AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FULL COMMITTEE HEARING ON EXPANDING SMALL BUSINESSES' ACCESS TO FEDERAL CONTRACTS

COMMITTEE ON SMALL BUSINESS UNITED STATES HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

APRIL 19, 2007

Serial Number 110-15

Printed for the use of the Committee on Small Business

Available via the World Wide Web: http://www.access.gpo.gov/congress/house

U.S. GOVERNMENT PRINTING OFFICE

34–827 PDF WASHINGTON : 2007

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

HOUSE COMMITTEE ON SMALL BUSINESS

NYDIA M. VELÁZQUEZ, New York, *Chairwoman*

JUANITA MILLENDER-McDONALD, California
WILLIAM JEFFERSON, Louisiana
HEATH SHULER, North Carolina
CHARLIE GONZALEZ, Texas
RICK LARSEN, Washington
RAUL GRIJALVA, Arizona
MICHAEL MICHAUD, Maine
MELISSA BEAN, Illinois
HENRY CUELLAR, Texas
DAN LIPINSKI, Illinois
GWEN MOORE, Wisconsin
JASON ALTMIRE, Pennsylvania
BRUCE BRALEY, Iowa
YVETTE CLARKE, New York
BRAD ELLSWORTH, Indiana
HANK JOHNSON, Georgia
JOE SESTAK, Pennsylvania

STEVE CHABOT, Ohio, *Ranking Member*
ROSCOE BARTLETT, Maryland
SAM GRAVES, Missouri
TODD AKIN, Missouri
BILL SHUSTER, Pennsylvania
MARILYN MUSGRAVE, Colorado
STEVE KING, Iowa
JEFF FORTENBERRY, Nebraska
LYNN WESTMORELAND, Georgia
LOUIE GOHMERT, Texas
DEAN HELLER, Nevada
DAVID DAVIS, Tennessee
MARY FALLIN, Oklahoma
VERN BUCHANAN, Florida
JIM JORDAN, Ohio

MICHAEL DAY, *Majority Staff Director*
ADAM MINEHARDT, *Deputy Staff Director*
TIM SLATTERY, *Chief Counsel*
KEVIN FITZPATRICK, *Minority Staff Director*

STANDING SUBCOMMITTEES

Subcommittee on Finance and Tax

MELISSA BEAN, Illinois, *Chairwoman*

RAUL GRIJALVA, Arizona
MICHAEL MICHAUD, Maine
BRAD ELLSWORTH, Indiana
HANK JOHNSON, Georgia
JOE SESTAK, Pennsylvania

DEAN HELLER, Nevada, *Ranking*
BILL SHUSTER, Pennsylvania
STEVE KING, Iowa
VERN BUCHANAN, Florida
JIM JORDAN, Ohio

Subcommittee on Contracting and Technology

BRUCE BRALEY, IOWA, *Chairman*

WILLIAM JEFFERSON, Louisiana
HENRY CUELLAR, Texas
GWEN MOORE, Wisconsin
YVETTE CLARKE, New York
JOE SESTAK, Pennsylvania

DAVID DAVIS, Tennessee, *Ranking*
ROSCOE BARTLETT, Maryland
SAM GRAVES, Missouri
TODD AKIN, Missouri
MARY FALLIN, Oklahoma

Subcommittee on Regulations, Health Care and Trade

CHARLES GONZÁLEZ, Texas, *Chairman*

WILLIAM JEFFERSON, Louisiana
RICK LARSEN, Washington
DAN LIPINSKI, Illinois
MELISSA BEAN, Illinois
GWEN MOORE, Wisconsin
JASON ALTMIRE, Pennsylvania
JOE SESTAK, Pennsylvania

LYNN WESTMORELAND, Georgia, *Ranking*
BILL SHUSTER, Pennsylvania
STEVE KING, Iowa
MARILYN MUSGRAVE, Colorado
MARY FALLIN, Oklahoma
VERN BUCHANAN, Florida
JIM JORDAN, Ohio

Subcommittee on Urban and Rural Entrepreneurship
HEATH SHULER, North Carolina, *Chairman*

RICK LARSEN, Washington
MICHAEL MICHAUD, Maine
GWEN MOORE, Wisconsin
YVETTE CLARKE, New York
BRAD ELLSWORTH, Indiana
HANK JOHNSON, Georgia

JEFF FORTENBERRY, Nebraska, *Ranking*
ROSCOE BARTLETT, Maryland
MARILYN MUSGRAVE, Colorado
DEAN HELLER, Nevada
DAVID DAVIS, Tennessee

Subcommittee on Investigations and Oversight

JASON ALTMIRE, PENNSYLVANIA, *Chairman*

JUANITA MILLENDER-McDONALD, California
CHARLIE GONZÁLEZ, Texas
RAUL GRIJALVA, Arizona

LOUIE GOHMERT, Texas, *Ranking*
LYNN WESTMORELAND, Georgia

CONTENTS

OPENING STATEMENTS

	Page
Velázquez, Hon. Nydia M.	1
Chabot, Hon. Steve	2

WITNESSES

Hsu, Paul, Associate Administrator for Government Contracting and Business Development, U.S. Small Business Administration	3
Parkinson, Nigel, Associated General Contractors of America	5
McCracken, Todd, National Small Business Association	7
Murphy, Emily, Miller & Chevalier Chartered	9
Taylor, Grady, Tri-Mega Purchasing Association	11

APPENDIX

Prepared Statements:

Velázquez, Hon. Nydia M.	33
Chabot, Hon. Steve	35
Altmire, Hon. Jason	36
Hsu, Paul, Associate Administrator for Government Contracting and Business Development, U.S. Small Business Administration	37
Parkinson, Nigel, Associated General Contractors of America	41
McCracken, Todd, National Small Business Association	44
Murphy, Emily, Miller & Chevalier Chartered	49
Taylor, Grady, Tri-Mega Purchasing Association	69

FULL COMMITTEE HEARING ON EXPANDING SMALL BUSINESSES' ACCESS TO FEDERAL CONTRACTS

THURSDAY, APRIL 19, 2007

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 10:00 a.m., in Room 2360 Rayburn House Office Building, Hon. Nydia Velázquez [Chairwoman of the Committee] presiding.

Present: Representatives Velázquez, Jefferson, Moore, Braley, Ellsworth, Johnson, Sestak, Chabot, Bartlett, Davis, Fallin, and Buchanan.

OPENING STATEMENT OF CHAIRWOMAN VELÁZQUEZ

ChairwomanVELÁZQUEZ. I call this hearing on Expanding Small Business' Access to Federal Contracts to order. The federal government is the biggest buyer of goods and services in the world.

Given the volume of its purchases, $330 billion last year, and the diversity of its acquisition, it should be easy for the small business participation goals to be reached. Unfortunately, as we have seen repeatedly, this is not the case.

Over the past several years, this Committee has had at least 15 hearings on agency procurement practices and the negative effect they have on small companies. Already in the 110th Congress, we have held 2 hearings on this issue. Today we continue our examination of the key values small businesses face when accessing federal contracts and legislation offered by our colleague from Iowa that addresses many of these programs.

In our work, several failures of the federal government have been made clear. The entrepreneurial share of the federal marketplace is sleeping, not expanding, as it should be.

Agencies consistently fail to achieve the minimum small business goal. And they are counting their accomplishments with contracts awarded to large corporations, inflating the amount of contracts that go to small firms.

In today's economy, entrepreneurs are the drivers representing 99 percent of all firms in this country. Yet, the federal government continues to fail to meet the 23 percent government-wide statutory small business goals. When these goals are not met, it means money out of the pockets of other small business owners and the loss of job creation in communities throughout the country.

In our most recent scorecard, we found that small businesses in general lost $4.5 billion in contracting opportunities last year because the 23 percent goal was missed. We found that women-owned businesses lost $5.2 billion because their 5 percent goal was missed. Minority contractors lost $4.5 billion because their 5 percent goal was not reached.

Over the past couple of years, we have also noted another disturbing trend. Agencies are counting contract awards to large companies as small business contracts. In 2005, about $12 billion in contracts were wrongly counted. These false numbers make it appear agencies are doing more with small businesses than they really are, which makes the true state of opportunity even worse.

One of the real problems here is that when agencies believe they are doing well with the small business measurements, they are more likely to engage in practices that are harmful to small businesses. In the last few years, for example, we have seen substantial increases in contract bundling and limited contract sourcing.

Contract bundling has been public enemy number one for small businesses that are trying to penetrate the federal marketplace. Over the last five years, total government contracting dollars have increased by almost 60 percent while the number of contract actions to small businesses decreased or declined by 55 percent.

Pure contract actions combined with greater procurement spending is proof of contract bundling. Today's hearing will allow us to review potential sources to increase access to government contracts as contained in H.R. 1873, the Small Business Fairness in Contracting Act, introduced by our colleague, Representative Braley. I believe this proposal will provide the tools necessary to create opportunities for increased small business contracts.

And let me just announce that we are planning to have a markup on this legislation on Tuesday since the leadership and I discussed the possibility for the bill to be on for floor action May 7.

So I look forward to working with my colleagues as we arrange for our mission of expanding and solidifying the role of small companies in the federal marketplace.

Let me thank all the witnesses for coming here and sharing their experiences with us today. And I now would like to recognize Ranking Member Chabot for his opening statement.

STATEMENT OF MR. CHABOT

Mr.CHABOT. Thank you very much. And, first, I would like to thank Chairwoman Velázquez for holding this very important and timely hearing to examine the practice of contract bundling and other federal procurement procedures that deny small business opportunities to obtain their fair share of government contracts.

We also will hear testimony from legal experts about the Small Business Fairness in Contracting Act and strategies for unbundling the contracts. It is well-known that bundling limits small businesses from competing for prime federal contracts. When small businesses are locked out from competing for prime contracts, the small business community loses business opportunities. The federal government loses important suppliers. And ultimately the taxpayer loses because of reduced competition that so often leads to higher prices.

The availability of federal contracts is at an all-time high, as the Chairwoman mentioned. Last year federal spending on government contracts amounted to $340 billion. This represents an 8 percent increase over the previous year and a 13 percent increase since fiscal year 2004.

Recent events, such as the cleanup from the Gulf Coast hurricanes and the ongoing war on terror, have created a growing need for services by government agencies and an increase in the amount of federal government contracts available. As the primary engine of innovation and job creation, small businesses should be receiving a fair proportion of the total prime contracts for property and services as required by the Small Business Act. Contract bundling is a barrier to achieving this goal.

We all look forward to hearing from our witnesses so that we can all learn more about bundling and strategies for increasing small business opportunities in the federal marketplace. This is a very important issue that directly affects the bottom lines of our nation's small businesses. And it is one that I am sure this Committee will continue to examine closely. We need to ensure that small businesses have and will continue to have a seat at the federal contracting table.

I yield back the balance of my time, Madam Chair.

ChairwomanVELÁZQUEZ. Thank you.

So we are going to start the hearing. Our first witness is Mr. Paul Hsu. He is the Associate Administrator for Government Contracting and Business Development at the United States Small Business Administration. Mr. Hsu has been in this new position just a few weeks. So congratulations and welcome.

Mr.HSU. Thank you.

ChairwomanVELÁZQUEZ. You have five minutes for making your testimony.

Mr.HSU. Thank you. Thank you very much.

STATEMENT OF PAUL HSU, ASSOCIATE ADMINISTRATOR FOR GOVERNMENT CONTRACTING AND BUSINESS DEVELOPMENT, UNITED STATES SMALL BUSINESS ADMINISTRATION

Mr.HSU. Chairwoman Velázquez, Ranking Member Chabot, distinguished members of the Committee, my name is Paul Hsu. I am the Associate Administrator for Office of Government Contracting and Business Development at the U.S. Small Business Administration. Thank you for inviting me to testify today.

I would like to take this opportunity, Madam Chair, to share with you and the distinguished members of the Committee my little experience with SBA's contracting and business development program, but, most importantly, I want to let you know that why I personally think that these programs are very important for small and minority-owned firms and very quickly. And here is my short personal story.

I was born in Taiwan and came to the United States in 1976. I was 26 years old and spoke very little English, but I managed to obtain a Master's degree in industrial management systems engineering from Central Missouri State University. And I got married and started having kids. I believe two of them are here today. And I got a job at the Harris Corporation and moved to Florida.

Harris was a Fortune 500 aerospace company. Ninety percent of our divisional revenue came from DOD. I was a chief engineer. And the life was really perfect until the Berlin Wall came tumbling down, the Soviet Union disappeared, and the DOD started reducing their requirements and Harris started laying off people and the entire facility was closed.

That was 1984, about 23 years ago. And that was the time I decided, "I am going to start my first company because I was so afraid that I might get laid off again."

But all I had at that time was a dream, a dream of a big building filled with people overlooking a parking lot with hundreds of cars and a tall flagpole with a huge American flag waving under the warm Florida sun.

So to take my dream to reality, the first thing I did, I sent my wife to work. And she did. She worked as a waitress at the local Pizza Hut while I was running around and chasing contracts. And she is very, very special lady.

After I had a contract, I realized that I needed money to buy parts or the contract itself could not be treated as a collateral. So after all the banks turned me down, a banker told me about SBA-guaranteed loan. I got a loan, and I started learning about SBA.

Soon I got into an 8(a) program. It was a great, great helping hand. A little later I joined the SBA-sponsored mentor protege program with Boeing, and I started building avionics, building radar components, the guiding system and many critical flight hardwares for the Boeing's fighter jet, including F-15s, F-18s, T-45s, C-17s, C-130, B-1, B-2, and B-52. I was so impressed about the mentor protege program I started my own. At one time I had two proteges: a HUBZone STB and a woman-owned STB.

Two years ago, my company has been acquired by a big publicly traded company. But, most of all, Madam Chair, it was the SBA. The SBA provided me the capital, the training, the counseling, and the contract opportunity that I desperately needed to go in my company.

So I can say this. I am the product of SBA and all the SBA's programs. And I am the living proof that these programs work. It is absolutely an honor and a privilege for me to serve an agency that I truly believe in.

I joined SBA on March 19th, exactly one month ago today. What I bring with me is the entrepreneurial spirit dedicated to impacting many small businesses as they look forward to achieve the success in the federal marketplace.

Here are some facts. Government contracting dollars go to the small businesses have grown significantly since F.Y. 2000. There were $30.6 billion more of small business contracts in F.Y. '05 than F.Y. 2000 and supporting an estimated about 235,000 jobs.

SBA recognized the need to improve the government contracting program and has taken the lead along with Office of Management and Budget, Office of Federal Procurement Policy to carry out a number of initiatives, including addressing the contract bundling and working with agencies to ensure their reporting is accurate. However, the integrity of the data reported to Congress and the public is very crucial to provide the confidence in the federal contracting system. Agencies are currently in the process of validating

their F.Y. '05 and F.Y. '06 data to identify the reason for coding discrepancies and to correct any error that may occur.

Additionally, the Administrator had made the contract data transparency and accuracy a very high priority and taken the issue very seriously. And we are going to continue to hold the agency accountable for their progress in meeting the small business contracting goal.

SBA released SCORE CARD, as you know, along with the F.Y. '06 contracting report. The SCORE CARD mirrored the President's management agenda, and it will more aggressively track and monitor the status of each agency's small business goal achievement and hold the agency more accountable.

This allowed the public to see clearly the progress in the level of the effort agencies are making to address their weak point. For instance, agency would be rated of their subcontracting achievement in addition to their prime contract.

SBA's F.Y. '08 budget, including a request on $500,000 to exam how best to serve the 8(a)'s; the HUBZone; the small, disadvantaged business community; as well as women and the veterans. We recognize the need to improve in this management in this important program and will use them, these resources, to determine how best to serve the community.

As an 8(a) graduate myself, I understand the frustration that my colleagues in the 8(a) community feel when the application, the contract approval--

ChairwomanVELÁZQUEZ. Mr. Hsu? Mr. Hsu?

Mr.HSU. Yes, ma'am?

ChairwomanVELÁZQUEZ. The time is expired. If you need like 5 to 10 seconds to summarize?

Mr.HSU. Okay. Thank you.

On behalf of the administrator, I relay his desire to work with the Committee to ensure the entrepreneurs will have the ability to compete with federal contracts and the work agency and help them to achieve the goal.

So, Madam Chair, that concludes my testimony. Thank you.

[The prepared statement of Mr. Hsu may be found in the Appendix on page 37.]

ChairwomanVELÁZQUEZ. Thank you, Mr. Hsu.

Our next witness is Mr. Nigel Parkinson. Mr. Parkinson is the owner of Parkinson Construction from Brentwood, Maryland. He is testifying on behalf of the Associated General Contractors. You will have five minutes.

Mr.PARKINSON. Thank you, Madam Chairman.

STATEMENT OF NIGEL PARKINSON, OWNER, PARKINSON CONSTRUCTION, BRENTWOOD, MARYLAND, ON BEHALF OF ASSOCIATED GENERAL CONTRACTORS

Mr.PARKINSON. My name is Nigel Parkinson. And I am testifying on behalf of the Associated General Contractors, AGC, the nation's largest and oldest construction trade association. Founded in 1918, our association represents more than 32,000 construction firms nationwide. I serve as Senior Vice President of AGC of metropolitan Washington, D.C. And, as the Chairwoman said, I am also the President of Parkinson Construction Company.

AGC is pleased to share our thoughts for this year, upcoming year, of transition of the Small Business Act. I am going to focus on the changes agency made by recommending for the impact of contract bundling and the growing concern over large construction contracts. AGC can be committed for the opportunity to ally these areas of concern to the construction industry.

Contract bundling has been a concern in the construction industry for several years. While there is no clear definition of bundling, it appears that consolidation of various projects is occurring more frequently. Small contracts are being bundled to result in large dollar solicitations that small businesses are not able to compete for unless they are partners with large firms.

While on the surface this may not seem harmful, this practices on the mind's intent of the small business program by allowing large business to obtain money set aside for smaller firms. AGC recommends that the federal government annually reports to Congress on contract bundling so that the magnitude can be gauged and the trend can be spotted and addressed by Congress. In addition, Congress should require SBA to monitor not only total volume of small business contracts, but the number of total contracts and the size of this contract as well.

The contract bundling institution is further compounded by the fact that small business set-asides keep increasing. A now overwhelming number of special preference programs leaves little work for small businesses with target preference and medium-sized businesses able to compete for work.

Right now our federal contracting options are very limited. We have found it difficult to compete on projects currently available for building our own backyard here in Washington, D.C. because absolutely every project because of size has a preference attached to us. That has excluded us from competing for the work.

Contract bundling combined with pressure on agencies to mix your small business charges with different goals is leaving firms like mine with no opportunity to grow our businesses. As a result, we are often shut out of the federal market.

Rather than creating a new specialty set-aside goal, the Congress should, instead, focus on how the existing programs can be improved to increase opportunities for small firms. As the Committee moves towards the utilization of the SBA programs, construction as an industry should be included in any revised definitions of the contract bundling to ensure that these consolidations are reviewed for potential negative impact on existing small businesses.

Additionally, agencies concerned that SBA does not currently have planning for additional resources devoted to ensuring that small companies are not economically aggrieved by contract bundling, there is currently an insufficient number of procurement censors representative in the SBA to monitor bundled contracts.

As a small business community, we view the issue of contract bundling as the time is out to move forward to solve the problem, the main issue being that contractors need to experience as prime contractors in order to go.

In the past, increased use of subcontracting has been the answer to provide small businesses opportunities to work on federal contracts. In the construction industry, small business has proven to

be an asset. The construction industry has proven that small businesses can compete as prime contractors on a relatively level playing field. Working from a prime contractor opportunity for small to medium-sized businesses should be the solution the government and the Committee should seek.

Since we are talking about the issue of contract bundling, I would also like to mention continued concerns by the growing reliance on the use of Alaskan Native contracting in sea by the federal agencies as a means to easily attain small business contracting goals.

A special contract is awarded to an ANC and is available by the traditional 8(a) program. And we believe that this program is clearly being used by procurement agency as a tool for contracting officials to meet their 8(a) goals.

We understand the ANC matter is currently under consideration by the Committee. And we look forward to working with the Committee on this particular issue.

[The prepared statement of Mr. Parkinson may be found in the Appendix on page 41.]

ChairwomanVELÁZQUEZ. Thank you, Mr. Parkinson.

Our next witness is Mr. Todd McCracken. Mr. McCracken is the Senior Director of Government Affairs for the National Small Business Association. Welcome.

Mr.MCCRACKEN. Thank you very much, appreciate the opportunity to be here, Madam Chairwoman.

STATEMENT OF TODD McCRACKEN, PRESIDENT, NATIONAL SMALL BUSINESS ASSOCIATION

Mr.MCCRACKEN. Again, my name is Tom McCracken. I am the President of the National Small Business Association. We are the oldest national small business advocacy association, United States. And I would like to thank you just for the chance to be here, for the opportunity to comment on H.R. 1873, which we certainly comment the introduction of, and we are very pleased to see the progress it would make for small businesses.

Federal procurement is of singular importance to many small businesses. And small business participation is crucial to helping the competitive federal procurement process. In other words, expanding the access of America's small businesses to federal contracts is beneficial to all involved.

The importance of expanding small business access to federal contracts is certainly recognized by the membership of NSBA, which has identified small business contracting as one of NSBA's top priority issues during our recent biennial small business congress.

First, I would like to talk a little bit about the small business contracting goal. We are pleased to see that H.R. 1873 would expand the goal to 30 percent for all federal contracts. NSBA welcomes the bill's stipulation that each federal agency would have an annual small business procurement goal not lower than the government-wide goal because there, as you probably all know, have been some issues with that in past years.

Further, we are also pleased that the bill would increase the small business contracting gaol and will be benchmarked in rela-

tion to a more accurate and inclusive federal procurement tally that finally will incorporate contracts carried out abroad. The inexplicable exclusion of various kinds of contracts, such as those carried out overseas, has distorted the reality of contracts from the government's small business procurement calculations too frequently. And they have resulted in escalating exclusions and creative bookkeeping, rather than increased small business contracting or even accurate data collection.

Federal contracting is of great importance to small businesses as well, despite the absence of the government-wide subcontracting goal. From F.Y. '85 to F.Y. '04, small businesses received between 34 and 42 percent of all federal subcontracting, according to a recent working paper produced by the SBA Office of Advocacy. H.R. 1873 would include the entire contract award for calculating the percentage of small business subcontracts awarded and not just those dollars that are subcontracted.

NSBA also welcomes the subcontracting and enforcement mechanism in H.R. 1873, under which prime contractors would receive bonus credits for their next bids upon achieving their subcontracting goals.

We do continue to advocate, however, for the codification of payment history in the federal evaluation of all prime federal contractors as well. In fact, almost 70 percent of the respondents to a recent procurement survey we conducted supported including payment history and federal evaluation process of all prime contractors according to our early results.

I would also like to bill a little bit on the contract bundling issue. We think it is really at the center of the issues that small businesses face in the procurement world. And we are very supportive of the things that the legislation does. We think, as I am sure most people in this room probably do agree, that we need to more, however.

In that same survey I mentioned before, over 30 percent of the respondents had firsthand personal experience losing out on a federal contract, specifically because of contract bundling. And bundling statistics that are out there now that we talk about are based on a more broad definition of contract bundling, that currently used by the federal government, the ones that actually show how bad the problem is because the federal government lies in our limited definition focused exclusively on whether one of the contracts was previously performed by a small business.

This overly narrow definition warps the government's calculations on the prevalence of contract bundling in the federal procurement arena. And we have long advocated for the expansion of the term to include any instance where two more individual contracts are combined. So NSBA welcomes efforts such as the one in the bill to enhance the definition of contract bundling.

And, finally, I have mentioned data. I would like to talk a little bit about reliable and accurate data because that is a big problem. Time and again, it has been demonstrated that a large number of contracts ostensibly awarded to small businesses actually have been awarded to and carried out by larger firms. The Office of Advocacy study has found that 44 of the top 1,000 small business contractors in 2002 were not, in fact, small businesses.

These exclusions of various kinds of contracts dilute the actual procurement data. And we continue to support the improvement in that data, such as what is done by H.R. 1873.

So we think the bill establishes a whole range of benchmarks that will move us forward on improving the small business procurement system. And we want to thank you for introducing the bill. And we want to thank you for giving us the opportunity to comment upon it. Thank you.

[The prepared statement of Mr. McCracken may be found in the Appendix on page 44.]

ChairwomanVELÁZQUEZ. Thank you.

Our net witness is Ms. Emily Murphy. Ms. Murphy is counsel for Miller and Chevalier, Chartered. Prior to this, she was on the staff of this Committee under Chairman Jim Talent. Emily served in the administration of both the SBA and the GSA. We are happy to welcome you back to the Committee.

Ms.MURPHY. Thank you very much.

STATEMENT OF EMILY MURPHY, ATTORNEY, MILLER AND CHEVALIER, CHARTERED

Ms.MURPHY. I am very happy to be here. It really is a homecoming. I also want to comment you all for taking the time to study these important, what I consider exciting issues and introducing the legislation, which is a great step in addressing a lot of the problems that small businesses are facing in government contracting.

I am here today even as a lawyer for Miller and Chevalier, but I am representing myself. I am not speaking on behalf of any of Miller and Chevalier's clients, whether they be small or large businesses, or on behalf of the American Bar Association, for whom I chair their Committee on Small Business and Other Socioeconomic Programs.

I also just want to say that my written testimony is a comment on a prior draft of the legislation. So I am hopefully going to be able to tweak it a little bit here today.

There is so much in this legislation that it is hard to even figure out how to start and get it done in five minutes. So let me dive right in.

I want to thank you, first of all, for addressing what I consider the key questions in government contracting. What kind of opportunities should be made available for small businesses? Who is a small business? And how do you make sure that those two connect, that those opportunities really are going to legitimate small businesses? I think by addressing contract bundling, this can be taking an important first step at recognizing what opportunities should be available to small businesses.

In the past year, in fiscal year 2006, the federal procurement data system was only able to identify 43 contracts over $5 million as having been bundled. And those contracts totaled over $5 billion. But when you talk to other small businesses, you will find that there are a lot more than 43 contracts being bundled. And so where is the disconnect?

I think that a lot of that disconnect is in the definition, which this Committee is addressing. The prior definition that was put into law in 1997 by this Committee took the first putting out the

primary award for what is contract bundling but in doing so stated that contract bundling had to have been for work that was currently being performed by small business or was suitable for award to small business. So it had to have been existing requirements.

Contracts evolve over time, and requirements evolve. So that our changing the definition with H.R. 1873 to include new requirements, the Committee is bringing in a whole new scope of contracts review. And that is going to create important opportunities for small business.

I also want to commend the Committee for looking at the idea of task orders and including those in the definition of contract bundling in the review. I would want to argue that there are different types of task orders and maybe some distinctions need to be made between those task orders, specifically that task orders about single award contracts may not always be appropriate for review; whereas, the prime contractor in a multiple award contract may need review depending on whether it is a limited duration contract, but the task orders always need review.

So if it was possible to address that language, I think that would help target the limited resources that exist for ensuring small businesses can compete.

I also want to thank you for taking the time to address what happens when SBA doesn't get the information on contract bundling and giving SBA the right to intervene at that point. I think that is going to give them a lot more fact-finding ability.

I noted that you have given them ten days to respond. And my question would be, what happens if those ten days hit the end of the fiscal year? I would love to see us create a situation where agencies want SBA to evolve, to get involved and intervene.

And I would suggest that you might want to look at the fiscal laws that involve those dollars. If there were some way to keep those dollars valid and valuable until SBA completed its review, even if it crossed fiscal years, you might actually have agencies beginning SBA to intervene.

Also, I know this Committee wanted to address the small business reserve. And I think that time idea of the small business reserve as a simplified acquisition threshold makes a lot of sense.

The small business reserve is currently any contract below $100,000. The simplified acquisition threshold is in most cases $100,000. However, the simplified acquisition threshold also has its minimum, of which the micro-purchase threshold applies. And that's $3,000 right now. It may make sense to tie the bottom level of this range to the micro-purchase threshold.

The one question I would like to see the Committee address, though, is what happens in times of emergencies. In times of emergencies, the simplified acquisition threshold can currently be raised to $25,000 for micro-purchases, and up to a million dollars for the simplified acquisition threshold. The Committee may want to address what ramifications that would have and whether added flexibility needs to be incorporated.

Moving on, since I know I am running out of time, when it comes to recertification, which is really the key question to address who is a small business, the Committee may want to look also at the—in H.R. 2802, which I believe that the Chairwoman cosponsored,

the Committee suggested that there be a five-year review and recertification. And I think that is now in regulation.

This legislation suggests that there will be an annual review for companies that are within 80 to 95 percent of the size standard. This seems a little difficult for those businesses to have that annual review just at a time that they are changing their rules. I would suggest that unless they are exercising an option, that they be allowed to rely on that initial certification because it is not going to go beyond a five-year period.

With small businesses who are legitimate small businesses, when they get a contract, grow because of that contract, you want to make sure that they have the planning and the time and place to make that transition seamlessly. And that is something that I believe that the Committee recognized with 2802 when they gave the presumption that a business could continue to remain small, even if it exceeded the size standard? It may be worth considering some of those provisions going forward as well.

Finally,—I promise I will wrap up—as the Committee is looking at certifications and databases and where small businesses represent themselves, I would hope that they would also look at the online representations and certifications application or Section K of any application because that is where true enforcement can take place. That is where an agency can say, "A firm has misrepresented their size status to us, and we are going to go forward."

It would be helpful if we could further identify what the damages are to the agency at that point in time so that they would have a greater bassi for any legal action they were going to take. I think that will really help resolve the problems of inadvertent or intentional misrepresentations.

Thank you so much for this opportunity to testify here today. And I look forward to answering any questions. I apologize for going over.

[The prepared statement of Ms. Murphy may be found in the Appendix on page 49.]

ChairwomanVELÁZQUEZ. Thank you so very much, an incredible, incredible testimony. Thank you.

Our next witness is Mr. Grady Taylor. He is the Executive Vice President of the TriMega Purchasing Association, a 500-member organization of office products suppliers. Welcome.

Mr.TAYLOR. Thank you, Chairwoman Velázquez, Ranking Member Chabot, and the Committee.

STATEMENT OF GRADY TAYLOR, EXECUTIVE VICE PRESIDENT, TRIMEGA PURCHASING ASSOCIATION

Mr.TAYLOR. I am pleased to be here today to testify before your Committee on this very important issue. TriMega Purchasing Association is a not-for-profit member-owned cooperative focused on the success of the small and independent office product dealer. We are the largest such entity in the country.

If you want to buy office products, there are two ways to do so. You can either buy them from a small, family-owned company or you can buy them from large, billion-dollar corporate companies, of which there are four. Regardless of whom you buy your supplies

from, both groups are serviced by the same wholesalers and manufacturers.

When you purchase office supplies, they are coming from the same major wholesalers and manufacturers. And, in fact, the only difference in our industry is size.

Where TriMega comes into play is that we have successfully negotiated on behalf of our independently owned dealer members competitive costs of the goods agreements with those same wholesalers and manufacturers in order to bring parity to the marketplace.

In spite of that, the office products industry is one, if not the most, negatively affected by the issues we are here to discuss today. The reason I say this is that when the federal government decides to implement a new pilot program that is supposed to make the purchasing of goods and services more efficient and cost-effective for the government, they usually use office products as a first product to test.

For some reason, the myth in the federal government is that buying office supplies is an easy process, the myth perpetrated in the '90s by the reinvention of government. I mean no disrespect to former Vice President Al Gore, who is credited with the reinvention of government concept as at the time, he made it look good on paper, but the actual implementation of the process has been bad for small business, especially those in the office supply industry.

Streamlining the government to make it more efficient is a good idea, but what the federal government has failed to do in its design phase is consider all of the issues that go into the buying process. It is simply not enough to look at pricing. You need to consider service; history of a company; capabilities of the company; and, most importantly, the impacts on the community your decisions will have if you severely limit the number of vendors able to sell to the federal government.

Limiting your choices of vendors means lost jobs for small business, lost tax revenue for the federal government and local community. And it means the inability of small businesses to grow and thrive.

Contract bundling has had a negative effect on industry. When you continue to make contracts larger and larger, new myths are perpetrated. When it comes to contract bundling, the myths we still hear from agencies are that independents cannot service large national contracts because they are not sophisticated enough.

This is another myth started in the '90s. And, unfortunately, it continues today. The reality is independent dealers can service national, large national, contracts. We are doing it and doing it successfully when given the opportunity to compete on a level plaything field.

I am still stunned to hear how surprised some agencies are to learn that independent dealers have Websites, online ordering capabilities, quality customer service, and the ability to accept government credit cards. We can do that and more.

Four years ago, we came to Congress with these concerns. And we were told it was unlikely Congress would address our issues. If we hoped to be effective in the government market, we needed to change our industry. We did just that.

The rules governing how and who does business with the government were still not in our favor. And it is our hope that this time Congress will act to level the playing field. Without your help now, industry faces a greater problem than contract bundling.

As you know, the administration is in the process of implementing what it calls strategic sourcing initiative. This process may be good for industries where subcontracting opportunities exist, but it could be the program that drives independent office products dealers from the federal market.

Strategic sourcing is a new contract bundling of our time and if fully implemented will mean the federal government will do business with less vendors, it will not get the cost savings they are seeking due to the lack of competition, keeping vendors honest. This is neither good for the government nor small business because the likely winners of these contracts will be large corporations.

We have witnessed firsthand the effects this program is having on small businesses through the $100 million award made to a large corporate entity in our industry by the Department of Health and Human Services, the first of many contracts to be awarded as part of the administration's strategic sourcing initiative.

I would also like to take this opportunity to highlight another issue facing small businesses that doesn't get much attention. That is the issue of pass-throughs. Today you have a lot of large companies using small businesses to gain greater access to the federal government market.

The way this works is a large company will approach a legitimate small business and create a relationship they label as mentoring. There is absolutely no mentoring going on. It is nothing more than circumvention around the intent of the statute.

Really, what happens is when a government agency wants to buy office supplies, they are using the small businesses who were awarded the contract, but the fulfillment and all of the work comes from the larger companies. In return for their willingness to sell their small business status, these dealers are getting a percentage of the sale but doing nothing. And the large corporate company continues to build its revenues and access to the market.

Not only is this abuse bad for the entire independent community, it is bad for the government. By turning a blind eye to these abuses, the government is taking credit for small business purchases that help agencies meet their 23 percent small business goals, even though these purchases were made through a large company.

In most cases, the only thing the small business provides is its Website is a face for these pass-throughs. This practice helps the agencies build up their small business purchases, making it look as if they are doing everything they can to meet the needs of the small business community.

ChairwomanVELÁZQUEZ. Mr. Taylor?

Mr.TAYLOR. Yes?

ChairwomanVELÁZQUEZ. Time expired.

Mr.TAYLOR. Yes.

ChairwomanVELÁZQUEZ. Would you summarize, please?

Mr.TAYLOR. Chairman Velázquez, more can be done. In fact, more has to be done. Our industry cannot continue to fight an uphill battle without your help.

Thank you for all of your support. You have been a real strong advocate on our behalf. And you give us hope that we can make positive changes to the process. Thank you.

[The prepared statement of Mr. Taylor may be found in the Appendix on page 69.]

ChairwomanVELÁZQUEZ. Thank you.

And the Chair now will recognize Representative Braley from Iowa, who is the main sponsor of the Small Business Fairness in Contracting Act, H.R. 1873, for an opening statement.

Mr.BRALEY. Thank you, Madam Chairman. And thank you for holding this important hearing.

Over the past five years, government agencies have greatly increased contract bundling, oftentimes combining small businesses. They are combining work small businesses could perform into giant packages that exceed small firms' ability to compete for this work. But during that same 5-year period, total government contracting has increased by 60 percent while small business contracts have decreased by 55 percent.

This is unacceptable. That is why on Tuesday evening I introduced H.R. 1873, the Small Business Fairness in Contracting Act. This bill will unbundle many of these contracts and level the playing field for small businesses. The bill will ensure proper competition among many businesses, saving taxpayer money and opening up opportunities for America's small businesses.

By law, federal organizations are required to support small businesses. However, contract bundling has resulted in less small business participation in federal contracts. It is essential to help remove the barriers blocking small businesses from entering into the nearly $400 billion per year federal marketplace.

Small businesses are the number one job creators in this country. And we need to ensure that this engine not only remains healthy but also has the support that it needs to grow. Let's make sure small businesses are not shut out of the federal marketplace.

Unfortunately, my state, Iowa, ranks near the bottom in terms of government contracting dollars awarded to small businesses. Small businesses are the backbone of the communities within my district in Iowa, as they are in most congressional districts. allowing them a fair opportunity to bid on federal contracts can bring economic vitality to these towns and cities.

Today I am hopeful we can begin a discussion that sends a message to small business owners that they will get a fair opportunity to compete for and win federal contracts.

Thank you again, Madam Chairwoman, and thank you for the witnesses who came in today and shared this valuable testimony.

ChairwomanVELÁZQUEZ. Thank you, Mr. Braley.

And now I would like to address my first question to Mr. Hsu. Mr. Hsu, I have met with the administrator, Mr. Preston, on several occasions. And one of the issues that I have been discussing with him is miscoding.

I know that you have been in your position only four weeks, but today you are the witness representing SBA on this issue. So you are sitting in the hot seat.

My question to you is, given the fact that your former company, MTI, still is being miscoded as a small company, so you bring a new perspective into your new job and given the fact that miscoding is a real problem for us, I will ask you how are you going to approach this issue?

Mr.HSU. Yes, ma'am. Yes. Miscoding for sure, I agree, is a very important issue. Speaking for SBA, we are doing something about it. The new recertification rule will be applied in the end of June. After simplifying these, there are two things about this. The small business must recertify after the five years after long contract, long-term contract.

And, secondly, if the small business gets acquired or are buying somebody, they have to recertify. So that will ensure—

ChairwomanVELÁZQUEZ. Now let me just say that the actions taken by the administrator regarding the miscoding issue only address 20 percent of the whole problem. So this is why we need to get this legislation passed.

Mr.HSU. Yes, ma'am.

ChairwomanVELÁZQUEZ. Let me talk to you about the fact that from 2004 through 2006 SBA filed 4 secretarial appeals on contract bundles. And it seems to me that SBA is like the Washington Generals. We lost 2,495 straight games to the Harlem Globetrotters.

(Laughter.)

ChairwomanVELÁZQUEZ. Since SBA has not been able to win one of those appeals, how do you think the appeal system is working?

Mr.HSU. Madam Chair, SBA as of today, at my office, I have 54 procurement representatives. And they review anywhere between 50,000 to 60,000 requirements every year. So that's average about 1,000 review requirements per year.

Yes, we filed the secretarial appeal on the average about five to ten years, but, again, this is my own philosophy. I feel like we need to try to work things out with agencies to secure the small business opportunities before they take the action a more formal way. Many of our successes occur in this level.

ChairwomanVELÁZQUEZ. I hear you. Given the facts of a poor record of SBA regarding appealing those contract bundles, are you telling me that how many PCRs are you hiring?

Mr.HSU. Fifty-four right now.

ChairwomanVELÁZQUEZ. Does that mean—

Mr.HSU. We expect to get to 66 by the end of this year.

ChairwomanVELÁZQUEZ. Do you think that will be enough?

Mr.HSU. Yes, I do because these are the very experienced PCRs. They understand the agency's requirements. And also we are working very hard to provide them with all the training tools. One of them, for example, is the quick market search.

ChairwomanVELÁZQUEZ. Sir, the problem that we have is that SBA is going to have fewer, even of the 54 PCRs that you are telling me, they are going to have fewer, than the agency had in 1993, when federal buying was $100 billion less than in F.Y. 2005.

Mr.HSU. Well, there are tools available, Madam Chair. The—

ChairwomanVELÁZQUEZ. I guess those tools are not working, sir, given the track record and continuing to lose your appeals to those agencies.

Mr.HSU. I will take a look on that.

ChairwomanVELÁZQUEZ. I will recognize Mr. Chabot.

Mr.CHABOT. Thank you very much, Madam Chair.

Mr. Taylor and Mr. Hsu, if I could address my first question to you two? Mr. Taylor, could you briefly describe what you described before relative to a lot of these office supply arrangements, where you have a small business who really is kind of a front man and you have somebody else that is really getting it and not getting the work?

And if you could listen to this, Mr. Hsu?

Go ahead, Mr. Taylor?

Mr.TAYLOR. Okay. Thank you.

The situation we have, you know something is not right when you have a firm that has 3 employees and is doing over a billion dollars a year in business. Those guys work awfully hard. And basically what happens is they are approached by one of the four corporate players we were talking about earlier and say, "We can bring this business, but we need to run it through you. We will pay you a certain percentage."

Basically you go to their site. The contract is, all the computer work, the e-commerce is, all put together by the publicly traded corporation. But, in essence, the agency that is doing the procurement is getting credit for doing business with small business. We are saying that is nothing but a circumvention over what the intent was supposed to happen.

Mr.CHABOT. And, again, following up with what the Chairwoman said, Mr. Hsu, even though you have only been there four weeks, I am just wondering, do you know if the SBA has been aware of this information? And is there anything currently being done to remedy that, do you know?

Mr.HSU. Yes, sir. As a matter of fact, last week I had a meeting with the administrator. And we did talk about that. But my point is this, though.

There are so many different types of small business. The small business can be manufacturer. The small business can be dealer. A manufacturer, a three-people company, it is almost impossible to do one billion dollars. But if this is a dealership, distributor, that can be possible because they deal with a big, big, big amount of business as a distributor or dealership.

And the bundling, sir, if I may, yes, SBA we understand these are very important issues. And as a small business owner, I can relate some of my experience in dealing with the bundling.

Very quickly, back in the early 1990s, I received, as I recall, anywhere between 2 to 3 a day from the PCRs calling them breakout specialists because their job is to break a big contract out to smaller contracts so I can bid on them. And they require three small businesses per separate contract so they can do that. And now, like the pendulum shifted the other way.

But, again, the problem is this, though. I don't think the definition is the issue. I think the enforcement is the issue. There are

contracts that are suitable for bundling; for example, like fire control systems. You want one company to build that.

But, again, the maintenance contract, for example, that is not a good idea to bundle because that requires some lawn services, regards some janitorial, regards elevator repair. So those are not good for bundling. So we need to concentrate on the enforcement, instead of a definition.

Mr.CHABOT. Thank you. I would just say that I think we need to look closely at what the congressional intent was here relative to doing what we can to make sure that small businesses get their fair share of the business nationwide and what that does to the economy. And there are policy issues.

So I think, you know, it may be necessary for Congress to look at this issue very closely and make sure that the administration and the SBA know what the intent is and make sure that it is ultimately carried back. I appreciate your comments.

Ms. Murphy, if I could turn to you at this point? I have to say I was very impressed with your testimony. And, really, all of the witnesses were very good, but, I mean, you know, you certainly have a wonderful grasp. I was impressed with you saying how exciting this issue is, too.

[Laughter.]

Mr.CHABOT. I would be interested to see how you would be under something that really is exciting, not that this isn't, of course.

[Laughter.]

Mr.CHABOT. But if you wouldn't mind—and I think, Mr. Braley, if I am not mistaken, has this changed a bit, your bill, or is it evolving somewhat or is it pretty much in its final form at this point?

Mr.BRALEY. It was filed yesterday.

Mr.CHABOT. It was filed yesterday? Okay. I would be very interested—and I am supportive of the bill, and I think its intent is very good. If you wouldn't mind, with your expertise, having been on this Committee and etcetera, now being in the private sector, I would be interested to see if you could go through this and perhaps critique it somewhat and make any suggestions that you think might be helpful. And then both sides could take a look at that and see if they are warranted.

Obviously we are not the fawn of all wisdom, nor even that much of it, to tell you the truth, but we try. And so we may be able to improve this bill and make sure that it benefits the small business community even more than its intent is right now. And I don't know if you would like to comment on that.

Ms.MURPHY. Well, I would be thrilled to provide any assistance I can with this because I know that you were saying that you would like to see me with something that is even really exciting, but I spent the last ten years focusing on this area. And I do think it is exciting.

I think it is a great area where you can figure out how to make sure that taxpayers get the best value for every dollar spent and that you are creating jobs and that you are bringing new technologies to the government and that you are making the system work. I think it is fun.

So I would love to sit down and talk to you about that or with anyone who wants to talk to me about it. I have a feeling I am not getting a lot of offers.

I highlighted a couple of areas where I thought that some changes might be appropriate, particularly in the area of recertification and in the area in looking at various types of indefinite delivery vehicles. And it is a very technical area, but it could really help better focus where a limited number of PCRs and the contracting personnel are spending their time.

Two very general comments I would make on it, though, would be that any regulations that the Committee requires to implement this, I would strongly suggest that they be put in place simultaneously with changes to the federal acquisition regulations.

Most acquisition professionals do not spend a lot of time reading 13 CFR, the contracting officers on the line day to day. By having the two occur simultaneously, you end up having less confusion between the two different sets of rules and regulations and making it a more consistent process so that it is implemented uniformly.

I would also suggest that at the same time that the Committee require that training be provided to contracting officers and contract specialists across the government, not just to small business technical advisers, because often training on small business programs isn't made available as quickly to contracting officers for the ones who have to implement the programs. And there is funding through the acquisition workforce training fund that could easily be tapped to do that.

I know that one of the issues that the Committee is looking at is appeals on bundling. And I know that the legislation has provided to address having that appeal go to the Office of Federal Procurement Policy. There is currently a statutory provision, though, in the Office of Federal Procurement Policy Act that prohibits the administrator from becoming involved in specific procurements.

And there are some legitimate reasons why you would want to keep decisions about individual contracts out of a political office. Depending on which direction the Committee decides to go, you need to amend the underlying LFPP Act as well or you may want to consider putting that appeal process someplace else.

GAO might be a place. Agency IGs might be an interesting idea as well. I haven't thought this one through completely, but an agency IG would be better positioned to understand both the agency's opinion, have expertise and insight into that agency's contracting programs, and still have independence so that they could be weighing those decisions. Those are just a few things that come to mind.

Mr.CHABOT. Thank you very much.

Madam Chair, I yield back the balance of my time.

ChairwomanVELÁZQUEZ. Mr. Jefferson?

Mr.JEFFERSON. Thank you, Madam Chair.

Mr. Hsu, I have been waiting for you for a long time. The job that you have has been vacant for 18 months. It is a very, very important job. As I appreciate it, you are to aggressively advocate with the 23 or 24 federal agencies that are out there for them to set aside, if you will, contracts for small business procurement.

I mean, the job hasn't been done for 18 months. At least it hasn't been done by anyone who has had the single focus of this work. What is your plan to contact these agencies? What are you going to do that will be different and aggressive about getting this job done that will have the agency setting aside these opportunities and to look forward to getting them accomplished?

Mr.HSU. Thank you, sir, for the question. Yes. We are implementing a program that is called the SCORE CARD. And so I plan to start visiting the agency. And I just had a wonderful meeting with the DOD, Linda Oliver. And so by next week, I will have my first meeting with the Air Force and then the Navy and the Army and the Marine Corps. I want to attack the DOD first.

Mr.JEFFERSON. What schedule are you working on to get through all of these agencies? In three months? In four months? When do you think you will have contacted all of the agencies to develop a plan with them?

Mr.HSU. Well, it depends on how many hours I work, sir. But I would say probably 9 months I would be able to visit all 24 agencies.

Mr.JEFFERSON. Well, that is a real long time. It puts down the road. We have 18 months waiting for you, and we have got 9 months to wait for you to get at least talking to them and getting some goals set.

Now, we had a meeting down in New Orleans here recently that the Chair Lady took our Committee down. We dealt with local contracting issues and the issues of how the agency would handle emergencies.

That is a real set of questions for us now because we are in a recovery phase back home; in New Orleans, I should say. Only 70 percent of the contracts that are being let are local.

How much are you focusing on a place on this issue?

Mr.HSU. I was mentioning that we have 54 PCRs and in 6 different areas. The New Orleans area, I believe, is area number five. And that will be the first area that we are going to implement this quick market search. And we are going to refocus the PCRs' effort. And, in other words, sir, instead of letting the PCRs concentrate on the 77 percent of those unrestricted contracts, we are going to ask them to look at the 23 percent which has already been set aside.

ChairwomanVELÁZQUEZ. Would the gentleman yield? Sir, we help Bill in New Orleans. And it is clear there is a problem with contracting money going to local small businesses, not only to small businesses but local small businesses. I understand you have five PCRs assigned to that area.

Mr.HSU. Right, right.

ChairwomanVELÁZQUEZ. And, yet, only seven percent of all contracting dollars have been going to local small businesses. I instructed the administrator in that hearing to meet with every agency that is involved in that area and to identify five prime contracts for small businesses. So, again, I am going to reinstate and to make it clear to the administration that we are going to be following it up.

We gave 30 days for the administrator to come back to us regarding contracting practices in the Gulf Coast. So this is quite important for this Committee but, more importantly, if this administra-

tion is really concerned and committed with the rebuilding and revitalization of the Gulf Coast.

Mr.JEFFERSON. Madam Chair, if I might ask you or as you—

ChairwomanVELÁZQUEZ. Thank you for yielding.

Mr.JEFFERSON. Yes, ma'am, but as you are in the process of trying to figure out the directive, if you will, you want to give to the agency, one might be to make sure that there is an accelerated schedule on meeting with these agencies to get some focus out of them about what they are going to do here. Nine months isn't a very good plan.

ChairwomanVELÁZQUEZ. Well, you know, the duty, the responsibility of the Committee is not to do the job of the Small Business Administration. That is their responsibility. And if there is one thing about this Committee now under my leadership, it is going to be oversight. So we gave them 30 days. And they will have to come back to—

Mr.JEFFERSON. I appreciate that. With respect to Mr. Hsu's answer to my question, it was going to take him nine months to even talk to the agencies about getting after—

Mr.HSU. Well, sir, I—

Mr.JEFFERSON. I hope we can accelerate this. I don't know what takes nine months to talk to agency heads.

Mr.HSU. Yes, sir. What I was referring to is to provide all the training and everything in nine months. But just talking to them, no, I don't need nine months to do that.

Mr.JEFFERSON. When you talk to them—

Mr.HSU. Probably a couple, you know, two, months.

Mr.JEFFERSON. Yes. I hope you will emphasize the notion of prime contracts versus subcontracts in your review with them, the commitment to the goals. I don't know how you feel about these goals. Do you think these goals that are set in here are too aggressive? Do you think that they are too aggressive? Do you think they are just right? Do you think they ought to be higher? What do you feel about the goals for minorities, for women, for small business generally, and for the local participation?

Mr.HSU. It is a statutory goal. And our job is to implement it. Yes, I definitely agree because as a former 8(a) business owner, I am all for that.

Mr.JEFFERSON. Now, there is definitely a connection between the bundling and the bonding issues. The larger these contracts are, the less the bonding authorizations in the statute are of assistance to small business people.

I don't know if in your experience you have determined whether these bonding issues are too low. We are trying to figure out how we can work the bonding a little bit better for the contract size, the sizes that are coming out now. Tell me how you feel about that.

Mr.HSU. Well, my understanding, when I was in the private sector, I owned a high tech electronic firm. I never had any kind of a bonding issue. But I do understand there are two different types of bonds: the performance bond and payment bond.

I am going to defer to Mr. Parkinson.

Mr.PARKINSON. Well, traditionally the bond initiative has been a problem for small and minority contracts in construction and that

there is a threshold. I don't know what the threshold is now for bonded projects. I think it is only 1,000-25,000.

But I think that is something that if you want to achieve the participation in New Orleans and the Gulf Coast, that the SBA should look closely at that to see how they can assist small businesses.

ChairwomanVELÁZQUEZ. Time is expired. I'm sorry. Time is expired.

Ms. Fallin?

Ms.FALLIN. Thank you, Madam Chair. I appreciate it, Chairwoman.

Mr. Parkinson, can I ask you just a question about the contract bundling? I think you had said that it was more prevalent in the construction than any other kinds of contracts. Can you explain that a little further, please?

Mr.PARKINSON. Well, with bonding in construction is that you have the proliferation of the larger companies who can bond and a few companies who can bond large size projects. And by breaking up the project to smaller sizes, you get an increased number of contractors, medium size and small businesses, who can be able to participate in those contracting.

And we have found that, even in this area, in the Washington area, where we operate, that a lot of large contracts exclude medium-sized companies in the $50 to $25 million to be able to participate and work on this contract and prime contractors.

As I alluded earlier, traditionally SBA has looked on the program to assist small businesses through the subcontracting mechanism. And we feel that after a while, you know, we have to grow up and develop into being prime contractors and that by having larger contracts, we cannot be able to develop from the subcontracting mode to become prime contractors.

Ms.FALLIN. All right. Thank you so much.

Mr.PARKINSON. Okay. Sure.

Ms.FALLIN. And I have another question for Mr. Taylor. You mentioned in your written testimony the positive experience your members have experienced in the teaming arrangements, enabling them to be selected for an award for large bundled requirements.

Can you explain a little bit further how the process works? And are there any ways that we could improve that? And should agencies do more outreach to the vendors and federal acquisition committees in the teaming arrangements?

Mr.TAYLOR. Thank you, Congresswoman. I think everything possible to ensure that small businesses get more business is a good thing, of course. What we have seen is large companies basically who have self-certified or actually outgrown their status continue to utilize the small business status keep getting the contracts.

I think anything that would make the process more transparent would be good for the government and for small business.

Ms.FALLIN. And if I can just ask any of you—and, Emily, you or Mr. McCracken could answer this—I hear back in my home state in Oklahoma from our small business owners that so many times they just don't know how to always go about searching out the government contracts and getting the information. Some do that have

been doing it for a while, but it seems like there is a population of the small business communities that are uneducated on this.

Are there any ways that we could improve upon or outreach to educate the small business owner or the general public about what is available? What is your best suggestion for us to continue to reach out to those folks and help them learn how to work with the federal government on the contracting?

Mr.MCCRACKEN. Well, I actually think that the best way is actually to begin on this path that we are talking about, which is breaking up a lot of the bundling, because what we have is a situation where the companies who are able to get these contracts are the ones who really know how the system works. They specialize in them. And the typical small business that might do the occasional government contract is the ones that are most left out, not exclusively left out, obviously. So I think that if we can improve the system, I think that is the most important piece of it.

Outreach is what it is, but certainly being much more effective, I think, in electronic posting of things, although, actually, you have to know about them, but there are some private sector businesses that do a pretty good job of letting people know about opportunities as well. So the marketplace does, I think, work in that regard.

Another issue that sort of ties into this that I would just bring to your attention, we talk to small businesses all the time because it sort of ties into teaming, although not exactly. We talk to small businesses all the time who feel like they were used kind of as a front for coming to get a contract because they say, "Well, we are going to partner with this company." And they put them in their bid and they say they are going to use them, and they never do. In fact, that company never winds up getting used by the large company who gets the contract, even though they say they are going to. That is something that needs to be addressed as well.

Ms.FALLIN. Have any of you had any experience with the Indian tribes? I know I hear a lot about different companies trying to team up with Indian tribes to help them on getting federal contracts for small business.

Mr.MCCRACKEN. It's not an area where I have a great deal of expertise. I know Mr. Parkinson mentioned it specifically in his testimony that it is an issue. It is certainly something that we have heard about and are looking into, but I couldn't speak to it specifically.

Ms.FALLIN. I think Paul raised his hand there.

Mr.HSU. Yes, I do. About ten years ago, when I was still in the private sector, one of my proteges was the tribal-owned company. The tribe is called the Muscogee Creek Indians. They are 80 percent the reservation in Alabama, 20 percent in Florida. So we had a strategic alliance agreement with this tribal-owned small machine shop. And we grew the company from 5 people to about 150 people, yes, about 4 years after that.

Ms.FALLIN. Thanks. Thank you, Ms. Chair.

ChairwomanVELÁZQUEZ. Mr. Braley? Yes?

Mr.BRALEY. Thank you.

Mr. Hsu, that hot seat you are sitting in is about to get a little hotter. You made the comment "I don't think the definition is the issue. I think enforcement is the issue." And then you said we need

to concentrate on enforcement, not the definition. Yet, at the beginning of your testimony, you said, "We are going to continue to hold agencies accountable for meeting the small business contracting goals."

I think there are people up here on this panel and a lot of people back there in the audience who believe your agency has not been enforcing the existing law, the existing regulations, and has not been holding agencies accountable for meeting the 23 percent contracting goal.

So what I want to know is how the culture of the Small Business Administration is going to change under your leadership to start to meet the goals that Congress has established to give small businesses their fair share of the pie?

Mr.HSU. Well, sir, as a former small business owner, I can tell you this.

Mr.BRALEY. No, I don't want to hear your personal perspective. I want to hear what you are going to do to change the culture of an agency that, quite frankly, has not been very favorable towards the businesses it is supposed to be supporting.

Mr.HSU. Well, with my limited experience with SBA, that is quite contrary.

Mr.BRALEY. Well, that is why we are concerned. You talked about having 54 PCRs who work under you.

Mr.HSU. Yes, sir.

Mr.BRALEY. And, yet, even though my state represents one percent of the U.S. population and even though this Committee is fortunate to have two University of Iowa law school graduates serving as staff counsel, a remarkable achievement,—

[Laughter.]

Mr.BRALEY. —and considering the advice they provide the small business owners in the State of Iowa, we have no PCR serving the small business owners of our state, despite the fact that they represent an enormous component of the economic opportunity that businesses provide to the people of my state.

Now, your agency administrator has talked about putting more PCRs in the field. And I want you to tell me and the people back in Iowa whether one of them is going to be in my state.

Mr.HSU. Well, it is a hot seat.

[Laughter.]

Mr.BRALEY. I think these are reasonable questions that taxpayers of this country have a right to know. Shouldn't there be a PCR in every state in this country? How do we expect to provide opportunity and access to small business procurement in federal agencies if we don't have a PCR assisting small businesses throughout this country?

Mr.HSU. Yes, sir. To me it's an issue of supply and demand.

Mr.BRALEY. Well, I don't care about supply and demand. I care about the small businesses in Iowa or North Dakota.

Mr.CHABOT. Madam Chair, sir, if I could ask a procedural question? Is it the policy of this Committee to allow the witnesses to answer the questions?

Mr.BRALEY. I apologize to the ranking member. You are absolutely correct. And I will certainly give the witness the opportunity.

Mr.CHABOT. And I think the gentleman raises very good points and points that deserve an answer, but I just think we—

Mr.BRALEY. I apologize.

Mr.HSU. If the federal government issued a forecast—and we all know what the federal government, the DOD, the DOT, whatever, and they are looking for. And our job is to match the demand and the supply.

I don't know the situation in Iowa, but I am hoping that there would be a lot of high tech small companies that can manufacture the guiding systems, the radar components, you know, and to supply the Boeing, the Lockheed, the Raytheons, the tanks, and whatever the government is required. And that is going to be our job.

If your state has a big demand for those items, yes, we definitely will take a very hard look on that.

Mr.BRALEY. But isn't part of the problem that there are states in this nation who are growing in population and business opportunity and there are states who aren't? And if we only tie PCRs and outreach to the states that are growing, we are going to continue to reinforce existing negative trends that affect businesses all over this country? Isn't that true?

Mr.HSU. Yes, sir.

Mr.BRALEY. Mr. McCracken, I have a question I wanted to ask you. One of the things that we know is that this 23 percent contracting goal has been viewed by some agencies as a ceiling, rather than as a minimal goal.

And one of the things you talked about was partnering abuse. And I wondered if you could offer some comments on what type of penalties might be necessary to minimize and eliminate partnering abuse.

Mr.MCCRACKEN. Well, I certainly think that penalties ought to be relatively stiff for that sort of abuse because often because you have a small business that I believe is going to have a certain amount of work that is coming up. There are things that they have to do to get ready for that, but it winds up not happening.

I mean, that is just how it affects the individual small company that is involved in that arrangement. It doesn't speak to the companies that may not get contracts at all because this contract went to a certain company because of what the agencies believed it was or was not going to do with the contract itself.

So I think the penalties should be relatively stiff, you know, perhaps including and going beyond losing the contract. The key is there has to be review. I mean, right now they are able to get away with this for quite some time before there is the necessary follow-up on their subcontracting plans.

So that really is the key, but we would favor pretty substantial penalties.

Mr.BRALEY. Mr. Parkinson, right now the definition of bundling excludes certain types of categories. And one of those categories is construction. We have heard some testimony about why that has existed in the past and whether it is good or not.

From your perspective, is there any good reason for including those categories like construction from unbundling requirements?

Mr.PARKINSON. Yes, sir. Because construction is a several billion-dollar industry. And the participation of small and medium-sized

businesses is critical to that industry. And the fact that with large contracts, it limits the small and medium-sized businesses to subcontracting mode.

Now, the SBA should look and the Congress should look at how we can increase small and medium-sized businesses in participating on this federal contract as prime contractors. And by the bundling of these projects or these contracts, that will facilitate and enable several companies, especially if you talk about the State of Iowa and other parts of the country, where you do have large construction companies, most of the members, I would say that $50 to $75 million range. And so this would enable them to participate and get more work outside of the preference program.

And, as I said earlier, if a lot of these programs are put in—if they are not pretty large, they are put in specific preference programs. And if you are not in a preference program, then you are excluded from participating in some of these contracts.

Mr.BRALEY. Thank you.

Mr. Hsu, I want to just close by assuring you that my frustration was not directed at you personally but, rather, at the agency that you are here to represent today and the fact that it has had an impact on business owners all over this country. And I think it is a cumulative frustration. So please accept my apology in the spirit it was intended.

ChairwomanVELÁZQUEZ. Well, the frustration—and I just want to say, look, you are here. You have been in the job only four weeks, but you are now in a position to say to the administration that they had better take corrective actions to deal with this issue. This is an issue that I have been working the last ten years, like Ms. Murphy said, that she has been working on, ten years that I have been issuing a scorecard.

In fact, in 2002, I was so excited when I heard President Bush to issue his small business agenda. And he said that at the top of that agenda, the number one issue will be contract bundling.

Well, as a reaction to my excitement to listen to his commitment to bundled contracts, I put together another report. And I said, "Mr. President, here it is. You don't have to instruct the agency to do any research regarding mega contracts. Here is the list."

Do you know how many contracts that were in this list have been unbundled? Zero. So we are not going to give up. Believe me that we are not going to give up.

The problem that you have, sir, is that back in 1993, you had 65 PCRs, 65 PCRs, when the federal buying was $240 billion. Today, with a federal buying of $340 billion, you only have 54. So that is the problem.

And now I recognize Ms. Moore.

Ms.MOORE. Thank you, Madam Chair. I have to apologize for being late. Other responsibilities kept me. So I hope I don't repeat things that have already been asked.

I do have a question for you, Mr. Hsu as it relates to—I think Mr. Braley and others have brought it up—about your perception that we don't need to change the definition of contract bundling. So I guess my question to you would be as we look at this definition and it says that construction, of course, is not included and other

new work that small businesses have not been engaged in previously.

So I think of building a bridge or building a hospital or housing or prosthetics for injured veterans. Almost anything that I can think of would fall into the category of any new work that small businesses are not already doing.

So I guess I would like to hear—and hopefully you are not repeating yourself, for the sake of others here who were on time. Can you just clarify for me why and how just almost any work you could think of wouldn't be, you know, a small business would be excluded?

Mr.HSU. Yes, ma'am. Maybe I am misspoken about the definition versus the enforcement. Definition definitely is important, but I think the enforcement is also important because the bottom line, there are some contracts that need to be bundled. And some contracts do not need to be bundled.

Ms.MOORE. Okay. I think I heard that. Well, thank you for that answer. There has been a lot of discussion here today about the abuse of contracts where larger companies involve smaller companies in a marginal way and then take all of the money.

One of the things that distressed me recently, we are having a Job Corps center built in my district, $28 million project, which they claim could not be unbundled. And they are building like dorms, a cafeteria, training center, clearly three different components of the same project.

So when we asked SBA whether or not we could have a consortium of small businesses, like an electrical contractor and carpenters and plumbers, numbers of small businesses get together, do what they said they couldn't do that either.

So perhaps this is a question for Ms. Murphy and you, too, Mr. Hsu, or anyone else who would like. I am having a hard time understanding why we couldn't have consortia, consortia of small businesses, bid on projects.

Mr.HSU. If I may, ma'am, the consortium of a small business, it is a good idea, but the only challenge that we are facing is that when the agency lets the contract, they have to look for one, so to speak, belly button to push. There has got to be a leader, one leader, and as many followers we don't really care. But there must be one company that has to be the lead.

Ms.MOORE. Well, then that means that it is wired for a larger company, then.

Mr.HSU. Responsible.

Ms.MOORE. And then everybody else has to be a sub.

Mr.HSU. If we don't, ma'am, you are dealing with 15-20 smaller companies. And there is no leadership. There is no—

Ms.MOORE. Mr. Parkinson, do you have any thoughts on that, you know, where you could have a consortium, where you could have a lead worker, like an architect or someone in charge? Can you comment on that and maybe Ms. Murphy? Okay. Grady wants to talk about it. Okay. Let me start with Mr. Parkinson.

Mr.PARKINSON. Well, I guess the SBA can encourage an agency to use construction managers. And the construction managers can break up the work into packages that can allow small and medium-sized companies to participate as general contractors.

Take, for example, you have a $20 million contract in your district and you hire a construction manager with a fee. And then you break the package into mechanical, plumbing, electrical. And you can allow a $5 million plumbing contractor or mechanical contractor to bid the job as the prime contractor. And that is the way you can get around it where you get as many participation for your local contractors—

Ms.MOORE. Did you see that as an ideal situation?

Mr.PARKINSON. In a lot of cases, it is because it gets the medium and small businesses in—

Ms.MOORE. Mr. Taylor?

Mr.TAYLOR. Congresswoman Moore, as Congresswoman Fallin mentioned a while ago, in a teaming arrangement, we do that quite often. We have GSA schedule contracts. One of our lead dealers in Washington, D.C. administers it. And we have about 100 dealers across the country that are all part of that contract. And it has been very successful.

So I would take exception that it is not a possible solution as the SBA saying. Frankly, from the SBA perspective, we have notified them on numerous occasions about what we consider some of the abuses as an organization.

As independent dealers, we do not feel the SBA is an advocate for us. In fact, the ultimately irony is SBA buys all of their office supplies from among those four large corporate companies we mentioned earlier.

ChairwomanVELÁZQUEZ. Timing is expired. We just got a notice from the leadership that there are going to be votes soon, like in ten minutes. So I would like to recognize Mr. Johnson.

Ms.MOORE. Madam Chair, I realize my time has expired. I just want to comment on this wonderful legislation. And I just hope that when it is in its final form, that you will look at this issue that I just raised, the teaming you called it,—

ChairwomanVELÁZQUEZ. Yes.

Ms.MOORE. —as something that we sort of mandate them to do if possible.

ChairwomanVELÁZQUEZ. Thank you.

Ms.MOORE. Thank you.

Mr.JOHNSON. Thank you, Madam Chair. Sorry for being late. Other responsibilities held me up, but I am glad to be here on such an important hearing.

I would like to ask a question of Mr. Hsu. Mr. Hsu, in 2004, the SBA proposed to restructure the size standards governing small business. And, in essence, the proposal would have collapsed the categories from 37 to 10. And the result would have been that many large firms would have been defined or the definition would have included a lot of large firms, thus excluding a lot of small businesses for the sake of federal contracts. This proposal was withdrawn after opponents very vocally voiced their concern with such changes.

Does the SBA still believe that changes must be made to the size standards?

Mr.HSU. Yes, sir. We definitely do that. As you know, in September 2006, the SBA and OPP jointly issued a policy to ask the small businesses to recertify themselves in the two different cir-

cumstances. What we are really trying to do is to make sure that we level the playing field.

Mr.JOHNSON. Any changes in terms of restructuring the size standards, how do they differ, the current methodology, if you will, from the 2004 proposed size standard change?

Mr.HSU. I am really not familiar with that particular issue, Congressman. I will definitely get back to you on that.

Mr.JOHNSON. All right. How does the SBA plan to fight fraudulent identification of small businesses for the sake of contract awarding?

I know this has been gone over a little previously. I hope I am not plowing up any ground that has already been plowed today.

Mr.HSU. We cannot stop anybody trying to cheat, but there is a mechanism built in. It is called protest. And so you would be surprised how well the system really works. So I think the system will police itself.

Mr.JOHNSON. So, in other words, there are no plans to fight fraudulent identification by the SBI,—

Mr.HSU. Well, no. I—

Mr.JOHNSON. —no plans to fight fraudulent identification by businesses parading as small businesses, when, in fact, they are large businesses? Is that what you are saying?

Mr.HSU. No. I'm pretty sure they are.

Mr.JOHNSON. But what is this self-policing mechanism? Explain that to us.

Mr.HSU. It is called the protest procedure.

Mr.JOHNSON. Protest. And who is it that has to protest?

Mr.HSU. If you don't feel like the winning company who won the bid has qualified, you know, either their capability or the size standards, then you definitely have the right to file the protest to SBA.

Mr.JOHNSON. And then—

Mr.HSU. And in SBA, we can also protest the size standard to the agency.

Mr.JOHNSON. So, in other words, it would be on the losing bidder, if you will, to protest to I guess the SBA about the fraudulent package that was submitted by the winning bidder? Is that what we are—

Mr.HSU. If they are not being honest with themselves, then I think we would definitely have the right to check into it and to make sure the playing field is level.

Mr.JOHNSON. All right. Do any of the other panelists have any comments on this particular issue?

Mr.TAYLOR. Congressman Johnson, the only problem is it is very costly for an independent small business owner to run through the protest procedure with SBA. In essence, if you are not sure you are going to win, by the time it is all done, you are out quite a bit of money.

Mr.JOHNSON. So there really needs to be kind of like a policing effort by the SBA itself, you would suggest, as opposed to leaving the onus on the small business person to contest and then spend money all the way through whatever channels there are to try to expose the fraud?

Mr.TAYLOR. Absolutely. We are not the experts. We think there is somebody else to enforce it for us. We have got to raise a flag every time.

Mr.JOHNSON. All right. Yes, ma'am?

Ms.MURPHY. I was just going to say that I was really excited about four weeks ago to see that the Office of Hearings and Appeals has expanded the period of time that they will consider a size protest also. They are now allowing challenges to size, even after a contract was awarded. In the past, once a contract was awarded, the protest became mooted, for all intents and purposes. That I think is going to open up a lot more enforcement possibilities.

Hopefully also there could be a link between the representations and certifications businesses make to some sort of consequences. A false representation to the government bears with it potential False Claims Act issues, but there has never been a way to define what the harm to the government is. When a court will look at that, they will say, "Well, the government still got the value of the goods and services they were purchasing."

Until there is a way to quantify what the harm to the government is, which could be done legislatively, I don't think that it is going to be very easy to enforce against bad actors.

Mr.JOHNSON. Has there ever been a referral to the U.S. Attorney's Office for criminal prosecution that anyone knows of the false statements in procuring federal contracts? Would there be anything that any of you all know about to prevent that from happening? Are the criminal laws sufficient? Mr. Hsu?

Mr.HSU. Sir, from the SBA point of view, we protest. We can, and we will continue to protest to protect the small business. And the false certification is definitely a problem. And I guess we are trying to stop it.

Mr.JOHNSON. Well, I guess we will have to take your word on that.

[Laughter.]

Mr.JOHNSON. How does the SBA ensure that it obtains—

ChairwomanVELÁZQUEZ. Time is expired. I'm sorry, but they are going to call votes. And I would like to give an opportunity to Mr. Sestak to make a question.

Mr.SESTAK. Thanks. Thanks, Ms. Chairman.

This isn't the question I was going to ask, Ms. Murphy, but as I was walking back here from the Armed Services Committee, I understand that you stated that unbundling of already bundled contracts provides a good opportunity for unbundling, correct?

Ms.MURPHY. In my written testimony, I commented on the fact that all of the efforts to date have been focusing on preventing bundling.

Mr.SESTAK. Right. But there is another opportunity here.

Ms.MURPHY. There is another opportunity to look at existing contracts or contracts going forward that are not being consolidated and seeing if they could be broken out.

Mr.SESTAK. Does SBA have procedures to search for such contracts or are there tools that we might provide to help move that process and take advantage of this new opportunity?

Ms.MURPHY. SBA actually has specific breakout PCRs as well as their regular PCRs, who can review any contract that is not being

set aside for small business. There are over eight million contract actions that are taking place each year. So that is a lot of contracts for them to be trying to review.

And the tools that they have, there are tools to go in and protest that, but then there is a question of, how does that get resolved?

Mr.SESTAK. But then what would be the procedures that you would recommend to take advantage from what I understand is looking for those that are bundled and unbundling them? I mean, if I gathered it right, this is an opportunity, but how go about it?

Ms.MURPHY. I think that when you are looking at each individual contract, one of the parts of the definition that exists in the Small Business Act refers to a contract. The only contracts that are reviewed are those that are suitable for award to small business. The opportunity had to have been suitable for award to small business in the first place before it is reviewed for bundling.

If you look at the Armed Services' definition of contract consolidation, it does not include that clause. So it looked at any two contracts that are being brought together or any two requirements and doesn't require that they already be suitable for small business. So it gives a greater opportunity to look at the scope of requirements that are out there and see if things can be broken out for small business.

If the definition of bundling were reconciled with that of contract consolidation, that might provide additional opportunities to break out those contracts.

Mr.SESTAK. All right. And, Mr. Hsu, one question. And I know you are relatively new. And I gather this question was probably asked in some way, but do we actually have any hard data or is hard data available soon that you think can demonstrate that there—and potentially you may have answered this—is a movement to be a decrease in bundling? I mean, is there a process by which you have been able or is there one ongoing where they can reach in and demonstrate an actual decrease?

Mr.HSU. Well, sir, I think the recertification effort, that will definitely hep to make sure that the small business is small business. And to clean up the FPDS-NG file, that also will be very helpful.

And the bundling issue has a very special place in our heart. We understand that. The PCR is working on it very hard. And we review, like I said before, anywhere between 50,000 to 60,000 requirements every year.

Mr.SESTAK. But is there a data?

ChairwomanVELÁZQUEZ. This is what we have. Over the last 5 years, total government contracting dollars have increased by almost 60 percent while the number of contract actions to small businesses declined by 55 percent.

Mr.SESTAK. Yes. My district gets 6.7 percent, not that it needs to be equal to everybody else's, and lost 607 small businesses.

Thank you, sir.

ChairwomanVELÁZQUEZ. Okay. Mr. Chabot, do you have any other questions?

Mr.CHABOT. I don't have any other questions, Madam Chair, but I would just want to just note for the record, just make clear where there have been a lot of questions and a lot of responses today, I

think we agree, both majority and minority, that there is an issue here, there is a problem that needs to be dealt with.

We have reviewed pretty thoroughly Mr. Braley's suggestion and have cosponsored the legislation. And I commend him for bringing that forward. And I think it is something that this Committee and the Small Business Committee need to continue a dialogue and open communications and work on a real fix for this because I think the small business community; whereas, the SBA does do considerable good in some areas, I think that this is an area of demonstrated weakness. And we need to make sure that small businesses are getting a fair shot at these government contracts. And I don't think it has been established that there are at this time. And we need to continue to work, I think, in a bipartisan manner to improve the track record.

ChairwomanVELÁZQUEZ. I thank the gentleman. And I really want to thank you and your staff for working in a bipartisan manner to address this issue.

But before we adjourn, I have two questions that I want to make. I want to be helpful in putting the final brushes to the legislation that we are trying to mark up on Tuesday.

Mr. McCracken, do you think a business and an agency should both certify that a business is a small business before they can be counted as fulfilling a contract goal and requirement?

Mr.MCCRACKEN. You are saying that the agency that they are applying for the contract for should certify they are a small business and they should self-certify they are a small business as well? In principle, yes. I haven't thought through all the machinations of how that would work, but in principle, I would think that would be a good idea.

ChairwomanVELÁZQUEZ. But let me ask you, do you think it is really difficult and expensive for a small business who bid in a federal contract to challenge that contract?

Mr.MCCRACKEN. Oh, definitely, absolutely.

ChairwomanVELÁZQUEZ. Okay. Ms. Murphy, I heard you when you talk about the OFPP being a mediator on contract bundles, but let me just share this with you. In March of 2002, the President charged OMB with developing the plan to address contract bundling as part of the administration's small business agenda. That was when he released his small business agenda.

Section 7 of executive order 13170 states, "If there is an irresolvable conflict on a bundled contract, then the SBA or the department or agency can seek assistance from OMB. OMB was charged with developing a scorecard to hold agencies accountable for improving success in achieving small business goals and the President's contract bundling initiative."

In August 3rd, 2006, a letter was sent to Senator Snowe, Clay Johnson, the Deputy Director for Management within OMB, stating that a senior position in OMB has been designated with primary responsibility for small business issues, including contract bundling.

Can you comment on that?

Ms.MURPHY. I don't think that what I am suggesting is actually contrary to what you are noting. OMB does have an incredibly important, and particularly OFPP has an incredibly important, role

in telling agencies what will be acceptable in terms of federal contracting practice.

They chair the committee that creates all the regulations to implement the laws that you all provide us with. However, the executive order you are referring to designates OMB, not OFPP. And I think that I was just trying to point out that there is already provision in statute that says OFPP has to keep their hands off of this.

And so that any way that you are going to go forward with it, that it needs to be at least reconciled or addressed. Whether OFPP is the appropriate place or whether you want them to be focusing on the policies and the implementation of those policies is obviously a question for this Committee. I don't get to make the decisions.

But I was also suggesting that as you are considering that, there are other alternatives that would leave OFPP in a policy role and have an independent arbitrator between the two agencies that helps them resolves that difficulty.

ChairwomanVELÁZQUEZ. I hear you. I want to thank you. It has been an incredible session, hearing. And, as we mentioned before, we intend to mark up this legislation this coming Tuesday.

Yes, Mr. Braley?

Mr.BRALEY. Madam Chairwoman, I just want to thank you and Ranking Member Chabot for cosponsoring this important bill. And I look forward to working with both of you as we move forward from this point. I think we have heard today there is a lot of interest in crafting a bipartisan bill that will really address this problem. So thank you both.

ChairwomanVELÁZQUEZ. Small Business Committee hearing adjourns.

[Whereupon, at 11:50 a.m., the foregoing matter was concluded.]

Opening Statement
Chairwoman Velázquez
Issues/Legislative Hearing on Procurement
April 19, 2007

The federal government is the biggest buyer of goods and services in the world. Given the volume of its purchases – $340 billion last year - and the diversity of its acquisitions, it should be easy for our goals for small business participation to be met.

Unfortunately, as we have seen repeatedly, this is not the case. Over the past seven years, this Committee has had at least 15 hearings on agency procurement practices and the negative effect they have on small companies. Already in the 110th Congress, we've had two hearings on this issue. Today, we will take a final look at key areas and consider action on legislation offered by our colleague from Iowa that addresses the problems that our hearings and reports have uncovered.

These hearings have provided us with several important findings: The small business share of the federal marketplace is slipping – not expanding as it should be. Agencies consistently fail to achieve their minimum small business goals. And, they are padding their small business accomplishments with contracts awarded to large corporations – thus, inflating the amount of contracts that go to small firms.

The reality is that the statute reflects our policy that small businesses should be afforded "maximum practicable opportunity" to participate in federal contracts and subcontracts; but it is not happening. By some counts, because of large exclusions and miscoding our contracting achievement is the lowest in years with small businesses at 21.5 percent of all contracts or 19.3 percent depending on what study you read.

The 23 percent government-wide statutory small business goal is supposed to be a floor, not a ceiling. When the goals we set are missed it means real money out of the pockets of small business owners.

- In our most recent ScoreCard, we found that small businesses *in general* lost $4.5 billion in contracting opportunities last year because the 23% goal was missed.
- We found that *women-owned* businesses lost $5.2 billion because their 5% goal was missed.
- Minority contractors lost $4.5 billion because their 5% goal was not reached.

Over the past couple of years, we have also noted another disturbing trend: agencies are counting contract awards to large companies as small business contracts. In 2005, about $12 billion in contracts was wrongly counted. These false numbers make it appear that agencies are doing more with small businesses than they really are. The pressure is reduced to make a full effort to encourage full small business participation with the agency.

And when agencies believe they are doing well with their small business measurements, they are more likely to engage in practices that are harmful to small businesses. In the last few years, for example, we have seen big increases are contract bundling and limited contract sourcing.

Contract bundling has been "public enemy number one" for small businesses that are trying to penetrate the federal marketplace. Over the last five years, total government contracting dollars have *increased* by almost 60 percent, while the number of contract actions to small businesses has *declined* by 55 percent. Fewer contract actions combined with greater procurement spending is proof of contract bundling.

Today's hearing will allow us to review the barriers facing small business as they attempt to gain access to government contracts. The committee will also start action on HR 1873, *the Small Business Fairness in Contracting Act*, introduced by our colleague, Representative Braley, which I believe addresses these problems directly and will provide the tools to make agencies toe the line on federal contracting goals.

I look forward to working with him and Ranking Member Chabot, as we reinforce our strategy of expanding and solidifying the role of small companies in the federal marketplace.

I now recognize Ranking Member Chabot for his opening statement.

U.S. House of Representatives
Small Business Committee
Rep. Steve Chabot (R-OH), Republican Leader

NEWS RELEASE

B363 Rayburn Office Building
Washington, D.C. 20515
Phone: (202) 225-5821
FOR IMMEDIATE RELEASE

April 19, 2007
CONTACT: George Cecala
Phone: (202) 225-2216

Opening Statement by Congressman Steve Chabot

Expanding Small Businesses' Access to Federal Contracts

"First, I would like to thank Chairwoman Velázquez for holding this very important and timely hearing to examine the practice of contract bundling and other federal procurement procedures that deny small businesses opportunities to obtain their fair share of government contracts. We will also hear testimony from legal experts about the *Small Business Fairness in Contracting Act* and strategies for unbundling contracts.

"It is well known that bundling limits small businesses from competing for prime federal contracts. When small businesses are locked out from competing for prime contacts, the small business community loses business opportunities, the federal government loses important suppliers, and, ultimately, the taxpayer loses because of reduced competition that so often leads to higher prices.

"The availability of federal contracts is at an all-time high. Last year, federal spending on government contracts amounted to $340 billion. This represents an eight percent increase over 2005, and a 13 percent increase since fiscal year 2004. Recent events – such as the cleanup from the Gulf Coast hurricanes and the ongoing War on Terror -- have created a growing need for services by government agencies and an increase in the amount of federal government contracts available.

"As the primary engine of innovation and job creation, small businesses should be receiving a fair proportion of the total prime contracts for property and services as required by the Small Business Act. Contract bundling is a barrier to achieving this goal.

"I look forward to hearing from our witnesses to learn more about bundling and strategies for increasing small business opportunities in the federal market place. This is a very important issue that directly affects the bottom lines of our nation's small businesses. And it's one that I'm sure this committee will continue to examine closely. We need to ensure that small businesses have, and will continue to have, a seat at the federal contracting table."

###

Statement of Rep. Jason Altmire
Committee on Small Business Hearing: "Expanding Small Businesses' Access to Federal Contracts"
April 19, 2007

Thank you, Madam Chair, for holding this important hearing today on federal procurement policy and its impact on American small businesses. I look forward to hearing from today's witnesses on the state of small business contracting and what we can do to improve small businesses' access to the $340 billion federal contracts market.

Fairness in federal contracting is crucial to small businesses and to the economy as a whole. The government has a responsibility to foster competition for contracts and ensure that small businesses have the same access to federal contracts as large corporations.

It is troubling that the agencies in charge of procurement do not seem to share this view. The increased use of contract bundling, the miscoding of large businesses as small businesses, and the apparent indifference toward small business contracting goals all serve to reduce competition and keep small businesses out of the federal contracting market.

We can do more to help our small businesses compete for contracts, and I thank you, Madam Chair, for your leadership on this issue and for holding this very important hearing. I yield back the balance of my time.

# # #

HOUSE SMALL BUSINESS COMMITTEE
HEARING REGARDING
GOVERNMENT CONTRACTING AND BUSINESS DEVELOPMENT LEGISLATION
April 19, 2007

Testimony of
Associate Administrator Paul Hsu

Good Morning Chairwoman Velazquez, Ranking Member Chabot and distinguished members of the Committee. My name is Paul Hsu, and I am the Associate Administrator for the Office of Government Contracting and Business Development at the US Small Business Administration. Thank you for inviting me to discuss issues affecting small business contracting and business development programs at SBA.

I'd like to take the opportunity to share with you my experience with SBA's contracting and business development programs, and why I personally feel these programs are important to small and minority owned firms.

I was born in Taiwan, and came to the United States in 1976. I obtained a Master's degree in Industrial Management and Systems Engineering from Central Missouri State University and a Ph.D. in Engineering Management from LaSalle University. In 1995, I was able to complete a three-year Executive Educational Program at Harvard Business School.

I understand the struggles entrepreneurs face when they decide to start a small business. In 1984, I started my first company. So that I could conserve the company's limited financial resources, my wife became a breadwinner for our family – working as waitress in the local Pizza Hut. Little by little, the company grew. After my company won its first contract, we needed working capital, money to buy parts and materials. I was able to find the financing we needed, but only with the help of an SBA-guaranteed loan. This was how I first came to know the Agency.

A little later, my company was certified under the 8(a) Business Development Program. I am pleased to tell you that my company is an example of the power of this program to give people and businesses opportunities to grow, to develop, to prosper, and to give back to their communities - that they might never have had otherwise. For example, in the mentor protégé program, my firm's relationship with Boeing presented wonderful opportunities for us to learn, to develop our business, and to extend our reach. Later, it was my privilege to become a mentor to another 8(a) program participant in rural Alabama.

All in all, SBA gave me the things I needed to develop a successful business. It provided me access to capital, to training and developmental experiences, and to solid competitive opportunities. Simply put, without the help of this Agency, I could not have come as far as I have. I am proud that I am the product of SBA, and that I am living proof that its programs work. For these reasons, I am honored to join an agency that I really believe in.

Since 2002, I have served on SBA's Regulatory Enforcement Fairness Board. In 2003, I was appointed by President Bush as a member of the President's Export Council (PEC), and the SBA's National Advisory Board. I am proud of the success my small business was able to achieve. And I bring with me the same entrepreneurial spirit, dedicated to impacting many small businesses as they work to achieve success in the federal marketplace.

Government contracting dollars going to small businesses have grown significantly since FY 2000. There were $30.6 billion more in small business prime contracts in FY 2005 than in FY 2000, supporting an estimated 235,000 jobs.

SBA recognizes the need for improving our Government Contracting programs, and is taking the lead, along with the Office of Management and Budget's Office of Federal Procurement Policy to carry out a number of initiatives, including addressing unjustified contract bundling and working with agencies to ensure their reporting is

accurate. However, the integrity of the data reported to Congress and the public is crucial to provide for the confidence in the Federal contracting system. Because of this, agencies are currently in the process of validating their FY 2005 and FY 2006 data to identify the reasons for coding discrepancies and to correct any errors that occurred.

Additionally, the Administrator has made contracting data transparency and accuracy a high priority and is taking the issue very seriously. We are going to continue to hold Agencies accountable for their progress in meeting the small business contracting goals established by Congress. SBA will release the new agency SCORE CARD along with the FY 2006 contracting report. The SCORE CARD mirrors the President's Management Agenda, and will more aggressively track and monitor the status of each agency's small business goal achievement and holds agencies more accountable. This allows the public to see clearly the progress and levels of effort agencies are making to address their weak points. For instance, agencies will be rated on their subcontracting achievements, in addition to their prime contracts.

SBA's FY 2008 Budget included a request of $500,000 to examine how best to serve the 8(a), HUBZone, and Small Disadvantaged Business Communities, as well as women and veterans. We recognize the need for improvement in the management of these important programs and will use these resources to determine how to best serve these communities. We will be analyzing, among other things, staff alignment, training and use of technology. As an 8(a) graduate I understand the frustration that my colleagues in the 8(a) community feel when applications, contract approvals or anything a program participant needs is not ready. After all, the point of 8(a) contracts is that they are supposed to be easier for contracting officers, not slower and harder.

We share the Committee's desire to support small businesses as they endeavor to do business with the Federal Government and become part of a strong national industrial base as well as continue the vital contributions small businesses have made to America's economic growth in recent years. On behalf of SBA Administrator Steven Preston, I relay his desire to work with the Committee to ensure that entrepreneurs have the ability

to compete for Federal contracts, while we work with agencies to help them achieve their goals.

We understand that the Committee is considering legislative proposals relating to contract bundling, subcontracting and small business goals. We recently received a copy of the proposal, and while time did not allow me to address the proposals in my testimony I am happy to answer any questions that you may have. The one issue I do want to address is the proposed change in the definition of a bundled contract. While I share the committee's concern about the impact of bundled contracts, I do not agree that the definition is the problem. The issue is enforcement, and the President, the Office of Procurement Policy and we, at the SBA, are all focused on addressing this issue.

Chairwoman Velazquez, this concludes my testimony. I look forward to answering any questions you may have.

STATEMENT OF MR. NIGEL PARKINSON

TO THE

COMMITTEE ON SMALL BUSINESS

ON

EXPANDING SMALL BUSINESS

ACCESS TO FEDERAL CONTRACTS

MR. NIGEL PARKINSON
PARKINSON CONSTRUCTION CO, INC.
BRENTWOOD, MD

APRIL 19, 2007

April 19, 2007
United States House of Representatives
Committee on Small Business

My name is Nigel Parkinson and I am testifying on behalf of the Associated General Contractors, the nation's largest and oldest construction trade association. Founded in 1918, our association represents more than 32,000 construction firms nationwide. I serve as Senior Vice President of the AGC of Metropolitan Washington, D.C. and I am President of Parkinson Construction of Brentwood, Maryland.

AGC is pleased to share our thoughts for this year's upcoming reauthorization of the Small Business Act. I am going to focus on the changes AGC members recommend for the impact of contract bundling and the growing concern over large construction contracts. AGC thanks the Committee for the opportunity to highlight these areas of concern to the construction industry.

Contract Bundling

Contract bundling has been a concern in the construction industry for several years. While there is no clear definition of bundling, it appears that the consolidation of various projects is occurring more frequently. Small contracts are being bundled to result in large dollar solicitations that small businesses are not able to compete for unless they partner with large firms. While on the surface this may not seem harmful, this practice undermines the intent of the small business program by allowing large business to obtain work normally set aside for smaller firms. AGC recommends that the federal government annually report to Congress on contract bundling so that the magnitude can be gauged and trends can be spotted and addressed by Congress. In addition, Congress should require SBA to monitor not only total dollar volume of small business contracts, but the number of total contracts and the size of those contracts as well.

The contract bundling situation is further compounded by the fact that small business set-asides keep increasing. The now overwhelming number of special preference programs leaves little work for small businesses without a preference and medium size businesses able to compete for work. Right now, our Federal contracting options are very limited. We have found it is difficult to compete on projects currently available for bid in our own backyard in Washington, DC because absolutely every project, regardless of size, has a preference attached to it. That excludes us from even competing for the work. Contract bundling, combined with pressure on agencies to meet their small business utilization goals, is leaving firms like mine with no opportunity to grow our business beyond the "graduate" level. As a result, we have been shut out of the Federal market.

Rather than creating new specialty set-asides or goals, the Congress should instead focus on how the existing programs can be improved to increase opportunities for small firms. As the Committee moves towards a reauthorization of the SBA's programs, construction as an industry should be included in any revised definitions of contract bundling, to ensure that these consolidations are reviewed for potential negative impact on existing small businesses.

Additionally, AGC is concerned that SBA does not currently have, nor is planning for additional resources devoted to ensuring that small companies are not economically aggrieved by contract bundling. There is currently an insufficient number of Procurement Center Representatives at SBA to monitor bundled contracts.

As the Small Business Committee reviews the issue of contract bundling and determines how to move forward to solve the problem, the main issue remains that contractors need experience as prime contractors in order to grow. In the past, increased use of subcontracting has been the answer to provide small businesses opportunities to work on federal contracts. In the construction industry, small business has proven to be an asset. The construction industry has proven that small businesses can compete as prime contractors on a relatively level playing field. Looking for more prime contractor opportunities for small to mid size businesses should be the solution the government and the Committee should seek.

Alaska Native Contracting

Since we are talking about the issue of contract bundling, I would like to mention continuing concerns raised by our members about the growing reliance on the use of Alaskan Native Contracting (ANC) by the Federal agencies as a means to easily attain small business contracting goals. The special preference awarded to an ANC supersedes any available by the traditional 8(a) program and we believe this program is clearly being used by procurement agencies as a tool for contracting officials to meet their 8(a) goals. We understand the ANC matter is currently under consideration by the Committee. We look forward to continue working with the Committee on this critical issue.

Subcontractor Participation

Another major challenge prime contractors continue to face is the inability to report the total dollar amount of small business participation on contracts. Currently, prime contractors are not allowed to report subcontractor participation beyond the first tier. Allowing prime contractors to report this critical data not only demonstrates a full calculation of total subcontractor participation, it will also serve to provide additional incentive to those prime contractors that achieve their subcontracting goals.

Conclusion

Thank you for the opportunity to testify on our recommendations for improving the Nation's small business program. Construction offers tremendous opportunities for all size contractors. The government gets the best products with maximum competition. AGC looks forward to working with the committee on balancing the needs of the federal government's procurement system and creating an environment in which construction contractors can continue to work to improve the quality of federal construction delivered to the owner – the Federal government and ultimately the American taxpayer.

TESTIMONY OF
TODD MCCRACKEN
PRESIDENT
NATIONAL SMALL BUSINESS ASSOCIATION
AT A HEARING BEFORE THE
COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES
ENTITLED
"EXPANDING SMALL BUSINESSES' ACCESS TO FEDERAL CONTRACTS"

APRIL 19, 2007

Chairwoman Velázquez, Ranking Member Chabot, and members of the committee, my name is Todd McCracken, and I am the president of the National Small Business Association (NSBA) , the oldest small-business advocacy organization in the United States. On behalf of NSBA, I would like to thank you for inviting me to testify today about the importance of expanding small businesses' access to federal contracts. I also would like to commend Congressman Braley, Chairwoman Velázquez, and Ranking Member Chabot for the introduction of *H.R. 1873, the Small Business Fairness in Contracting Act.*

Federal procurement is of singular importance to many small businesses; and small-business participation is crucial to a healthy and competitive federal procurement process. In other words, expanding the access of America's small businesses to federal contracts is beneficial to all involved. The importance of expanding small-business access to federal contracts is certainly recognized by the membership of NSBA, which identified small-business contracting as one of NSBA's top-five priority issues during our recent biennial Small Business Congress.

Small businesses provide high-quality goods and services to federal-contracting agencies and infuse the federal procurement system with much-needed competition. In turn, the federal government invests in the most-dynamic and innovative sector of the U.S. economy. America's small businesses annually have generated 60 to 80 percent of the country's net new jobs over the last decade. Small businesses also "produce 13 to 14 times more patents per employee than their larger counterparts, and...these patents are more likely to be cited in other patenting applications," according to a recent SBA Office of Advocacy working paper.

Todd McCracken
National Small Business Association

This unrivaled success has been achieved with less than adequate governmental support, however. In FY 2006, for instance, small companies received 19 percent of federal contracting dollars, according to data compiled by the respected research firm Eagle Eye Publishers. Even governmental statistics regarding small-business federal contracting, while more optimistic than those independently compiled, are underwhelming considering the huge and integral role small businesses play in the U.S. economy. The federal research and development numbers are even more disheartening. Despite employing more scientists and engineers than large businesses (32 percent vs. 27 percent) and generating five times more patents per research and development dollar than large companies, America's small businesses receive only 4.3 percent of federal research and development funds.

Small Business Contracting Goal

The *Small Business Reauthorization Act of 1997* established a government-wide goal of 23 percent of prime, federal contracts to be awarded to small firms. While this was a welcome initial step, it is time to enhance it. America's small businesses—which comprise 99.7 percent of all employer firms in the U.S., employ half of all private sector employees, and are responsible for more than 50 percent of the country's private, non-farm gross domestic product—deserve their fair share of federal contracting dollars. NSBA is extremely pleased to see that *H.R. 1873* reflects this recognition and proposes raising the government's small-business procurement goal to 30 percent of all federal contacts. NSBA also welcomes the bill's stipulation that each federal agency will have an annual small-business procurement goal not lower than the government-wide goal.

Furthermore, NSBA is pleased that *H.R. 1873*'s increased small-business contracting goal will be benchmarked in relation to a more accurate and inclusive federal procurement tally that finally will incorporate contracts carried out abroad. The inexplicable exclusion of various kinds of contracts, such as those carried out overseas, has distorted the reality of federal small-business procurement for too long. The continued omission of certain types of contracts from the government's small-business procurement calculations too frequently have resulted in escalating exclusions and creative bookkeeping rather than increased small-business contracting or even accurate data collection.

Todd McCracken
National Small Business Association

Federal subcontracting is of great import to small businesses as well—despite the absence of a government-wide subcontracting goal. From FY 1985 to FY 2004, small businesses received between 34 and 42 percent of all federal subcontracting, according to a recent working paper produced by the SBA Office of Advocacy. NSBA is grateful that *H.R. 1873* would include the entire contract award when calculating the percentage of small-business subcontracts awarded and not just those dollars that are subcontracted. NSBA also welcomes the subcontracting enforcement mechanism in *H.R. 1873* under which prime contractors would receive bonus credits for their next bids upon achieving their subcontracting goals. NSBA continues to advocate, however, for the codification of payment history in the federal evaluation of all prime federal contractors as well. In fact, almost 70 percent of the respondents to an NSBA procurement survey supported including payment history in the federal evaluation process of all prime contractors, according to preliminary results.

Contract Bundling

Small-business concerns about contract bundling are not new. Unfortunately, they are persistent—as the love affair between federal procurement agents and bundled contracts continues unabated. This dalliance perseveres despite repeated governmental denouncements of its economic unseemliness. No less than the president himself has called for a reduction in contract bundling, saying "I believe the best way to help our small businesses is not only through small-business loans. . . but to unbundle government contracts so people have a chance to be able to bid and receive a contract to help get their business going." NSBA agrees.

The exceptional growth witnessed in the last fifteen years in the size, breadth of work, and number of work locations of prime contracts has been to the detriment of America's small businesses. According to a report sponsored by the SBA Office of Advocacy, 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."

According to the same report, federal agencies reporting to the U.S. General Services Administration's Federal Procurement Data Center issued a combined 1.24 million prime contracts worth $1.89 trillion between FY 1992 and FY 2001. The report determined that 8.6 percent of these contracts were bundled

and that they accounted for $840.3 billion, or 44.5 percent, of all reported prime contract dollars during this period. The more frequently contracts are bundled and the larger the average bundled contract becomes, the more small businesses are going to be excluded from competing in the federal procurement system. In fact, over 30 percent of the respondents to an NSBA procurement survey reported first-hand experience of losing out on a federal contract because of contract bundling, according to preliminary results.

The previously referenced bundling statistics are based on a more broad definition of contract bundling than currently used by the federal government, which relies on a limited definition focused exclusively on whether one of the contracts was previously performed by a small business. This overly-narrow definition warps the government's calculations on the prevalence of contract bundling in the federal procurement arena. Having long advocated an expansion of the term to include any instance where two or more individual contracts are combined, NSBA welcomes efforts, such as those included in *H.R. 1873*, to enhance the definition of contract bundling.

Improved Oversight

In order to break-up bundled contracts and ensure agency compliance with existing contracting rules, NSBA supports increased oversight authority for the Office of Management and Budget. NSBA also supports an increased level of authority for the Office of Small and Disadvantaged Business Utilization or the establishment of a similar small-business-focused contracting office within each agency.

Reliable and Accurate Data

The previously-alluded-to discrepancies between the small-business contracting statistics compiled by the government and outside experts demonstrate the absence of reliable and accurate small-business federal procurement data. Time and again, it has been demonstrated that a large number of contracts ostensibly awarded to small businesses actually have been awarded to and carried out by large firms. A FY 2005 SBA Office of Advocacy-sponsored study found that 44 of the top 1,000 small business contractors in FY 2002 were not, in fact, small businesses—and the small-business coded contracts they received totaled $2

billion. Over 20 percent of the respondents to an NSBA procurement survey reported losing out on a federal procurement opportunity that instead went to a large firm identified as a small business, according to preliminary results.

The aforementioned exclusion of various kinds of contracts, such as those carried out abroad, also dilutes the accuracy of federal procurement data. NSBA continues to support efforts to improve the accuracy and reliability of federal procurement data, such as the provision in *H.R. 1873* establishing an annual report from the SBA Administrator on the number and dollar value of contracts improperly coded as being awarded to small businesses.

Elimination of Fraud

Large businesses are far too frequently the real recipients and executioners of federal contracts ostensibly awarded to small businesses. Up to a third of the SBA's list of top 100 small business contractors in 2005 were actually large businesses, according to a report from Eagle Eye Publishers. To combat this fraud, NSBA urges prompt prosecution for companies found to have fraudulently claimed small-business status. Having long supported increased authority for the SBA to disbar large contractors that fraudulently identified themselves as small businesses, NSBA applauds the inclusion of such a provision in *H.R. 1873*.

Conclusion

As cliché as it is say, small businesses are the backbone of the U.S. economy. America's small businesses comprise 99.7 percent of all employer firms and lead the nation in net new job creation and innovation. Small businesses also can infuse the federal procurement system with much-needed competition—but only if they allowed to compete on an even slightly-level playing field. Achieving such a playing field will benefit both the small-business community and the federal government.

CONGRESSIONAL TESTIMONY

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON SMALL BUSINESS

April 19, 2007

Expanding Small Businesses Access to Federal Contracts

Testimony of

Emily W. Murphy

Counsel
Miller & Chevalier Chartered
655 Fifteenth Street. N.W., Suite 900
Washington, DC, 20005
202-626-5800

MILLER & CHEVALIER
CHARTERED

Testimony of Emily Murphy

Thank you, Chairwoman Velázquez, Ranking Member Chabot, and Members of the Committee for allowing me to testify before you today on Expanding Small Businesses Access to Federal Contracts.

My name is Emily Murphy, and I am a government contracts attorney with the law firm of Miller & Chevalier. While Miller & Chevalier represents both large and small businesses in government contracting matters, the testimony I am providing reflects my personal views and not necessarily those of other attorneys in the firm or of our clients. Prior to joining Miller & Chevalier this Spring, I was the Chief Acquisition Officer with the General Services Administration, and I previously served as the acting Associate Administrator for Government Contracting with the Small Business Administration. While I also serve as the Co-Chair of the Small Business and Socioeconomic Programs Committee of the American Bar Association's Public Contract Law Section, my testimony should not be seen as representative of the ABA's views. Given my background, it is not surprising that this is an issue I am particularly passionate about, even more so since my first introduction to government contracting and contract bundling was working for this Committee a decade ago.

I. SCOPE OF TESTIMONY AND INITIAL RECOMMENDATIONS

I was asked to provide my view on a series of proposals on small business participation in the Federal marketplace and also on proposals to increase such participation. As you know, the last several years have been tumultuous for small business government contracting, but there are three key issues that are at the heart of the controversy. First, which businesses are legitimately small? Second, what opportunities are available to those businesses? Third, how do you protect small businesses when the processes in place to address the first and second questions break down?

The discussion draft with which I was provided addresses these three problems. I hope that my testimony will help refine these ideas, and perhaps build upon them. In some cases, I will merely be raising additional questions that may help the Committee with whatever legislative strategy it chooses to pursue. These issues are not easy, and the individuals I had the privilege of working with inside the Government - both in the Executive Branch and in Congress - have struggled to find solutions that promote small businesses and provide taxpayers with the best value for every dollar spent. I commend the Committee for taking the time to study these issues so thoroughly, and for inviting this discussion of them.

Whatever decisions the Committee ultimately makes, I have two recommendations: please provide that any rulemakings by SBA to implement these changes be done concurrently with the necessary changes to the Federal Acquisition Regulations (FAR); and require that online training be made available by the Federal Acquisition Institute and the Defense Acquisition University to instruct acquisition professionals on these changes. Most contracting officers and specialists do not regularly consult with the relevant sections of title 13 of the Code of Federal Regulations. Instead, they rely upon the FAR, which does not address how to treat disparities between the two sets of regulations. Requiring timely and coordinated changes to the FAR will

provide the most immediate benefit to small businesses and give contracting officers clear guidance on how to proceed. Second, small businesses will benefit if contracting personnel, including but not limited to small business technical advisors, are given prompt training on any changes. This will help ensure uniform application of any changes, and improve the quality of small business contracting. Funds from the Acquisition Workforce Training Fund could be used to cover the cost of this training.

II. CONTRACT BUNDLING

Contract bundling is central to the question of small business opportunities. Congress first acted on this issue with the Small Business Reauthorization Act of 1997, but the problem is as real today as it was a decade ago. The Federal marketplace continues to expand: the Federal Government spent over $417 billion in Fiscal Year 2006 through nearly 8.3 million contract actions.[1] However, only 43 contracts over $5 million were reported as bundled or consolidated, and these 43 contracts accounted for $5.7 billion.[2] While the simple scale of Federal spending provides enormous opportunities for all businesses, small or large, bundling is still not readily recognized or identified.

Compounding the problem is the fact that, once a contract is bundled, unless it was specifically identified at the time it was bundled, it slips from view. All bundling efforts to date have focused almost exclusively on how to prevent bundling, without proposing strategies to unbundle contracts. However, the Federal Government needs to make a concerted effort to structure all contracts to ensure the maximum opportunity for small businesses. The law of supply and demand dictates that the greater the number of potential contractors, the lower the prices, and the prevention of bundling or unbundling of contracts should result in increased competition.

The strategies included in the discussion draft address many of the key issues involving bundling: the definition of bundling; justification of bundling; appeals on bundled contracts; and third party reviews of bundling. I will discuss them next, but I would encourage the Committee to also consider ways to address the unbundling of contracting opportunities.

A. The Definition of Contract Bundling

The definition of bundling has been the subject of dispute for over a decade. The 1997 legislation provided an initial definition, but the last ten years have illustrated that additional clarification is needed. Currently, the Small Business Act (the Act) defines "Bundling of Contract Requirements" as:

> [C]onsolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a

[1] Report run using the Federal Procurement Data System on April 17, 2007. On file with the author.

[2] Id.

> 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).

Small Business Act of 1958, § 3 (o)(2), Public Law 85-536, 15 U.S.C. 632 as amended (2006).

As codified, the definition requires that work have been previously provided or performed. However, work and requirements evolve, so this definition limits the scope of contracts covered. Removing this requirement would require a greater analysis of the underlying work to be performed, and expand opportunities for small businesses. Likewise, the current definition does not sufficiently recognize the complexities inherent in construction contracts. It is almost unheard of to have two identical construction projects. Variations between plans, site conditions, labor rates, and a myriad of other factors will always distinguish the projects. Specifically including construction services, combined with deleting the requirement that work have been previously provided or performed, will better address this important sector of small businesses.

The definition of contract bundling is further confused by separate requirements and procedures in place for contract consolidation at the Department of Defense (DoD). The National Defense Authorization Act for Fiscal Year 2004[3] limits bundling-like behavior under the terms "consolidation of contract requirements" and "consolidation" stating that the terms:

> with respect to contract requirements of a military department, Defense Agency, or Department of Defense Field Activity, mean a use of a solicitation to obtain offers for a single contract or a multiple award contract to satisfy two or more requirements of that department, agency, or activity for goods or services that have previously been provided to, or performed for, that department, agency, or activity under two or more separate contracts smaller in cost than the total cost of the contract for which the offers are solicited."

10 U.S.C. 2382(c)(1) (2004).

[3] P.L. 108-136.

This confusion is only intensified by the fact that consolidation procedures only apply to contracts in excess of $5 million, and the analysis is slightly different than that applying to bundling.[4]

Separate policies for different agencies addressing the same problem do not make sense. If contract is not consolidated, but is bundled, how is the DoD contracting officer - or the contracting personnel at another agency operating on DoD's behalf - supposed to proceed? What if the reverse scenario were true and a contract is consolidated but not bundled? Small businesses should not have to navigate through contradictory laws and regulations. If the Committee could provide one uniform definition, and one set of procedures, it would simplify the contracting process to the benefit of small businesses and contracting personnel.

B. Bundling Methodology

I understand the Committee is seeking to define and enumerate the ways in which bundling occurs, and I was provided with a draft definition of bundling methodology. The definition seeks to clarify that indefinite delivery contract vehicles (IDVs), and the orders against them, are potential methods for bundling. Specifically, the bundling methodology includes:

- a solicitation to obtain offers for a single contract or order, or a multiple award contract or order;
- a solicitation of offers for the issuance of a task or delivery order under an existing single or multiple award contract or order; or
- the creation of any new procurement requirement that permits a consolidation of contract or order requirements.

---

[4] *See* DFAR 207.170-3 (2007)(a), providing:

(a) Agencies shall not consolidate contract requirements with an estimated total value exceeding $5.5 million unless the acquisition strategy includes—
  (1) The results of market research;
  (2) Identification of any alternative contracting approaches that would involve a lesser degree of consolidation; and
  (3) A determination by the senior procurement executive that the consolidation is necessary and justified.
    (i) Market research may indicate that consolidation of contract requirements is necessary and justified if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches. Benefits may include costs and, regardless of whether quantifiable in dollar amounts—
      (A) Quality;
      (B) Acquisition cycle;
      (C) Terms and conditions; and
      (D) Any other benefit.
    (ii) Savings in administrative or personnel costs alone do not constitute a sufficient justification for a consolidation of contract requirements unless the total amount of the cost savings is expected to be substantial in relation to the total cost of the procurement.

Given that the GSA schedule program alone accounts for over "10 million commercial supplies and services"[5] and over $35 billion in sales in FY 2006,[6] multiple award vehicles are definitely worthy of consideration. However, to more surgically focus the attention of contracting officers and small business advocates, before including both contract level and task order level review for all IDVs, it is important to analyze some unique characteristics of these vehicles. There are three types of IDVs - definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. These may be multiple or single award vehicles. These contracts may themselves be set aside. While each permutation poses unique challenges for small business, not every permutation of those challenges should be addressed as contract bundling.

1. Definite Quantity Contracts

According to the FAR, a definite quantity contract "provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance to be scheduled at designated locations upon order."[7] These contracts are used when the Government can determine in advance how much of a supply or service it will need, but not the exact date on which it will need delivery.[8] These contracts are only to be used for supplies or services that "are regularly available or will be available after a short lead time."[9]

Single award definite quantity contracts should be reviewed at the contract level for bundling. As the statement of work is very clear as to the amount being purchased, assessing the scope is fairly straightforward, with the only complication being the diversity of locations which may later be specified for delivery. If the contract does not specify the locations, it may make performance more difficult or costly for the awardee, but it is not going to change the awardee. Therefore, task or delivery orders[10] against single award definite quantity contracts should not be considered potential methods for bundling.

Multiple award definite quantity contracts should be reviewed at both the contract level and the task order level for bundling. The initial contract award lays out the parameters for all task orders, but the division of work between the task orders is crucial to determining if requirements are being consolidated. Since the scope and size of task orders against a multiple

---

[5] *GSA Schedules* www.gsa.gov/schedules (April 17, 2007).

[6] *Hearing on* Veterans *Identity and Credit Protection Legislation: Hearing Before the H. Comm. On Veterans Affairs* 109th Cong, http://veterans.house.gov/hearings/schedule109/jul06/7-18-06/witness.html (1996) (statement of James A. Williams, Commissioner, Federal Acquisition Services, U.S. General Services Administration).

[7] FAR 15.502(a).

[8] FAR 15.502(b)(1).

[9] FAR 15.502(b)(2).

[10] "Delivery order contract" means a contract for supplies that does not procure or specify a firm quantity of supplies (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of supplies during the period of the contract. FAR 16.501-1. "Task order contract" means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract. Id.

award definite quantity contract could affect whether small businesses are able to compete, and both contract award and order-level award should be included in the bundling methodology.

2. Requirements Contracts

In contrast to a definite quantity contract, a requirements contract "provides for filling all actual purchase requirements of designated Government activities" during the period of performance, with delivery to be scheduled later.[11] The difference here is that the amount to be purchased is not specified in advance, although the Government provides "a realistic estimated total quantity in the solicitation and resulting contract."[12] Under these contracts, the Government's estimate is not binding, and there is no assumption that the conditions surrounding the delivery of goods or services will be stable.[13] While the contract should try to specify a limit to the contractor's obligation under the agreement, and may give parameters limiting order size and frequency, there is simply more risk to contractors with requirements contracts.[14] These contracts are used when "the Government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated Government activities will need during a definite period."[15]

The FAR directs the contracting officer to base the estimate on records of previous requirements and consumption and the most current information available, which provides some scope information to be reviewed for bundling. In the case of a single award requirement contract, if more than one contractor was previously providing the good or service, a strict bundling analysis would be required. However, if the single award passed that initial review and the scope of a task order exceeded the predictions of the Government, it could pose a burden to a small business but would not be bundling - the requirement was already consolidated. Indeed, reviewing the task orders of a single award requirements contract for bundling does not aid small business in the sector, since the Government is already obligated.

Likewise, multiple award requirements contracts should be reviewed prior to the initial contract award for bundling. If there are both small and large winners of a multiple award requirements contract, the task orders against those contracts should be reviewed for bundling, as the division of work could preclude small business from winning any of the task orders. However, if only businesses that are other-than-small have won the initial contracts, reviewing task orders seems a duplication of effort without benefit - the Government would need to terminate all of the outstanding contracts in order to change its procurement strategy, or else it would be in violation of the requirements contract. Additionally, the Government should have

[11] FAR 16.503(a).

[12] FAR 16.503(a)(1).

[13] FAR 16.503(a)(1).

[14] FAR 16.503(a)(1)-(2).

[15] FAR 16.503(b).

already addressed how it would mitigate the bundling at the contract level, so there is little advantage to small businesses if these task orders are included in the methodology.

3. Indefinite-Quantity Contracts.

Indefinite delivery indefinite quantity (IDIQ) contracts are the best known of the IDVs. These include the multiple award schedules, government-wide acquisition contracts, multiple agency contracts, and most multiple award contracts. According to the FAR, an IDIQ "provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period" where the Government places "orders for individual requirements" and scope limitations may be phrased as a "number of units or as dollar values."[16] The contracts require that the Government purchase a minimum quantity, and establishes a limit on how much may be purchased, but are otherwise used when the Government cannot predetermine its exact needs.[17] These contracts can be used very successfully to reduce the time and cost of meeting recurring needs, to prequalify vendors, or ensure that terms and conditions are already negotiated for emergency contracts.

There is a strong statutory preference for making IDIQ contracts into multiple award vehicles, except in the case of contracts for advisory and assistance services, when those contracts are for less than three years and $11.5 million, including all options.[18] There are some exceptions, but these merit additional scrutiny because the amount of work remains relatively undefined. As single award IDIQ contracts do not obligate the Government to award to a specific vendor, they are appropriate for review at the time of contract award and of task order.

Some multiple award IDIQs should also be reviewed at the prime contract and task order level. Indeed, FAR 16.505 already states that orders should be reviewed for bundling. At the contract level, it makes sense to consider IDIQs that limit the number of awardees as potential methods for bundling, but the value diminishes when the IDIQ allows unlimited contract awards over an indefinite period of time. For example, the GSA schedules program allows any business to apply at any time, so that approximately 80% of schedule awardees are small businesses. While awards against the schedule may be bundled, there seems little advantage to consider these open IDIQs as potential bundling methods.

4. The Question of Set-Aside IDVs

Some IDVs are already set aside for small business, or a subcategory thereof. For example, there is a GWAC restricted to 8(a) firms called the Streamlined Technology Acquisition Resources for Services (STARS) GWAC, with a program ceiling of $15 billion.[19] A

[16] FAR 16.504(a).

[17] FAR 16.504(a)-(b).

[18] FAR 16.504(c).

[19] www.gsa.gov/8astars

recent competitive award against that contract was worth in excess of $200 million.[20] The proposed bundling methodology would include these contracts. While this particular example references the consolidation of requirements, it was still deemed suitable for award to small businesses. The Committee may wish to tailor its methodology to either not include such GWACs, or alter its definition of bundling to address these awards.

5. Other Vehicles

The Committee may wish to clarify whether it considers blanket purchase agreements (BPAs) or basic ordering agreements (BOAs) in its definition of bundling methodology.

BPAs are a "simplified method of filling anticipated repetitive needs for supplies or services by establishing 'charge accounts' with qualified sources of supply."[21] They may be established with multiple vendors, a single vendor, or against the multiple award schedules.[22] While the FAR establishes the simplified acquisition threshold as the default maximum for orders against BPAs, agencies have the discretion to raise the threshold to $5.5 million.[23] BPAs may be used by multiple agencies.

Unlike BPAs, BOAs are not contracts - they are "written instrument[s] of understanding" between the Government and a contractor, containing "terms and clauses applying to future contracts (orders)," a description "of supplies or services to be provided," and "methods for pricing, issuing, and delivering future orders under the basic ordering agreement."24 These agreements are intended to "expedite contracting for uncertain requirements for supplies or services when specific items, quantities, and prices are not known at the time the agreement is executed, but a substantial number of requirements for the type of supplies or services covered by the agreement are anticipated to be purchased from the contractor."25 An order against a BOA may be a binding contact.[26] Given the scope of BOAs, these are vehicles that may be worth considering even prior to award of a task order.

---

[20] Press Release, U.S. General Services Administration, GSA Awards GITGO Contract, (March 1, 2007) http://www.gsa.gov/Portal/gsa/ep/contentView.do?pageTypeId=8199&P=&channelId=-13259&contentType=GSA_BASIC&contentId=22522 (April 17, 2007, 7:36 pm).

[21] FAR 13.303-1(a)

[22] FAR 13.303-3(c)

[23] FAR 13.303-5(b).

[24] FAR 16.703(a).

[25] FAR 16.703(b).

[26] FAR 16.703(c).

C. Justifications0

While bundling is certainly problematic for small businesses, the Small Business Act provides that in certain circumstances it may be justified.[27] This Act specifically enumerates the cases in which a justification will be required, and provides a process for proceeding. The Committee's discussion draft would modify the events that trigger a review, the information that must be provided to SBA with a justification, consequences of a failure to provide the information, and additional steps that should be taken if the bundling justification is based on anticipated cost savings.

1. Contracts Requiring SBA Review

Currently, an agency must submit its justification to the Small Business Administration (SBA) when:

> a proposed procurement includes in its statement of work goods or services currently being performed by a small business, and if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects, or the solicitation involves an unnecessary or unjustified bundling of contract requirements, as determined by the Administration . . .

15 U.S.C. 632.

This language would seem to indicate that in order to trigger a review, the proposed procurement must be such that a small business could not perform. The discussion draft suggests amending this language to replace "if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely" to "if the proposed procurement would now be combined with other requirements for goods and services." With this change, contracts that an agency intended to set aside for small business would still need to be submitted to a procurement center representative (PCR) for approval. It may be the Committee's intention to ensure that this review take place so that work is not inappropriately shifted from one North American Industrial Classification System (NAICS) code to another in order to allow business that would not qualify under one NAICS code to compete. However, if the work is staying in the same NAICS code, and will be set aside, it may not be necessary to seek PCR approval.

[27] Small Business Act §15(a), 15 U.S.C. 632.

2. Information to be Provided to SBA

The Committee is also considering asking that additional information be provided to the PCR. This information includes:

- the names, addresses and sizes of the incumbent contract holders;
- a description of the industries that might be interested in bidding on the contract requirements; and
- the number of small businesses listed in the industry categories that could be excluded from future bidding if the contract is combined or packaged.

While I thoroughly agree that this information will give the PCR a better basis to assess the proposed procurement, I would like to suggest a few modifications. First, when asking for information on the incumbent, the Committee may also wish to include the incumbent's DUNS number. The Committee is considering asking for the size of the incumbent, but the question remains as to whether the Committee wants the size of the incumbent at the time of the previous award, at the time the last option was exercised, or the firm's current size. Since the contracting activity may not have a current certification of size for the firm, it may make sense to provide the last certification associated with the requirement.

A description of the industries that may be interested in bidding on the contract requirements is a wonderful way to avoid NAICS shopping. Currently, a contracting officer assesses the primary function of each contract, and chooses the NAICS code that best describes that good or service. The NAICS code then corresponds to a SBA size standard, which indicates which firms will be considered small for the procurement. The choice of NAICS is crucial - if a contract is classified as satellite communications services, the size standard is $13.5 million in average annual revenues over the prior three years, whereas if the contract is considered telecommunications, the size standard is 1,500 employees. While either may be justifiable, different types of companies will compete for these procurements. Therefore, asking the contracting officer to provide this information gives SBA a better picture of the universe of companies.

Additionally, the Committee is contemplating asking for the number of small businesses listed in the industry categories that could be excluded from future bidding if the contract is combined or packaged. There are many ways of obtaining this data, and each has its drawbacks. A contracting officer might literally go to the Central Contractor Registration (CCR) and run a report of how many businesses are self-representing as small within a particular NAICS code, but this level of market research would not greatly add to SBA's understanding of the market. Alternatively, a contracting officer could state that, given the ability of small businesses to team on large procurements, very few firms would be excluded. A contracting officer may not be in the best position to decide if smaller firms within a category would be excluded, whereas larger small businesses would remain viable. Instead, it may be preferable to have either agency issue a Request for Information. This would allow interested businesses the opportunity to go on the record as to whether the size or scope is appropriate, and to offer suggestions.

3. Failure to Provide SBA with Notification

Given that only 45 activities were reported as bundled in FY 2006, the Committee's discussion draft indicated its concern that SBA has limited options if an agency does not make it aware of a potential bundle. Therefore, the Committee is considering amending the statute to provide that "[i]f no notification of the procurement and accompanying statement is received, but the Administration determines that there is cause to believe the contract combines requirements or discrete construction projects or includes unnecessary and unjustified bundling, then the Administration can demand that such a statement of work, goods or services be completed by the procurement activity and sent to the Procurement Center Representative and the solicitation process postponed for at least 30 days to allow the Administration with time to review the statement and make recommendations . . . before the procurement is continued."

This language may inadvertently pose a Catch-22. It requires that the Administration[28] make a determination before the Administration is provided with information. Such a determination is unlikely to withstand review, since the information necessary for the determination is absent. The Committee may wish to consider modifying this language to allow the Administration to require the provision of information if it has a good faith belief that the procurement is an undisclosed bundle. This will strengthen SBA's fact-finding powers. Under the proposal, failure to provide notice would trigger a 30-day stay of the procurement process. While SBA clearly needs time to review findings, and an agency should not be rewarded for failing to comply with the Small Business Act, this could have unintended consequences depending on the stage at which SBA intervenes or the timing in the fiscal year. In many cases, a 30 day delay will only inconvenience the agency, but what if the agency has already received proposals and is about to issue an award? Likewise, what if SBA becomes aware of a procurement in the last week of September, and the funds will expire at the end of the fiscal year? The Committee may want to provide additional guidance on how the SBA should proceed, or grant SBA additional authorities. For example, could the Administration allow the procurement to proceed with a right to insist upon termination or an early recompete if SBA's review leads to a finding of bundling? Or could SBA's intervention in a procurement waive the expiration of the funds for a reasonable period into the next fiscal year? The latter could have the unintended consequence of inspiring agencies that are fighting the end of the year rush to solicit SBA intervention in procurements.

4. Cost Savings

The Committee's discussion draft would require additional information and trigger additional actions if a bundling justification were based on cost saving. Specifically, the proposed language requires that, "[i]f the procurement activity justifies a bundled contract based on a cost savings of at least 5 percent then, in addition to providing the notice described in this section, the procurement activity will convene a meeting of the incumbent contractors and the Procurement Center Representative for the activity and shall take reasonable steps to notify other

[28]See H.R. Rep. No 108-325 at 136 (2003) for a discussion on delegation of authority.

small businesses that might have an interest in bidding on the contract, such as previous unsuccessful bidders, and provide an opportunity for them to comment and suggest ways that they could reduce costs or share the burdens of the contract and then transmit a report based on the meeting to the Administration for recommendations."

The premise of this change seems to be that if small businesses are given the opportunity, they, too, can provide a more cost efficient solution for the Government. While the underlying premise may be sound, one technical issue and one procedural issue would surface.

One technical change the Committee may consider involves the reference to the 5% cost savings. This number is derived from the regulatory implementation of the current bundling statute.[29] However, since the percentage is not codified, the Committee runs the risk of a regulatory change that would leave the percentage without context. The Committee should consider either codifying the basis for this figure, or simply stating that the additional review is predicated on a bundling justification citing cost savings as a primary factor.

The second issue is more substantive and difficult to resolve. Meetings regarding a proposed or ongoing procurement that include prospective contractors, incumbents, and other non-governmental personnel and the contracting personnel could result in a violation of the Procurement Integrity Act[30] or other laws and regulations. For example, FAR 5.401(a) provides that "[a] high level of business security must be maintained in order to preserve the integrity of the acquisition process. When it is necessary to obtain information from potential contractors and others outside the Government for use in preparing Government estimates, contracting officers shall ensure that the information is not publicized or discussed with potential contractors." Since the savings referred to in the statute could directly relate to those cost estimates, it would be better if the Committee provided more guidance on how to treat these situations. Likewise, FAR 14.22 states that before a solicitation is published, "Information concerning proposed acquisitions shall not be released outside the Government before solicitation except for presolicitation notices . . . or long-range acquisition estimates . . . or synopses." Any releases of information shall be made "to all prospective bidders . . . as nearly as possible at the same time, so that one prospective bidder shall not be given unfair advantage over another."[31] Even once the solicitation is made public, "[d]iscussions with prospective bidders" regarding that solicitation are to be conducted only by authorized individuals and "shall not furnish any information to a prospective bidder that alone or together with other information may afford an advantage over others."[32] These are just a few of the many provisions regarding the release of information during the procurement process.[33]

---

[29] See FAR 7.107(b)(2).

[30] 41 U.S.C. § 423

[31] FAR 14.211(a).

[32] FAR 14.211(b).

[33] See e.g. the Privacy Act, 5 U.S.C. 552a; the Trade Secrets Act, 18 U.S.C. 1905;FAR 3.104; FAR 15.2.

Given these hurdles, and the serious penalties facing Government personnel for violations of these requirements, the Committee might consider either providing a specific statutory exception. An easier approach that would reach more small businesses might be to simply hold an industry day and specifically invite those the Committee designated in the discussion draft. This would permit a free flow of information to all interest parties without the same level of risk.

D. Appeals

The Small Business Act currently only triggers a review of a proposed bundle when "a proposed procurement includes in its statement of work goods or services currently being performed by a small business,"[34] and only allows bringing the issue to the attention of the Administrator if the Procurement Center Representative begins the appeal of the bundling decision. The discussion draft seeks to expand who has status to begin the process, first by allowing a review if a "proposed procurement would negatively impact one or more small business concerns" and by allowing small businesses or their trade association to request that the Administrator begin an appeal.

Clearly, bundling may harm small businesses even when the incumbent contractor is not a small business. Work held by an other-than-small business may be of a type that small businesses would be competitive with at the recompete. However, by changing the language of the statute, the Committee would be suggesting that only one small business needs to be harmed without addressing what would happen if that harm benefited other small businesses. For example, a small business could be harmed if small businesses in a different NAICS business code were receiving the work, or because the changes to the procurement might make the small a lower-tiered subcontractor. While the Committee certainly does not want to encourage NAICS shopping, having various sectors of small business at odds with each other over a procurement puts the SBA in the difficult position of choosing which small businesses to favor. It may be worth considering modifying the change to reflect that the harm to a small business must benefit other-than-small businesses.

E. Third Party Reviews

Currently, if the SBA and the contracting agency ultimately disagree, the contracting agency is allowed to prevail. Understandably, this is an unsatisfying result for many small businesses. The Committee's discussion draft proposes to remedy the stalemate by placing the ultimate decision in the Director of the Office of Management and Budget (OMB), and allowing the Director to delegate that authority to a subordinate with OMB who is also a Senate-confirmed Presidential appointee.

At OMB, the procurement expertise resides in the Office of Federal Procurement Policy (OFPP). However, the OFPP Act specifically bars OFPP from interfering with "the determination by executive agencies of their need for, or their use of, specific property, services,

[34] Small Business Act § 15(a), 15 U.S.C. 644(a).

or construction, *including particular specifications* therefor; or . . . interfer[ing] with the determination by executive agencies of *specific actions in the award or administration of procurement contracts*."[35] While the Committee could modify this provision, it was always intended to prevent political pressure from being exerted on specific contracts. Alternatively, the Committee could place appeal power elsewhere. Each of the following suggestions has strengths and weakness, but may provide a viable alternative to OMB: SBA's Office of Advocacy; the contracting agency's Inspector General; the Government Accountability Office (GAO); or a subsection of the Chief Acquisition Officers Council (CAOC).

III. INCREASING THE NUMBER OF SMALL BUSINESS CONTRACTS AND SUBCONTRACTS

A. Small Business Prime Contract Goals

The Small Business Act currently provides the "Government-wide goal for participation by small business concerns shall be established at not less than 23 percent of the total value of all prime contract awards for each fiscal year;" establishes the goals for prime contracts with Historically Underutilized Business Zone (HUBZone) small businesses and Service Disabled Veteran Owned Small Businesses (SDVOSBs) at 3% each, and with small business concerns owned and controlled by socially and economically disadvantaged individuals (SDBs) and small business concerns owned and controlled by women (WOSBs) at 5%.[36]

The Committee's discussion would alter the goals, how they are established and allocated among the agencies, and what contracts are included for purposes of the goals. Specifically, the discussion draft would raise the overall small business goal to 30%. It would also state that each award could only be counted towards one category. That is, an agency awarding a contract to a SDVOSB could not also count that award as an award to a small business. An award made to a WOSB/SDB firm would require that the agency choose which of its goals to apply the award towards: the small business goal, the WOSB goal, or the SDB goal. In essence, the goals would become cumulative, so that the 16% currently allocated to subcategories of small business would become goals in addition to the proposed 30%, raising the overall goal to 46% - twice the current goal. Simultaneously, contracts for work overseas would also be included in the goaling base, whereas currently most agencies exclude these contracts.[37]

As I am not a statistician and have not seen the information comparing the capacity of small businesses to the Federal marketplace, I can offer no opinion on the numbers themselves. However, I would suggest that the Committee consider the interplay of these changes. Including

---

[35] 41 U.S.C. 405(c) (emphasis added).

[36] Small Business Act § 15(g)(1), 15 U.S.C. 644(g).

[37] Currently, the Department of State and U.S. AID include contracts awarded in the U.S. but performed overseas towards their goals, but exclude contracts award and performed overseas. See DOSAR 619.000, "DOS contracts that are awarded domestically for performance overseas shall be subject to the Small Business Act as a matter of policy. Contracts that are both awarded and performed overseas should comply on a voluntary basis."

overseas contracts seems reasonable, because the internet and technology now allow contracting officers overseas greater access to market research on U.S. small businesses, and industry days can now be conducted via videoconference. However, overseas work also brings with it additional costs and risks for small businesses. The intersection of these two should be considered in establishing goals. If firms cannot be counted in more than one category, contracting officers will face further pressures on what types of contracting authority they will use - for example, an 8(a) sole source or a competitive SDVOSB set aside. Unless additional clarification is provided on the order of precedence, this may lead to increased infighting among small businesses and increased protests. When deciding upon the correct small business goal, I would urge the Committee to consider the interplay of programs, small business capacity, and the composition of the Federal marketplace.

The Committee is also considering requiring that agencies annually negotiate their goals with SBA before the end of the fiscal year, and that no agency be allowed to have a goal lower than the government-wide goal. Anything the Committee can do to encourage long-term, responsible acquisition planning will be a win for small businesses and the taxpayers. Therefore, I would go even further: require that each agency's small business goal be part of its budget submission. However, don't freeze goals at that level. As Congress evaluate and decides upon appropriations, keep the effects on small businesses in mind. As some fiscal years arrive with agencies operating on continuing resolutions, require that final goals be agreed upon 30 days after the President signs an agency's appropriations bill. This will keep small business opportunities at the forefront, and encourage each program manager to think of ways to use small businesses well in advance of the fiscal year.

B. Making Small Businesses the First Choice

In the discussion draft, the Committee proposes linking the upper threshold of the small business reserve to the simplified acquisition threshold. Additionally, the Committee should consider linking the lower threshold to the micropurchase threshold. This would ensure an inflation-adjusted zone of contracts targeted specifically at small businesses. In making such a change, the Committee should also consider how emergency-related increases in the micropurchase threshold and simplified acquisition threshold would affect the small business reserve. For example, during emergency situations, the micropurchase threshold may be raised to $15,000 for purchases inside the U.S. and $25,000 for purchases outside the U.S.[38] Simultaneously, in contingency operations or if "the supplies or services are going to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, the simplified acquisition threshold is raised to $250,000 for contracts "awarded and performed, or purchase to be made, inside the United States; and . . . $1 million for any contract to be awarded and performed, or purchase to be made, outside the United States."[39] Any changes to the reserve should specifically address these situations so that in cases of emergency, confusion does not cause any delay in providing contracting support to those in need.

[38] FAR 13.201(g)(1).

[39] FAR 2.101

The Committee also proposes applying the small business reserve to orders as well as contracts. As previously discussed, it is important to distinguish between types of orders - a delivery order against a definite quantity contract may not be the appropriate place to apply the small business reserve, because the overall contract has already been reviewed. The same is true for most, if not all, task orders against single award contracts. Indeed, I believe the Committee intends this language to apply to IDIQ contracts, specifically the multiple award schedules. While applying the reserve to these task orders would certainly identify additional opportunities for small businesses, other issues should also be addressed. First, multiple award IDIQ contracts have a statutory requirement that fair opportunity be provided to all contract holders.[40] If the Committee wishes to apply the small business reserve to these orders, the fair opportunity provisions in FASA would need to be amended.

Additionally, if the multiple award schedules program is to be amended, it is important to remember that the schedules were intended to follow commercial contracting practices, therefore reduce barriers to entry for small businesses. To some extent this has worked - approximately 38% of orders against schedule contracts go to small businesses, and nearly 80% of schedule contract holders have self-certified as small. Many of these businesses have become successful as wholesalers or value-added resellers, a role they fulfill when doing business with nongovernmental customers as well. However, once set-asides are applied to the schedules, the way small businesses interact with the schedules will change. Specifically, under set-aside contracts, the limitation on subcontracting and nonmanufacturer rules will apply. This will mean that those small businesses having success under the schedules will have to change their business model if they are going to continue to compete.

C. Subcontracting Goals and Enforcement

Recognizing that prime contracts are only one avenue for small businesses to access the Federal marketplace, the Committee's discussion draft also addresses three ways to increase subcontracting opportunities for small businesses: by adding transparency to the current state of subcontracting; incentivizing large businesses to meet their goals; and by helping small businesses target large firms that may need small businesses subcontractors.

The first is to have all other-than-small business prime contractors report on subcontractor usage as a percentage of the value of the underlying contract. Currently, goals are set against the amount the prime contractor subcontracts. In other words, a contract for a million dollars could have a subcontracting goal of 40%. Rather than meaning that $400,000 would be subcontracted to small businesses, the goal only means that if the prime contractor subcontracts $100,000, of that sum only $40,000 would be targeted at small businesses. Increasing disclosure is certainly in keeping with the requirement of the Federal Funding Accountability and

[40] Federal Acquisition Streamlining Act (FASA) of 1994.; Pub. L. No. 103-355 (Oct. 13, 1994). FASA is codified in scattered sections of Title 10 of the United States Code for military agencies and Title 41 of the Code for civilian agencies. *See specifically* 41 U.S.C. § 253j(b). For implementation, see FAR 16.505; FAR 8.405-2.

Transparency Act of 2006 (FFATA), which will require complete disclosure of all subcontracts.[41] The only issue this potentially raises is how businesses with commercial subcontracting plans would comply. These firms have subcontracting plans predicated on a company's, division's or organizational unit's total spending rather than on a specific contract.

Further, the Committee suggests incentivizing companies to meet or exceed their subcontracting goals by suggesting that they receive "bonus credits for their next bid". While intriguing, it is unclear if the Committee means this would be credited towards a firm's past performance score, or would be a price evaluation adjustment. Likewise, would it apply only to follow-on work, or work with that agency, or would it apply elsewhere? This idea certainly deserves more attention.

Finally, the Committee is considering directing SBA to create a password-protected database that will enable SBA to help assist small businesses in marketing to large corporations that have not achieved their small business goals. If I correctly understand the idea, much of the information needed for this database could be extracted from the Electronic Subcontracting Reporting System (ESRS). ESRS recently replaced the paper SF 294 and F 295 that firms submitted with their achievements. If SBA could mine this data in such a way that protected sensitive prime contractor data but allowed small businesses to see needs and market themselves, both small and large businesses would benefit.

IV. PROTECTION OF TAXPAYERS FROM FRAUD

The purpose of the small business government contracting programs is to provide opportunities for legitimate small businesses, so small and large businesses alike are rightfully upset when they perceive other-than-small businesses receiving and benefiting from a status they do not deserve. It is even more frustrating for all concerned if an other-than-small business faces no consequences for a misrepresentation, or continues to represent itself as a small business. The question remains how to deter this practice while protecting the due process rights of legitimate small and large businesses.

A. CCR

To address these issues, the Committee's discussion draft first suggests that when a business fails to prevail in a size protest, SBA and the agencies should flag the business in CCR. This could be effective, especially if the flags were linked to specific NAICS codes, because a firm may be legitimately small in some NAICS codes while large in others. It would also need to provide a way for the firm to remove the flag if it successfully reorganized itself or otherwise legitimately changed its size status. I would suggest that the flag be visible only to Government personnel and the business itself. The Committee may also wish to consider having the flag trigger an alert to the contracting officer when the contracting officer is reviewing the firm's representations and certifications through the Online Representation and Certifications

[41] Pub. L. 109-282

Application (ORCA). This would give the contracting officer additional information that may be relevant to deciding whether or not to challenge a firm's size or veracity.

When addressing CCR, the Committee's discussion draft advocates a biannual, independent audit of CCR, in order to purge the Dynamic Small Business Search (DSBS) segment of the database. Any business that is purged and then attempts to recertify "while not, in fact, a small business" would face debarment and additional penalties. While a clean database is a laudable ideal, several questions would need to be addressed regarding implementation. The first is what standard the auditor would use to determine who was small. Would they simply take the firms own information on the number of employees and revenues and apply it to the identified NAICS codes, or would the review be based solely on the results of size appeals? It simply isn't feasible to conduct a complete size audit of the 313,904 firms listed in DSBS at noon on April 17, 2007, so some scaled back review would have to be agreed upon. Next, would firms proposed for removal have an appeal process, and how would that operate? Finally, does SBA have the resources to conduct such an audit? As the Committee focuses on CCR compliance, I hope it will also consider working with SBA and CCR to ensure that the questions a business is asked when it registers in CCR help well-intentioned small businesses make the right representations.

B. FPDS-NG

The Committee also suggests that SBA qualify all reports on small business goal accomplishments as estimated until such time as GAO certifies that there are no data integrity issues with the Federal Procurement Data System-Next Generation (FPDS NG). As long as people are entering data in FPDS-NG, there are going to be mistakes with the data, but FPDS-NG remains the statutorily designated official source of procurement data. It may be confusing to have official estimated data, but that can probably be explained. However, given that to err is human, perhaps a better standard for the GAO review might be to assess whether the errors are statistically significant.

The Committee would also require that the Office of Advocacy report annually on the "number and dollar value of contract awards that were coded as awards to small business concerns but were in fact made to businesses that did not qualify as small business concerns." The Office of Advocacy issued a similar report in 2004. However, that report raised additional questions - Advocacy was unable to determine if a firm had actually been small at the time of award, only whether the firm was still small at the time the report was run. This is not to suggest that there isn't a real problem with miscoding of data, but that the scope of the report and the resources for the report need to be clearly defined.

C. Increased Penalties for False Certification as a Small Business

When firms falsely certify themselves as small, it is very frustrating for their competitors to see them escape unscathed. The Committee suggests correcting this problem by providing a private right of action to the competitors and allowing them to collect "direct and consequential" damages when a firm receives a contract due to a false certification. However, even direct and

consequential damages will be hard to prove, since the aggrieved firm would need to prove that but for the misrepresented firm's false representation, the aggrieved would have won the contract. That is a nearly impossible burden to meet. Instead, I would suggest that the Committee implement a private right of action for other firms who competed for the work, and specify that damages for purposes of the False Claims Acts in these situations is the value of the contract.

V. CONCLUSION

Again, thank you for inviting me here today, and for focusing on these important issues. I believe that by addressing contract bundling, the issues involving the small business reserve, and the goaling process, the Committee is addressing which opportunities should be available to small businesses. By examining reporting systems and certifications, the Committee is attempting to better define who is a small business. Finally, increased penalties for false certification and expanded rights of action will help make sure that small businesses have access to opportunities and are empowered when they see other-than-small businesses seeking to take advantage of small business preferences. While there are still issues to be addressed, the Committee is to be commended for tackling these issues. I look forward to your questions.

Statement of

Grady Taylor
Executive Vice President

TriMega Purchasing Association

Before the

U.S. House of Representatives
Small Business Committee

Small Business Access to Government Contracts

Thursday, April 19, 2007

Madam Chairwoman and members of the Committee, my name is Grady Taylor and I serve as the Executive Vice President of the TriMega Purchasing Association. I am pleased to be here to testify before your committee on this very important issue.

First, let me tell you who we are.

TriMega Purchasing Association is a not-for-profit member owned cooperative focused on the success of independent office supply dealers. Dedicated to the business of office products, computer supplies, and office furniture TriMega's approximately 500+ member companies each range in annual sales from $1M to over $80 million.

Founded in 1987, TriMega has provided an environment in which dealers have experienced growth as a result of aggressive pricing, a focused catalog and flyer program, a special GSA program called "GoverNet™", FULL return of all vendor rebates, and the lowest "participation" costs of any industry buying group.

Now let me tell you about the industry.

If you want to buy office products there is really only two ways to do so. You can either buy them from small family-owned companies or you can buy them from large billion dollar corporate companies, of which there are four.

Regardless of who you buy your supplies from, both groups are serviced by the same wholesalers and manufacturers. This means that if you order from Staples they are getting the product from one of these major channel participants. If you buy it from a small independent dealer, you are getting if from the same major wholesalers or manufacturers. So, in effect, the only difference in our industry is size. Where TriMega Purchasing Association comes into play is that we have successfully negotiated – on behalf of our independently-owned dealer/members, competitive cost-of-goods agreements with these same wholesalers and manufacturers in order to bring parity to the marketplace.

In most other industries subcontracting works. In our industry subcontracting is not an option. Independent dealers and our large corporate competitors don't work well together. In fact, if you looked at the large national contracts issued by the Federal government for the past ten years, I'd bet you would find very little subcontracting opportunities for independents.

Now let me tell you about the problems our industry faces and why this hearing is critical to helping with solutions.

The office products industry is one if not the most negatively affected by the issues we are here to discuss today. The reason I say this, is that when the Federal government decides to implement a new pilot program that is supposed to make the purchasing of goods and services more efficient and cost effective for the government, they usually use office products as the first product to test.

For some reason the myth in the Federal government is that buying office supplies is an easy process. This is a myth perpetuated in the 90's by the "Reinvention of Government." I mean no disrespect to former Vice President Al Gore, who is credited with the "Reinvention of Government" concept, as at the time it may have looked good on paper, but the actual implementation of the process has been bad for small businesses; especially those in the office supply industry.

Streamlining the government to make it more efficient is a good idea, but what the Federal government has failed to do in its design phase is to consider all the issues that go into the buying process. It is simply not enough to look at pricing. You need to consider service, history of a company, capabilities of the company, and most importantly, the impacts on the community your decisions will have if you severely limit the number of vendors able to sell to the Federal government. Limiting your choices of vendor's means lost jobs for a small business; lost tax revenue for the Federal government and local community and; it means the inability of small businesses to grow and thrive. As you can see, more goes into the decisions of whom and how the Federal government buys than is actually being considered today.

Contract bundling has had a negative effect on our industry. When you continue to make contracts larger and larger, new myths are perpetuated. When it comes to contract bundling the myths we still hear from agencies are that independents can't service large national contracts because they are not sophisticated enough.

This is another myth started in the 90's and unfortunately it continues today. The reality is independent dealers can service large national contracts. We're doing it and doing it successfully when given the opportunity to compete on a level playing field.

I am still stunned to hear how surprised some agencies are to learn that independent dealers have websites, online ordering capabilities, quality customer service, and the ability to accept government credit cards. We can do all that and more.

Doing business with the Federal government is a challenge for small businesses. Not because they have trouble servicing the contracts, but because agencies eliminate them in most cases right out of the gate. I still believe that doing business with the Federal government is worth it, but the reason I'm here today is to shed some light on the problems we still face as small businesses. Our industry isn't looking for handouts. We are looking for a level playing field that gives us the same opportunities that are given to our large corporate competitors.

Four years ago we came to Congress with these concerns and were told that it was unlikely Congress would address our issues. If we hoped to be effective in the government market we needed to change our industry. We did just that. To help us compete, TriMega created the first teaming arrangement in our industry. Today there are others like the American Office Product Distributors (AOPD) and Independent Stationers (is.group) who also have created teaming arrangements for their dealers and have done it successfully. Both were selected as two of the 18 vendors for the $100 million office supply contract with the Department of the Army three years ago. I have to say this effort has paid off as our independent dealers are gaining more Federal government business.

Don't mistake my comments. We still face a lot of hurdles. The rules are still not in our favor and it is my hope that this time, Congress will act to level the playing field. Without your help now, our industry faces a greater problem than contract bundling.

As you know, the Administration is in the process of implementing what it calls its Strategic Sourcing initiative. This process may be good for industries where subcontracting opportunities exist, but it could be the program that drives independent dealers from the federal market.

Strategic Sourcing is the new contract bundling of our time and if fully implemented will mean the Federal government will do business with less vendors and will not get the cost savings they are seeking due to the lack of competition keeping vendors honest. This is neither good for the government nor small businesses because the likely winners of these contracts will be large corporations. We have witnessed this first-hand with the award made to a large corporate company in our industry by the Department of Health and Human Services.

Over the past three years we have lost out on large national contracts with the Federal government without a real reason why. We lost out on doing business with the Department of Health and Human Services, even after we pointed out how the RFP was written for the companies that were awarded the contract.

Let me explain. When an RFP for office products is issued it is done so using the generic manufacturer part number so that anyone can identify what that product is and offer a price. In the case of the HHS, the RFP was issued using Staples and Office Depot part numbers. This meant it was almost impossible for anyone other than those two companies to submit bids.

Our industry pointed this out to HHS officials and were told that they issued the RFP with the information they had. It was our responsibility to find a way to find the correct corresponding part numbers not theirs.

Last year alone independents lost out on large national contracts with the Internal Revenue Service and Federal Aviation Administration. In the case of the Federal Aviation Administration, we lost out even when the person handling the RFP recommended to his supervisors and the small business advocate in the agency that the award should be given to small businesses. This person was told no and it went to a large corporate company. In the case of the IRS, our dealer members were told in a meeting with IRS officials that it would be hard to make a change to a new vendor because they didn't want to have to educate their employees on how to buy from new vendors. A statement that shocked us, but didn't surprise us.

I point these cases out because a stigma against using small businesses in the Federal government still exists. In some areas it is getting better. I want to praise the Department of the Army for their participation with our sector as alluded to earlier. I also want to commend the Department of Homeland Security, which awarded part of its multi-million dollar contract to a small business recently. These are two of the very few success stories in our industry. We tend to lose out on more than we win. Not because we can't compete, but because of the myths I described earlier and the abuses taking place through what is called "pass-through partnerships."

I would also like to take this opportunity to highlight another issue facing small businesses that doesn't get much attention. Today you have a lot of large companies using small businesses to gain greater access to the Federal government market. The way this works is a large company will approach a legitimate small business and create a relationship they label as "mentoring." There is absolutely no "mentoring" taking place. It is nothing more than circumvention around the intent of the statues.

Really what happens is when a government agency wants to buy office supplies they are using the small businesses, who was awarded the contract, online ordering platform, but the fulfillment usually comes from the large company. In return for their willingness to sell their small business status these dealers are getting a percentage of the sale for doing nothing and the large corporate company continues to build its revenues and access to this market.

Not only is this abuse bad for the entire independent community, it's bad for the government. By turning a blind eye to these abuses the government is taking credit for small business purchases that help agencies meet their 23% small business goals even though these purchases are made through a large company. In most cases the only thing the small business provides is its website as the face for these pass-throughs. This practice helps agencies build up their small business purchases making it look as if they are doing everything they can to meet the needs of the small business community. It only makes it harder for legitimate businesses to succeed in this market.

Congress took steps to curb this practice when it was made aware that the Federal Prison Industries (FPI) program was doing it for furniture purchases. It is our hope that Congress will now go after those large and small businesses abusing the procurement process and thus making it more difficult for legitimate small businesses to make gains in agencies.

It is also our hope that as Congress debates the issues of contracting with small businesses that it will include this important issue in the debate. As an industry we have begun to take steps to weed out the bad apples by expelling them from industry groups. We are hoping Congress will join us by passing legislation that ends this practice, as it did with the FPI program.

Chairwoman Velazquez, more can be done. In fact, more has to be done. Our industry cannot continue to fight an uphill battle without your help. It is my hope that today's hearing will help educate this committee on the issues still facing small businesses. We should not have to work three times harder in order to do business with the Federal government. If you make the process fair, open and the playing field level, I'm confident we will win our share of contracts.

Again, let me stress, we are not looking for handouts, but we are looking for a fair shake. With your help and support, I am confident we will get that fair shake. Let me also say that this is an issue that can't linger around for years before Congress acts. I don't believe we have that much time before we see independents giving up on trying to do business with the Federal government.

A lot goes into submitting a good proposal for each RFP. It takes 100's of hours and thousands of dollars if done right. Without a better track record of winning and losing contracts, I'm afraid many of our dealers will simply opt to get out and focus on their commercial business.

This option is not a good one for the Federal government. When you limit your buying options you are almost guaranteeing you are not getting the best pricing in the market. The reason is simple, you are limiting competition. When you limit competition there is no incentive for a seller to give you best value pricing. At the end of the day you end up paying more because there are not enough options to keep competition honest and prices lower.

I realize I am limited to five minutes in my statement. This statement only touches on the surface of the problems and challenges small businesses face with doing business with the Federal government. I would be happy to spend additional time with you, your colleagues or your staff explaining the other problems we face.

Madam Chairwoman, let me again thank you for all your support of the small business community. You have been a real strong advocate on our behalf and you give us hope that we can make positive changes to the process.

As you begin to draft any legislation in this area, we would welcome the opportunity to serve as a small business resource to you and your colleagues. Our membership comprises some of the best independent office supply dealers in the country. I am confident that their experience and knowledge in this area could be useful to you and your staff as you move forward.

Let me again thank you for this opportunity and I would be happy to stay around and answer questions now or in writing at a later date if you would like. Please feel free to contact me directly if you have any questions or need any assistance.

○