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EXAMINING THE BARRIERS FOR SMALL BUSINESS CONTRACTORS AT THE DOD

HEARING

BEFORE THE

SUBCOMMITTEE ON CONTRACTING AND WORKFORCE

OF THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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EXAMINING THE BARRIERS FOR SMALL BUSINESS CONTRACTORS AT THE DOD

TUESDAY, NOVEMBER 8, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CONTRACTING AND WORKFORCE,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Subcommittee met, pursuant to call, at 9:59 a.m., in Sumter County Council's Chambers, 13 East Canal Street, Sumter, South Carolina, Hon. Mick Mulvaney (chairman of the Subcommittee) presiding.

Present: Representative Mulvaney.

Chairman MULVANEY. I'm Mick Mulvaney, 5th District representative from South Carolina, and the chairman of the Small Business Subcommittee on Contracting and Workforce. To my right is Joe Hartz with the Small Business Committee in Washington, D.C., and on the left is Natalie Binkholder, legislative assistant in my office. I believe some of you all have also met Eric Bettingbiel, the deputy chief.

It is not unusual to have these hearings with just one member of Congress. The ranking member, who is a Democrat, is entitled to be here. However, she is from California, so it is not surprising she didn't make the trip. We also extended an invitation to Mr. Clyburn's office, and we may see them come in or come and go as the hearing goes.

So what I will do is go ahead and call the meeting to order, which is a very fancy way of starting, and let's go over some logistics first before I give my opening statement.

In front of you, you will see a timer. Typically, we ask folks to keep their comments to 5 minutes, and I say typically because a lot of times we will have 15 members and 20 witnesses, and if we don't limit the time, the meetings would take 6 hours. We try to avoid that.

What you will see then in front of you is a timer that says 5 minutes. The green light will be on for the first 4 minutes, then the yellow light will go on when there is 1 minute remaining, and then once you go over 5 the red light goes on. I encourage you to use that only as a guide today. Because of the size of the hearing, and because of the relatively small number of witnesses, I am going to encourage you to go ahead and take your time, and if you need to go beyond the 5 minutes, that is great. If we get to the point, if you have talked for 20 minutes, what you will hear me do is very quietly tap the end of the gavel, and that would encourage you to please wrap up, as we do have other folks who want to testify.

How I run the meetings is I will introduce each of the witnesses, ask you all to give your testimony at one time, and then I will ask questions at the end, and then we will start to our second panel.

So with that, I will read an opening statement and then introduce the first panel.

Thanks again for being here. I appreciate your willingness to appear before the Subcommittee to talk about the barriers small business contractors face when working with the Department of Defense.

The Federal Government purchases nearly $500 billion in goods annually. Because this is a significant amount of Federal dollars, we owe it to the taxpayers to make sure we are using those funds wisely and efficiently.

Government contracting offers a unique opportunity to invest in small businesses while also stimulating our economy. Small businesses play a critical role in our economy and job growth, creating seven out of every ten jobs in the country. With unemployment still stalled around 9 percent nationally, 11 percent in South Carolina, closer to 14 percent in this district, it is more important than ever to invest in the small firms that support our communities and create our jobs. It is difficult to build a strong economy when its foundation, America's small businesses, are not strong themselves.

Small business contractors are good for the government and good for the economy. They increase competition, innovation, create jobs, and save taxpayer dollars, which is why there is a statutory goal that 23 percent of all prime contractor dollars issued, spent by the United States Government, go to small business.

Unfortunately, other than criticism from Congress, no penalty exists for a failure by the Federal Government to meet these goals, which is one of the reasons we have not only this hearing today but all the hearings we have in Washington. In addition to a lack of penalties, there are a number of other barriers that prevent the Federal Government from maximizing the use of small businesses in Federal procurement.

For instance, we should reduce the flawed practice of contract bundling, which we will talk a little bit about today, which occurs when the government consolidates smaller contracts into bigger contracts that small businesses are not able to perform, and it can virtually shut out small businesses from the contracting process. Additionally, we must work to strengthen the enforcement system. And finally, in light of the President's executive order concerning the use of project labor agreements, which we will touch on briefly again here today, we must keep our eyes open to when such agreements are used and whether those agreements have an adverse impact on small businesses, especially here in South Carolina.

By addressing those and other problems that we hope to examine today, we can help small businesses compete in the national marketplace.

That is sort of a general background. What we are looking to accomplish here today is to examine some of the problems and the barriers, if there are any, that face small businesses when working specifically with the Department of Defense. As most everybody here knows, during the recent BRAC process, the United States saw fit to move the 3rd Army from Fort McPherson, Georgia, up

here to Shaw Air Force Base. As part of the BRAC process, several large construction projects were necessary for facilities, housing, and infrastructure to accommodate the approximately 1,000 additional soldiers, civilian employees, and their families moving to this base.

In 2009, the Navy awarded the construction of 3rd Army Headquarters. The Navy was actually responsible for the building of an Army headquarters on an Air Force base, which I thought was fascinating. The Navy gave that contract to a company from Montgomery, Alabama; and while some of the subcontracts of that general contract came to local businesses, many did not.

By no means is this hearing today to lay blame on anybody. This is a fact-finding mission. A lot of folks in this community have reached out to me and said why didn't we get more business locally. That is why we are here today, to find out exactly what happened and why it happened. My experience in the short time that I have been in office is fairly simple: small businesses here want to work at Shaw Air Force Base. At the same time, the folks who run Shaw Air Force Base want to use small business.

So today we are going to find out more exactly about the process by which 3rd Army was built and Shaw was improved. When small businesses did get work, and some of those folks are here today and will be testifying, we will find out why. We will also hear from folks who didn't get work on that particular project, and we are going to find out why as well. There could be perfectly legitimate reasons why contracts went someplace other than to local contractors.

Today's hearing is specifically designed to lay out on the table the facts, not the rumors and the things that we hear in the community, but the facts about why 3rd Army was built the way that it was by the folks that it was.

Again, thank you all for participating in the process. We are going to introduce the first panel. The first witness is Robert Griffin, the Assistant Commander for Acquisition at the Navy Facilities Engineering Command. He has nearly 30 years of public service and was selected to the Navy's Senior Executive Service in July of 2000. He is the Command's senior civilian contracting official responsible for the contractual business practices, policy and oversight for the Command's $10 billion contract program.

He is a graduate of George Mason University in Virginia, with a Bachelor of Science in Business Administration. His awards include the President's Meritorious Executive Service Award in 2004, the Department of Navy Superior Civilian Service Award in 1998, and the Meritorious Civilian Service Award in 1996.

Mr. Griffin, thank you for being here.

Also on the first panel is Ms. Jackie Robinson-Burnette. She is the Associate Director for the U.S. Army Corps of Engineers' $6 billion Small Business Program. She is the principal advisor to the Corps' commander and the Secretary of the Army, the Director of Small Business Programs and all Corps small business matters.

Ms. Robinson-Burnette oversees an integrated network of over 70 contract specialists that serve as the Corps' small business advisors throughout the country. She is the senior authority on small business legislation and regulations, and develops and implements

training programs. She graduated from the University of Maryland with a Bachelor's in Business Management.

Thank you very much as well, Ms. Robinson-Burnette, for being here.

Finally, rounding out the first panel is John Caporal. Did I get that right?

Mr. CAPORAL. Yes, sir.

Chairman MULVANEY. Like "corporal" without the R?

Mr. CAPORAL. Yes.

Chairman MULVANEY. Acting Director of the Air Force Small Business Programs Office, where he manages the execution of small business programs for the Department of the Air Force. As a member of the Air Force small business leadership since November of 2004, he has helped transform, modernize, and promote successful practices with respect to engaging small business. Through his leadership, the Air Force has implemented several innovative strategies to better align the small business community with the mission and priorities of the Air Force.

He has a Bachelor's degree in Secondary Education from Miami University in Oxford, Ohio, and a Master's degree in Public Administration from the University of Dayton. He graduated from the Air Force Command and Staff College in 1987 while at Wright Patterson Air Force Base.

Welcome to all of you.

With that, we will begin. And I think if there is one thing that is evident from those introductions is that these are the exact folks, these are the folks who help make the decisions. These are very high-ranking individuals, and I appreciate you all taking time from your busy schedules to do that.

With that, Mr. Griffin, you have between 5 and 10 minutes, so fire away.

STATEMENTS OF ROBERT GRIFFIN, ASSISTANT COMMANDER FOR ACQUISITION, NAVY FACILITIES ENGINEERING COMMAND, WASHINGTON, D.C.; JACKIE ROBINSON-BURNETTE, U.S. ARMY CORPS OF ENGINEERS, ASSOCIATE DIRECTOR OF SMALL BUSINESS, WASHINGTON, D.C.; JOHN CAPORAL, SECRETARY, U.S. AIR FORCE SMALL BUSINESS PROGRAMS OFFICE, WASHINGTON, D.C.

STATEMENT OF ROBERT GRIFFIN

Mr. GRIFFIN. Chairman Mulvaney, thank you for the opportunity to testify before you and your constituents today on the construction contract for the 3rd Army Headquarters Complex at Shaw Air Force Base in Sumter, South Carolina, also the process by which the Federal Government awards contracts and the use of project labor agreements. I would also like to confirm the Navy's commitment to increase the utilization of small business firms. We view the key to successful contracting as the health of the industrial base, and that begins with small business firms.

The contract for construction of the 3rd Army Headquarters Complex at Shaw Air Force Base is a negotiated, firm fixed price, design-build construction contract. It was procured via full and open competition, with the concurrence of the Small Business Ad-

ministration on September 16, 2008, and awarded by the Navy on May 29, 2009 to Caddell Construction Company of Montgomery, Alabama. The price at time of award was $91,600,000. The scheduled completion date is November 14, 2011. Prior to the issuance of the solicitation, a market survey was conducted to determine if a sufficient number of capable small businesses existed to compete this procurement among small business prime contractors only. However, no small businesses capable of performing the work were identified.

According to the Small Business Administration's Table of Small Business Size Standards, a company is considered a small business if its average annual receipts for the past three years is $33.5 million or less. Eighteen offerors responded to the first phase of the solicitation. These offerors' proposals were evaluated on experience, past performance, and past small business utilization. The top four proposals were invited to Phase 2 of the solicitation, where they submitted a price proposal and a separate technical proposal.

The technical proposal consists of a small business subcontracting plan, a management approach, and a technical solution. The Caddell proposal was found to be the best value since their technical proposal was the highest rated and their price proposal was the lowest.

The Executive Order 13502 on Project Labor Agreements issued on February 6, 2009 encourages executive agencies to consider project labor agreements in connection with large-scale construction projects greater than $25 million. When the 3rd Army Headquarters construction acquisition was solicited in December 2008, the Executive Order 13502 was not in place, and Executive Order 13202, dated February 17, 2001 actually prohibited the use of project labor agreements. Accordingly, a project labor agreement was not considered on this project and had no impact on the award of this project.

I would also like to mention that the Navy is performing a small business outreach event today in Sumter, South Carolina, and thank you again for the opportunity to testify before you today.

[The statement of Mr. Griffin follows on page 37.]

Chairman MULVANEY. Mr. Griffin, thank you very much.

Ordinarily what I do is let everybody go first, but I think I will change that up a little bit today because my guess is that each of you will have a lot of detail. You had a great deal of detail in a very short period of time, so let me ask you a couple of questions.

So one of the things that we have heard back home here is that the project labor agreements were part of the process, and what I am hearing from you today is that they were not.

Mr. GRIFFIN. They were not.

Chairman MULVANEY. Can you please explain to folks what project labor agreements are?

Mr. GRIFFIN. Okay. A project labor agreement is an agreement between the government and a contractor, and the contractor and a workforce. Basically, the AFL–CIO, which represents the Building and Trades Council, is the agent for the local unions that represent the workers that would work in a specific geographical area. Some areas have as many as 19 separate labor unions that are gov-

erned and coordinated by the Building and Trades Council, which is the AFL–CIO.

Under a project labor agreement, either the contractor would negotiate at arm's length in advance of submitting a proposal with the AFL–CIO and establish the ground rules under which labor matters would be managed in the contract, which would include wage rates, would include benefits, would include certain requirements for safety, it may include programs to develop certain specific skills or sets of workers. They can vary from point to point.

The Department of the Navy has not implemented a project labor agreement to date in any of its projects. We have evaluated consistent with the Executive Order all projects since 2009 over $25 million using the criteria set forth in the executive order. Specifically, we look to see if the project requires multiple contractors and subcontractors, whether there is a shortage of skilled workers in that area where the work is to be performed, whether completion of the project will take an extended time, and whether there is risk to completion maybe based on certain environmental windows for purposes of construction access, whether PLAs or project labor agreements have been used for similar projects in the past and whether they have been successful, whether the project labor agreement would promote the long-term interests of the Department, develop future skilled labor, and other factors that may come into play in unique situations.

Chairman MULVANEY. Thank you. And my understanding is that project labor agreements have been generally perceived as being favorable to union labor over at-will labor. But my understanding is exactly what you just laid out, which is that 3rd Army expansion at Shaw was not covered by a project labor agreement because it was let before President Obama issued the policy.

Mr. GRIFFIN. Yes, sir.

Chairman MULVANEY. I guess it is fair to say that if there was another project over $25 million that began today at Shaw Air Force Base, it would be subject to the review that you have just laid out, and it might fall under the project labor agreement.

Mr. GRIFFIN. Yes, sir.

Chairman MULVANEY. But that the work that was done out there that was the subject of today's hearing for 3rd Army was not done under the rules regarding project labor agreements.

Mr. GRIFFIN. Yes, sir. That is correct.

Chairman MULVANEY. Tell me a little bit about design-build and whether or not you perceive that as having any influence or any impact on whether or not small businesses can participate in a particular project.

Mr. GRIFFIN. The decision to go design-build, the Department has——

Chairman MULVANEY. Could you, for the record, give a little summary of what design-build means?

Mr. GRIFFIN. Certainly. There are two basic approaches to constructing a building. You can hire an independent architect engineering firm who in turn would design the facility and then take that design and compete that design for purposes of the award of the construction contract, or you can combine the design aspects of the requirement and the construction and award a single contract

to a single entity, which normally would be some type of joint venture or prime-sub relationship between a construction firm and an architect engineering firm.

Depending on the complexity of the project, the Navy's policy is to evaluate what we believe would be the most effective and efficient approach. One benefit that we have found from design-build is that we eliminate the finger pointing if there's some type of error and omission during the construction phase. So that single entity cannot come back and blame an independent architect because the drawings may have been mistaken, resulting in a construction change, which causes a cost overrun. So we believe that there is great benefit in certain types of construction. When we go into very complex industrial type construction, kind of one off, it is not a normal process, we still go back to our conventional design bid build where the design is a separate component. So it is just another technique for purposes of construction.

Chairman MULVANEY. What would you say to the criticism that design-build projects tend, or at least might have the tendency, to exclude small businesses on the design side, that a small architectural firm, a small design firm might be excluded because they don't have the ability to do the design-build relationships?

Mr. GRIFFIN. Well, I think there is some credibility to that concern. I mean, the Naval Facilities Engineering Command works very closely with the Society of American Military Engineers, and also the Association of Independent Architects, and we try to partner with them and the Association of General Contractors to find the sweet spot between where we should be doing stand-alone design and where we should be doing design-build.

We also have to peel the layer back even more, a couple of layers, so that we can see where we can have opportunities for small business architect engineering firms, because normally the dominant in a design-build scenario would be the construction firm. So the architect engineering firm will always be the sub because their proportion of the work is usually 6 to 9 percent of the total construction price.

Chairman MULVANEY. And last question for this round. You mention in your testimony that the Navy found that no small businesses were capable of taking this contract. I believe this is one of the contracts that was open to small business because I think this is one of the contracts where small businesses, had they been named as the prime contractor, would have been allowed to delegate or subcontract out 85 percent of the work. So they would only have to do 15 percent. There are different levels for different contracts.

But on this one, small businesses would have been appropriate to name a small business as a general contractor if they could meet the requirements. You said you couldn't find any small businesses that met those requirements.

Tell me about the process. Tell me how the Navy went through the process of looking at small businesses that would have applied to be the general contractor here.

Mr. GRIFFIN. Oh. Yes, sir, I would be happy to. In coordination with the Small Business Administration, we do a market survey, and we basically advertise in Fed Biz Ops that we intend to do a

project of this size and scope at this location; in this case, $90-plus million in Sumter, South Carolina. We give the nature of the project and we request qualifications from interested parties, and we evaluate those qualifications.

We did have a half-a-dozen small businesses come in and show interest in the project, and we evaluate each of those independently, and we determined based on our own experience that none of those, in our opinion, had a likelihood of success. So we elected to go to the Small Business Administration and ask that we advertise the project on an unrestricted basis, which would allow large businesses to bid, as well as small businesses.

One of the things we look at is the risk factor as well. So as I explain in my testimony, the size standard for a small business is $33.5 million a year based on average annual receipts over three years. So to ask a small business who has traditionally not done more than $33.5 million a year total work to step up and do a single project almost three times that value seems like it is a leap as far as size, and then they have to get bonding capability.

Chairman MULVANEY. How big was the whole project?

Mr. GRIFFIN. The project was——

Chairman MULVANEY. The whole contract?

Mr. GRIFFIN. Total value after change orders was $106,300,000. Those change orders for additional security work and collateral equipment.

Chairman MULVANEY. Okay.

Mr. GRIFFIN. So they would have to bond the original amount of $91 million, and the bonding industry right now is extremely tight, the surety industry. So they have problems getting bonds. They probably would have working capital challenges initially until the payment flow begins, and we could theoretically harm them if we allow them to get into a project as a prime that they have never done before at that size and scope. We could bankrupt a company.

So we look at it very carefully. They still can bid the project, and they would still be evaluated, and actually they would have an advantage in one of the major factors, which is——

Chairman MULVANEY. And you say 15 small businesses bid this project as a——

Mr. GRIFFIN. No, no.

Chairman MULVANEY. How many was it?

Mr. GRIFFIN. I said a half-a-dozen in the market analysis said we were interested, and we had a total, I believe, of 18 people who bid the actual job in Phase 1, and I explained under our process of Phase 1/Phase 2 we have criteria to short list, and we did short list, and then none of the small businesses made it to the second phase.

Chairman MULVANEY. Got you. Thank you, Mr. Griffin. We have more when the other folks have finished.

Ms. Robinson-Burnette, would you like to present your testimony, please?

STATEMENT OF JACKIE ROBINSON-BURNETTE

Ms. ROBINSON-BURNETTE. Mr. Chairman, thank you for the opportunity to speak. It is one of my greatest passions to educate small businesses. It is understandable why Congress is heavily fo-

cused on the efforts of Federal agencies to award contracts to small businesses, because small businesses play a significant role in recovering our economy.

At the Corps of Engineers, we greatly depend on small businesses to help us meet an array of diverse missions around the world. Our missions include research and development, managing valuable aquatic resources, building infrastructure, providing engineering solutions to DOD and other Federal agencies, international government agencies and non-international government agencies in nearly 100 countries around the world.

The small business goal for the Army is 25.3 percent, and this past fiscal year the Corps exceeded that goal, achieving 42.5 percent, nearly $8 billion to small businesses, and 63 percent of our subcontracting dollars went to small businesses.

The Charleston District exceeded their goals for the last three years. Charleston District is responsible for the State of South Carolina. In fiscal year 2011, Charleston's small business goal was 40 percent, and they are projecting achievement at 84 percent of all dollars awarded to small businesses. You can see that our commanders at every level in the Corps are committed to giving small businesses contract opportunities.

There are organizations like the Procurement Technical Assistance Center and the Minority Business Development Center that walk small businesses through the contracting process. It is imperative that small businesses that have yet to receive their first contract award contact these organizations so they can focus their efforts in a way that would more clearly get them to a contract award.

Each buying activity has small business advocates, and the Federal Acquisition Regulation requires that all contract actions under $150,000 are set aside exclusively and automatically for small businesses. And for procurements over $150,000, small business advocates sit side by side with contracting officers and program managers to determine if there is a reasonable expectation that two or more small businesses will submit a competitive offer at a fair market price. This is referred to as the Rule of Two. When market research validates the Rule of Two, contracting officers are required to set aside actions for small businesses over $150,000.

The Rule of Two is validated by several different methods through market research. The most effective method is the sources sought synopsis, which is posted on the Federal Business Opportunities webpage. Typically, we ask small businesses to respond to a handful of questions and list information about their financial capability as well. Many small businesses are unaware of the significance of the sources sought synopsis and they don't respond, therefore missing their opportunity to influence the acquisition. Of course, small businesses may submit a proposal when the acquisition is unrestricted, available for proposals from large and small businesses, but they maximize their potential when the procurements are set aside.

Small businesses have to be diligent about marketing their experience, past performance, and financial capability. Our customers are expecting us to minimize risk to their projects by making the award to the most financially capable firm with the most experi-

ence. Having 8(a) certification or small business certification is definitely an advantage, but it never takes precedence over capability to perform. Firms must clearly understand what is in the requirement in order to submit a winning solution. Small businesses must keep in mind that they must provide their best possible technical proposal and best possible price with the initial offer because they may not have an opportunity to submit a revision.

Finally, small businesses must ask for debriefings. The debriefings can provide critical information necessary to improve future proposals. Our large businesses are also very interested in supporting Federal small business programs through subcontracting. They are engaged with firms, and especially when small firms find the contracting opportunity and focus their marketing efforts around those specific opportunities. Large firms also prefer to hear about a firm's capability, past performance and financial capability, and establish relationships, more so than just the firm's size standard.

Today we are prepared to talk to firms in the local community about different projects that we have in the Corps of Engineers. There are many small business projects projected for set-aside to small firms. I want to list a few of them.

There is a competitive 8(a) design-build fire protection multiple award task order contract. It is going to be valued—the task orders will be valued between $75,000 and $1.5 million over a five-year period.

We have Clouter Creek Ditching, which is a project that is going to be between $500,000 and $1 million. It is going to be in Berkeley County, South Carolina.

We have the Virginia Charleston New Post Traumatic Stress Disorder/Mental Health Research Facility. It will cost between $5 and $10 million in Charleston, South Carolina.

And then the Gantry Crane Rehab and Inspection Certification at Stephen Power Plant, Stephen, South Carolina.

We look forward to talking to firms after this hearing about those opportunities. They will be specifically set aside for small businesses, and I look forward to any questions that you have.

[The statement of Ms. Robinson-Burnette follows on page 48.]

Chairman MULVANEY. Thank you, Ms. Robinson-Burnette. And that gives me the opportunity to go off the message here for a little bit to remind everybody that after this meeting on the way out, various departments will have information available on projects that are available to small businesses in the area. So thank you for doing that.

Ms. ROBINSON-BURNETTE. You're welcome.

Chairman MULVANEY. And before we got ready for this meeting, I had no idea your numbers were what they were. I do this a good bit. One of the things that we press the agencies on, I mean from Treasury to Health and Human Services to the Army Corps up in Washington, is on the percentage of their set asides for small business. Those are the best numbers I have ever heard.

Ms. ROBINSON-BURNETTE. Thank you, sir.

Chairman MULVANEY. So it makes me extraordinarily proud to know that that is happening in South Carolina. Thank you for

doing that. Please keep up the good work. We need all the help we can get.

Help a layman understand. Was the Army Corps involved with the 3rd Army expansion at Shaw Air Force Base? Or was it the Navy working with Caddell directly? Tell me what your role was, if anything, on this project.

Ms. ROBINSON-BURNETTE. Sir, I don't have the full details on that, but I believe that they independently awarded and solicited for that contract.

Chairman MULVANEY. So the Army Corps of Engineers—the Navy was in charge of this. I recognize that. But again, for a layperson, was the Army Corps of Engineers involved in this project?

Mr. GRIFFIN. No. Title 10 identifies two organizations that do military construction, the Army Corps of Engineers and the Naval Facilities Engineering Command. The Air Force work is distributed between the Army and the Navy based on geographic basis. South Carolina happens to be a territory that the Naval Facilities Engineering Command would do the MILCON for the Air Force.

Chairman MULVANEY. Got you. Great. That helps. Thank you very much.

Mr. Caporal, if you want to go ahead and begin, please?

STATEMENT OF JOHN CAPORAL

Mr. CAPORAL. Thank you, Congressman Mulvaney. Thank you for the opportunity to discuss Air Force Small Business Program. Our office reports directly to the Undersecretary of the Air Force. We provide policy advice, guidance, training, and innovative strategies to ensure quality solutions for Air Force acquisition teams to maximize opportunities for small businesses. Our vision is to ensure maximum practicable opportunities for small businesses at the earliest stages of acquisition planning and to make small business the solution of choice to meet the needs of the Air Force mission.

We strive to promote a culture of shared responsibility with our acquisition partners, recognizing the critical role small businesses plays not only in advancing the mission but in strengthening our nation's industrial base. We are more than advocates for small business. We are advocates for the Air Force mission using small business solutions.

In fiscal year 2010, the Air Force awarded $8.8 billion to small businesses, or 15.4 percent of total procurement dollars. In fiscal year 2011 the awarded amount dropped to $8.2 billion or 14.5 percent. This is not official yet. We haven't verified those numbers, but don't expect it to change too much. While this represents a drop in dollars and percentages over the previous year, 2011 saw an unprecedented level of commitment to small business programs from our Air Force leaders at all levels. Our fourth quarter numbers began to rise in conjunction with the heightened attention. Despite a tough budget environment, we believe this increased level of support of the program, reflected in our future acquisition strategies, will pay big dividends in the coming years.

Under our new director, Mr. Joseph M. McDade, we are reinvigorating the role that small business plays at the prime and subcon-

tracting levels in all of our acquisitions. We are developing a new plan that we believe will receive the endorsement of our senior leaders, leading to a higher level of achievement in the coming years.

Shaw Air Force Base, one of our most active operational installations, has done a superb job of supporting the Air Force Small Business program. They awarded over $78 million to small businesses in fiscal year 2011. That is 86.6 percent of their total spends, and that exceeded their goal, which was set at 81 percent. Air Combat Command, Shaw Air Force Base's parent command, also had a great year for small business awards. The ACC awarded a total of $836 million or 41.8 percent to small businesses. In fact, 11 of our 13 major commands awarded more than the statutory goal of 23 percent, ranging from 25 percent to 78 percent.

The challenge is with the product mix of our major weapons system commands that obligate more than 70 percent of our budget, yet award less than 10 percent of prime contract awards to small businesses. One of our goals for 2012 is to increase the market research and data analysis that is needed to increase prime contract awards in these two MAJCOMS.

Our strategic goals in fiscal year 2012 include: finding that right balance between enterprise buying strategies, known as strategic sourcing, and making sure that our small businesses are full partners in the process and are utilized to the maximum extent; number two, focusing more intensely on market analysis to identify additional opportunities for small business in this time of declining budgets; and three, finding the right acquisition strategies for small business when a long-term contract is written. These include providing on-ramp opportunities, which allow small businesses not selected initially another opportunity to compete later on in the ordering period, and also to encourage more teaming arrangements between small businesses to allow them to compete on longer, higher dollar contracts.

In closing, I would like to share a story about a small business contractor who performs work here at Shaw Air Force Base. ISPHI Information Technologies, Inc., a Mount Pleasant, South Carolina small business, has provided over 25,000 hours of logistical support for contingency operations, exercises, war-readiness material prepositioning, maintenance, and day-to-day planning efforts in support of the contingency/deployed personnel at the Air Force Central Command Area of Responsibility. The invaluable work performed under this contract demonstrates that while achieving Air Force small business goals are important, it is the support provided to the warfighter that showcases the true value of the program. We need to develop strategies that ensure that companies like ISHPI Information Technologies continue to thrive and grow. It is the jobs provided to the local communities and the innovation, agility, and value they provide to the taxpayer that needs to be encouraged. Finding and helping small businesses like ISHPI succeed and contribute to the mission is what motivates all 145 of our small business specialists that are located at every Air Force installation. There are success stories like these at every installation. Our aim is to develop more of those success stories.

Ms. Judith Cruxton, our small business specialist, and Major Harris, who is our contracting commander, are also here today and will be set up outside afterwards, and we will be glad to talk to small businesses and help them learn more about the opportunities that are here at Shaw Air Force Base.

So with that, I want to thank you for the opportunity to address you today. I will be glad to take any questions you might have.

[The statement of Mr. Caporal follows on page 58.]

Chairman MULVANEY. Let me ask you a question on the logistics involved. You've got an Army base on an Air Force base. Who is going to be responsible for the maintenance of the Army side of the property? Will it be the Air Force, or will it be the Army?

Mr. CAPORAL. Going back to my contracting days, lots of times we would have a memorandum of agreement. Normally it is the contracting organization that does the maintenance, or that does the oversight. But a lot of times, if it is done by DCMA, they don't come on an Air Force base or an installation. So local agreements have to be made, and sometimes the folks at the Air Force and the construction flight will take that responsibility to come out and oversee the project.

It gets a little touchy sometimes because, you know, manpower is short and they don't get any manpower credit sometimes when they do that. But from what I recall, we have worked out lots of successful agreements like that.

Chairman MULVANEY. Let's say that I am—pick a business—I am an asphalt company, and I am here in Sumter, and I want to know the next time that resurfacing the roads on part of the base goes out to bid. If I talk to the Air Force small business contact, or I talk to your contracting person, is that enough, or do I need to also go over and talk to somebody on the Army side of the base as well?

Mr. CAPORAL. Well, we do lots of local construction projects. Title 10 is really for the big construction projects that are done. We have a Center for Engineering and Environment down at San Antonio at Lackland Air Force Base called AFCEE, and they do projects for the Air Force that are some of the larger ones. But besides that, we have lots of local small construction projects that are handled locally at the base.

Chairman MULVANEY. Right, and that is what I am asking about. I am not interested in doing work in San Antonio, Texas. I am a local guy here. I do resurfacing, and I want to just know the next time a project comes up at Shaw that I might be able to qualify for, I might be able to bid on. If I have reached out to the Air Force, have I covered all of my bases? Will I know about all of the bids, the contracts that go out, or do I also need to go talk to the Army as well?

Mr. CAPORAL. Probably need to talk to both, and probably the small business person could advise whether that is going to be a larger requirement that maybe the Army is going to handle. Also, we have a forecast tool on our website. So sometimes it is too late when you see the requirement, and it is 30 days to close. But with our forecast tool, you can find out about these requirements maybe six months to a year ahead of time.

Chairman MULVANEY. Ms. Robinson-Burnette, even though you are not directly involved with Shaw, you have a lot of small business experience. Tell me the one thing that small businesses do that excludes them from getting contracts. What is the biggest mistake that a small business makes when they bid on a contract with the Army Corps of Engineers? If you could waive a magic wand to fix it in order to allow more small businesses to participate—I recognize you all are doing a great job anyway but, generally speaking, what is the number-one mistake that small businesses make when they bid for government contract work?

Ms. ROBINSON-BURNETTE. Sir, I think the number-one mistake is misunderstanding the requirements of the solicitation and not understanding the limitations of the contracting officer when there are mistakes. For example, contracting officers can indicate that there is a page limitation for submitting the technical proposal, and sometimes small businesses will give—if the page limitation is 10, small businesses may add 12 pages, and they don't understand that after we get to the 10th page, we are prohibited from reading and considering the additional information, and a major portion of their technical information could be on those additional pages.

Another thing that small businesses do, and I have learned this from counseling with them, is after they propose, they utilize the debriefing as a chance to challenge the contracting officer's decision more so than gaining critical information that they can use to make their next proposal more successful. Quite often they may hold back a little bit from their technical proposal and increase the price so they can submit a—we used to call it best and final offer—revised proposal that they believe will really push them a bit higher. And even in the case with this award from Shaw, there wasn't an opportunity for revised proposals. The government has the opportunity to award on initial proposals.

Chairman MULVANEY. Mr. Griffin mentioned that as part of the process, that there are two considerations. There could be more than two, but the two major considerations are the—what did you call it?—the abilities, and then also price. These contracts are not bid just on price generally.

Mr. GRIFFIN. Yes, sir. There are best value determinations basically balancing the merit of their technical proposal and their price proposal.

Chairman MULVANEY. Ms. Robinson-Burnette, what can small businesses do—I think we all—I have been a small business. I understand lowest price. This is pretty easy for me to get. What about the best technical side? What can small businesses do to better present the technical sides of their arguments, or their bids?

Ms. ROBINSON-BURNETTE. I think it is important for small businesses, when they look at the requirements of the solicitation, to present solutions and not just repeat what is in the solicitation but provide solutions that will show that they are technically excellent and that they have strong technical capabilities, and that they are providing additional solutions. For instance, they could talk about green initiatives in a project. That is just one thing that could provide them an edge up on their proposal. But just clearly looking at the requirements, and then making sure that they respond adequately.

One of the things that large businesses do is they often have proposal writers from another team that have not been involved in that proposal that is being submitted to look and review, and that way an objective team can take a look to see if the proposal writers have answered the mail for that acquisition.

Chairman MULVANEY. Before I go back to rebuilding the 3rd Army, because I have a series of questions on that, I want to ask you both, the two of you questions about in-sourcing. Have you seen the impact of that?

For those of you who aren't familiar with it, there is a new initiative with the current administration to take what are deemed to be—I can't remember the exact bureaucratic term, but essentially government functions——

Mr. GRIFFIN. Inherently governmental functions.

Chairman MULVANEY. Inherently governmental functions, and there is also ancillary——

Mr. GRIFFIN. Close to, yeah.

Chairman MULVANEY. Close to. Tell me about what you have seen generally with in-sourcing, which can be described as government going off and not renewing contracts with private small businesses especially, and effectively bringing the jobs in-house, and if there is any experience you have here in South Carolina on those, that would be helpful as well.

Mr. GRIFFIN. I would be glad to answer that. We have seen the effects of in-sourcing, and it seems like it has fallen disproportionately on small businesses. A lot of the things that were brought back in tended to be more of the low-hanging fruit that small businesses could do, advisory and assistance support contracts, those sorts of things. And it became a double whammy for these businesses. Not only did they lose the contract, but they also lost their workforce. The government swooped right in and made these folks job offers, and if you have 15 employees and you wind up losing 10 back to the government, that can be a critical mass for trying to grow your company in the future.

We don't have any really good figures on it, just a lot of anecdotal evidence. A lot of the ones that were being threatened or that were in the process, I think the Air Force pulled back on some of those. They didn't really come to fruition, but it still caused a lot of consternation. They decided maybe they couldn't really find the cost savings. There was a lot of subjectivity about the cost, as you can imagine, about whether it is really least expensive for the contractor or the government. And as a result of that, I think in some cases they decided to leave the contracts in place, which probably worked out well for our small businesses overall.

Chairman MULVANEY. Ms. Robinson-Burnette.

Ms. ROBINSON-BURNETTE. Yes. There are some in-sourcing that is occurring, not a lot at the Corps. Some of the contracts that we have attempted to in-source are focused merely on contract support-type services, and some of those contracting actions we still have small businesses working them, but we have in-sourced some of the contracting functions. And part of the acquisition, grow the acquisition workforce, we are receiving new staff and personnel to take on those contracting functions, and they are being in-sourced. I don't have specific numbers for you today.

Chairman MULVANEY. We have heard some disturbing stories on the committee. The one that sticks out in my mind was the cartographer who showed up at his office one morning, and there was a Department of Defense person there who had been instructed to go in and essentially take this gentleman's business from him. He said we have not renewed your contract, we need you to abandon the building right now. And he said what am I supposed to do about my employees? He said don't worry, we have hired all of them and given them 20 percent raises. That is in-sourcing. So I appreciate your insights on that. We will continue to keep an eye on that in Washington.

Let's finish, Mr. Griffin. Let's go back to 3rd Army, because that's really the real purpose that we are here today. You mentioned something that I think is probably at the core of the issue, which was the subcontracting plan that Caddell came up with.

And full disclosure, by the way. We invited Caddell to come today. They were very candid with us and said that everybody who was involved with this project was overseas. We will continue to reach out with them if we have any follow-up questions. They have not been excluded from this meeting. They simply chose not to participate.

Tell me about their subcontracting plan, and tell the folks here why that is significant and what part of the process that subcontracting plan plays.

Mr. GRIFFIN. Okay. Subcontracting goes—there are two phases in the acquisition. The first phase, we look at their historical use of small business, have they had a positive pattern of hiring and using small business, have they maintained their commitment that they usually provide in their proposal. In the second half, the Phase 2, they come in and tell us specifically for this project what their subcontracting strategy will be.

In this case, Caddell came in with a very aggressive subcontracting plan, 71.5 percent of the dollars available they wanted to subcontract out. They did a job fair initially when the project was first awarded, and they identified 45 major subcontracts that they planned to award. Of the 45 major subcontracts, 23 were awarded to South Carolina firms, of which 5 were from Sumter. So we think that Caddell put the effort out and really tried hard to meet its commitment locally to hire small business firms.

They do have to balance cost as well. There were some subcontracts awarded out-of-state for work that could have been performed in-state because it was more cost effective to do so.

Chairman MULVANEY. Do you have any idea of the value of the 23 subcontracts and the 5 subcontracts specifically that were in Sumter?

Mr. GRIFFIN. Yes, sir. Let me see. I can tell you that the small business value was $37,552,000.

Chairman MULVANEY. That was total, not——

Mr. GRIFFIN. That is total small business. I do not have the distribution for the South Carolina firms.

Chairman MULVANEY. If you could provide us with that at a later date, that would be great, because that is really the crux of the issue. You had a $100 billion contract.

Mr. GRIFFIN. Yes, sir.

Chairman MULVANEY. So the question is what percentage of that $100 billion—and then again, there is math that even somebody with my degree can handle—what percentage of that came to South Carolina firms, and what percentage of that came specifically to Sumter firms? I think that would be helpful to have.

Tell me about the process by which you all oversee the execution of the subcontracting plan. How often do you all touch base with a Caddell and say, look, have you let these subcontracts? Who have they gone to? Do you ask them how those subcontractors got the job? Tell me about how you all oversee that particular part of the business.

Mr. GRIFFIN. And I may have to defer the details to the two to my right, who are smarter than I am on subcontracting matters. But the contractor is required to report into a database its subcontracting activity. The contracting officer and the small business specialist are responsible for overseeing that data and seeing how that data aligns with what was promised initially in the proposal.

And if the contractor is meeting his goals, then things are going well. If not, then the government has a responsibility to inquire as to why. There may be a logical reason why the goal was not obtainable. It may be that the asset was not available, that the subcontractor was not available at the small business level. But it is incumbent upon the government to enforce the promises made by the contractor in the proposal.

Chairman MULVANEY. Are any records kept on subcontracts that are not awarded? For example, is the information available—we know that five Sumter businesses got subcontracts under the Caddell contract. Is there a way to know how many Sumter businesses bid on subcontracts?

Mr. GRIFFIN. Okay, I will have to take that for the record or pass it to one of the small business specialists.

Chairman MULVANEY. Are those records kept? If I run a small business here, I run a landscaping company and I want to bid on the clean-up for this contract during the construction, and I don't get it, and there could be completely legitimate reasons not to get it, is a record kept of my bid and my application for that particular job?

Ms. ROBINSON-BURNETTE. Sir, we don't keep records of subcontractors' proposals to the prime. The relationship between the government is between the government and the prime, and we don't have privity of contract to be able to see it.

Chairman MULVANEY. Great point. Is the prime obligated to keep those records?

Mr. GRIFFIN. One area I do understand. If the contractor also does cost reimbursement work and the contractor seeks what is deemed an approved purchasing system which is regulated by the government, then they need to maintain those records because the government has to go periodically and inspect their purchasing process and determine if, in fact, they are competing the work the way the government would otherwise compete the work. So the larger firms tend to have that, predominantly the ones that do cost reimbursement work. Fixed price contractors that are not seeking to have an approved purchasing system usually do not have the in-

centive to keep those records and probably do not keep those records.

Chairman MULVANEY. Got you. But it is possible to know the dollar amounts we talked about before?

Mr. GRIFFIN. Yes, sir. I have got the data aggregated to the 23 firms, so I would have the sub data, and I will provide it within a couple of days.

Chairman MULVANEY. Okay. There are no geographic preferences, are there, in any of these contracts? There is a small business preference, and within that there could be various disadvantaged groups. There could be Alaskan Indian-owned groups. There could be women-owned or disabled veteran-owned. But there are no geographic preferences at all in these contracts?

Mr. CAPORAL. There is one exception to that, and that is in the 8(a) program. In the 8(a) program, they need to draw from that district.

Chairman MULVANEY. That's the business pub or the——

Mr. CAPORAL. The SBA district. That is the 8(a) Business Development Program. These are firms that for nine years are in a special status and can get sole-sourced contracts up to $4.5 million, $4 million for services and $6 million for manufacturing.

Chairman MULVANEY. Are those the no-bid contracts?

Mr. CAPORAL. They can be awarded sole-source up to those dollar amounts.

Chairman MULVANEY. I lose track. There is more than one program to administer. I recognize that.

Mr. CAPORAL. Yes.

Chairman MULVANEY. And that is the one I think that the Indian-owned companies are exempt from, right? They can go up to a higher dollar amount?

Mr. CAPORAL. Yes.

Chairman MULVANEY. And they can go for longer than nine years?

Ms. ROBINSON-BURNETTE. Yes, sir.

Chairman MULVANEY. Okay. Do you all keep records of 8(a) as a subdivision, 8(a) companies as a subdivision of an overall contract? I imagine you would, wouldn't you? If there were 8(a) folks working at 3rd Army at Shaw, there would be a record of it, right?

Ms. ROBINSON-BURNETTE. Yes, sir.

Chairman MULVANEY. Okay. And if they had applied and were denied, there would be a record of that as well, wouldn't there?

Ms. ROBINSON-BURNETTE. Yes, sir.

Chairman MULVANEY. Okay. Thank you.

Ms. ROBINSON-BURNETTE. Sir, I would like to add, in terms of geographical programs, there is the Historically Underutilized Business Zone Program, and Hubzone firms, we can set aside an action for a Hubzone area, and the firm has to be in that Hubzone and has to employ a specific number of folks from the historically underutilized business zone.

Chairman MULVANEY. That did not apply to 3rd Army, did it? Okay. And Sumter is not a Hubzone generally when it comes to government contracts.

Mr. GRIFFIN. I think in the case of this project, it was just the size. It was too large when you did the market survey. If the mar-

ket survey would have shown that there were two Hubzone contractors capable of performing the work, then we would have considered a set-aside for a Hubzone.

Chairman MULVANEY. Got you.

Mr. GRIFFIN. This one just was so large, it probably wasn't feasible.

Chairman MULVANEY. Folks, I think that is all I have got. Hold on just a second.

[Pause.]

Chairman MULVANEY. Thanks very much. That is it. Thank you. Just one very quick follow-up.

Mr. Caporal, Ms. Robinson-Burnette was very helpful and gave an idea of some of the jobs that were coming down the pipeline in the area. Are you familiar with some of those that the Air Force is having or might have in the near future as well?

Mr. CAPORAL. We have got a list of those that is available that can be passed out.

Chairman MULVANEY. Great, that would be great. I found that one of the biggest challenges that we face in the Small Business Administration, although I have been misquoted on this, Mr. Griffin, is simply making the information available to the small business community of the opportunities that are out there.

Folks, I can't thank you enough for taking the time to do this. I know that everybody is extraordinarily busy, and especially in you all's position, as high up as you are, this is a major sacrifice for you. I appreciate that.

I would appreciate getting the information. We will follow up with your office separately on that. That would be extraordinarily helpful to answer the questions here. One of the questions is how much money stayed in Sumter, and I think the folks here have a right to know that, and clearly that information exists. It is not a secret, and we will get that out and get that to everybody.

So I can't thank you enough, but I appreciate your time.

The next panel? If the next three folks could come up, please, that would be great.

Mr. Griffin, if you wouldn't mind sticking around? I don't know what your schedule is like, but some issues may come up in the next panel. If you could stick around for another half-hour, that would be great. Is that possible? Thank you.

We are going to go ahead and bring up the second panel. I will introduce them very briefly, and then we will go through the same process.

Mr. Lynam is first. Mr. Lynam is the owner of Lynam Construction. It is Bill Lynam; I apologize. He started the company here in Sumter in 1990. They specialize in the building of commercial, industrial, school and church projects. The company has been a certified Varco-Pruden Metals building contractor for 23 years, and that enables them to design and engineer metal buildings from small commercial to large industrial projects.

Mr. Lynam has managed Sumter, South Carolina jobs such as the St. James Lutheran Church, the Jehovah Missionary Baptist Church, the Child Day Care Center, Kaydon Corporation, Jemison Demsey, and the Hodge Warehouse. In addition to the Sumter jobs, he has also managed the South Carolina Employment Security

Commission building in Columbia and a 20-story high-rise in Fort Lauderdale, Florida.

He is a graduate of Clemson. That is okay.

[Laughter.]

Chairman MULVANEY. Where is my deputy chief? Yes, my deputy chief is from Clemson.

He runs the company along with his son, Zeke.

Welcome, Mr. Lynam. Thank you for being here today.

The next witness is Billy Aycock, president of Aycock Construction, also here in Sumter, 20 years of experience as a general contractor and custom home builder in Sumter. They have been involved in many premiere construction opportunities in and around North and South Carolina, including projects such as the construction of the West Acton High School, Lexington Medical Office Building, the Fort Bragg barracks and parachute facility, Toomey Hospital parking garage, and the renovation of the governor's mansion.

Among Mr. Aycock's long list of credentials, he is proud to be a member of the local and state homebuilders association and was also Creative Homes winner in 2003, sponsored by the HPA. As a former builder and member, I congratulate you on that.

He is also honored to be judge in the 2010 Columbia Tour of Homes, and in 2010 he was elected by the Sumter and Clarendon HPA as their president, and was reelected this year. He is also a member of the State HPA Board of Directors for 2010 and 2011.

Mr. Aycock, it is a pleasure to have you.

Mr. AYCOCK. Thank you.

Chairman MULVANEY. Finishing up the second panel, Scott Bellows. Scott is the South Carolina program manager for the procurement and technical assistance center, or what we call PTAC. You can't have a government meeting and not use at least one acronym. He is embedded with the South Carolina Small Business Development Center, SBDC, and focuses on assisting businesses that are interested in selling their goods and services to the government.

Mr. Bellows gained much of his contracting experience during his 12 years with the U.S. Agency for International Development, USAID. He has also worked in the private sector with an emphasis on the integration of technology into schools and small businesses. Prior to joining USAID, he worked with a New York-based engineering firm where he worked primarily overseas in Egypt.

He holds a Master's degree in International Affairs from Columbia University in New York and an MBA from a school that some people call USC, but it is in a different state, someplace on the West Coast.

[Laughter.]

Chairman MULVANEY. So, Mr. Bellows, glad to have you here, sir.

Mr. BELLOWS. Thank you.

Chairman MULVANEY. Mr. Lynam, fire away.

STATEMENTS OF BILL LYNAM, OWNER, LYNAM CONSTRUCTION, SUMTER, SOUTH CAROLINA; WILLIAM "BILLY" AYCOCK, PRESIDENT, AYCOCK CONSTRUCTION LLC, SUMTER, SOUTH CAROLINA; SCOTT H. BELLOWS, PROGRAM MANAGER, SOUTH CAROLINA PTAC, THE MOORE SCHOOL OF BUSINESS, SMALL BUSINESS DEVELOPMENT CENTER, COLUMBIA, SOUTH CAROLINA

STATEMENT OF BILL LYNAM

Mr. LYNAM. Okay. Congressman Mulvaney, I certainly appreciate this opportunity. I was asked to come and testify, and I was given the term and the one that you brought up, it was "barriers" to working at Shaw Air Force Base. I want to include a little bit on Fort Jackson, too, because we worked there, and it is basically exactly the same.

When you all talked earlier about 3rd Army, I was involved in the subcontractor selection process, and just to give a comment on how that could be of more benefit to Sumter small businesses, and I am strictly small business. In fact, we are smaller now than we have been in a long time.

Chairman MULVANEY. Smaller than you want to be, I would imagine.

Mr. LYNAM. Yeah, a whole lot smaller. I started working at Shaw Air Force Base in 1977 and have been off and on at Shaw ever since. Of course, back then you sat around a table and you cut the bids open, and the low man got the job. It is totally different now.

The barriers to the 3rd Army for the local small business is my perspective, and when I met with Caddell's representatives, was the packages were too large. When I went to—we separated at that meeting, and the person that we talked with was the structural end of it, which we were looking at the pre-engineered metal buildings and concrete. The pre-engineered metal buildings had already been purchased. The concrete they told us you would have to do the entire project. We couldn't take one of the structures and do the concrete, which probably on a $100 million project, probably is $10 million worth of concrete, way out of our league, couldn't deal with it. So we were pretty much ruled out of 3rd Army by the packages that they presented.

Small business at Shaw, you brought up something at the last panel right at the end, which is 8(a). 8(a) is now at Shaw as construction in small business. I don't know about other trades, but construction is pretty close to 100 percent. We can't find anything that is not 8(a) out there. I don't qualify for 8(a). I am a veteran of the 60s and the Army.

Chairman MULVANEY. But you are not disabled.

Mr. LYNAM. No, it is not the same, and I have taken 27 months now to get that certified and still don't have it. That is a barrier, I think, but there is no veteran contracting work at Shaw that we know of, can't find any.

We worked for five contractors at Shaw. We don't work for all five, but there are five. They are called MACC contractors that are pre-selected, all 8(a) contractors. So anyone else is fairly excluded. We would like to see that opened up a little bit. We would like to see it opened up to veteran contractors.

Another—of those five MACC contractors, two are foreign Americans.

Chairman MULVANEY. And "MAC" is M-A-C, sir?

Mr. LYNAM. M-A-C-C.

Chairman MULVANEY. Okay.

Mr. LYNAM. Multi-contract——

Chairman MULVANEY. What is it?

Mr. BELLOWS. Multiple Award Contracts, Construction Contracts.

Chairman MULVANEY. Okay.

Mr. LYNAM. The requirements for 8(a), when everybody talks 8(a), so many people don't realize that to qualify for 8(a) is pretty broad. I have worked for Koreans, I have worked for Chinese, I have worked for Hispanics, and to take—and they are American citizens. But to take those contractors and put them above our veterans to me is an injustice.

I was at a meeting similar to this one a few months ago that Mr. Clyburn put on down at Santee, and there were two individuals there from the SBA. One of them was a Mr. McLorhorn from—I believe he was from Kentucky. And one of his comments was that the veterans are the only people who have put their lives on the line for this country. Why not move them up to the front and give them opportunity to bid these jobs? It is not happening.

There is a new bill, but it is pretty much restricted to VA-funded projects.

The barriers that exist right now, and I confirmed this this past Wednesday, working for the 8(a) contractors and in talking to local contractors—now, I am strictly talking the Sumter area, contractors that I know who there are a few in this room tonight, today—is payment, payment from the general contractor to the subcontractor. The government pays. That is not a problem. But enforcing that payment from the contractor to the subcontractor is a problem.

Right now, today, November the 8th, I am still waiting on September money, and they say they haven't gotten their money. The contracting officer says they have. The same thing with other things like retainage. These are the barriers that contractors in Sumter say I am not going out there.

We need to fix those things, and it would be simple enough to do. But that is the biggest one that I hear locally is I am not going to Shaw because you can't get paid. Well, you can. It just takes a little time.

[The statement of Mr. Lynam follows on page 62.]

Chairman MULVANEY. Mr. Lynam, I don't mean to cut you off, but this is a big topic in Washington right now because part of the President's jobs bill—and despite what folks read in the newspaper, there is actually many pieces of the President's proposed jobs bill that members of my party agree with. There is a long list of them, actually, and one of them or several of them deal with small businesses, and one is the one you just mentioned, which is that the President proposed and has actually issued some executive orders, I believe, to start paying subcontractors on 15 days instead of 30 days. Excuse me, contractors on 15 days instead of 30 days.

Are you telling me that that hasn't been filtered down, that the government is paying the contractors faster, or at least is starting to do that, but the contractors are not paying the subcontractors any faster?

Mr. LYNAM. That is correct. If you look at the actual regulations—now, I just signed a contract with another one out there, and he did not put payment terms in his contract. He put a FAR number. I looked that FAR number up on the Internet, and it will kind of shock you what it says. The contractor got paid in about 14 days, which is great, from the government. They are supposed to pay the subs in 7, and they signed on——

Chairman MULVANEY. It is 7 after they get their money.

Mr. LYNAM. After they get their money, and it is 7 calendar days, not working days. They are not doing it.

Chairman MULVANEY. All right. What I may do before we are finished here is call some of the first panelists up to address some of those issues, because it is one of the things that concerned us in Washington, was that we all agree with paying subcontractors—excuse me, and I do that too often. We all agree with the concept of paying contractors more quickly. We understood what the flow of money through the system would do, but we are concerned about the fact that might not be passed from the contractors down to the subs, and it sounds like that is happening.

Mr. LYNAM. That is right.

Chairman MULVANEY. I didn't mean to cut you off, so please continue, sir.

Mr. LYNAM. As barriers go, and I am trying to use that word "barrier," that is one of the largest ones that my friends, people I know that are contractors in Sumter say I can't deal with that. I don't have the money. We don't.

Chairman MULVANEY. Tell me about the process to become qualified for the 8(a), because you say you are trying to.

By the way, 8(a), for those of you—please stop me if I am wrong on this, because I do lose track of the programs. I believe that is the one that, if you are 8(a) certified, you have the right to bid for—excuse me, to do no-bid contracts. There are certain set-asides in certain contracts up to a certain amount of money. Is it $4.5 million? That was it? So it is very advantageous to be certified as 8(a). Tell me about the process you have gone through to try to get your company certified for that.

Mr. LYNAM. Well, I can't become 8(a). You have to be African American, Native American, Alaskan American, and then there is a list on the Internet of all the other countries.

Chairman MULVANEY. But there is a veteran—I am looking now to the SBA people. Is there not a veteran 8(a) set-aside? I thought it was a service disabled——

Mr. AYCOCK. No, sir. It primarily is for those in the past who have been disadvantaged. That list, minority or anything, it says those that are economically disadvantaged in the past, and it kind of goes to what Mr. Lynam has said. Those are the individuals—we do have, like, a white female in Charleston that got 8(a) certified, but I think that is the only person in the State of South Carolina——

Chairman MULVANEY. And my staffers are correctly pointing out that I am confusing the 8(a) program with the Service Disabled Veterans program.

Mr. AYCOCK. Two separate things.

Chairman MULVANEY. They are. So what you are saying is that if 100 percent of the contracts in that particular area are 8(a) at Sumter, that you will never get a chance to bid on those.

Mr. LYNAM. That is correct.

Chairman MULVANEY. Because those are no-bid contracts.

Mr. LYNAM. Well, I think those five did. We bid, too. We bid the products that we sell, the metal buildings, the concrete, the sheetrock, or whatever. We bid it to those five. Usually at Shaw, when they come up with a project they are going to do, it will go out to an invitation to those five contractors to submit usually design-build type packages.

Chairman MULVANEY. Got you. Okay. Mr. Lynam, you talk about the package as being too large, and I take it from your testimony that deals with the size of the job itself, not the physical size of the package in terms of the number of pages, it is just too complicated, people don't want to do it.

Mr. LYNAM. Right.

Chairman MULVANEY. But it is the size of the job.

Mr. LYNAM. Right.

Chairman MULVANEY. Did you get the impression that the contractor had bundled any of those? And by "bundling" I mean maybe there was supposed to be a job for the concrete over here and a job for the concrete over there and then the concrete in a third location, and he just decided on his own to bundle those together, to take it as one contract?

Mr. LYNAM. I couldn't tell you what his motivation was to do it. When we approached him about it, we asked him—we knew very little about 3rd Army building. That was the first time we had seen it, was in that meeting. They said—I asked him could we bid the concrete on one of the buildings. He said no, you have to take the entire project.

Chairman MULVANEY. And did they say why?

Mr. LYNAM. Didn't say why.

Chairman MULVANEY. Okay. You said you were involved in the subcontractor selection process. That is what you have been describing.

Mr. LYNAM. Yes.

Chairman MULVANEY. You weren't involved with Caddell in picking subcontractors.

Mr. LYNAM. No.

Chairman MULVANEY. You were trying to be a subcontractor.

Mr. LYNAM. We were just trying to be one, right.

Chairman MULVANEY. All right. I am going to come back to a couple of the other things when we are finished.

I am sorry, Mr. Lynam. I cut you off. Are you——

Mr. LYNAM. No, I am finished.

Chairman MULVANEY. Mr. Aycock.

STATEMENT OF WILLIAM AYCOCK

Mr. AYCOCK. Yes, sir. I presented or prepared a brief statement which you asked. Some questions in here have already been answered by the first panel, but I am going to go ahead and present it as I have it prepared today.

First of all, thank you for having me today. On behalf of the Sumter-Clarendon Home Builders Association, I am grateful for the opportunity to speak with you. I would also like to thank the local businesses and the Sumter Board of Realtors that have supported the growth of this community and the never-ending support of Shaw Air Force Base. Together with these organizations we have raised a great deal of money and local support of Shaw Air Force Base and its growth through the addition of the 3rd Army Campaign.

As this town will benefit greatly from the addition of new friends and neighbors with a growing economy here, our local builders and subcontractors are suffering from a dramatic decrease in new construction sales. As our local HBA members have declined by over 30 percent over the past 3 years, many of us are asking the question: With the number of new homes on the market now in our community, why is the government building hundreds of new homes to further depress this market? That isn't the question that we are here today. That is just a statement.

The next question: If the homes are going to be built nevertheless, why aren't we, the ones here supporting this base and community, the ones building these homes?

This brings us to the concerns of this hearing today. Why aren't small businesses receiving, at a minimum, the percentage of business as described by this government? Let me say that it is not because of the lack of local labor force but the lack of the opportunity.

At a local meeting held by Hensel Phelps—and Hensel Phelps was awarded this job, I believe, by Caddell. I believe that it is the chain that—Forest City? Okay. It was awarded these homes. They had a general meeting here, a local meeting here looking for subcontractors. I saw over a hundred small business owners from this community excited about going back to work. I also had a few other contractors locally that spoke to me at the meeting and after the meeting that said, made the statement, we will never have a chance at this project. I later found this to be true.

Hensel Phelps placed such stringent guidelines and unrealistic expectations that it became obvious that this meeting, in my opinion, was just a tool for the company to say we offered opportunity. There were only three companies at this meeting that I am aware of that may have the financial resources to possibly meet their requirements. I would say at least this would definitely deter our local small businesses from ever receiving an opportunity to work on this project. I personally registered at this meeting with my name and address, expecting to receive a bid package that had several different types of things they wanted, different people to bid on as far as subcontractors and specific type jobs. I never received this bid package.

I followed up with phone calls; was informed that Hensel Phelps wanted companies that would commit to numerous bases, I guess back to the bundling that you were speaking of earlier. Knowing

full well that my small business couldn't take on this amount of work, I had to face the realization that my idea of small business and theirs is two completely different things.

Two weeks ago I followed up again by phone and I was given a company based in—given a name of a company based in West Virginia to see if I could gain employment from them to work on a base just minutes from my home. We here have locally supported the base through the BRAC list just a few years ago. I personally met hundreds of families from Fort McPherson who have come to tour this town to try to gain them as neighbors and friends, and I find it unfortunate that I have got to call a company a few states over to see if I can gain employment of a base right down the road.

This leaves me with the question: If the government sets aside a percentage of business for small owners, who determines the amount of the cap of the business? Who says it has got to be worth $33.5 million? And that seems like a high number to me. That is cutting out, weeding out a lot of small businesses that can't exceed or can't reach the amount of work by bundling or whatever type strategies they are using to basically just overlook us. These seem to be obvious loopholes for these large companies like Hensel Phelps to exclude the small businesses, at least in this community.

[The statement of Mr. Aycock follows on page 63.]

Chairman MULVANEY. I think the $33 million deals with the definition of a small business, and there is really no rhyme nor reason to that. The definition of a small business varies dramatically depending on the industry segment that the small business is in. So I don't think it is accurate to say that they didn't have to deal with anybody if they weren't at $33 million. I think the original testimony was that once you are over $33 million, you are no longer a small business. But you make some other excellent points.

The housing is really what got my attention on this, and the building products, when we first got into this, because it is one of the industries I understand. And I toured the base, and they were rebuilding the apartments on the base and tearing down some of the old housing and building some of the new housing, and I can't remember what the numbers were, but the dollars per unit on the apartments were way above what I could have built them for, because I used to build those things.

And I recognize we get caught in this mental game where we say, well, okay, if we are going to go and build some houses on an Army base or an Air Force base or a Naval base, it has got to be cheaper to find somebody to do all of it because there is going to be economies of scale. And if they can do a job in South Carolina and Florida and Arizona, then we are going to be able to beat them down on price.

And housing has never been like that. Housing has always been one of those things that is actually much more effective or can be as effective on a small scale as it is on a large scale. There are certain very limited exceptions, such as when you buy your appliances and so forth.

But there was a reason that you go back before the last crash and the top 10 largest home builders in the nation only controlled 50 percent of the business. Home building has always been a small business. It is an entrepreneurial business. It is very efficient and

cost effective at a very small level, and I think it is one of the places where the Federal Government has sort of lost track of that particular item.

I am disappointed to hear that Hensel Phelps, that part of the process that gave them this contract was that they could build on several different—and we will come back, Mr. Griffin, and have you come up before we are over—disappointed that we thought we would get a better deal as taxpayers by giving it to a company that is far away in dealing with a huge project, as opposed to doing exactly what you just described, which is home builders in Sumter can build houses in Sumter probably cheaper than anybody else.

I also share your concerns regarding the impact on the overall market here. There were a lot of houses that were built in anticipation of 3rd Army moving in without realization that all this housing would be rehabbed on the base. So now we end up with an over-supply of housing in Sumter without significant immediate prospects for filling it with other industries. There is some good news recently.

But really what we are talking about here when it comes to housing on bases is the ultimate in in-sourcing. There is no reason for the government to be building housing. There is a huge private sector out there that can provide this in a cost-effective manner, and effectively what we have done is taken it away from small business. So I am extraordinarily sympathetic.

I want to go back to a couple of questions. Tell me about the meetings. Tell me about the Hensel Phelps meetings. And am I pronouncing that correctly? Tell me about those meetings. Tell me about how they advertised it, how they ran the meetings. I want to know. And I take it Hensel Phelps is a large subcontract of—it is a separate contract, then, to do the housing?

Mr. GRIFFIN. Not to——

Chairman MULVANEY. Understood.

Mr. GRIFFIN. Unfortunately, the housing component of the Department of Defense moves to what is called public/private venture housing under a new statute, and it is no longer appropriated money. Basically, they have assigned 50-year leases on the housing, and large management companies have taken the inventory and then bond financed to raise the capital that would be offset by the rental income. And those companies like Forest City won those deals, and they are not governed by the same rules and regulations——

Chairman MULVANEY. Fair enough. That is the way most college dorms are built as well these days. I understand that. Thank you for that insight.

Tell me about the meetings with Hensel Phelps. Tell me how that went through the process.

Mr. AYCOCK. They contacted our local homebuilder's office looking basically to hire our subcontractors, wanted some of our subcontractors to come, bid. I went to a local meeting we had at a building there at Swan Lake, which is a local area here. They had a form there, wanted everybody to sign it and fill it out, and they talked about how great the jobs were going to be and how good this company is to work for, and they may be.

Everybody who registered, I was under the impression that we would all receive a bid package to bid on certain things that they were requiring or they were needing. I know of a couple of other people who got these packages who actually bid on them who never were contacted back. One of them who was contacted back said that they want him to commit to two other bases, three in total, and he just wasn't aware, wasn't able to do that, which if this doesn't fall under the guidelines, it is tough for a small business to commit to that type of work. So basically that is the only meeting that I went to that they had and that I am aware of.

Chairman MULVANEY. Did any local builders get hired by Hensel Phelps?

Mr. AYCOCK. Not to my knowledge.

Chairman MULVANEY. Any local subs?

Mr. AYCOCK. Not to my knowledge. No, sir.

Chairman MULVANEY. All right. We will come back.

Mr. Bellows, why don't you do your testimony? We will come back to the questions.

STATEMENT OF SCOTT BELLOWS

Mr. BELLOWS. All right. Thank you for this opportunity to present my views on matters relating to barriers for small business contractors at the Department of Defense. In my role as the South Carolina Procurement Technical Assistance Program Manager, a Department of Defense initiative aimed at maintaining America's industrial infrastructure and enhancing competition in the procurement arena, I work with a broad assortment of private sector firms, collaborate closely with the Small Business Development Center network colleagues, and interface often with various agency small business specialists. Although our operations have helped our South Carolina clients to secure over $1 billion in contract awards so far this year, this work masks a number of fundamental problems that affect our client base, especially the smaller of the small businesses.

I believe that there is a general consensus that America's small business community is what is going to revitalize our economy. I think that there's also a quiet concern that with the pending government belt tightening, the downward shift in public sector work will align with a depressed private sector economy to further complicate an already depressed economy. The return of a large number of our troops in the coming months may only accentuate the problem. In this context, I offer the following four observations.

First, there are a number of forces at play in our economy that are, for the time being, distorting what should be a highly competitive market. Changes in banking regulations are stifling loans, changes in the insurance industry are reducing the ability of firms to reduce risk, and changes in labor laws are causing firms not to add new employees.

The consequence of all this appears to be that the larger firms are moving into a self-financing mode and in-sourcing work where possible, medium-sized firms are contracting out labor but are hesitant to actually bring on W–2 employees, and small businesses are just working to survive. Most of our work revolves around helping the small business community.

Second, the small business community is undercapitalized. While the larger, less risky firms are finding ways to deal with the economy, smaller businesses are finding this much more difficult or impossible. Termination of the SBA's Community Express Loan pilot program ended one of the few meaningful options available to many of these small businesses. Similarly, changes to the Export Express Loan Program that was made permanent under the Jobs Act tightened the language in a way that the funding could only be used for export-related activities. For many small businesses whose domestic and export functions are not as clear cut, this change ruled out yet another option for many of the smaller, would-be exporters.

Third and compounding these problems, our well-intentioned small business programs have evolved in a way that skews their original intent. First, the plethora of small business programs—8(a), Hubzone, SDVOSB, WOSB—has disenfranchised many of those who are not eligible to the extent that they no longer back the very programs they once were glad to support. Even those set-aside programs don't really achieve what most think that they do. It is not that the percentages are wrong, it is just that many of the same contractors tend to get the work time and time again, and those who want to break into government contracting soon realize that it is a long, uphill battle. Instead of asking how many dollars went to small business contractors, if one asks how many unique vendor contracts were awarded during a certain period of time, you might just come away with a different impression of how these programs are promoting small business development and helping to revitalize our economy. Many of these small business contracts are actually quite large, awarded for long periods of time, and all but eliminate new opportunities for aspiring government vendors. I have included a report generated from the Federal Procurement Data System in support of this argument. In all fairness to the contracting officers, these individuals tend to be understaffed, have to consider the risk to taxpayer money, and are cognizant of the need to meet small business target numbers. Technically speaking, they are just playing by the rules set before them. The prime contractors likewise are helping to meet the small business targets while simultaneously minimizing their risks by using subcontractors that they know and trust. I would probably do the same thing if I were in their position.

The fourth and final point that I would like to make is to note that across all government sectors there seems to be an emphasis on job creation. The best way to do this is to create a policy environment that facilitates private sector growth. If the government does this, I am confident that the private sector can manage the creation of jobs.

Thank you for this opportunity.

[The statement of Mr. Bellows follows on page 65.]

Chairman MULVANEY. Mr. Bellows, it is interesting that you mention the issue regarding the differentiation between the amount of money that is contracted out and the number of unique providers. In the hearing, the corresponding hearing to this that we had out in California, one of the topics was how difficult it has become to deal with small business programs, not necessarily the Ad-

ministration. The administration actually gets very, very high marks for ease of dealing with. You would almost rather deal with the SBA than any other Federal bureaucracy. They are actually pretty good to work with.

But the process has become so difficult that it is essentially a specialized sub-market, that SBA lending, which was the subject of the hearing out in California, has become a specialized sub-market where most banks now don't do SBA lending, or many. That is an exaggeration. But it's such a specialized business that large banks will hire entire teams that come in and do nothing but SBA lending, and the concept of our local neighborhood bank or credit union doing an SBA-backed loan doesn't exist anymore. You have to go to the Wells Fargos and the Bank of Americas of the world in order to get it. Again, an over-generalization, but a general trend.

Similarly, I think that if we look into it, and I was making a comment to Ms. Binkholder that we are going to do that when we go back to D.C., I think what you will see is exactly what you have mentioned, which is that government contracting, at least within the SBA program, is becoming a specialty in and of itself, that it is so complex to try to learn how to do it that you actually have to go off and do just that. You can't be what you all are and also be a small business, or a big-time small business participant. It is either you are in or you are out. It is simply too complex of a process. Again, over-generalizations for sure, but certainly worth some inquiry.

Let me ask you, out of the four that you have mentioned, I go back to D.C., and I should have asked this of all the panelists. I will ask of the other two gentlemen before you leave. What is the one thing I can do, what is the one issue that I can raise back in Washington on this committee to try to fix the problems that you have identified? Of those four, which is the one that you would like to see me spend the most amount of time on, recognizing that we can't fix everything but we can fix some things?

Mr. BELLOWS. I think if you work on the assumption that small business—and I am talking this kind of small business. The SBA's definition of small business for many of my clients is big business. But if you are looking at small business and saying, yes, they are truly going to have an impact, they are the ones that are going to really address a lot of the problems in this economy, then they have to be included in the process.

And what has happened is if you go to a typical base—and we are Shaw. My report focuses on Sumter County because I knew that might be of interest to you. I think you can go across the country. I don't think it is particular to Shaw. And I think what you will find is you are a contracting officer, you have got people telling you, look, we need to meet these targets, 25 percent for this, 5 percent for this and all that, you have got taxpayer money at work. Heaven forbid that a contract go awry. And there is a natural inclination when you are understaffed to say, all right, we are going to bundle this thing because I can't manage 10 small projects; I can manage one large project. And I am going to put the burden on the prime contractor. I am going to tell them I want to see that subcontracting plan. I want to make sure that this work gets allocated.

Now, you have been a contractor. Put yourself in the contractor's place. You have got people you have worked with for the last 5 or 10 years. They know what they are doing. They have built the same type of housing. They come in, boom, boom, boom, you get the job done, the government is happy.

And people like this say what about me? That is risk. And the government is not going to compensate you if one of these guys goofs up. So you are stuck. And so they come in, they do their job. They won it according to the rules that were set before them. They didn't do anything wrong, and the job gets done, and the targets are met, and almost everybody is happy.

Where it is really hard is for these people to break into that, especially if they are not a certified program, given some special advantages. It is really tough. That is all I can say.

Chairman MULVANEY. How long does it take to become certified generally? Do you know?

Mr. BELLOWS. Which program?

Chairman MULVANEY. 8(a).

Mr. BELLOWS. I work with a lot of firms becoming 8(a) certified. I probably on an individual basis put in, I am guessing, 10 hours at least of my time with each applicant. There are firms—almost anybody that applies for 8(a) and, frankly, a service disabled vet will tell you they get contacted frequently by firms that charge anywhere from $3,000 to $8,000 to help them get certified and told that if you don't do this, you are simply not going to get work.

Chairman MULVANEY. From start to finish, how long does the process typically take in terms of weeks or months? Do you have a feel for that?

Mr. BELLOWS. The 8(a) program has got—it used to be an 8-month processing by the SBA. I understand it is down to 3 or 4 months, and about the same for Hubzone, and I believe the same for service disabled vet, although yours may have taken longer.

Chairman MULVANEY. Your experience—and again, at this level I have only anecdotal evidence so far. We are continuing to try to pull some data. But if you are 8(a) certified, on average what percentage of your business is thereafter 8(a) work?

Mr. BELLOWS. As much as you can make it. I mean, that is my impression, because there is—one of the previous speakers mentioned there is a 9-year window, and that is your opportunity to grow your firm, to do whatever you are going to do. In a sense, if you digress too much from the government focus, the time is going to tick by you. So you want to—the objective—if I were an 8(a) firm, I would want to grow my firm as quickly as I could, as big as I could, and then toward the end of the 9-year period start to shift my focus into other areas.

Chairman MULVANEY. And that is what we have seen, is that the program—again, I wasn't around when the program was created, but my expectations of the program would be that gentlemen like this could use it, which is that they would run their own business, and then if a government contracting opportunity came up, they might go over and do the 8(a) program as well. But that doesn't seem to be—again, I don't want to over-generalize, but the anecdotal evidence is that once you get that certification, you go off and do as much of that as you possibly can to establish your business,

and then at the end of the 9 years you go off and you go back and do what these gentlemen do, which is go back and be essentially private sector.

Mr. BELLOWS. It is kind of a Catch–22, because even if you look at the 8(a) firms, which are for socially and economically disadvantaged firms, and there are ethnic groups that are implied to be socially and economically disadvantaged, they get a preference. They don't have to do the social disadvantaged narrative in the application process.

Chairman MULVANEY. Right, and the best thing to be is a Native American—excuse me—Native Alaskan Eskimo, I think. How that happened—oh, I asked that question how that happened, by the way. They said it was the same guy that did the Bridge To Nowhere got that passed.

Mr. BELLOWS. Yeah, I know. If you look at the attachments, you will see that a number of the contracts are exactly that.

Chairman MULVANEY. I have seen that, yes. It is amazing what that can do. Thank you, Mr. Bellows.

Gentlemen, I am going to come back to your experience at Shaw a little bit. One of the things that we have heard regularly when small business people come to Washington to testify—and again, we have had similar hearings to this in Washington with folks all over the country on dealing with the government. That is what this committee does. One of their frustrations is they don't ever hear why they didn't get the job. Have you ever had the opportunity to sit down with anybody after you had bid a job? You didn't get a chance to bid it, Mr. Aycock, so that doesn't really apply to you. But clearly, Mr. Lynam, did you have a chance—were you satisfied—did you know why you didn't get the work? It sounds like you may have in the circumstance, with the job being too large. But is that typical, or do you always get to get some feedback?

Mr. LYNAM. We typically don't have the opportunity to bid straight to the government, so we are bidding to contractors.

Chairman MULVANEY. Correct.

Mr. LYNAM. Which they will tell you that you weren't cheap, you weren't the best price. No, we don't have a problem with that. They will generally tell you why you didn't get it.

Chairman MULVANEY. Okay. Did you ever not get a job because of your qualifications?

Mr. LYNAM. Yes.

Chairman MULVANEY. Tell me about that.

Mr. LYNAM. Working on one right now that we are not going to get.

Chairman MULVANEY. I have been there. We all know we put bids in that we are not going to get.

Mr. LYNAM. We get calls occasionally. I am working on my third one right now, and I can't just turn it away, at Shawl, by a user of a building, not contracting. They need a price. I had to call this morning, wanting to hurry up and get my price in. We know that the units, the users are not going to award these contracts. They go through contracting. And I have had, on the last two that we gave them a price—what we have to do—apparently—I say apparently because I am not sure what they are doing—they will take two or three contractors, a sergeant or somebody from a unit, and

get a price on what they are doing. Then they submit it to contracting. Well, then contracting, the last time it happened I got a call said are you 8(a)? I said no. They say we are sorry. I did all the design work and the whole works.

Chairman MULVANEY. They are using that to compare the 8(a) bid, aren't they?

Mr. LYNAM. That is correct. We have got to get one out there today or tomorrow that I would almost bet the contracting people here in this room don't know about, but they will as soon as they get their prices in and they give them the data on it, and we will have 20 or 30 hours worth of time in it.

Chairman MULVANEY. I'll generally ask you this and maybe start to wrap up. We have taken some good testimony today on some of the general issues facing small business. Thank you, Mr. Bellows, for your input. It is extraordinarily helpful. And thanks again to the first panel.

When we drill right down to home here, okay, I have not seen—I have friends of members of Congress all over the country, and I have yet to talk to any of them who have major military installations in their area who have better relations than Sumter has with Shaw. In fact, the exact opposite is usually the case, that the community in which the military base is located is at loggerheads so often with the communities that they are in, and this is the exact opposite. We have a tremendous relationship here between the civilian community and the military community.

But that being said, what can we do to make it better? What can we do, Mr. Aycock, to fix the situation? What can we do to make sure, short of waving a magic wand and changing the SBA, which I don't have the ability to do. But what are the things that we can do locally? What are the things that you could do, that I could do, that the folks in this room could do to make it so that you all could get more business from this base? You live it every single day. You all know more about it than I do, all the time.

Mr. AYCOCK. Locally, I am not sure. I think that housing should be subject to this 23 percent rule. I think that it should, you know, and using small or local businesses with that. When it is not, I think there definitely should be a penalty in place to make sure this is policed and followed up on. As far as locally, I am not sure. I don't think—they don't really abide by local guidelines, government issued contracts and things like that. So I don't know if locally there is anything I can do about it, or we.

Chairman MULVANEY. Mr. Lynam.

Mr. LYNAM. I would like to see the market opened up a little bit, not so tightly restricted to five contractors, again small business, and I am talking small business, not the government's definition. We probably don't have a contractor in Sumter that approaches that level, maybe one. And allow us to—or support us with these contractors, one or the other. Now, I have no problem with Shaw. You mentioned the relationship. I worked at Shaw since '77 and have had a great relationship with them. It is those people we are working for that I am having the problem with.

Chairman MULVANEY. Right.

Mr. LYNAM. And not getting a whole lot of support to help me. That is the problem. I can't wait for money as long as we wait for

money, knowing that they have been paid, and then the contracting officer tell me right fast they have been paid, retainage, things like that. When the government is not holding retainage on the contractor and they are holding it on us, that is basically illegal, but they do it every day.

We need support to help us with those things, and it would be a great opportunity.

Chairman MULVANEY. You know, the reason we do these hearings, and folks ask me all the time after the meetings up in D.C., out in California, here, they say was it worthwhile. The reason we do these hearings, a couple of different reasons. Number one, we are always looking for anecdotes. We are looking for stories. The government is so large and it is so difficult to get your hands around it, oftentimes telling a story such as the one where you went to the meeting and they actually tried to hire your subcontractors instead of hire you, that allows us to explain very complex issues in a relatively simple fashion. It allows me to understand it. It sort of crystallizes the issue.

We also try to use these meetings to stir the debate. Invariably the Sumter Item will publish some type of article today. The Homebuilders Association may put it in their journal, and it may end up in three other journals that you have never read about. But with the Internet, it drives the debate. The example that I give of that is the 3 percent withholding rule that we just changed this year was something that probably very few people outside of this room knew about two or three years ago, but because Congress has been having hearings, we continued those hearings this year, not only did we actually get a bill passed that ended up in the President's jobs package, and there is a good chance that 3 percent bill will be passed out of the Senate this year. So we do it to drive debate as well.

Personally, I do it for another reason, not a different reason but another reason, which is I am looking for ideas. I am looking for things that we can actually change. Again, the big picture, very difficult to change Congress at this level. But if a small group of people is interested in changing it at small levels, there are actually opportunities to make improvements.

One of the things we took out of the California meetings, for example, was to try and work on changing micro-lending. It is evidently just as difficult within the SBA world to lend $15,000 as it is $5 million. As a result, nobody lends $15,000. Why would you, if you were a bank, take all the time to fill out this amount of paperwork to lend $15,000 and make a small amount of money on that, versus the exact same time and paperwork to lend a couple of million dollars that you can make some money on? So as a result, nobody does micro-lending, yet micro-lending is extraordinarily important. That was the one idea we took out of California.

We have got two here today that I will tell you folks I want to work on. The first one you mentioned at the very outset—I am glad you did mention it—which is on the payment times, because that is exactly what we were afraid would happen, that this benefit—not benefit, but the additional consideration given in trying to get payments out the door faster—and thank the Lord there are

enough people in government who understood the importance of that, that there is a difference in business if you get paid in 30 days versus 15 days. But we were concerned when those rules changed, or at least they are starting to be implemented now, that it wouldn't filter down, and that the benefit would be consumed at the contract level and would not go down to the subcontract level. For me, I am particularly concerned about the impact on small business, and we are going to look into that, maybe have some special hearings on that when we go back next year.

The other one is a little more subtle, but Mr. Aycock and Mr. Griffin, your testimony together has brought my attention to something I was not familiar with and probably nobody cares about in Washington other than me as of today I sit here. Changing the housing model has some unintended consequences. What I imagine they tried to do is move to a system where the government didn't have to pay for the housing. It is a great deal for the taxpayers. But by moving to that model—and this is the model that, again, many universities have switched to, where instead of a university building a dorm, they will contract with an outside company that builds the dorm, and then the university will essentially force the students to live there, and the company that has built the dorm can finance the structure, make a little bit of money, make a profit. It is a low-risk endeavor. It is the way that most university dorms are built these days, and it sounds to me as if DOD has copied that model.

And there is a perfectly legitimate reason for doing that, because it takes it off the government books, the taxpayers don't have to pay for it, it is privately funded. But when you do it in the scale that it looks like they have done it, it cuts this gentleman out of the process entirely. In fact, it excludes most small businesses at all from running those developments, not from being involved, because a small contractor or subcontractor could still provide the concrete, the brick, the electrical work for these houses, for that particular building, but it prevents homebuilders from doing what they do, which is build houses, because you are not building one or two. You have got to build 600 at a time. In fact, more than that. You probably have to build several thousand at a time because you are doing five or six bases at a time, and there are very few, even of the national builders, who have the ability to do that.

And what we have done, in essence, is cut a huge part of the private sector economy, in this area especially, out from the process. The only people now who can afford to run the projects to build housing on military bases are probably large insurance companies or huge contracting firms, and that is something that we need to take a look at. There is no reason to do it that way, Mr. Aycock. There is no reason that we can't simply allow the local homebuilders in Sumter to build a couple of extra houses and let the military folks buy them if they want to, rent them if they want to, or not buy them if they want to, or not rent them if they want to. So maybe taking a look at that housing model is something that is worthwhile and in the long run will be helpful to our small businesses.

That is more than I usually like to talk at these things, but since there is no other congressman here, I can do it for all of them.

Listen, thank you all to everybody for participating. Again, I know everybody walks out of here saying, gee, I don't know if that was helpful. These things are very, very helpful. You have no idea. This is how government works. We don't sit up in Washington and sit on the sofa one day, watch TV and go, wait a second, I wonder if my subcontractors are getting paid. It is doing things like this that drive home the real world, and in some sense maybe we should do this more often because we don't get it enough inside the Beltway, perhaps.

With that, I am going to stick around for a little bit. There will be organizations outside for the small businesses to get involved. I know there is a representative here from the SBA in South Carolina. Mr. Griffin is here, put on a tremendous presentation here a couple of weeks ago to introduce small businesses or folks interested in running a small business to the services that are available to you. Again, the SBA, one of the best—and it is not just me saying it—one of the best Federal agencies with which to work. You heard, I think, the process on 8(a) has come down from eight months to several months. I have heard the same thing. That is not the story across all Federal agencies, as you can probably imagine. In fact, most of them are going the other way.

So again, thank you for your time. Thank you for your effort. Thank you for your input.

And with that, we will adjourn the meeting.

[Whereupon, at 11:45 a.m., the Subcommittee was adjourned.]

**Not for Publication until released by
the House Committee on Small Business**

Statement of

Mr. Robert Griffin, SES

Assistant Commander for Acquisition, Naval Facilities Engineering Command

Before the

Subcommittee on Contracting and Workforce

of the

House Committee on Small Business

Subject:

Examing the Barriers for Small Business Contractors at the DOD

November 8, 2011

**Not for Publication until released by
the House Committee on Small Business**

Chairman Mulvaney, thank you for the opportunity to testify before you and your constituents today on use of a Project Labor Agreement (PLA) on the construction contract for the Third Army Headquarters Complex at Shaw Air Force Base in Sumter, South Carolina, the process by which the federal government awards contracts and specifically to discuss the contract for construction of the Third Army Headquarters.

Project Labor Agreement

The Executive Order (EO) 13502 issued on February 6, 2009 encourages executive agencies to consider requiring the use of project labor agreements in connection with large-scale (projects of $25 million or more) construction projects in order to promote economy and efficiency in Federal procurement. Agencies may, on a project-by-project basis, require the use of a PLA by a contractor where use of such an agreement will advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards and other matters, and be consistent with law.

The EO does not require an executive agency to use a PLA on any construction project nor does it preclude the use of a PLA in circumstances not covered by this order. This EO does not require contractors or subcontractors to enter into a PLA with any particular labor organization.

Federal Acquisition Regulation (FAR) Part 22.5 states that PLAs are a tool that agencies may use to promote economy and efficiency in Federal procurement, and that agencies may also consider the following factors in deciding whether the use of PLAs is appropriate for the construction project (FAR 22.503(c)):

1) The project will require multiple construction contractors and/or subcontractors employing workers in multiple crafts or trades.

2) There is a shortage of skilled labor in the region in which the construction project will be sited.

3) Completion of the project will require an extended period of time.

4) PLAs have been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic area of the project.

5) A PLA will promote the agency's long term program interests, such as facilitating the training of a skilled workforce to meet the agency's future construction needs.

6) Any other factors that the agency decides are appropriate.

Naval Facilities Engineering Command (NAVFAC) policy requires the Contracting Officer (KO) prepare a decision memorandum for all construction projects $25M and above. The KO's memorandum will address whether or not the particular project satisfies the criteria set forth in the EO. In addition, during the acquisition planning stages, the policy encourages soliciting the perspectives of stakeholders/offices with particular expertise and including those views in the KO's memo.

When the Third Army Headquarters construction acquisition was solicited on December 3, 2008, this policy was not in effect and the EO 13202 dated February 17, 2001 prohibited the use of project labor agreements.

The Federal Acquisition Process

I would like to provide a brief overview of the Federal Acquisition Process using information from the FAR and from one source cited at the end of this testimony.

Several statutes govern federal acquisitions. The Armed Services Procurement Act of 1947 (ASPA) governs the acquisition of all property (except land), construction, and services by defense agencies. The Competition in Contracting Act (CICA) requires federal agencies to seek and obtain full and open competition wherever possible in the contract award process.

The FAR contains standard policies and procedures for acquisitions by all federal agencies. Numerous agency-specific supplements have been implemented after promulgation of the FAR. These supplements, however, may not conflict with or supersede relevant FAR provisions.

FAR Part 1.102, Statement of guiding principles for the FAR, gives clear vision for Federal Acquisition when it states:

"(a) The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives…

(b) The Federal Acquisition System will—

(1) Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service by, for example—

(i) Maximizing the use of commercial products and services;

(ii) Using contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform; and

(iii) Promoting competition; …"

Acquisition Methods

Now I will discuss acquisition methods for federal government contracts. Federal statutes establish two basic methods of obtaining full and open competition. These are 1) sealed bidding and 2) competitive negotiation. In either acquisition method, the KO performs a small business coordination process to determine prime and subcontracting opportunities for small business concerns.

Sealed Bidding

Sealed bidding is characterized by formal, specific procedures. These procedures aim to provide all bidders an opportunity to compete for a contract on an equal footing. See FAR Part 14.

Once a federal agency identifies a need, and decides to proceed with an acquisition, it must solicit sealed bids when the following four conditions exist per FAR 6.401(a): (1) time permits the solicitation, submission and evaluation of sealed bids; (2) the award will be made on the basis of price and other price-related factors; (3) it is not necessary to conduct discussions with the responding offerors about their bids; and (4) there is a reasonable expectation of receiving more than one sealed bid.

Sealed bidding is initiated by issuance of an Invitation for Bids (IFB) through display in a public place, announcement in newspapers or trade journals, publication in such internet-based venues at FedBizOps, and by mailing the IFB to those contractors on the agency's solicitation mailing list.

All bids received by the time and at the place set for opening are publicly opened and read aloud by the contracting officer. The contracting officer awards the contract to the bidder found to be responsible and who submitted the lowest responsive bid.

Negotiation

If one of the four conditions for use of sealed bidding is not present, the contracting officer may award a contract using competitive negotiation. In contrast to sealed bidding, competitive negotiation is a more flexible process that enables an agency to conduct discussions and evaluate offers using price and other factors as well. The contracting officer may engage in

discussions with offerors and, in evaluating proposals, may consider factors other than cost, such as management experience, technical approach, and/or past performance. See FAR Part 15.

A negotiated procurement begins when the contracting officer issues a Request for Proposals (RFP). As in sealed bidding, if the procurement is over $25,000, the contracting officer will synopsize a notice of the proposed contract action in FedBizOps.

Evaluation of the proposals is in accordance with the factors specified in the solicitation. A source selection authority is designated to lead an evaluation team with the appropriate expertise to review and evaluate all proposals. As noted earlier, typical factors that are evaluated include (a) cost or price; (b) past performance on government contracts; and (c) technical approach.

A negotiated procurement may include negotiation called "discussions," but such is not required. If discussions are necessary, the contracting officer must identify the offerors that fall within what is called the competitive range. The competitive range is comprised of all the most highly rated proposals. To assist in determining the competitive range, the contracting officer may engage in limited communications with all offerors. After establishing the competitive range, the contracting officer will notify each excluded offeror and proceed to conduct discussions with the remaining offerors.

According to the FAR, the primary objective of discussions is to maximize the agency's ability "to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation." After closing discussions, the evaluation team will review and evaluate the final offers according to the evaluation criteria set forth in the RFP, and recommend to the source selection authority the offeror whose proposal is most advantageous to the government. The documented award decision will contain an analysis of any trade-offs accomplished by

negotiations and the reasons why the awardee's proposal represents the best value to the government. There are a number of review levels within the organization to ensure the integrity of the process. If requested by an unsuccessful offeror, the contracting officer will conduct a pre- or post-award debriefing during which strengths and weaknesses of the offeror's proposal will be explained.

The Contract

Having discussed the general context within which federal contracts are awarded, I will now shift to a discussion of specifics regarding the Navy's acquisition of construction for the Third Army Headquarters Complex at Shaw Air Force Base. The Navy is the official execution agent for all Military Construction projects executed at Shaw Air Force base and several other Air Force Bases throughout the southeast. The Navy does not exercise Government Contracting Officer warrant authority on other types of contracts such as services at this location.

The contract for construction of the Third Army Headquarters Complex at Shaw Air Force Base is a negotiated, firm fixed price, design build construction contract. It was procured via full and open competition, with the concurrence of the Small Business Administration on September 16, 2008, and awarded by the Navy on May 29, 2009 to Caddell Construction Company, Inc., of 2700 Lagoon Park Drive, Montgomery, Al. The price at time of award was $91,600,000. The completion date is November 14, 2011, which conforms to the contract duration of 899 days.

The Solicitation

Prior to issuance of the solicitation, a market survey was conducted to determine if a sufficient number of capable small businesses existed to compete this procurement among small business prime contractors; however, no small businesses capable of completing this

procurement were identified. The procurement was solicited on December 3, 2008 and specified a two phase evaluation process. Interested offerors were asked to submit a first phase proposal which was evaluated solely on technical factors, and those offerors whose proposals were rated highest during the first phase were invited to submit a second phase proposal evaluated based on price and further technical factors, with all technical factors combined and price considered to be of approximately equal importance. Eighteen offerors responded to the first phase of the solicitation. Those offerors' proposals were evaluated on the following factors listed in the solicitation and all of equal importance: 1) relevant experience and capability of key personnel, 2) past performance, and 3) past small business subcontracting effort and small disadvantaged business participation. Of those 18 offerors who submitted phase one proposals, one was from South Carolina, but this firm was not invited to submit a second phase proposal because they were not considered one of the highly rated proposes in phase one. Also, one was classified as a Historically Underutilized Business Zone (HUBZone) business and the remaining were other than small business. Of those 18 offerors, four proposals were evaluated as "good" and fourteen as "marginal" based on the evaluation factors. The offerors with proposals rated as good were invited to submit proposals for the second phase of the solicitation. The second phase required the offerors to submit a price proposal and a separate technical proposal. The offerors' phase two technical proposals were evaluated based on the following factors listed in the solicitation and all of equal importance: 1) small business subcontracting plan, 2) management approach, and 3) technical solution. At the end of the phase two review, three proposals remained at an overall technical rating of "good", while one had dropped to "poor". The price proposals were evaluated and all offerors were considered to be responsive and responsible. Discussions with the offerors were not necessary. The Caddell Construction Company, Inc. proposal was found to

represent the best value to the Government because their proposal was the number one technically ranked offer and their price proposal was the lowest price. No protests were received after award. Offerors who requested debriefings from the Navy were provided such. A Davis Bacon Act wage determination was included in the solicitation and labor interviews were performed by the Navy during construction.

Subcontracting

Now I will discuss details of the prime contractor's subcontracts for the Third Army Headquarters contract. It is important to recognize the lack of privity between the Federal Government and subcontractors. The Federal Acquisition Regulation, in part 42, refers to the lack of privity between the Federal Government and subcontractors. The Federal government has privity with its prime contractors, but not with their subcontractors. Therefore, the Federal government has limited influence over the relationships that prime contractors establish with subcontractors.

The total number of workers, including those of the subcontractors, utilized by Caddell Construction Company, Inc. during construction of the Third Army Headquarters was approximately 1,800. Following award of the contract, Caddell held a small business job fair to solicit small businesses subcontractors. Certified payrolls provided to the Navy during construction indicate that Caddell employed 45 subcontractors, including 23 from South Carolina, of which 21 are small businesses. According to the Electronic Subcontracting Reporting System (eSRS) database, Caddell subcontracted approximately 77% of the contract value or about $81.5 million. Of those subcontracts, about $37.5 million, or about 46%, was awarded by Caddell to small businesses. Caddell also purchased office and building supplies from 30 companies in South Carolina.

Naval Facilities Engineering Command Southeast Contracts

Now I will provide some award statistics for Navy contracts across the southeastern United States. The Navy command responsible for award of the Third Army Headquarters contract is NAVFAC Southeast, based in Jacksonville, FL. NAVFAC Southeast is a regional subordinate command of the Naval Facilities Engineering Command (NAVFAC). NAVFAC Southeast is responsible for procuring and administering construction contracts and other facilities services to Navy, Marine Corps, Air Force and Joint Service bases across a seven-state area of the southeast and portions of the Caribbean. NAVFAC Southeast awarded over $3.5 billion in contracts in fiscal years 2009-2011. NAVFAC negotiates with the Department of the Navy Office of Small Business Programs, annual small business targets that are consistently met or exceeded. As noted in Figure 1 below, NAVFAC Southeast has exceeded small business prime contracting targets for all categories of small businesses for the last three years.

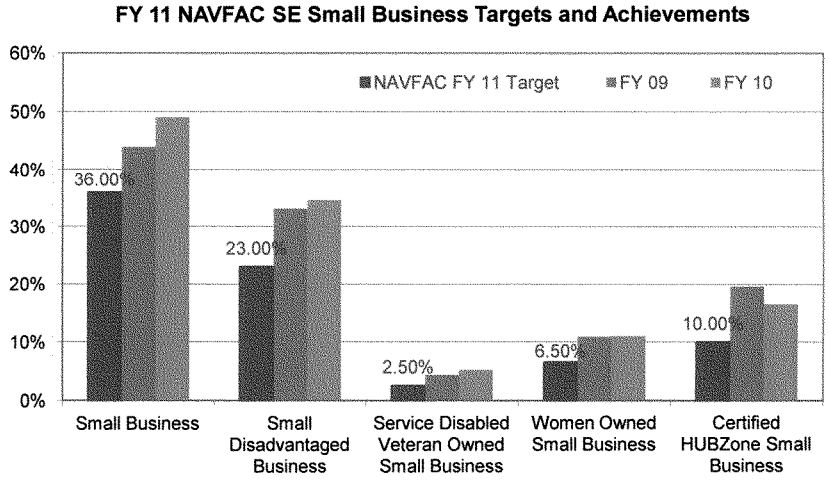

Figure 1 NAVFAC Southeast Small Business Targets and Achievements

All NAVFAC Commands hold and/or participate in Outreach Events throughout our regional footprints, which are also designed to provide training, information, and guidance to enhance the ability of small businesses to compete for NAVFAC contracts. Examples of such events attended by NAVFAC Southeast personnel are the South Carolina State Chamber and SBA Salute to Small Business and Match Maker Event held May 4, 2011 and sponsored by the South Carolina Small Business Administration representatives in Columbia, and a conference entitled "Doing Business with NAVFAC" hosted by the Beaufort Chamber of Commerce on April 6, 2011. NAVFAC provided conference attendees the opportunity to meet and talk to the NAVFAC Director, Office of Small Business Programs who provided information on contracting with the Navy and NAVFAC, and other useful tools to help local businesses in attendance understand the Federal procurement process and NAVFAC's opportunities.

Thank you again for the opportunity to testify before you today on the process by which the Federal government awards contracts and the Third Army Headquarters Complex construction.

U.S. ARMY CORPS OF ENGINEERS

DEPARTMENT OF THE ARMY

TESTIMONY OF

JACKIE L. ROBINSON-BURNETTE
ASSOCIATE DIRECTOR,
OFFICE OF SMALL BUSINESS PROGRAMS

BEFORE THE

COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON CONTRACTING AND WORKFORCE
UNITED STATES HOUSE OF REPRESENTATIVES

ON

EXAMINING THE BARRIERS FOR SMALL BUSINESS CONTRACTORS AT THE DOD

November 8, 2011

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to be here today to discuss opportunities for small businesses working with the U.S. Army Corps of Engineers (USACE). I am Jackie Robinson-Burnette, Associate Director, USACE Office of Small Business Programs. I am a Defense Acquisition Workforce employee with over 20 years of contracting experience, primarily as a contracting officer. I have served as an Army Small Business Program Leader over the last 5 years. One of my greatest passions is educating small businesses on how to do business with the Government. It is imperative for prospective small businesses to gain an understanding of the federal procurement process in order to be successful.

It is understandable that Congress is heavily focused on the efforts of federal agencies to provide opportunities to small businesses. Our small businesses play a significant role in the recovery of the nation's economy. According to the U.S. Small Business Administration, small businesses:

- represent 99.7 percent of all employer firms;
- employ just over half of all private sector employees; and
- have generated 64 percent of net new jobs over the past 15 years.

My testimony will address the Corps of Engineers Small Business program; some of the key aspects of the procurement process; what small businesses need to know about marketing to federal agencies; and strategies for small businesses to market to federal contractors for subcontracting opportunities. I will close my statement by sharing some South Carolina contracting opportunities projected to be exclusively set-aside for small business competition.

Corps of Engineers and Small Business Program

The USACE understands the value of small businesses to our economy, and advocates for the participation of small businesses, including small disadvantaged, women-owned, HUBZone, veteran, and service-disabled veteran-owned small businesses (SDVOSB), in its procurement process at both the prime and subcontracting levels.

At USACE, we greatly depend on small businesses to help us meet an array of diverse missions around the world. The USACE has a very diverse military and civil works mission. We have more than 33,000 civilians, 600 military, and 300,000 contract employees working around the world providing a unique value to the Nation. Our mission includes research and development, managing valuable aquatic resources, building infrastructure, and providing engineering solutions to the Department of Defense and other federal and international government and non-governmental agencies in nearly 100 countries around the world.

The Army's small business contracting goal is 25.3% of all contract dollars obligated in the United States. We expect final USACE reporting to show 42.52% awarded to small businesses in fiscal year 2011 and 39.7% in fiscal year 2010. We expect final USACE reporting to show 5% awarded to SDVOSBs in fiscal year 2011 and 3.2% in fiscal year 2010, above the 3% Service-Disabled Veteran-Owned Small Business goal. Though the Woman-Owned Small Business set-aside program did not become effective until March 2011, USACE consistently exceeded the 5% Woman Owned Small Business Goal for the past five years. We expect final reporting to show over 8% awarded to WOSBs in fiscal 2011.

The USACE's prime contractors continue that high performance level in their award of subcontracts. Our fiscal year 2011 data pulled from the recently implemented Electronic Subcontracting Reporting System (eSRS) reflects that USACE contractors awarded over 63% of all subcontracted dollars to small businesses [% subject to change as final reports are released]. The Charleston District exceeded small business goals for the last three years. The District's operations cover the state of South Carolina. In fiscal year 2011, Charleston's goal was to award 40% of all dollars to Small Businesses, and we are projecting achievement at 84.95%. In fiscal year 2010, Charleston's goal was to award 35.79% to Small Businesses, and they achieved 70.03%. In 2009 their goal was to award 32% to Small Businesses, and they achieved 50.01%.

While we believe these numbers are impressive – they were record-breaking this year–the true measure of the value of small business cannot be measured in dollars and cents, but rather by the quality of services small businesses provide our Nation and the impact that their efforts have throughout the world. The leaders and commanders at all levels of our organization are

committed to the success of the program to ensure prime and subcontract awards to small businesses.

Small Businesses Marketing for Federal Contracts

There are basic registration procedures that small businesses must complete to become eligible for contract awards. There are organizations like Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTAC), and Minority Business Development Centers (MBDC) that walk small businesses through the procurement process through training and mentoring. It is imperative that newly formed firms and firms that have yet to receive their first federal contract connect with these agencies to help focus their efforts in a way that would more likely result in contract awards. These organizations (unlike contracting activities) help firms with the registration process, determine which NAICS codes to align under, connect firms with banking and financial institutions, teach firms how to read and analyze the requirements of an RFP, and actually assist with proposal writing. PTACs also analyze statistics and buying trends of federal agencies in order to direct firms to agencies that have the greatest need for their services.

Influencing the Acquisition

Each federal buying activity has an advocate for small businesses and each agency determines the level of commitment to providing small business advocates. Army contracting activities assign a full-time Small Business Advocate for each contracting office that procures in excess of $100 million per fiscal year. The USACE has approximately 50 buying activities (Districts and Centers) and over 50 Small Business Advocates dedicated to assisting small businesses obtain USACE contracts.

The Federal Acquisition Regulation (FAR) requires contracting officers to set-aside each procurement that is valued under $150,000 automatically and exclusively for small businesses unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. Contracting Officers must coordinate and secure

concurrence of the Small Business Advocate when conditions exist that would cause a solicitation valued under $150,000 to be solicited on an unrestricted basis to both small and other than small firms.

For procurements over $150,000, Small Business Advocates sit side-by-side with Contracting Officers and Program Managers to determine if there is a reasonable expectation that two or more responsible small businesses will submit an offer at a fair market price. This is referred to as the "Rule of Two." When market research validates small business capability, contracting officers are required to set-aside acquisitions over $150,000 for small businesses.

Federal agencies are generally required to advertise contract opportunities valued at $25,000 and greater on FBO.gov. Market research to validate the "Rule of Two" is done through a variety of methods, but the most effective method is a Sources Sought Synopsis on the Federal Business Opportunities (FBO.gov) web page. The purpose of a sources sought notice is to request information about the capability of small business firms. Typically, the notice requires small businesses to respond to a handful of questions and provide information about their technical capabilities and experience. Small businesses have a set number of days to respond. When two or more capable firms are identified, the FAR requires the solicitation to be set-aside exclusively for small businesses. In addition, the solicitation can be set-aside for small business subcategories. For example, if two or more capable SDVOSB firms respond, it can be set-aside for SDVOSBs. However, Small Business Advocates cannot recommend setting solicitations aside exclusively for small businesses if market research does not validate small business capability and interest.

Many small businesses focus their efforts on marketing face-to-face at outreach events and meetings with contracting officials and program managers without targeting a specific acquisition. There is significant value in face-to-face relationship building techniques. However, one of the most important and effective marketing techniques is responding to sources sought notices for upcoming solicitations.

Many small businesses are unaware of the significance of sources sought notices. Some Small Businesses consider the nature of sources sought notices to mean that it is too late to market

for and participate in a particular procurement. Some are hesitant to respond, concerned that their technology or solution would be included in the final version of the solicitation and made available for other competitors to see and perhaps utilize to their competitive advantage. These concerns are unnecessary. A sources sought notices is not a Request for Proposal (RFP) and does not solicit proprietary information. Rather, they are a way for contracting officers to perform market research, verify requirements, validate an approach to a solution (i.e. socioeconomic goals), and ensure competition. Small businesses miss the opportunity to influence the acquisition strategy when they fail to respond to sources sought notices. Of course small businesses may propose on acquisitions that are not set-side exclusively for small businesses, but their potential for success is maximized when the procurements are set-aside for small business competition only. Small businesses must look for these opportunities on FBO.gov, determine if they have the experience and financial capability to handle the work, and then target their marketing efforts directly for specific procurements.

Technical Capability versus Small Business Certification(s)

Small businesses must be diligent about pursuing work that aligns with their experience, past performance, and financial capability. When marketing, they must emphasize their experience, past performance, and financial capability. Our customers expect us to minimize risks to their projects by making contract awards to the most experienced, capable, and financially sound firms. In the award decision process, evaluation teams weigh proposals for the optimum mix of experience, capability and financial soundness that result in contract award to the proposal deemed most capable of delivering a project on schedule and on budget for either best value or lowest price technically acceptable requirements. Having 8(a) certification is definitely an advantage, but it never takes precedence over the shown capability to perform.

Responding to Solicitations

Small businesses can maximize their potential for receiving prime contracts through mentoring and education. Many organizations are dedicated to teaching small businesses how to navigate the federal procurement process. Firms must clearly understand what is required in the solicitation in order to respond in the correct format and with a winning solution. Contracting

officers and evaluation teams rate proposals as discussed above to determine whether proposals respond to the RFP requirements, and ultimately which proposal offers the best value. Each RFP includes evaluation factors. At a minimum, the government evaluates the price, technical capability (experience), and past performance. Experience can be evaluated under the technical capability factor. Contracting Officers may consider past performance for non-federal public state or local, or private sector projects, either as a prime or subcontractor. The Government will also, at a minimum, advise offerors of the most significant factors, and when combined, whether or not those factors are more important, less important, or equally as important to the price factor. Small businesses must understand which factors are more significant than others in order to submit a winning proposal.

Contracting Officers may set page limitations for proposal submissions. In such a case, Contracting Officers are prohibited from and will not review or consider the information on the proposal pages that exceed the page limitations. Firms should be careful not to add extraneous information that unnecessarily extends the number of pages beyond the page limitations.

Small business proposal writers should look for ways to make their proposal stand out by applying creative ideas to express capability and technical strength. One possible technique used by proposal teams is to have a separate team review the proposal against the solicitation requirements prior to submission, or for teams from very small companies to have individuals review elements of proposals written by others on the team. Review teams can increase the potential for success, because they objectively review whether or not the proposal effectively responds to the Government's needs. Small businesses must keep in mind the Government's right to award without negotiations and discussions, even in negotiated procurements, so it is very important that the initial proposal represents the best possible technical proposal at the best possible price – there may not be an opportunity to submit a revision.

Finally, small businesses should consistently request proposal debriefings. Offerrors may request a debriefing to discuss the evaluation of their proposal in comparison with the requirements of the solicitation. The debriefing can provide critical information necessary to improve future proposal submissions.

Strategies for Marketing to Federal Contractors for Subcontract Opportunities

Strategies for marketing to federal prime contractors for subcontract opportunities are very similar to the marketing strategies suggested for bids for prime contracts offered to the federal agencies. Firms should do their homework to include potentially speaking to current or previous subcontractors to learn as much as possible about the culture, vision, and mission of the prime contractor.

At USACE, we are in the early stages of developing a forum with our large prime contractors to help improve transparency in the subcontracting process. We are talking to large businesses to learn about their process for selecting subcontractors. Large prime contractors are invested in supporting federal small business programs through subcontracting. They are especially engaged when small firms find opportunities and focus the discussion around specific opportunities. Large firms prefer to hear about a small businesses experience and capability, past performance, financial stability and established relationships more so than simply hearing about the potential subcontractor's size and small business certifications.

When negotiating with a large business, small firms should seek to obtain binding agreements, where possible. Contracting Officers have the option to consider proposal responses with binding small business agreements more favorably in accordance with DFARS 215.304.

The Small Business Jobs Act of 2010, signed in to law by President Barack Obama in September 2010, requires prime contractors to notify contracting officers prior to changing small business subcontractors that were identified in the proposal. The proposed regulations were recently issued by the SBA and soon to be implemented.

Projected Small Business Set-Aside Opportunities in South Carolina

There are many small business set-aside contract opportunities projected for South Carolina this fiscal year. Opportunities range from information technology services, to leased building space in Charleston, rental of portable latrines, to catering support. Following are several business set-aside opportunities projected by our Charleston District for fiscal year 2012.

- **Competitive 8(a)**. Design-Build Fire Protection Multiple Award Task Order Contract (MATOC). There will be a maximum of 5 awards under this MATOC; base year and four option years. This contract will primarily consist of fire protection installation or repairs (new construction and renovations) with design-build capabilities. Most tasks will be between $75,000 to $1,500,000, over a five year period.

- **Small Business**.
  - Clouter Creek Ditching, projected to cost between $500,000 and $1 million. The work will be conducted at the Clouter Creek Disposal site located in Berkeley County, South Carolina.

  - VA Charleston New Post Traumatic Stress Disorder/Mental Health Research Facility, projected to cost between $5 million and $10 million. This project is located at the Ralph H. Johnson Medical Center, Charleston, SC.

  - Gantry Crane Rehab & Inspection Certification at the Stephen Power Plant, Stephen, SC, projected to cost between $1 million and $5 million.

Conclusion

In conclusion, there are numerous actions that small businesses can take to increase their competitiveness: educate themselves about the process; market their technical capabilities, past performance, and financial stability more so than their small business certifications; take the initiative to search for opportunities advertised and focus their marketing efforts directly for specific procurements; and utilize debriefings to improve their future proposal submissions. The Army and USACE are available to help small businesses in the education process through training sessions, outreach events, and one-on-one counseling.

The USACE recognizes the important role that small businesses play in revitalizing the economy. We understand and appreciate your focus on small business opportunities, and I appreciate the

opportunity to be here today to discuss this important program. I look forward to answering any questions you may have.

Statement of

JOHN G. CAPORAL, GS-15
Deputy Director
U.S. Air Force Office of Small Business Programs

Before the

House Committee on Small Business

Contracting and Workforce Subcommittee

November 8, 2011

Embargoed until released
by the House Small Business Committee

Thank You for the opportunity to discuss the Air Force Small Business program. Our office reports directly to the Under Secretary of the Air Force. We provide policy, advice, guidance, training, and innovative strategies to ensure quality solutions for Air Force acquisition teams to maximize opportunities for small businesses. Our vision is to ensure maximum practicable opportunities for small businesses at the earliest stages of acquisition planning and to make small business the solution of choice to meet the needs of the Air Force mission. We strive to promote a culture of shared responsibility with our acquisition partners recognizing the critical role small business plays not only in advancing the mission but in strengthening our nation's industrial base. We are more than advocates for small business. We are advocates for the Air Force mission using small business solutions.

In fiscal year (FY) 2010, the Air Force awarded $8.8 billion dollars to small businesses (15.4% of total procurement dollars).[1] In FY 2011 the awarded amount was $8.2 billion or 14.5 %. While this represents a drop in dollars and percentages, over the previous year, 2011 saw an unprecedented level of commitment to the small business program from our Air Force leaders at all levels. Our fourth quarter numbers began to rise in conjunction with the heightened attention. Despite a tough budget environment, we believe this increased high level support of the program, reflected in our future acquisition strategies, will pay dividends in the coming years. Under our new director, Mr. Joseph M. McDade, we are re-invigorating the role that small business plays at the prime and subcontracting levels in all of our acquisitions. We are developing a new plan that we believe will receive the endorsement of our senior leaders, leading to a higher level of achievement in the coming years.

[1] These are preliminary totals that have not been validated by the Department of Defense.

Shaw AFB, one of our most active operational installations, has done a superb job of supporting the Air Force Small Business program. They awarded over $78 million dollars to small businesses in FY 2011—86.66% of their total spends, exceeding their goal of 81%.[2] Air Combat Command (ACC), Shaw AFB's parent command, also had a great year for small business awards. The ACC awarded a total of $836 million or 41.8% to small businesses. In fact, 11 of the 13 major commands (MAJCOMS) awarded more than the statutory goal of 23% ranging from 25% to 78%. The challenge is with the product mix of our major weapons system commands that obligate more than 70% of our budget, yet award less than 10% of prime contract dollars to small businesses. One of our goals for FY 2012 is to increase the market research and data analysis needed to increase prime contract awards in those two MAJCOMS.

Our strategic goals in FY 2012 include: 1) finding the right balance between enterprise buying strategies (strategic sourcing) and making sure that our small businesses are full partners in the process and are utilized to the maximum extent. 2) focusing more intensely on market analysis to identify additional opportunities for small business in this time of declining budgets and 3) finding the right acquisition strategies for small business when a long term contract is written. These include providing "on ramp" opportunities, which allow small businesses not selected initially another opportunity to compete later in the ordering period and encouraging more teaming arrangements between small businesses to allow them to compete on longer, higher dollar contracts.

[2] These are preliminary totals that have not been validated by the Department of Defense.

In closing, I would like to share a story about a small business contractor who performs work here at Shaw AFB. ISPHI Information Technologies, Inc., a Mount Pleasant South Carolina small business, has provided over 25,000 hours of logistical support for contingency operations, exercises, war ready material pre-positioning, maintenance and day to day planning efforts in support of the contingency/deployed personnel for the Air Force Central Command Area of Responsibility (AOR). The invaluable work performed under this contract demonstrates that while achieving Air Force small business goals are important, it's the support provided to the warfighter that showcases the true value of the program. We need to develop strategies that ensure that companies like ISHPI Information Technologies continue to thrive and grow. It's the jobs provided to the local communities and the innovation, agility and value they provide to the taxpayer that needs to be encouraged. Finding and helping small businesses like ISHPI succeed and contribute to the mission is what motivates all 145 of our small business specialists! There are success stories like this at every installation. Our aim is to develop more.

Thank You for the opportunity to address you today. I will be glad to take any questions you might have.

Elliott H. "Bill" Lynam, III

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Testimony to Congressional Sub-Committee on Small Business

3rd Army

Contracts were let in large parcels which excluded small contractors. Contracts, such as concrete, could have been divided into smaller parcels (i.e. a per building contract). This would have allowed smaller contractors to take part in the construction.

Shaw Small Business

All small business at Shaw is reserved for SBA 8A contractors. Five (5) have been selected to construct all of the small business work for a contract period of five years.

Standard small business can only work as sub-contractors to these five.

Our experience, and others, has been that the SBA 8A contractors ignore the payment regulation of the federal government. Contracting officers do not seem to be motivated to insure that these regulations are followed. Most local small business cannot survive with the payment practices that are common place to these contractors.

Veteran Contracting

Veteran Contractors should be offered the same bid opportunities as SBA 8A's on military bases. Most SBA 8A contractors have never served in our military and yet they are given preference over veterans. Especially the SBA 8A contractors who are foreign country qualifiers. It is very disturbing that our veterans must step aside for foreign/American contractors who have never served our country.

Two years ago, I personally applied for Veteran Contractor status and have yet to get it. Papers have been lost, missed filed, entered into computer wrong, etc. It has been a very frustrating endeavor.

11-3-11

E. H. "Bill" Lynam, III President

Aycock Construction A Subsidary Of
Aycock Holding Company, LLC
1081 Alice Dr.
Sumter, SC 29150
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November 8, 2011

Congress of the United States
US House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington DC 20515-6315

RE: Subcommittee Hearing

Dear Members of the Congressional Board:

On behalf of the local Sumter-Clarendon HBA, I am grateful for this opportunity to speak with you today. I would also like the thank all of the local businesses and the Sumter Board of Realtors that have supported the growth of this community and the never ending support of Shaw Air Force Base. Together with these organizations we have raised a great deal of money locally in support of Shaw Air Force Base and its growth through the addition of the "Welcome Third Army Campaign." As this town will benefit greatly from the addition of new friends and neighbors with a growing economy here, our local builders and subcontractors are suffering from a dramatic decrease in new construction sales. As our local HBA members have declined by over 30% over the past 3 years many of us are asking the question "With the number of new homes on the market now in our community why is the government building hundreds of new homes to depress our market further."

The next question is if the homes are going to be built nevertheless why aren't we the ones who live here and support this base and this community, the ones building these homes?

This brings us to the concerns of this hearing today. Why aren't small businesses receiving at a minimum the percentage of business as described by this government. Let me say that it is not because of lack of local labor force but the lack of the opportunity.

At a local meeting held by Hensel Phelps, the awarded contractor of these homes, I saw over a hundred small business owners from this community excited about the chance to go back to work. I also saw some local business owners there that stated to me, "We will never have a chance at this project." I later found this to be true. Hensel Phelps placed such stringent guidelines and unrealistic expectations that it became obvious that this meeting was a tool for this company to say we offered. There were only three (3) companies at this meeting that I am aware of that might have the financial resources to possibly meet their requirements. I would say at least this would definitely deter our local small businesses from ever receiving an opportunity

to work on this project. I personally registered at the meeting with my name and address, expecting to receive a bid package that never came. When I followed up with phone calls I was informed that Hensel Phelps wanted companies that could commit to numerous bases. Knowing full well that my small business couldn't take on this amount of work I had to face the realization that my idea of small business and theirs is two completely different things. Two weeks ago, I followed up again by phone and I was given the name of a company based in West Virginia to see if I could gain employment from them to work on a base minutes from my home that my neighbors and I have supported through the BRAC list just a few years ago, to meeting hundreds of families this past year from Fort McPherson welcoming them to our community.

This leaves me with the third question, "If the government sets aside a percentage of business for small business owners, who determines the amount or the cap of a small business?" The figure given to me is $35,000,000. I am not certain this is correct, but if it is why is it so high? These seem to be obvious loop holes for large companies like Hensel Phelps to exclude the small businesses, at least in this community.

My final question or concern is who regulates or polices that the opportunity is given to small business owners like myself.

Sincerely yours,

William K. Aycock, Jr.

Testimony by Scott H Bellows

At a subcommittee hearing entitled

Examining the Barriers for Small Business Contractors at the DOD

Taking place on Tues., November 8th at the Sumter County Council's Chambers, 13 East Canal Street, Sumter, SC 29150.

Thank you for this opportunity to present my views on matters relating to barriers for small business contractors at the Department of Defense. In my role as the SC Procurement Technical Assistance Program Manager, a Dept. of Defense initiative aimed at maintaining America's industrial infrastructure and enhancing competition in the procurement arena, I work with a broad assortment of private sector firms, collaborate closely with my Small Business Development Center network colleagues and interface often with various agency Small Business Specialists. Although our operations have helped our South Carolina clients to secure over $1 billion in contract awards so far this year, this work masks a number of fundamental problems that affect our client base, especially the smaller of the small businesses.

I believe that there's a general consensus that America's small business community is what's going to revitalize our economy. I think that there's also a quiet concern that with the pending government belt tightening, the downward shift in public sector work will align with a depressed private sector economy...to further complicate an already depressed economy. The return of a large number of our troops in the coming months may only accentuate the problem. In this context, I offer the following four observations.

First, there are a number of forces at play in our economy that are, for the time being, distorting what should be a highly competitive market. Changes in banking regulations are stifling loans, changes in the insurance industry are reducing the ability of firms to reduce risk and changes in labor laws are causing firms not to add new employees.

The consequence of all this appears to be that larger firms are moving into a self-financing mode and in-sourcing work where possible; medium-sized firms are contracting out labor but are hesitant to actually bring on W-2 employees and small business are just working hard to survive. Most of our work revolves around helping the small business community.

Second, the small business community is undercapitalized. While the larger, less risky firms are finding ways to deal with the economy, smaller businesses are finding this much more difficult or impossible. Termination of the SBA's Community Express Loan pilot program ended one of the few meaningful options available to many of these small businesses. Similarly, changes to the Export Express Loan Program that was made permanent under the Jobs Act tightened the language in a way that the funding could only be used for export related activities. For many small businesses whose domestic and export functions are not as clear cut, this change ruled out yet another option for many of the smaller, would-be exporters.

Third and compounding these problems, our well-intentioned small business programs have evolved in a way that skews their original intent. First, the plethora of small business programs—8a, Hubzone, SDVOSB, WOSB—has disenfranchised many of those who are not eligible to the extent that they no longer back the very programs they once were glad to support. Even those set-aside programs don't really achieve what most think that they do. It's not that the percentages are wrong, it's just that many of the same contractors tend to get the work time and time again and those who want to break into government contracting soon realize that it's a long, uphill battle. Instead of asking how many dollars went to small business contractors, if one asks how many 'unique' vendor contracts were awarded during a certain period of time, you might just come away with a different impression of how these programs are promoting small business development and helping to revitalize our economy. Many of these small business contracts are actually quite large, awarded for long periods of time and all but eliminate new opportunities for aspiring government vendors. I have included a report generated from the Federal Procurement Data System in support of this argument. In all fairness to the Contracting Officers, these individuals tend to be understaffed, have to consider the risk to taxpayer money and are cognizant of the need to meet small business target numbers. Technically speaking, they're just playing by the rules set before them. The prime contractors, likewise, are helping to meet the small business targets while simultaneously minimizing their risks by using subcontractors that they know and trust. I would probably do the same, were I in their position.

The fourth and final point that I would like to make is to note that across all government sectors there seems to be an emphasis on "job creation." The best way to do this is to create a policy environment that facilities private sector growth. If the government does this, I am confident that the private sector can manage the creation of jobs.

Thank you for this opportunity to express my views.

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Statement for the Record for Associated Builders and Contractors

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Statement of
Ben Brubeck
Director of Labor and Federal Procurement
Associated Builders and Contractors

Before the
House Small Business Subcommittee on Contracting and Workforce

On
"Examining the Barriers for Small Business Contractors at the DoD"

November 8, 2011

The Voice of the Merit Shop®

STATEMENT OF BEN BRUBECK, DIRECTOR OF LABOR AND FEDERAL PROCUREMENT FOR ASSOCIATED BUILDERS AND CONTRACTORS, INC. BEFORE THE HOUSE SMALL BUSINESS SUBCOMMITTEE ON CONTRACTING AND WORKFORCE

NOVEMBER 8, 2011

Chairman Mulvaney and members of the House Small Business Subcommittee on Contracting and Workforce, thank you for investigating ways to make it easier for small businesses to win their fair share of federal contracts. This field hearing, *Examining the Barriers for Small Business Contractors at the DoD*, is especially important as small businesses in South Carolina and across the United States are searching for new opportunities in federal contracting to keep their doors open in this difficult economy.

The U.S. construction industry unemployment rate stands at 13.7 percent and was as high as 27.2 percent in February 2010—the highest level recorded since the federal government began making the data available in 1976.[1] The unemployment rate would be even higher, except the recession forced construction industry employees to retire early or find work in other sectors of the economy.

Construction in the private and public sectors of the economy has slowed considerably. Businesses and retailers aren't expanding in the private sector, cash-strapped local and state governments aren't building significant public works projects, and few indicators suggest the construction industry will grow in the next few years. In short, all contractors, including small business contractors, are fighting to stay in business and keep their workforces employed.

I am writing on behalf of Associated Builders and Contractors (ABC), a national construction trade association representing 23,000 merit shop general contractors, subcontractors and materials suppliers in the commercial and industrial construction industry that belong to 75 local ABC chapters throughout the United States. Conservatively, ABC member companies employ more than two million workers whose training and experience span all of the 20-plus skilled trades that comprise the construction industry. ABC helps members win work and deliver that work safely, ethically and profitably.

The majority of ABC's contractor members are classified as small businesses by the Small Business Administration (SBA). This is consistent with the SBA's findings that the construction industry has one of the highest concentrations of small business participation (more than 86 percent).[2] At the same time, many ABC members are large construction companies that have contracted directly with the Department of Defense (DoD) and other federal agencies to

[1] U.S. Bureau of Labor Statistics, *Industries at a Glance: Construction: NAICS 23* http://www.bls.gov/iag/tgs/iag23.htm, accessed 11/8/11
[2] *The Small Business Economy: A Report To The President*, U.S. Small Business Administration, Office of Advocacy (2009), at page 8.

successfully build large federal construction projects.[3] These large prime contractors subcontract a significant portion of federal contracts to qualified small businesses.[4]

The majority of ABC member companies, known as merit shop contractors, are not signatory to a construction trade union. They have a core workforce of experienced and qualified employees that are not members of a construction trade union (commonly referred to as nonunion employees).

The Bureau of Labor Statistics' (BLS) most recent report states that 86.9 percent of the U.S. construction industry workforce does not belong to a union.[5] In South Carolina, 97.7 percent of the construction workforce does not belong to a union.[6]

However, federal agencies like the DoD have been pushed by an anti-competitive and discriminatory White House executive order to adopt a new policy that discourages the vast majority of qualified small businesses and their skilled employees from competing for federal contracts if they refuse to sign a controversial project-specific union contract called a project labor agreement (PLA). A government-mandated PLA typically forces contractors for the life of a project to replace their existing workforce with unfamiliar union labor, pay fees to unions, pay into union pension and benefit plans, and obey archaic and inefficient union work rules if they want to win a federal construction contract.

Few small contractors in the construction industry are signatory to construction trade unions. Likewise, our research indicates that few small businesses in the construction industry support government-mandated PLAs,[7] and a number of business and construction industry groups advancing the interests of small businesses oppose government-mandated PLAs.[8] In short, government-mandated PLAs on federal construction contracts are a barrier to qualified small businesses winning federal construction contracts.

Executive Order 13502 Harms Small Businesses

Signed Feb. 6, 2009, President Obama's Executive Order 13502[9] and related Federal Acquisition

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[3] Seventeen of the top 20 contractors on *Engineering News-Record*'s 2010 list of the top industry contractors are ABC members. All of the top 10 companies on *Engineering News-Record*'s 2009 Top Contractors list, and 21 of the top 25, are ABC member firms. Five of the six construction firms on *Fortune*'s 2010 and 2011 list of the *100 Best Companies to Work For* are ABC members..

[4] See comments to the FAR Council [FAR Case 2009-005 at http://www.regulations.gov/#!docketDetail;D=FAR-2009-0024] of Jeff Wenaas, president of Hensel Phelps Construction, a prime contractor that has performed more than $6 billion in construction contracts on federal projects with costs exceeding $25 million. Hensel Phelps has subcontracted more than $3.5 billion of that total to small businesses, the majority of which are nonunion. These percentages are typical of the experience of many other ABC members. Wenaas' comments are referenced in *Comments of Associated Builders and Contractors, Inc. Concerning the Economic Impact of the Proposed Rule and the Councils' Failure to Comply with the Regulatory Flexibility Act, 5 U.S.C. § 601* available at www.abc.org/plastudies.

[5] *See* bls.gov. *Union Members Summary*. Jan. 21, 2011.

[6] The *Union Membership and Coverage Database*. available at www.unionstats.com, is an online data resource providing private and public sector labor union membership, coverage and density estimates compiled from the Current Population Survey (CPS), a monthly household survey, using BLS methods. The database, constructed by Barry Hirsch (Andrew Young School of Policy Studies, Georgia State University) and David Macpherson (Department of Economics, Trinity University), is updated annually. This is the most recent data. There is no data on construction union workforce membership at the local, city or county level.

[7] Many of ABC's small business members, along with other small nonunion contractors that are not ABC members, perform work on federal construction projects, including projects whose total cost exceeds $25 million. In a recent ABC membership survey, more than 35 percent of the respondents stated they perform work on such projects. Significantly, in 2010 and in 2011, 98 percent of these survey respondents indicated they would be less likely to bid on such work if a project labor agreement were imposed as a condition of performing the work.

[8] See TheTruthAboutPLAs.com *Diverse Coalition of Construction Industry Associations and Employer Groups Oppose Government-Mandated Project Labor Agreements*. June 14, 2011.

[9] President Barack Obama, "Use of Project Labor Agreements for Federal Construction Projects," *Federal Register*, vol. 74, February 11, 2009, pp. 6985–6987.

Regulatory (FAR) Council regulations[10] encourage federal agencies to mandate, on a case-by-case basis, PLAs on federal construction projects exceeding $25 million in total costs.

While the order and related FAR regulations do not mandate PLAs on all federal construction contracts, it urges federal agencies to mandate PLAs if they can determine a PLA will promote economy and efficiency in federal procurement.

The order and FAR final rule were implemented despite the fact federal agencies experienced no delays or cost overruns[11] while government-mandated PLAs were prohibited on federal and federally assisted projects for eight years during the Bush administration,[12] and despite the fact PLA mandates have a long track record of increasing costs, creating delays, harming small businesses and needlessly discriminating against merit shop employees in the private, local and state sectors of the construction industry, as documented in numerous studies and hundreds of comments submitted to the FAR council by the contracting community in opposition to the FAR's proposed rule.[13]

Executive Order 13502 and the related FAR rule have exposed federal procurement officials to intense political pressure from labor unions, other special interest groups, politicians and political appointees to require PLAs on large-scale federal construction projects.

More PLA mandates translate into more work for union members and union contractors, and more union dues that can be steered to the campaigns of pro-PLA politicians. Unfortunately, these politicians continue to push for PLAs to create jobs exclusively for their political patrons. This cycle of crony contracting has a real impact on all small businesses in the construction industry.

The USACE's Use of PLAs Under Executive Order 13502

This year, witnesses have testified at three separate hearings before the House Oversight and Government Reform Committee[14] about why government-mandated PLAs harm the construction industry. At a June 3, 2011, House Oversight and Government Reform's Technology,

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[10] Department of Defense, General Services Administration and the National Aeronautics and Space Administration, "Use of Project Labor Agreements for Federal Construction Projects," *Federal Register*, vol. 75, April 13, 2010, pp. 19168–19179. Federal Acquisition Regulation; FAR Case 2009-005, "Use of Project Labor Agreements for Federal Construction Projects" Final Rule issued April 14, 2010, effective May 14, 2010. Proposed Rule issued July 14, 2009: http://edocket.access.gpo.gov/2010/2010-8118.htm

[11] *See* Tuerck, Glassman and Bachmann, *Union-Only Project Labor Agreements On Federal Construction Projects: A Costly Solution In Search Of A Problem.* August 2009, available at http//abc.org/plastudies.

[12] On Feb. 17, 2001, President George W. Bush signed Executive Order 13202, which stated federal agencies could not "require or prohibit" construction contractors from entering into PLAs on federal and federally assisted construction projects. The EO did not prevent contractors from voluntarily entering into PLAs, as is permitted by the National Labor Relations Act; President George W. Bush, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," *Federal Register*, vol. 66, Feb. 22, 2001, pp. 11225–11226. On April 6, 2001, the EO was amended to allow PLAs to continue if they were in effect on the date EO 13202 was issued; President George W. Bush, "Amendment to Executive Order 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," *Federal Register*, vol. 66, April 11, 2001, pp. 18717–18718. Section 8(f) of the National Labor Relations Act (NLRA) allows employers and unions in the construction industry to enter into pre-hire agreements. Section 8(e) of the act allows agreements that limit work on a project to contractors that agree to the terms of a PLA. The Bush orders were repealed by President Obama's Executive Order 13502, which allows federal agencies to mandate PLAs on federal projects and permits recipients of federal assistance to mandate PLAs.

[13] Dozens of studies on government-mandated PLAs, as well as ABC National and ABC member comments on the proposed FAR rule, can be found at www.abc.org/plastudies

[14] On March 16, 2011, the House Oversight and Government Reform (OGR) Committee's Regulatory Affairs, Stimulus Oversight and Government Spending Subcommittee held a hearing called *Regulatory Impediments to Job Creation: The Cost of Doing Business in the Construction Industry*. On April 20, 2011, the House OGR Committee's Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending held a field hearing in New York called *Regulatory Impediments to Job Creation in the Northeast*. On June 3, the OGR Technology, Information Policy, Intergovernmental Relations and Procurement Reform Subcommittee held a hearing called *H.R. 735 and Project Labor Agreements: Restoring Competition and Neutrality to Government Construction Projects*.

Information Policy, Intergovernmental Relations and Procurement Reform Subcommittee hearing, ABC member Kirby Wu, 2011 chair of the ABC New Jersey Chapter and president of Wu & Associates, a small business general contractor of Cherry Hill, N.J., described government-mandated PLAs as, "nothing more than anti-competitive schemes designed to give contractors signatory to specific construction trade unions promoting PLAs an unfair competitive advantage against merit shop competitors like myself."

Mr. Wu testified:

> "PLAs also have the practical effect of creating jobs exclusively for unionized construction tradespeople by forcing union representation or compulsory union membership, inefficient and archaic union work rules, payment of union dues, forced contributions to union pension and benefit plans, and a host of other problems on merit shop employees that have freely decided not to join a union. It is needless discrimination based on labor affiliation and it hurts merit shop employees as much as it hurts their general contractor and subcontractor employers.
>
> PLA mandates also curtail effective and tested business practices and construction techniques that help contractors deliver superior construction projects."

Mr. Wu's testimony further described a frustrating experience during the summer of 2010 with a PLA mandated by the U.S. Army Corps of Engineers (USACE) Louisville District on an Armed Forces Reserve Center project in Camden, N.J., that resulted in procurement delays, red tape and needless litigation. The USACE dropped the PLA requirement in the face of a bid protest by Mr. Wu, but then replaced the PLA mandate with a new policy that gave preferential treatment to contractors that voluntarily submitted offers subject to a PLA. Mr. Wu opted not to move forward after spending considerable time and money pursuing this project.

This is a clear example of why permitting federal agencies like the USACE to mandate PLAs and implement discriminatory PLA preferences is bad public policy and a barrier to federal contracts for qualified small businesses.

Also in 2010, ABC and the contracting community fought PLAs mandated by the USACE on a $100 million to $250 million technical applications center at Patrick Air Force Base in Brevard County, Fla.[15], and a $25 million to $100 million Army Reserve Center in Los Alamitos, Calif.[16]

In each instance, the USACE abandoned its PLA mandates after the contracting community publicly spoke out against the anti-competitive agreements, contacted elected officials and threatened litigation.

Following the incidents in New Jersey, Florida and California, the USACE issued *Procurement Instruction Letter (PIL) 2001-01, USACE Policy Relating to the Use of Project Labor Agreements (PLAs) for Federal Construction Projects* on Oct. 15, 2010.[17] This document

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[15] TheTruthAboutPLAs.com. *U.S. Army Corps of Engineers Eliminates Project Labor Agreement Gift to Big Labor*. Aug. 18, 2010.
[16] TheTruthAboutPLAs.com. *Federal Project Labor Agreement Removed from Army Project in Los Alamitos, California*. Sept. 20, 2010.
[17] Accessed http://www.usace.army.mil/CECT/Documents/PIL2011-01ProjectLaborAgreements.pdf.

provided additional guidance to USACE contracting officers about the agency's PLA decision-making process and required USACE districts to issue a labor market survey to the contracting community to determine whether a PLA should be mandated. The U.S. Department of Veterans Affairs and DoD agencies, such as the Naval Facilities Engineering Command (NAVFAC),[18] have issued similar PLA labor market surveys.

To date, USACE districts have issued more than 50 labor market surveys for large-scale USACE construction projects,[19] including one for the Brigade Combat Team Barracks (BCT) construction project at Ft. Jackson, S.C.[20] To the best of our knowledge, the USACE has not mandated a PLA on a project where a PLA labor market survey was issued. We are aware of one project subjected to a PLA preference policy following a PLA labor market survey. Without acknowledging that it is ever appropriate for a federal agency to mandate a PLA, the USACE should be commended for its survey approach, which has resulted in fair and open competition on almost all of their large-scale construction projects and has led to small businesses winning federal construction contracts.

However, small businesses in the DoD contracting community still live in fear of government-mandated PLAs. For example, in May 2011 the USACE Savannah District initially mandated a PLA on a $25 million to $100 million Company Operations Facility at Ft. Bragg, N.C., where just 2.4 percent of the state construction workforce is unionized.[21] A PLA survey was not issued for this project. After weeks of the contracting community's campaign to remove the PLA mandate, the USACE Savannah District finally eliminated the PLA. However many small businesses chose not to pursue contracts on that project because they were scared off by the initial PLA mandate and ensuing uncertainty. If the USACE were to suddenly start implementing government-mandated PLAs on more large-scale construction projects, it would certainly harm small businesses.

Suggested Remedies

Congress can help small businesses access more federal contracts, restore certainty to the marketplace and alleviate concerns about government-mandated PLAs by passing the Government Neutrality in Contracting Act (H.R. 735/S. 119) which has been assigned to the House Oversight and Government Reform Committee.

H.R. 735 will help taxpayers get the best possible construction project at the best possible price by increasing competition, reducing waste and eliminating favoritism in federal contracting.

With more than 160 cosponsors, this measure will promote and ensure fair and open competition on federal and federally assisted construction projects by prohibiting anti-competitive and costly government-mandated PLAs. Contractors would still be free to enter into PLAs voluntarily, as is permitted by the National Labor Relations Act, but the bill takes the government out of this important decision-making process.

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[18] NAVFAC manages the planning, design, construction, contingency engineering, real estate, environmental and public works support for U.S. Navy shore facilities around the world.

[19] Prior to the Oct. 15, 2010 PIL 2001-01, the USACE issued fewer than than 10 PLA surveys. NAVFAC and the U.S. Department of Veterans Affairs also issued about a dozen PLA surveys for large-scale projects since President Obama issued Executive Order 13502.

[20] USACE Sources Sought Notice W9126G-11-R-00X2 on Potential Project Labor Agreement Use for Brigade Combat Team Barracks (BCT) at Fort Jackson, S.C. Issued Jan. 24, 2011.

[21] See Solicitation # W912HN-11-B-0003, Company Operations Facilities (COF) 3rd Brigade, Ft. Bragg, NC. Issued May 4, 2011.

By eliminating government favoritism in federal contracting, H.R. 735 guarantees all qualified contractors and their skilled workforces, regardless of labor affiliation, can compete on a level playing field for federal and federally assisted construction contracts. It is supported by a diverse coalition of construction industry groups.

Because federal agencies like the DoD have limited construction budgets, inflated costs due to the inefficiencies of government-mandated PLAs may result in fewer construction projects. Fewer projects translates into less job creation. Eliminating government-mandated PLAs likely will reduce waste and produce more construction jobs in an industry facing an unemployment rate exceeding 13 percent. Passage of H.R. 735 would be a win for taxpayers, small businesses and the principles of good government.