on this issue and the constant skirting of contract bundling safeguards. So, I want to thank Chair Snowe for making this important issue the focus of the Committee's second hearing. I also want to thank SBA Administrator Hector V. Baretto, OMB Office of Federal Procurement Policy Administrator Angela B. Styles, DOD Office of Acquisition Director Deidre Lee, and GAO Acquisition and Sourcing Management Director David Cooper for their current and future efforts to address contract bundling. I would also like to thank, Paul Murphy, President of Eagle Eye Publishers; Eric Adolphe, CEO of OPTIMUS Corp.; Michael Robinson, Defense Logistics Manager of MassMEP; and Carol Kuc, who is representing Women Impacting Public Policy, for representing small businesses from around the nation.

Also, I am happy to see that the Administration has recognized this problem and followed our lead from last Congress by introducing a well-intentioned proposal to combat contract bundling. While very similar to my legislation in spirit, the SBA's January 31, 2003, anti-bundling rule

lacks the means to deter procurement officials from unnecessarily bundling contracts and does little to change the deep-rooted contract bundling culture that exists at many federal agencies. I am also concerned that the proposal does not adequately close the current loopholes agencies use to avoid current contract bundling safeguards. Put simply, the Administration's proposal is a step in the right direction, but lacks the teeth to change the tone and protect small businesses. However, I applaud the Administration for joining me and the members of this Committee in the fight to protect small businesses in the Federal marketplace and look forward to working with the Administration and my colleagues on this important issue.

I look forward to reviewing the witness testimony and continuing our work with the Administration and the small-business community as we address this critical issue.

Thank you.

July 2, 2002

Senator John F. Kerry
Chairman
Senate Committee on Small Business
428A Russell Senate Office Building
Washington, DC 20510

Dear Senator Kerry:

I am writing to express the Computer & Communications Industry Association's (CCIA) support for S. 2466, the "Small Business Federal Contractor Safeguard Act."

CCIA was founded on the belief that competition and vibrant markets are critical factors in the success of our economy and in our ability to lead the world in innovation and technology. We are the leading industry advocate in promoting open, barrier-free competition in the offering of computer and communications products and services worldwide, and our motto is "open markets, open systems, open networks, and full, fair and open competition."

CCIA is an association of computer, communications, Internet and technology companies that range from small entrepreneurial firms to some of the largest members of the industry. CCIA's members include equipment manufacturers, software developers, providers of electronic commerce, networking, telecommunications and online services, resellers, systems integrators, and third-party vendors. Our member companies employ nearly one million people and generate annual revenues exceeding $300 billion.

We have found that, in general, contract bundling can harm many small businesses by locking them out of "mega contracts;" can harm taxpayers by promoting procurement of goods and services that may not be cost-efficient; and can hurt vendors of all sizes who do not have the resources to fulfill bundled contracts. We believe that the requirements of S. 2466 in regards to bundled contracts of over $2 million and $5 million will go far in ensuring that bundling is used only in the rare case, and as the norm.

We appreciate your efforts to promote effective and fair procurement policies, and congratulate you on this excellent proposal. Please let me know if there is anything I can do to assist in passage of S. 2466. You can contact me at (202)783-0070 x 110, or Gabe Rubin of my staff at (202)783-0070 x 107.

Sincerely,

Ed Black
President & CEO

cc: Members of the Senate Committee on Small Business

lasertone
The printer resource company

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Senator John Kerry
Ranking Member Committee on Small Business & Entrepreneurship
United States Senate
428A Russell
Washington, DC 20510

March 31, 2003

Thank you for the opportunity to present Lasertone's opinion and experience on contract bundling. Lasertone is a woman owned manufacturer of alternative toner products for laser printers. Founded in 1989, the company has enjoyed steady growth and profitability, primarily in New England based mid market accounts. The company has 70 full time employees, 2002 revenues were $13.1M. Lasertone is engaged in the early stages of marketing its products nationally to both the private and public sectors.

Although introduction and access to the Federal market is not difficult, there are significant obstacles between the introduction of one's company and our goal of closing business. Even after the arduous task of getting products listed on the GSA schedule is complete, the actual procurement cycle is cumbersome and prohibitive to small business. Contract bundling remains the single most difficult impediment to a small company like Lasertone vying for a piece of the lucrative office supply contract.

It appears most toner falls under the office products programs for the Primes as well some Federal Agencies. We can find no instance in our experience of identifying toner opportunities where the toner is broken out separately from the office supply contract. Toner (although it represents approximately 20% of any given office supply contract) is not included in quotas. Some examples are:

United Technologies Companies (Pratt & Whitney, Sikorsky, Otis Elevator), Lockheed Martin, and Boeing. Operating supplies are seldom considered in Government contracts, unless there is an outsourced agreement where the supplier might be managing desktop technology, such as Lockheed Martin's outsourced, on-site arrangement at NASA/Kennedy Space Center. The toner and printer service are bundled in that contract. There is no incentive for the outsourced partner to solicit small businesses or M/WBEs for a percentage of the contract.

Additional data is based on some research on the Agencies within the Department of Treasury. It appears their toner is acquired through the Corporate Express, or Office Depot contracts. In this case the office products company is considered the Prime. The prime has to report % of M/WBE as part of the contract. IRS has Office Depot and Corporate Express. Office Depot and Corporate Express should have a higher quota than 5% because each item represents a small dollar amount relative to other types of materials required for contract. Low cost, low risk. This would give small companies a huge advantage by using the distribution channel of these large

corporations. Minimal overhead added, but jobs added to support the incremental business. Even a few SKUS make a significant revenue contribution to a small company. Lasertone (WBE) currently partners with Paperworks (MBE) at Ford Motor Company. Lasertone serves as the manufacturer, Paperworks the distributor. This type of partnership should be encouraged on the Federal level and would strengthen our positions to the Primes such as Corporate Express or Office Depot.

Several Government web sites post toner bids. Many of the posting are for OEM only and are small orders where they are trying to get better than GSA pricing.

Examples are:

www.Fedbid.com - many of the toner bids are very small, less than 20/50 cartridges. The State Department uses this site as a rule for toner going to foreign embassies.

www.Fedbiz.org - Lasertone bid on a couple of agencies toner this way. Most recently the National Bureau of Transportation Safety (waiting or decision).

It is our hope that legislation for unbundling contracts will pass and that opportunities for partnering and teaming will become an integral part of all major Federal contracts. Without it, small business doesn't stand a chance of competing.

Respectfully submitted,

Nancy J. Connolly

Nancy J. Connolly
President

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WBENC Certified
SOMWBA Certified - Commonwealth of MA

April 1, 2003

The Honorable Olympia Snowe
Committee on Small Business and Entrepreneurship
United States Senate
Washington, D.C. 20510

Dear Chairwoman Snowe:

On behalf of the 600,000 members of the National Federation of Independent Business (NFIB), I want to thank the Committee for your leadership in addressing the issue of contract bundling. Your efforts, along with those of the Office of Management and Budget (OMB) and the Small Business Administration (SBA) are important steps in reforming a government contracting process that has excluded thousands of small businesses whose contributions would strengthen our nation's economy. Such efforts will take due diligence by this Committee and the small business community.

Our members want to compete for federal contracts and strongly support efforts to unbundle the federal contracting quagmire. Significantly fewer small businesses are receiving federal government contracts. The number of small businesses receiving new contract awards has declined from 26,506 in 1991 to 11,651 in 2000. Bundling provides an unfair competitive advantage for big businesses over small. The use of multiple award contracts has only served to intensify the decline in small business participation in the federal contracting arena. Multiple award contracts are not subject to uniform review for contract bundling and small business participation. According to a report by the SBA Office of Advocacy for every 100 bundled contracts, 106 individual contracts are no longer available for small business. For every $100 awarded on a bundled contract, there is a $33 decrease to small business.

NFIB applauds OMB and SBA, as well as the Senate Small Business Committee, for working to correct the problem. The President's announcement of the Small Business Agenda in March 2002, the nine-point action plan unveiled by OMB in October 2002 and the proposed rule on contract bundling published in January 2003 are key to ensuring that small businesses have access to federal contracting opportunities. NFIB appreciates the efforts of this Administration and Congress to turn around the current situation where small businesses are being pushed out of bidding through contract bundling, especially considering the federal government is the largest buyer of goods and services in the United States.

Although intended to serve a useful cost-saving purpose contract bundling reduces the quality of work on federal projects because it edges out small contractors who could do more work at a higher quality for less money. In the past, pieces of federal projects provided steady work for small firms, but an increase in bundling means only small companies that have a standing subcontractor relationship with government contract giants enjoy steady federal contract work.

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A level playing field where small businesses can compete will allow for innovation, creativity and lower costs to the federal government contracting process that small businesses always bring. When contract bundling occurs, small businesses are no longer able to compete because of the sheer size, diversity, aggregate dollar value or specialized nature of the procurement requirements. Contract bundling is an impediment for free, fair and open competition. The ultimate winners of reforming the federal contracting process will be the American taxpayers.

In addition to looking at contract bundling, we also hope the Committee will examine OMB's proposed revisions to its Circular A-76, which governs how federal agencies determine whether commercial activities will be performed by the public or private sector. We believe these revisions are a significant improvement over the current circular and could open up millions of dollars in new federal contracting opportunities for the private sector. It provides guidance and procedures for determining whether these activities should be provided through contract with commercial sources or by in-house resources or through inter-service support agreements with other agencies. These revisions also inform agencies of the FAIR Act's requirements; and the implementation if the statutory requirements of the FAIR Act. Additionally, Circular A-76 explains in detail how government departments must determine costs to ensure a level playing field between the existing government workforce and the competing private-sector business. NFIB supports the proposed changes in Circular A-76, which could speed up the outsourcing of a wide range of federal jobs such as mowing lawns, designing computer networks and maintaining weapons systems.

The members of NFIB appreciate the efforts to reform the federal contracting system to create a contracting process that is both fair to small business and meets the critical needs of federal agencies. Thank you for your commitment to giving small businesses a better opportunity to participate in the federal procurement process.

Sincerely,

Dan Danner
Senior Vice President of Public Policy
National Federation of Independent Business

LAMA

LATIN AMERICAN MANAGEMENT ASSOCIATION

March 18, 2003

Senator John Kerry
Senate Small Business Committee
Washington, DC 20510

Dear Senator Kerry:

Bundling is an out-of-control, runaway freight train. Bundling is at an all-time high and, frightfully, there is no end in sight. In FY 2001, bundled contracts gobbled up over 50% of the Federal procurement dollar - $109 billion. It is likely that bundling will not stop until there is simply nothing left to bundle.

Bundling is concentrating federal contracting in a tiny universe of companies, mostly large. Over 90% of the $109 billion in FY 2001 bundled contracts went to less than 1500 firms. That's roughly half of the federal procurement dollar going to just 1500 firms.

The President's recently announced strategy for dealing with bundling, while well intentioned, is insufficient. Much stronger measures are called for. Here are some options:

- There should be a 10-year moratorium on bundling;
- No agency should be permitted to bundle over 50% of its requirements;
- New bundling should be permitted only for competition limited to small business;
- No further bundling should be permitted for so called *"administrative efficiency"* (by this flimsy criteria, the entire federal procurement budget will be bundled);
- No further bundling should occur without a showing of at least 10% cost savings;
- Existing bundled contracts should be unbundled so as to break out the elements that could be performed by small business;
- No bundling should be permitted by agencies that have not met the 23% small business goal, including all of its component elements;
- Adding requirements to existing bundled contracts should not be permitted.

To say that bundling is having an adverse impact on small business is such an understatement that it is hard to find words to correctly characterize the problem. Congresswoman Nydia Velazquez said it best when she recently stated that, for small business, ***"Bundling is public enemy #1."***

Yours truly,

Stephen Denlinger
CEO

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LAMA is the oldest national Hispanic business organization in the United States

TERRY NEESE
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BARBARA KASOFF
VICE PRESIDENT

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Virginia
Catherine Giordano
Ann Mount-Cyll D.
Patricia Parker
Rosemarie Pellotier
Dorothy Wood
Washington, D.C.
Kathleen Diamond
Karen Kerrigan

July 23, 2002

The Honorable John Kerry
Chairman
Committee on Small Business and Entrepreneurship
United States Senate
Washington, D.C. 20510

Dear Chairman Kerry:

We are writing on behalf of Women Impacting Public Policy (WIPP) a national bipartisan organization representing 300,000 women in business in support of S. 2466, the Small Business Federal Contractor Safeguard Act.

WIPP supports the goals of S.2466, which seeks to once and for all create a uniform government policy that eliminates the harmful practice of contract bundling. Two recent research studies, the "Impact of Contract Bundling on Small Business: FY1992-FY1999" and "Bundled Contract Study FY91-95," conducted by the U.S. Small Business Administration on the issue of contract bundling and its impact upon small businesses found that:

(1) For all federal contracts, contract consolidation is increasing. From FY1991 to FY1995, overall government contract spending dropped 8.7 percent ($196.6 billion to $179.4 billion). The number of business units receiving contracts dropped 6.5 percent (78,800 to 74,400) and the number of contracts dropped 11 percent (193,000 to 171,000). In FY1995 there was less money going to fewer contractors via fewer contract vehicles. Also, average contract value increased. This suggests a gradual consolidation among federal contracts.
(2) The FY 1999 total of bundled prime contracts over $25,000 was the highest in the past eight years.
(3) A bundled contract can last many years. The value of the average bundled contract was $8 million in FY 1999. This represented an increase of 21 percent in the average contract size over the past eight years.
(4) In FY 1999, large businesses received 67 percent of all prime contract dollars and 74 percent of all bundled dollars. Small firms received 18.7 percent of all contract dollars—up 2 percent since FY1995 but more than 4 percent short of the 23 percent procurement goal required by law.
(5) Analysis showed that for every increase of 100 bundled contracts, there was a decrease of more than 106 individual contracts awarded to small firms; for every additional $100 awarded on bundled contract, there was a decrease of $33 to small business.

WIPP believes these findings clearly indicate the direct and harmful impact that contract bundling and the subsequent subcontracting to small businesses has and will continue to have on the small business sector doing business with the federal government.

In summary, it is abundantly clear that contract bundling must be eliminated and changes must be made to the current way federal agencies treat multiple award contracts. WIPP urges the Committee to expeditiously consider S. 2466 so that women- and minority-owned businesses can fully participate in the federal procurement arena.

Sincerely,

Terry Neese
President

Barbara Kasoff
Vice President

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MBELDEF

Minority Business Enterprise Legal Defense and Education Fund, Inc.
Visit our Website "www.mbeldef.org"

Parren J. Mitchell
Founder and Chairman

Anthony W. Robinson
President

March 18, 2003

The Honorable Olympia J. Snowe
Chairperson, Committee on Small Business & Entrepreneurship
United States Senate
428A Russell Senate Office Building
Washington, DC 20510

RE: S. 2466, the "Small Business Federal Contractor Safeguard Act" and the Small Business Administration's (SBA) proposed amendments to the Federal Acquisition Regulation

Dear Senator Snowe:

At the request of the Committee on Small Business and Entrepreneurship, I am writing to offer my observations on S. 2466, the "Small Business Federal Contractor Safeguard Act" and the Small Business Administration's (SBA) proposed amendments to the Federal Acquisition Regulation (FAR).

Over the past 23 years, the Minority Business Legal Defense and Education Fund has monitored barriers to market entry and growth, which prevent talented small business owners to exist and thrive. MBLDEF serves as a national advocate and legal representative for minority business enterprises (MBEs) by promoting policies affecting equitable and full participation of minority enterprises in the mainstream marketplace.

Many small businesses and MBEs rely on Federal agency contracts, which in some cases comprise a large amount of their overall business. Obtaining (and retaining) these contracts frequently leads to opportunities in the private sector, which strengthen a firm's reputation and ability to complete future projects. Unfortunately, bundling and consolidation of multiple goods and service contracts into a single procurement request is all too common by Federal agencies. Without an affirmative subcontracting requirement for small businesses, large private contractors bid the entire contract. This provides little room for small businesses to participate as subcontractors.

S.2466 and the SBA's proposed amendments to the FAR and SBA practices address contract bundling and consolidation by incorporating multiple award contract reviews, acquisition dollar thresholds, market share research, oversight mechanisms, and teaming of small businesses. I wish to highlight four points that may frustrate the purpose of S. 2466 and proposed FAR amendments.

1. Although there is an expressed commitment in S. 2466 and the proposed FAR amendments to increase contracting opportunities for small businesses as well as setting acquisition thresholds, there is no explicit requirement that agencies contract with small businesses whenever feasible. In addition, the proposed $2 million dollar threshold is an arbitrary one. There are a large number of contracts under $2 million dollars that small businesses wish to participate in as subcontractors. Agencies will face little oversight if they bundle or consolidate contracts that fall below this figure.

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2. The level of staffing SBA and agency offices of small and disadvantaged business utilization will devote to implementing the FAR amendments is unclear. The FAR amendments call for SBA procurement center representatives to work with agencies to identify acquisitions that involve bundling so that teams of small businesses may become prime contractors. However, agencies have seen a reduction of contract officers, which force remaining staff to quickly assemble contract specifications and award the contract. In this process, agencies may rush to secure contracts with known larger companies that the officer has utilized before. Small businesses, which are capable to do the work, yet lack a similar track record, will likely not be chosen.

3. The types of remedies envisioned by S.2466 and the proposed FAR amendments are needed now more than ever before. The September 11, 2001 tragedies have transformed our thinking and direction of Federal dollar allocation. Consolidation of Federal agencies into the Department of Homeland Security, as well as a shift in priorities has changed the government's goods and services needs. A recent Washington Post article referenced the U.S. Agency for International Development (USAID) utilizing its special authority to solicit bids from selected companies instead of permitting a process that would have sought a larger pool of qualified companies. If this practice is repeated by other agencies, competition is stifled.

4. Looking into the future, the possible rebuilding of Iraq following an ensuing conflict will result in tremendous business opportunities for American firms. The country's largest construction firms will bid billions of dollars in contracts for the reconstruction effort. These firms have not had a stellar track record for including small business as subcontractors. MBDELF is concerned that the excluded companies will be qualified small businesses, which will be unable to take part in post-war overseas ventures.

To mitigate the effects of contract bundling and consolidation, agencies and private companies must first commit to using more small businesses as contractors and subcontractors. Additional specific steps include 1) soliciting suggestions for alternative strategies from the small business community, 2) separating individual contract components into segments that are desirable and manageable for small businesses, 3) placing the inclusion of small businesses as an element in the bid evaluation process, either by setting a minimum number of small businesses to be used or by setting specific contract dollar amounts that are given to small businesses, and 4) offering the opportunity for teaming between two or more small businesses for large contracts.

To make S. 2466 and proposed FAR amendments an effective tool, MBDELF respectfully recommends that the committee carefully consider the above concerns. MBDELF will work with you and committee members to achieve the goal of greater inclusion of small businesses in Federal procurement.

Sincerely,

Anthony W. Robinson
President,
Minority Business Legal Defense and Education Fund

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