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DOING BUSINESS WITH DOD: UNIQUE CHALLENGES FACED BY SMALL AND MID-SIZED BUSINESSES

HEARING

BEFORE THE

PANEL ON BUSINESS CHALLENGES WITHIN THE DEFENSE INDUSTRY

OF THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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PANEL ON BUSINESS CHALLENGES WITHIN THE DEFENSE INDUSTRY

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DOING BUSINESS WITH DOD: UNIQUE CHALLENGES FACED BY SMALL AND MID-SIZED BUSINESSES

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
PANEL ON BUSINESS CHALLENGES WITHIN THE DEFENSE INDUSTRY,
Washington, DC, Tuesday, January 17, 2012.

The panel met, pursuant to call, at 3:04 p.m., in room 2118, Rayburn House Office Building, Hon. Bill Shuster (chairman of the panel) presiding.

OPENING STATEMENT OF HON. BILL SHUSTER, A REPRESENTATIVE FROM PENNSYLVANIA, CHAIRMAN, PANEL ON BUSINESS CHALLENGES WITHIN THE DEFENSE INDUSTRY

Mr. SHUSTER. We are going to get started. Mr. Larsen is en route. We had a very hectic schedule last week; we traveled to the west coast and to Hawaii. So maybe Mr. Larsen is still jet lagged or, like me, is not sure where he is. We had to get up every day and say, "What State are we in?"

But we will go ahead and get started. The hearing will come to order.

I want to welcome our panelists today. I look forward to hearing your testimony.

The Armed Services Committee Panel on Business Challenges in the Defense Industry is meeting today to continue our dialogue regarding the health and future of our Nation's defense industrial base. And today we specifically look at the unique challenges that small and medium-sized businesses face in trying to do business with the Department of Defense [DOD].

Members of the panel, as I said, just returned on Friday morning from meeting with businesses in southern California and Honolulu. And as I have said before, these roundtable discussions have been extremely valuable to the panel. And meetings we had last week provided us with a great deal of insight into many of the challenges that they face in the defense industry. We were honored to have a hearing in Chairman McKeon's district in Santa Clarita, and we also had a meeting in San Diego with Congressman Duncan Hunter and Susan Davis, who both serve on the Armed Services Committee.

In addition to the three industry roundtables, we also had an opportunity to meet with Admiral Willard, the Commander of the U.S. Pacific Command, and we toured many of the DOD industrial facilities that support our Navy in the Pacific.

While we were in Hawaii, one of the small business owners commented that DOD takes the view that small businesses should take a small role. In reality, small businesses are the backbone of this economy. And, according to the Small Business Administration [SBA], small businesses play a leading role as the driver of economic growth and job creation in the national economy and that more than half of working Americans own or work for a small business and that small businesses are responsible for two of every three net new private sector jobs created in recent years. We also heard from some of the large companies out there how important small business is in the defense industrial base and what they make up.

There is no doubt that the DOD acquisition community is very risk-averse, and we have to find ways to meter that risk-aversion and reduce the bureaucracy and leverage this critical sector of our economy to meet our national security requirements.

We have three terrific witnesses today, and they are with us today to explore this topic and assist us in trying to understand this paradigm.

We have with us Mr. John Shoraka, Acting Associate Administrator for Government Contracting and Business Development for the Small Business Administration.

Ms. Linda Hillmer is the chair of the Small Business Division of the NDIA [National Defense Industrial Association]. And Ms. Lynn Schubert is president of The Surety & Fidelity Association of America.

While Ms. Hillmer and her organization are very familiar with HASC [House Armed Services Committee], I know that Mr. Shoraka and Ms. Schubert are probably a bit out of their comfort zones. It is not often that someone from the SBA or the world of surety bonding comes to testify before the defense committees. However, your experience and insight and recommendations are going to be very important to us, and we are honored you are here with us today.

I also would like to thank Mr. Dan Else and the rest of his team at the Congressional Research Service [CRS] for their assistance in preparations for today's hearing. I am looking forward to the discussion.

And, with that, I was going to turn to Mr. Larsen, but he is still probably on another time zone. So what we will do is once Mr. Larsen—and we will go through your testimony first, and then when Mr. Larsen arrives maybe he will have some opening remarks to make.

So, with that, we will proceed. Mr. Shoraka, if you want to go first, you have 5 minutes. And proceed, please.

[The prepared statement of Mr. Shuster can be found in the Appendix on page 31.]

STATEMENT OF A. JOHN SHORAKA, ACTING ASSOCIATE ADMINISTRATOR FOR GOVERNMENT CONTRACTING AND BUSINESS DEVELOPMENT, U.S. SMALL BUSINESS ADMINISTRATION

Mr. SHORAKA. Thank you, Chairman Shuster and members of the House Armed Services Committee. Thank you for inviting me to testify today.

Our top priority at the SBA is to maximize opportunities for small businesses and ensure that the benefits of our programs flow to the intended recipients. My office works each day to get Federal contracting dollars into the hands of small and disadvantaged businesses.

Contracting with small business is a win-win. Small businesses, who are drivers of the American economy, get the revenue they need to grow and create jobs. Meanwhile, the Federal Government has the opportunity to work with the most innovative and responsive companies in the country.

My office's primary objective is to ensure that eligible small businesses receive their fair share of Federal prime and subcontracting dollars. One way we do that is through our oversight of the Federal Government's efforts to meet the statutorily mandated small business goals, which include prime contracting dollars, awarding 23 percent to small businesses.

Over the last 2 years, the Federal Government has made significant improvements in contracting to small businesses. For example, in fiscal year 2010, small businesses won nearly $100 billion, or 22.7 percent, of Federal prime contracting dollars. This marks the second consecutive year of percentage and dollar increases after 3 consecutive years of decline and was the largest 2-year increase in over a decade.

Small businesses also won $74 billion, or 35.4 percent, of subcontracting dollars.

Throughout the fiscal year, we at the SBA track and monitor Federal agencies' small business contracting performance closely and publish the annual "Small Business Procurement Scorecard." In fiscal year 2010, DOD achieved a grade of "B," reaching 95.8 percent of its small business contracting goals.

The Department awarded 20.94 percent, or $61 billion, of its Federal contracts to small businesses. The Department awarded $10.4 billion in prime contracts to women-owned small businesses; $20.7 billion to small disadvantaged businesses; $5.3 billion to service-disabled veteran-owned small businesses; and $8.7 billion to Historically Underutilized Business Zones, or HUBZones. It also significantly exceeded overall subcontracting goals of 31.7 percent to small businesses, awarding 37.3 percent.

DOD submitted a fully responsive plan to increase small business contracting within its procurement. The Department was fully receptive to SBA during the reporting period and demonstrated its procurement data was fully and accurately reported.

Congress took a major step toward helping small businesses engage in the Federal marketplace with the passage of the Small Business Jobs Act of 2010. Since its enactment, we continue to roll out many benefits to small businesses, specifically the 19 contracting provisions contained in the Jobs Act that will help redirect billions of contracting dollars into the hands of small business.

Among changes already enacted include: making it harder to bundle contracts, a practice that makes it more difficult for small businesses to compete; holding large prime contractors more accountable to their own subcontracting plans; and strengthening the skills of Federal acquisition workforces by implementing mandatory small business training, revising existing core certifications, and requiring training on small business contracting.

While the Jobs Act has made marked improvement to the Federal procurement environment for small businesses, contracting with a large and complex agency like the Department of Defense naturally comes with unique challenges. My office works regularly with all branches of the DOD and their small business communities conducting outreach and training events and finding new ways to support small businesses and help DOD hit and/or exceed its small business contracting goals.

Because of the significant amount of contracts coming from the Department of Defense, my office is in constant contact with the DOD's Office of Small Business Programs and Office of Small Business and Disadvantaged Business Utilization [OSDBU] to track and monitor DOD's small business contracting goals. Monthly, the SBA chairs the Small Business Procurement Advisory Council, a meeting where we collaborate with OSDBUs from across the Federal Government to find out how we can best support agencies and address any issues they have with their small business contracting goals.

DOD has continued to work to increase small business contracting opportunities for small businesses demonstrating unprecedented top-level commitment to small business procurement. As an example, in August of 2011, Secretary of Defense Leon Panetta issued a memorandum urging the Department's acquisition workforce to identify opportunities to increase contracting with small businesses. In addition to Secretary Panetta, the Assistant Secretaries of each component of the Department of Defense issued detailed memoranda to their respective acquisition teams and program buyers to encourage the increased use of small businesses.

The SBA remains committed to working with Federal agencies to get even more contracts and subcontracts into the hands of small businesses in the coming years.

I want to thank you for allowing me to share SBA's views and initiatives with you today, and I will be happy to answer any questions you may have.

[The prepared statement of Mr. Shoraka can be found in the Appendix on page 35.]

Mr. SHUSTER. Thank you very much.

And, Mr. Larsen, when they get done with testimony, if you have an opening statement.

Mr. LARSEN. That is fine. Thank you.

Mr. SHUSTER. Okay. Thanks.

Ms. Hillmer.

STATEMENT OF LINDA HILLMER, CHAIR, SMALL BUSINESS DIVISION, NATIONAL DEFENSE INDUSTRIAL ASSOCIATION

Ms. HILLMER. Thank you.

Good afternoon, Chairman Shuster, Ranking Member Larsen, and other distinguished members of the committee. My name is Linda Hillmer, and I am the chair of the Small Business Division of America's leading defense industrial association promoting national security. NDIA has 95,000 members worldwide, more than

1,700 corporate members, and nearly 900 Small Business Division members.

In addition to volunteering as the chair of the NDIA Small Business Division, I am a small business owner whose company has supported DOD since 2001. I am also a former Federal Government contracts professional, which means I am kind of bilingual; I speak English and I speak Federal acquisition.

In fiscal year 2010, DOD awarded over $61 billion in prime contracts to small businesses. I am here today to talk about some of the challenges that small businesses face in doing business with DOD.

One of those challenges is bundling. We know why DOD bundles contracts. There was a war on two fronts, increasing budgets and a stretched acquisition staff. Bundling appeared to be a logical answer to meeting the wartime requirements. We are now in a different time, however, and different solutions are required.

DOD is very concerned, and rightly so, with avoiding what it calls a "hollow force" inside the military. I believe the Department ought to also be concerned about a hollow small business industrial base. One of the acquisition approaches bringing about this hollow small business industrial base is the increased use of bundling.

Let me give you an example of how bundling hurts small business. Bundling puts small businesses in a dependent subcontracting role, well-hidden from government decisionmakers. It keeps us at arm's length from the government program managers who set the requirements. It also means that the government contracting leaders who make all the acquisition strategy decisions do not see the small businesses who are performing the work under the primes.

But bundling contracts not only hurts small business, it hurts DOD. Bundling means the government pays twice on overhead; it pays for the prime and again for the sub. But more important than dollars, bundling hurts the government by attacking quality. As DOD is awarding more and more IDIQ [Indefinite Delivery, Indefinite Quantity] task orders based on the lowest price, the large primes are putting the squeeze on small businesses. This may mean lower costs for DOD, but at what ultimate cost? Don't get me wrong, lower prices are not bad, but where are the cuts coming from? Are they coming from the prime's profit or from the small businesses?

In an effort to stay alive, small businesses will generally cut quality or leave the defense industrial base entirely. Both decisions ultimately result in lower-quality products and services in support of the warfighter.

Bundling is an acquisition approach, and it is a symptom of a much larger issue at DOD, and that is the perception of small business within the Department. It is an issue that requires the meaningful inclusion of small business in all funded requirements. It needs to be the responsibility of three players: the requirements community, which has the need and the money and forecast requirement; the acquisition community, which commits the funding and sets the acquisition strategy; and the small business directors, who have the responsibility to meet the Federal small business goals.

Through deliberate organizational approaches and strategic cultural changes, DOD can ensure maximum small business participation, smartly stretching limited budgets to meet our Nation's defense and security needs.

Thank you again for the opportunity to speak, and I am happy to take any questions.

[The prepared statement of Ms. Hillmer can be found in the Appendix on page 41.]

Mr. SHUSTER. Thank you.

And, with that, Ms. Schubert, you are recognized.

STATEMENT OF LYNN M. SCHUBERT, PRESIDENT, THE SURETY & FIDELITY ASSOCIATION OF AMERICA

Ms. SCHUBERT. Thank you, Chairman Shuster and the committee, for inviting us here to testify on this critical issue.

The Surety & Fidelity Association [SFA] is a trade association of more than 450 insurance companies who write surety bonds. They write the vast majority of surety bonds written here in the United States, as well on core projects around the world. We also are a rating agency and licensed by each insurance department across the country. We work closely with Federal agencies on surety issues and particularly well with the Corps of Engineers.

One of the many requirements for performing construction projects for the DOD, as well as other Federal agencies, is to provide surety bonds to protect the taxpayers and workers, subcontractors, and suppliers on construction projects. For small and medium-sized contractors, this requirement provides both protections and challenges.

There is good public policy for the universal requirement of surety bonds on public construction projects. These performance and payment bonds guarantee that the project will be completed and that the subcontractor suppliers and laborers on the job will be paid. Contractors on DOD projects over $150,000 must be able to provide these required bonds. If the contractor defaults and additional funds are needed for completion and to pay the subcontractors and workers, the surety pays the excess costs.

There is a direct connection between a contractor's capability and its bond ability. There are a number of things DOD can do to increase both that capability and the bond ability.

If a contractor is bidding for a job that is too large for its business to perform, it will have difficulty in obtaining the surety bonds that were required. Over recent years, the size and dollar value of contracts being let by DOD has increased, and, almost by definition, small and medium-sized contractors cannot perform those large contracts. Therefore, many of the contracts from the DOD are just simply too large.

Also, as you have already heard, bundling is a tremendous problem with DOD projects. While this may assist in administration of the contract for the DOD, it directly impacts the ability of small and mid-sized contractors to perform the contract and, consequently, to get the required surety bonds.

To address the needs of small businesses, Federal procurement rules should contain both mandates and incentives to break construction contracts into smaller parts.

First, Federal construction contracts need to be subject to the current anti-bundling regulations. Unfortunately, there is a recent case that holds that construction contracts are not even subject to the existing anti-bundling regulations, and that needs to be changed by legislation.

SFA also recommends that a Federal agency letting construction contracts should let 5 percent of its total budget in contracts of no more than $5 million.

Third, the projects that are set aside for small businesses need to be of a size that small businesses can perform.

And, fourth, the Joint Venture and Mentor-Protégé Programs must be allowed to work more effectively. The current Federal regulations lack clarity and standardization among the procuring agencies as to what arrangements are acceptable. In addition, the regulations present a disincentive for smaller contractors to participate in Federal construction projects with larger contractors as joint ventures or with the Mentor-Protégé Program. SFA suggests that small businesses should not lose their status and be disqualified from bidding on small business opportunities because of their participation in these programs or because surety bonds were issued based on the strength of the larger contractor joint venture program. The larger contractor's indemnity to the surety for losses under the bond should not threaten the small contractor's status.

What happens is you have the partnership, and if a surety is allowed to use the financial status of the larger contractor to begin to develop a relationship with the smaller contractor, ultimately they will develop a surety relationship for that smaller contractor, who will be able to bid individually without a joint venture or as part of the Protégé Program.

We also urge Congress to look at improvements to the SBA Surety Bond Guarantee Program. We have worked very closely with the SBA over the years on improvements that are necessary, and quite recently as well. And I believe legislation will be introduced, and we urge you to support that legislation.

If you are interested, we work very closely with the Department of Transportation and other agencies on programs to assist small, emerging contractors in getting surety bonds. We would be more than happy to roll out a program with the DOD for DOD contractors as well.

Last two other points. There is an automatic increase in the Miller Act threshold, which is the threshold below which bonds are not required, that has been put in place, and it has exemptions in there for certain statutes. The Miller Act needs to be added to that exemption. And all of the details on that are in our written testimony.

And last, there is a bill pending in Congress, H.R. 3534, called the "Security in Bonding Act of 2011" that would ensure that the small and mid-sized contractors who are adversely impacted by fraudulent sureties would no longer have to face that. And I urge you to look at that bill and consider it when it comes to the House.

Thank you very much.

[The prepared statement of Ms. Schubert can be found in the Appendix on page 48.]

Mr. SHUSTER. Thank you very much.

With that, Mr. Larsen, if you have an opening statement.

STATEMENT OF HON. RICK LARSEN, A REPRESENTATIVE FROM WASHINGTON, RANKING MEMBER, PANEL ON BUSINESS CHALLENGES WITHIN THE DEFENSE INDUSTRY

Mr. LARSEN. Thank you, Mr. Chairman. And we had a great CODEL [congressional delegation], and I appreciate your leadership on that CODEL. And it was good to see several of the Members be able to attend all or part of it and really provide good further insight for us out in the field about what our small businesses are facing as part of their contracting with the DOD.

I have a statement I will enter for the record, but I just want to make a few key points.

A key message that has been shared by a lot of the stakeholders that we have met with is the importance of the defense industrial base to our Nation's security and how important that base is to ensuring our women and men in the Armed Forces have the best weapons, the best services, the best products to do their job, and this defense industrial base is a force multiplier for our military.

But, as we are even hearing today and we have heard over this last week as part of the CODEL and in other hearings, this defense industrial base is a force multiplier but not a monolithic entity. It has many faces to it. It has large, multinational corporations; small companies that provide important subsystems and parts to major weapons programs, as well as services. And we are even hearing some of the concerns today expressed that we have heard as part of the trip we just had.

But I just want to be sure that we continue to focus the panel on what we feel the key elements hindering small and mid-sized businesses are in their ability to contract with the DOD and what steps we can take to open up opportunities with the Department of Defense.

With that, Mr. Chairman, I will just enter the rest of the statement into the record, without objection, if that is possible.

Mr. SHUSTER. Without objection, so ordered.

Mr. LARSEN. Thank you.

[The prepared statement of Mr. Larsen can be found in the Appendix on page 33.]

Mr. SHUSTER. Thank you, Mr. Larsen.

And, with that, we will go to questions. I am going to start off first.

Mr. Shoraka, you said that for 3 years running, prior to this year, or I guess it would be 2011 where your numbers came from 22.7 [percent]? Is that from 2011 or 2010?

Mr. SHORAKA. 2010.

Mr. SHUSTER. Okay. Prior to that, you said, for 3 years straight there was a decline in the percent. What was the reason for that? Did it have to do with we were at war and getting contracts out quick, or was there some other reason that you feel that that was on a decline?

Mr. SHORAKA. The numbers for 2009 and 2010 showed 2 consecutive years of increases.

Mr. SHUSTER. Right.

Mr. SHORAKA. Before that, there was 3 years of declines.

I would say that, in the last several years, there has been a high priority given from the Administration to small business contracting, from the President and his advisor, Valerie Jarrett, having quarterly meetings with Deputy Secretaries from each of the agencies. And I think that has had a significant positive impact on the agencies meeting their goals.

Mr. SHUSTER. Right. And who were those business meetings with you said?

Mr. SHORAKA. The quarterly meetings are White House initiatives with all the Deputy Secretaries from each of the CFO [chief financial officers] agencies, the 24 agencies.

Mr. SHUSTER. Okay.

And, Ms. Hillmer, you said that the government is paying twice from a prime to a sub. Can you sort of explain why you think they are paying twice?

Ms. HILLMER. Sure.

The prime contractor has the main contract, and they have their own overhead structure and the profits requirements that they need to meet. Small businesses who are the subs to these primes, we have our own overhead as well. So you are paying—or DOD is paying for our overhead as well as the prime's overhead. Whereas if they came to us directly and contracted, it would be one overhead——

Mr. SHUSTER. Right.

Ms. HILLMER [continuing]. But it requires more administration on their part.

Mr. SHUSTER. Right. And you don't feel—I mean, I think the idea behind subbing it out is you lower your overhead because you are going out to a subcontractor, but you don't feel that is happening there. Their overhead is their overhead; they are going to—they are subbing it out because it is a way for them to increase their profit as well.

Ms. HILLMER. That is exactly correct.

Mr. SHUSTER. Okay.

And as we are moving forward with this panel, we see that when the Office of the Secretary of Defense [OSD] focuses on—we look at the MRAPs [Mine Resistant Ambush Protected vehicles] and some of the other products that had to get out there quickly, do you believe that the Office of the Secretary of Defense, that Small Business Programs, is focused enough on working with the small businesses?

You mentioned there were some, here, White House initiatives. But at OSD, is there enough focus on small business, do you believe?

Any one of you can all comment on that if you care to.

Mr. SHORAKA. If I may first?

Mr. SHUSTER. Sure.

Mr. SHORAKA. I think certainly when we talk about the last fiscal year and looking at the continuing resolutions at the end of the fiscal year, some challenges obviously—that presented some challenges. But there was very close collaboration between our agency as the SBA along with the Department of Defense, along with their Office of Small Business as well as their OSDBUs. And I think, moving forward, we have identified opportunities to continue where we left off last quarter of last year and adding additional identification of opportunities.

As an example, we talk about our procurement center representatives, which are SBA officials who sit at the most active buying activities that the DOD has. So the procurement center representatives identify opportunities where small businesses should be participating. And if they don't go small business set-aside, they can object to that.

Mr. SHUSTER. And what happens if they object?

Mr. SHORAKA. They can object, and there have been cases where the contracting officer has turned around and made a portion of it small set-aside. If the procurement agency does not agree, we can file for an appeal, which raises it up to a higher level.

Mr. SHUSTER. Okay.

Ms. Hillmer.

Ms. HILLMER. It has been interesting watching the OSD Small Business Office, having been in DOD for quite a few years. You know, that office sat vacant for 2 years, and during that time it really hurt small business. Now they have put a director in there, and he has worked very hard and made a lot of progress. He is working very closely with NDIA. They have put a lot of policies in place. Yet to see how those policies are going to affect small business per se. But the focus that I have seen at DOD on small business has been more serious than what I have seen in a number of years.

Mr. SHUSTER. Just in the past couple years.

Ms. HILLMER. Yes.

Mr. SHUSTER. Ms. Schubert, do you have a comment?

Ms. SCHUBERT. We have not worked directly with that office. We have for a number of other agencies but not with DOD.

Mr. SHUSTER. And just so I am clear, on surety bonds the contracting is just on construction?

Ms. SCHUBERT. There are other requirements, there are other Federal requirements for surety bonds for a particular service: contracts—there are hundreds of them.

Mr. SHUSTER. Right.

Ms. SCHUBERT. Construction is the one that is most impacted by this.

Mr. SHUSTER. But building a component for a bigger system, are you required to have a surety bond for that? If one of the small companies is building, you know, an engine for a Humvee, does that require a surety bond?

Ms. SCHUBERT. I don't believe so.

Mr. SHUSTER. Okay.

Ms. SCHUBERT. But I will get back to you with the answer on that.

Mr. SHUSTER. Okay.

All right. With that, we go to Mr. Larsen for questions.

Mr. LARSEN. First, for Ms. Schubert, can you just explain again to me on the Mentor-Protégé Program, does the protégé, for the sake of definition, become subsumed in the definition of a larger contractor, and therefore they can lose their ability to get a surety bond? Is that kind of what you are saying?

Ms. SCHUBERT. Yes, that is what I am saying. And one of the major problems is that it is handled differently throughout the various agencies. There is no one way that it is acceptable or unacceptable. And what we would love to see is one standard that, "This is what is acceptable."

Not only do they get subsumed, but even if they don't, if the surety looks to the larger contractor for the bond, then there is a——

Mr. LARSEN. It applies to the protégé?

Ms. SCHUBERT. Yes. Exactly.

Mr. LARSEN. Only in the DOD?

Ms. SCHUBERT. No. It is a problem throughout the Federal—all the Federal agencies.

Mr. LARSEN. Okay. And then how would you specifically fix that?

Ms. SCHUBERT. Well, we would suggest that it not make the smaller contractor lose out on its small contractor status. What happens is they lose out on their status and then they no longer can qualify for the set-aside program.

Mr. LARSEN. Yeah. To do your bonding, do you need to have a certain—does the contractor need to have a certain size contract to do surety——

Ms. SCHUBERT. Well, in the Federal Government, the size contract where bonding is required is $150,000——

Mr. LARSEN. Oh, okay.

Ms. SCHUBERT [continuing]. And above. In States, some of them are $50,000. Local municipalities, some of them are $10,000, $20,000.

Mr. LARSEN. So those are relatively small?

Ms. SCHUBERT. It is.

Mr. LARSEN. Relatively.

Ms. SCHUBERT. It is—no, it is definitely relatively small.

Mr. LARSEN. Yeah. Yeah.

Ms. SCHUBERT. And what happens is you have contractors who are starting to get bonding at $100,000 or $150,000, and then the project they want to bid on is a $5 million project, and they don't have the capability to perform the project, and now they need a surety bond, and therefore they can't get that bond.

Mr. LARSEN. Yeah. Are these largely construction?

Ms. SCHUBERT. Yes.

Mr. LARSEN. Yeah. Yeah. Okay.

Ms. SCHUBERT. And there is plenty of that in DOD.

Mr. LARSEN. Yeah. And we always want more.

Ms. SCHUBERT. Yes. So do we.

Mr. LARSEN. And if we ever get a transportation bill, we will have more.

Ms. Hillmer, in your written testimony on page 3 and your oral testimony, you talked about the longer-term cultural and organizational shift necessary. How can that happen, and how could we write that into legislation? Give me something to grab on to here.

Ms. HILLMER. I love it. Thank you for asking.

It really needs to start from the top, as with any cultural change. If there is any way that Congress can put teeth to the small business goals, that would be a huge step in the right direction. Right now, if DOD or any agency doesn't meet its small business goals, they get hauled before Congress and get their wrist slapped. But there is no—there is no price to pay literally.

Ms. HILLMER. So if there were some teeth to those goals, that would help.

Just having the Secretaries of the services understand the importance of the small business industrial base and embrace that and push that down through their services I think would make a huge difference. The program managers themselves, the requirers, have to understand the importance of small business and the role that small business plays.

I believe you mentioned before that the DOD culture is risk-averse. Nobody gets fired for hiring IBM, right? But for a small business, there is some risk there. And so they are not as embracing of small business as they could be. And if the requirements community were perhaps held accountable for including small business, they might be a little bit more open to doing that.

Mr. LARSEN. One of the issues we heard about last week—and we may have heard about it before, and it may have been stated a different way—had to do with—and I want to see if I can get this right, and the staff could help me remember this correctly—it is a difference between, you know, being allowed to compete and then actually being qualified to compete or qualified to do the job.

Is that—you are nodding your head, for the record, as if you understand what I am talking about. So maybe you could help me out with the problem and what you think the solution is.

Ms. HILLMER. I do understand the problem. And that is actually something that the OSD Office of Small Business has been looking into in their market research surveys, to their credit.

When a commercial company wants to do business with a small business, they do a lot of research on that small business, and they make sure that they are not only qualified, they are viable, they are able to perform. And that is the type of information that is missing from the market research that is available to PMs [program managers] and small business specialists and contracting officers right now.

Mr. LARSEN. Okay. All right.

Is it "Shoraka," Mr. Shoraka?

Mr. SHORAKA. That is correct.

Mr. LARSEN. Can you discuss briefly your view about the teeth or lack of teeth in enforcing the small business goal, the goal of achieving the small business contracting goals?

Mr. SHORAKA. Sure. I think there are several, I guess, different layers of that.

As mentioned earlier, there is an emphasis on small business goals from the White House on down. The Administration, through Valerie Jarrett, has made it very clear to each agency that the goals are very important to meet. Our agency, Karen Mills, holds regular conversations with each of the agencies to make sure that the goals are met.

Our Deputy Administrator, beginning as soon as the goals were released this year, has held calls with each of the Deputy Secretaries, emphasizing, one, the importance of the goals, but, also, what are the tools to meeting those goals. As I mentioned, the Small Business Jobs Act gave us some additional tools. So what are the tools under there? Like, we talk about bundling and the restrictions on bundling now. We talk about indefinite quantity contracts and how those can now be set aside. So what are the tools?

Another thing that I would point out is that, from the White House initiative, all SESes [Senior Executive Service] that have in their program procurement activity are now under their performance metrics graded on understanding the small business and meeting the small business goals. So that is one thing we have worked with agencies, to make sure that the program officers are now also aware of and are rated on the goals.

Mr. LARSEN. Are they rated individually, or are they rated as an agency and then their budget requests reflect the achievement?

Mr. SHORAKA. With regards to the goals for the agency, obviously it is rated as an agency. But supervisors, then, that are doing reviews on SESes, as an example, can rate them individually.

Mr. LARSEN. Uh-huh. Yeah. Thank you.

Thank you, Mr. Chairman.

Mr. SHUSTER. With that, Mr. Schilling is recognized for questions.

Mr. SCHILLING. Thank you, Chairman.

Welcome. Happy New Year. It is good to be back.

I would like to start out with Mr. Shoraka. I am going to be, here soon, going to be introducing a small business bill that will address the Mentor-Protégé programs. Its main goal is to allow the SBA to either create a new program for a qualifying small business or to participate to open up a current program for them. Anyway, it would also streamline—and I think that is one of the things that we are getting at.

And I got to say I am very impressed with what is going on here. I mean, I think we are really getting a good grip here. I am a small business owner. I kind of jump ahead of myself all the time.

But it will streamline and make the process easier for small businesses to participate by setting standard regulations for each department. Specifically, it will put SBA in charge of overseeing and setting standard rules, and the department would implement regulations for all of the programs. This bill would also require SBA to present data to Congress about the progress of the programs with regard to how successful protégés are in general and in terms of obtaining and retaining Federal contracts.

Currently, 13 departments sponsor programs, which differ in eligibility and incentives to participate, but each program exists to pair new businesses with businesses that are more experienced with Federal contracting. However, success among departments varies widely.

Do you think something like this would help the small businesses? And then, in what ways?

Mr. SHORAKA. I think we hear about the Mentor-Protégé Program at the Department of Defense oftentimes, and we often hear that that is one way of engaging mentors along with the protégés and bringing them on board either as a subcontractor or on a prime contract relationship. And that has been very successful.

Different agencies have different models, certainly. At the SBA, our Mentor-Protégé Program as it stands focuses on our 8(a) portfolio, our 8(a) portfolio being disadvantaged firms. This provides an opportunity for a protégé to team up with a mentor and submit for a joint venture application. Under that joint venture application, that entity now is considered an 8(a), so they can actually pursue, even though they are joined together now, a set-aside project. This is an incentive, I think, for the large business because now they can pursue small businesses, but it is an incentive for the small business because now they can be mentored and pursue larger projects.

I think there are different models that work at different agencies in certain respects, and they have been modeled after what works at their own agency. I know the Small Business Jobs Act allowed for the SBA to roll out the Mentor-Protégé Program to our other set-aside programs, and that is something that we are working on currently.

Mr. SCHILLING. Very good.

My next question will go to Mrs. Hillmer. DOD has been used as an example of successful mentor-protégé programs, which is basically why my bill gives them the option to remain separate if they want to in the program.

Can you speak on your experiences with the DOD's mentor-protégé programs and why they are so successful?

Ms. HILLMER. I have no personal experience with it. However, I do know other small businesses that do participate. And it is true, DOD has a very good Mentor-Protégé Program in place. It is well structured, and it is implemented well. So I think it would serve as a very good example. And I have known several small businesses that have found it to be very useful and it has helped them.

Mr. SCHILLING. Very good.

Ms. Schubert, in reference to the unbundling, can you give—I mean, we have got some ideas as to why we should unbundle, but what would be some of the adverse things, some of the reasons why we shouldn't unbundle? Are there any reasons why not to unbundle, I guess?

Ms. SCHUBERT. Well, what we hear from the Federal Government is the ease of administration. They want to see one contract, one place, one sense of responsibility. And, unfortunately, that eliminates vast numbers of small businesses when you do that. And it also does double bill overhead, there is no question about that.

Unbundling would make a lot more small businesses eligible for surety bonding, which would allow them to then participate as general contractors and not just subcontractors on the jobs.

Mr. SCHILLING. Very good.

Thank you very much.

Mr. SHUSTER. I recognize Ms. Hanabusa for questions.

Ms. HANABUSA. Thank you, Mr. Chair.

Ms. Hillmer, I understand the theory behind why we shouldn't bundle, and I agree with you. However, if it is not one company that is doing it and bundling, then who takes that role? In other words, say you have one project, you have to have these different components, and now we have it bundled. Does it then mean that we increase the government acquisition staff so they then become responsible, where before we kind of pushed it onto the prime?

Ms. HILLMER. I have been with DOD a while now, so I am watching this come full circle. It used to be where DOD did have program integration, and those program integrators were responsible for, yes, hiring scores of contractors to do various types of work under the bigger programs.

So, yes, it does result in more work for the Department of Defense, quote, unquote. But I just think that the importance of maintaining a strong industrial base and the small businesses in that industrial base outweighs that.

Ms. HANABUSA. So that would be the cost that would have to be paid if we decide that small business is the priority. And we have decided that. But to implement it—in other words, to put our money where our mouth is—we would need to then realize that maybe the unintended intended consequence of that action is going to be that we are going to have to increase the acquisition force within DOD so that they would now be overseeing the contracts in a different manner.

Ms. HILLMER. The short answer is yes. DOD has been increasing its acquisition workforce, as you know. So I say, why not?

Ms. HANABUSA. But they are still bundling?

Ms. HILLMER. They are still bundling.

Ms. HANABUSA. It takes a while to refocus.

Ms. HILLMER. Right. It takes a while to turn the ship around.

Ms. HANABUSA. Thank you.

Ms. Schubert, I understand a lot about surety bonds. And the interesting part about surety bonds in the construction context is that it really has been the mechanism by which we have kept smaller contractors out of large construction projects, because they just can't bond it. I think one of the issues that people do not realize is small businesses, when they actually go out for those bonds, really put a lot of their personal assets on the line because that bond has got to be backed by someone's assets. And if you are a big corporation, you have assets, but usually a small business is an individual. So that is why, for many of them, they not only do not have the capabilities of getting the bonds, but they also may not want to put their home, for example, on the line.

So, having said that, as the consequence of that, is there an alternative for that surety requirement to keep the small business contractor being able to bid and to be competitive? Because for a lot of them one bad project could wipe them out forever.

Ms. SCHUBERT. Well, that is actually our concern. One bad project could wipe a subcontractor out forever, as well. So if you don't have the performance and the payment bonds in place, then the other people, the other small businesses are definitely impacted because that protection is not there. In fact, there is some excellent testimony from a number of years ago by subcontractors who said they just would not participate on Federal contracts any longer until the size of the payment bond was made equal with the size of the performance bond. So you have both sides of the story.

We represent sureties who write a tremendous number of bonds for small contractors. We actually have some statistics that I would be happy to provide for you at a later date in writing about the number of small contractors that have bonding.

It is extraordinarily rare that a surety company is interested in taking somebody's house as collateral, particularly in this economy, but even in previous economies it just isn't something that a surety wants to do. They have to have the capital, but, more importantly, they have to have the capacity to do the work.

And if you look at—what Ms. Hillmer was talking about is analyzing the capability and the qualifications of the contractor. That is what a surety bond does, that is what the surety does, is they evaluate the contractors to make sure that they can do the work.

We have a number of excellent programs that actually help small contractors get their first bond.

Ms. HANABUSA. So you are acting like a pre-qualifier for the government as well, is what you are saying, by having that contract?

Ms. SCHUBERT. Correct. And that is why the requirement was put in place in the first place, was contractors not performing——

Ms. HANABUSA. But most of the big contracts, like, for example, in Hawaii, they have to be able to bond a 50-year project.

Ms. SCHUBERT. A 50-year project?

Ms. HANABUSA. Fifty. That is the way military construction works in Hawaii. The housing is built on a 50-year project. So there are very few companies who are able to bond a 50-year housing project.

Ms. SCHUBERT. That is correct. I would recommend that you change the requirement—because you are not going to get contractors to bond 50 years.

Ms. HANABUSA. Congress did it well. I wasn't here, but they did it well. And there are few who qualify for that.

Ms. SCHUBERT. We would be happy to help with that.

Ms. HANABUSA. Thank you.

Ms. SCHUBERT. The direct answer to your question is there are alternatives. You are allowed to post letters of credit, you are allowed to post assets. And those assets have to be pledged to the Federal Government, and they are put in a federally insured financial institution.

It is much more difficult to do that for a contractor than it is to get a surety bond. That is why we like working through the mentor-protégé programs and joint ventures to try and assist those contractors.

Ms. HANABUSA. Thank you very much.

Thank you, Mr. Chair.

Mr. SHUSTER. Mr. Runyan is recognized for questions.

Mr. RUNYAN. Thank you, Mr. Chairman.

And, Ms. Hillmer, as we go through this, in talking, obviously, you say the double charge on bundling—and we get that, because it is a redundant overhead on both sides. But with your experience with acquisitions and contracting officers, as we have been through many of these hearings, a lot of time, and you mentioned it too, that there is no history, no research, and they are afraid to take that step and give them that contract. Therefore, a lot of the subs actually have to go through the primes to even get their foot in the door.

And a lot of times—and we experienced this out in California—a lot of times the subs will just get bought up by the primes, and their intellectual property [IP] and everything will just disappear, and it is not getting to the DOD.

How do we deal with the lack of background and the lack of the acquisition or the contracting officer being out there and being exposed also? There has to be a way we can help that process.

Ms. HILLMER. That is a very good question, and it is a difficult one to answer. I mean, I have been wrapping my brain around it, the division has been wrapping their brains around it. We are trying to come up with the answer to that.

Part of it is about market research. Right now, DOD—none of the military services have really sufficient market research tools. How to get the small businesses to—how to get DOD to take that chance on a small business, that is part of the SBIR [Small Business Innovation Research] program, too, SBIR—which, by the way, thank you very much for reauthorizing that. It has made a huge difference to our members, and we are really appreciative. So SBIR is a good way to get some of the new technology into DOD.

How to get new services and approaches and get DOD program managers to take that chance? Maybe it is part of the culture and rewarding them for taking chances and bringing in small business and creating a different kind of incentive program.

You know, those are all things we have been thinking about. There is no clear-cut answer. It is a tough one. It is a tough, tough nut to crack.

Mr. RUNYAN. I agree. And you hear it at every field hearing we have, and that is a frustrating aspect. And it is a big reason why this panel was put together.

Ms. HILLMER. And I can tell you, with the bundling issue and IDIQs, the increasing use of IDIQs, you are not getting those small businesses involved who haven't had past performance with DOD. None of those companies are invited to the table. So you are missing out on an entire possible industrial base there.

Mr. SHUSTER. Which companies are not invited did you say?

Ms. HILLMER. Small businesses who don't have any experience in doing business with DOD. Because the primes who are going after these large IDIQs, the small businesses they want on their teams, just like everybody, they want them to have experience and past performance that they can use to win the work. And if you don't have past performance with DOD, you don't get invited to the party.

Mr. RUNYAN. Thanks.

I yield back, Chairman.

Mr. SHUSTER. Ms. Sutton.

Ms. SUTTON. Thank you very much, Mr. Chairman. I was sorry I had to miss the field hearings. I know that they were tremendously informative, and I am looking forward to gathering——

Mr. SHUSTER. If you will yield for 1 second?

Ms. SUTTON. Certainly.

Mr. SHUSTER. We brought up, you know, one of the topics—I think we brought up a number of times the topics we learned about corrosion. And, in fact, we brought it up to the chairman, and he looked at us and said, "How much?"

Ms. SUTTON. I know. I am telling you, I am so proud. Thank you so much for doing that. There is a lot of money to be saved and progress to be made by mitigating and preventing corrosion.

But I digress. This has been very informative, as well, and I appreciate it.

And I just want to clarify, Ms. Hillmer, I think that you said a few moments ago that you notice that the focus on small business in the past couple of years has been better, has been notably better. Is that correct?

Ms. HILLMER. Within DOD, since they have the new director, there is a focus. And they have actually elevated him, directly reporting to the AT&L [Acquisition, Technology and Logistics].

Ms. SUTTON. Well, I appreciate hearing that. That is always the kind of news we want to know.

There were some things that were discussed already that I would just like a little more clarification.

Ms. Hillmer, let me ask you, on page 3 of your testimony, you talk about how the whole, the IDIQ contracts based on lowest price, the large primes are putting the squeeze on their smaller subcontractors. I would just like to explore that a little bit more. You talk about how that may reduce the quality or leave the defense market—they may leave the defense market space entirely.

But could you just give me, without naming names, some sort of example of how quality might be at risk and anything else you want to talk about along these lines?

Ms. HILLMER. Actually, I would like to give you a personal example of my own company, if I could.

Ms. SUTTON. Certainly.

Ms. HILLMER. We spent $8,000 to participate in a proposal, an IDIQ proposal. And the large prime won, and as soon as they won, the first thing they did was come back to us and say, "We need to slash your rates."

My company prides itself on the quality of the products and services that we provide to DOD. It is very different than some of the large contractors. We are very focused on what we do and very much personally involved and very creative. Doing low-quality work doesn't interest us, and, quite frankly, I think it hurts the Department of Defense.

Ms. SUTTON. Sure.

Ms. HILLMER. And in order for us to continue with that contract, we would have had to cut our salaries, cut everything, and hire people who are not as creative and talented as the people that we have. And so we simply removed ourselves from the contract. So we will not be participating and providing our services under that contract to the Air Force.

Ms. SUTTON. I appreciate that. Does anyone else have a comment on that? Okay.

Sir, you were talking about the ratings when goals aren't met, and Ms. Hillmer, you were also talking about the need to change, it starts at the top, and the need to sort of implement effective measures to make sure that those goals are met. Can you tell me how the ratings translate? I guess part of being an incentive or disincentive for certain behavior, so if a goal isn't met, what is the result? What happens?

Mr. SHORAKA. Well, first of all, I should say that since there is emphasis on this from higher, from the White House down, there is a huge incentive, I think, for the agencies to meet the goals. But having said that, the score cards are published. If the goal is not met, their grade reflects that. However, the agency is also required to develop a plan, which we negotiate and which we agree to, on how they will meet their goals moving forward. In other words, we didn't meet our goals last year; this is why, and this is how we are going to meet them next year. And that plan is developed in consultation with us.

One point that I would add with regards to the subcontracting, I just wanted to add that under the Small Business Jobs Act, it does provide four additional provisions for prime contractors to meet their subcontracting goals, so there is more teeth for prime contractors to meet their own subcontracting goals that they present in their proposals.

Ms. SUTTON. Would you like to add anything, Ms. Hillmer?

Ms. HILLMER. I think your question was, what are the ramifications if they don't meet?

Ms. SUTTON. Right.

Ms. HILLMER. And what I am hearing is that the ramifications are you have to report back and come back with a plan. I think that money talks, and if you affect a budget, they will feel it.

Ms. SUTTON. Thank you.

Mr. SHUSTER. Thank you.

With that, Mr. West is recognized for questions.

Mr. WEST. Thank you, Mr. Chairman, and also Ranking Member, thanks to the panel for being here.

You know, one of the important things you brought up was the invite to the table. I did, you know, 22 years with a fun organization called the Army. You know, when you go to the Association, the United States Army trade show, if you want to call it that, one of the things that I think we need to focus on, you don't see a lot of the small businesses there, you know.

Do we have something or can we start something like this AUSA [Association of the United States Army] that you see up in Washington, DC, or down in Fort Lauderdale, that can go around regionally, and we can start—instead of focusing on the big contracts, can we focus on, you know, small businesses, and we can highlight them, and especially some small businesses that don't have the experience so they can get that invite to the table; is that something that we are looking at doing with some of these trade organizations?

Mr. SHORAKA. Thank you.

If I just may add, with regards to sort of matchmaking events, et cetera, we are working with the Department of Defense to ensure that we increase matchmaking events. As has been mentioned, they have a new Office of Small Business Programs director. I should also mention that the Administration has asked that senior level officials, Senate-confirmed officials participate in at least two small business matchmaking events from each agency, so that should increase the opportunities for small businesses to participate. And I think that level of commitment from the agency would encourage small businesses, would encourage program buyers at the agency to be present, but it would encourage small businesses to participate as well.

Mr. WEST. Well, the AUSA winter symposium is coming up for Fort Lauderdale, which happens to be our district. Is there any kind of way that we can say to AUSA, you need to earmark out, you know, "X" amount of space on that floor for some of these local small businesses that do DOD type of contracts? I can name about 10 off the top of my head. But is that something that we can go to them and, you know, try to get them to do?

Mr. SHORAKA. I wouldn't know the answer to that right off the top of my head, but I can certainly work on that when I get back to the office and get an answer to you.

Mr. WEST. Ms. Hillmer.

Ms. HILLMER. Well, I can speak from NDIA's perspective. Actually, what we are doing this year, because NDIA has an annual small business conference, we are actually making it more regionalized, so we do attract the regional small businesses.

Speaking from a small business point of view, the reason you don't see those small businesses at these bigger events is because of the cost. When I first started my business, I spent a lot of money attending a lot of events, a lot of matchmaking, things like that. Didn't result in any business.

So I think what we have to do, and to the Department's credit, Department of Defense, they are actually looking at this as well, how do you make these events a return on investment for small businesses who participate? How do you measure that? And, quite frankly, just ask them, did you get any business out of this, a year later, 2 years later, things like that?

Regarding your specific question, can you ask an association to set aside some space or some time for small businesses? I say, try it. Let's see what happens.

Mr. WEST. Okay. You guys try that, and I will try it on my end.

The other question I have real quickly, a good friend of mine, Colonel Pete Newell, started a great organization with the Army, called the Rapid Force Initiative, where they go over into these combat theaters of operation, they find out immediately the type of things that the men and women on the ground need. And they come back, and they go looking for small businesses that can provide those type of goods and services right off the shelf. What are we doing to try to, you know, use that type of small business innovation to cut down on this procurement and acquisition process that we have that, you know, can go from, you know, until ad infinitum, ad nauseam, so is there something we can do with that to take what Colonel Newell has with the Army and extend that out for the other branches of service or maybe make that a DOD type of, you know, agency?

Mr. SHORAKA. If I can answer, with regards to the SBA, we have several cluster initiatives where we have some of them focused on the Department of Defense, which provides incentives for identifying opportunities, as you have mentioned. Also, as was mentioned earlier, the SBIR and STTR [Small Business Technology Transfer Program] initiatives, and with the 6-year extension that provides, you know, a level of comfort for small businesses and certainty. I think that encourages them to participate in the program, and I would say that with the increase in the grants, that should also encourage them to participate in the program.

Ms. HILLMER. I believe DOD has something called a Rapid Innovation Fund [RIF], where they are specifically targeting some small businesses and helping them get through—they have really neat products and services—and helping them get through the procurement process without having to jump through all the hoops. But I like your idea very much, and I think we should try to do it.

Mr. WEST. Very well.

Thank you, Mr. Chairman. I yield back.

Mr. SHUSTER. Thank you.

As we talked a little bit about here, I said in my opening statement and a couple other members mentioned about the Department of Defense, the project, the program managers being risk-averse, something was said, put some teeth into the mandates. I always get a little concerned when we are more forcing things down, sometimes you force bad decisions, and I think somebody was talking a little, how do you reward taking those risks? And in Washington, DC, everybody is concerned about taking a risk because The Washington Post or the Los Angeles Times or one of these newspapers pile on and say how terrible it was that this program manager or this Member of Congress or this company took a risk to try to do something, and obviously, it didn't succeed. So as I am going through this process, and I will just try to throw this idea out there. You know, we have heard about, today we talked a lot about not enough market research out there, you know, DOD has to, they want to deal with somebody they have got experience with because they have experience and they know they can perform something. We have heard a lot about the DCAA [Defense Contract Audit Agency] and their auditing and how difficult that is, and so as I am thinking about this and trying to think a little bit outside the box, is it possible that—there are industries in America that self-regulate, the financial services industry, FINRA [Financial Industry Regulatory Authority] is self-regulatory, CPAs [Certified Public Accountants]; even, God forbid, the lawyers I think self-regulate to a certain degree. Is it possible to have an organization that is funded by industry that, you know, for one thing maybe certifies a company? Because a lot of the work when you go into—in Hawaii, we went into, and the arsenal and other places, we have gone into where a lot of the work they do, they are machine shops, and you are machining things, but industry all across America, not Department of Defense, they get things machined and built all the time that isn't specialized to the Department of Defense. And sometimes we try to make it that, oh, it has got to be machined exactly this way or it is not going to fit where if you are manufacturing any kind of high-performance vehicle or item, it has got to be machined properly. So is it possible in your minds to set up an organization that maybe certifies companies and says, yeah, this company can machine or this company can manufacture this? Is it possible in that organization to sort of self-regulate and go in and do the audits on smaller businesses? And of course, you would still have—for instance, FINRA has the SEC [Security and Exchanges Commission] over top of it, and when FINRA goes in, the SEC sometimes goes in behind and says, no, not good enough or you need to change.

And I think we do two things, you know, I am saying this and across the street, if people hear me saying this, you know, we are going to eliminate a lot of DCAA employees, but push them out into the private sector, let them self-regulate. I believe they are going to have a better understanding of small businesses and, again, funded by, but FINRA's been working for 70 years very well, as well as some of these other agencies, so when you talk about changing the culture over there, when you talk about how do we look at this differently, does that—when I say this thing to you, though not fully created in my mind, but is it completely out of the box, it is too crazy, or is that something that you see as potentially workable?

Ms. HILLMER. It is an interesting thought. I hadn't thought about self-regulation. The biggest negative I could see to that would be competition. Once you start regulating, giving the seal of approval, then those companies that don't have that or don't know how to get it or can't afford it because there will be a price associated with it, then you kind of maybe knock them out.

Mr. SHUSTER. But we are doing that already, aren't we, if you don't know how to get into DOD? And this is, you know, when I look at the FINRA model, I keep coming back to the industry, you want to be a financial broker in this country, you have got to go through the process and get certified by FINRA, and then you can sell the various products, where same thing, especially—you know, I am not concerned about the Boeings and the Lockheeds of the world, they have got it figured out. But it is very difficult for, and I have got small businesses come to me in my district all the time, how do I get business with DOD? And they think there is some magic, but it is get in there and pound away and go through the process, and it may take 3 years, 5 years, you know, 10 years to get business.

Mr. SHORAKA. The only comment that I would make is, you know, my concern would be an additional layer of work for the small business. I mean, we hear about small businesses and getting on a schedule or small businesses and getting into the 8(a) program, as an example. Another layer of certification I would maybe be concerned about that or costs associated thereof.

Another thing, just with my perspective, I come out of the small business government contracting world myself before I was appointed to the SBA, and I know, as a small business that was a government contractor, I know that the DCAA oftentimes gets thrown under the bus, but they are for—and, you know, this is the perspective of the SBA, they are, you know, stewards of the taxpayer dollars, and I do know that the DCAA has certain restrictions that don't necessarily always apply to small businesses under contracts, from contract-to-contract provisions, but as stewards of the taxpayer dollars, they are sort of tasked with doing that work, but again, with the comment with regards to a certification process, that is the only thing I think that I would add.

Mr. SHUSTER. Ms. Schubert.

And with that, I believe Ms. Hanabusa has further questions.

Ms. HANABUSA. I just had a follow-up for Ms. Schubert.

Ms. Schubert, is there like a percentage that is the cost of a surety bond on a project?

Ms. SCHUBERT. There is. A premium on a surety bond is somewhere about 1 percent of the contract price or below.

Ms. HANABUSA. So according to your testimony, you know, you were taking issue with the fact that the council went from $100,000 to $150,000, and you felt that it was going to leave unprotected any sub [subcontractor] that was doing work, I guess, on a $150,000 contract, am I reading that correctly?

Ms. SCHUBERT. Yes, that is correct.

Ms. HANABUSA. That would be a sub to a contractor is a $150,000 contract?

Ms. SCHUBERT. Right.

Ms. HANABUSA. So what if we were to go to a situation where we unbundled and they all became general contractors, then wouldn't a lot of the smaller guys also have to come up, if they were all about $150,000, that they would then all have to come with their own surety bond and payment bonds attached to them versus a general contractor who we assume would have that? Though I do know some generals who actually require certain large subs to carry subcontracting bonds as well, and the ones I was referring to are really the smaller subcontractors who, under the terms of their contract with the general, have to also carry surety and payment bond requirements, but if we were to, quote, unbundle it, wouldn't we result with more surety bonds out there, too?

Ms. SCHUBERT. There wouldn't be more surety bonds, you would just have different contractors who had the contracts up to the 150, you are talking about the $150,000.

Ms. HANABUSA. Right, but if they were in this normal structure, you probably would have one large contractor who would have a surety bond, and the subs, probably depending on how their general felt, may or may not be required to carry the bonds, correct?

Ms. SCHUBERT. Right. And you could end up actually, as backwards as it sounds, you could end up with more surety bond requirements that way. The bond requirement covers the entire contract price, so say you have a $500,000—make something easy, a million dollar contract, you have one surety bond, and it is based on a million dollars. You divide it up into $150,000 contracts, you would still have the same overall value of surety bonds out there, it is just they would be provided by smaller contractors.

Ms. HANABUSA. Different?

Ms. SCHUBERT. From different people, yes.

Ms. HANABUSA. Do you know what the percentage rate on the call on those bonds are, from your industry standpoint? Military construction, for example, what is the failure rate that we are looking at that has called upon the bonds?

Ms. SCHUBERT. I can provide those statistics for you. That is one of the things our organization does, and one of the things to keep in mind is the point of—there are two points to the bond. One is the prequalification, as you described it very accurately.

Ms. HANABUSA. Right.

Ms. SCHUBERT. And then the second is to pay if, in fact, the surety is wrong with their prequalification, they then turn around and pay, so I can provide the loss ratios for you.

Ms. HANABUSA. Yes.

Ms. SCHUBERT. And the premium volume, and we can—the way it is divided up is Federal versus non-Federal. I don't believe that we have statistics specifically on military, but I can get you as much detail as we have.

Ms. HANABUSA. Do you by any chance have statistics—this has been a curious thing for me. When they were in Hawaii, they got to see our example of corrosion, which was the stadium. And having been part of that litigation, I can tell you the litigation costs on many of it—I had a surety company—on the surety issues far exceeded the actual original construction costs, so do you have statistics that when we start to do all of this, at what point is it, you know—did all—everything associated with the bond exceed the actual benefit that we receive? In other words, did government ever have to step in, finish the project anyway? Do you have any statistics like that?

Ms. SCHUBERT. No. We have plenty of cases, I am sure, going both ways on that, and I would be happy to sit down and talk with you about that.

Ms. HANABUSA. Sure, I would appreciate it. Thank you.

Thank you, Mr. Chair.

Ms. SCHUBERT. Could I also—one suggestion that might address not these questions but the earlier question, the SBA surety bond guarantee program is a very useful tool for small contractors to get the bonds, so we work very closely with SBA on that, and if you would like, we could also sit down with you about the changes that are necessary so we can help increase the number of contractors who can get the benefit of the bond guarantee program.

Ms. HANABUSA. I would appreciate that. Thank you.

Ms. SCHUBERT. You are welcome.

Mr. SHUSTER. Thank you, Mrs. Hanabusa, and thank you for hosting us out there in Hawaii.

And also, Ms. Sutton, we also saw examples of corrosion in Palmdale with some of our Air Force fighters, and they are telling us that coming in from Hawaii from Hickam Air Force Base, F–22s are going to come in, and because of the climate there, as well as some other places in the country, corrosion is a huge problem, so you were on our mind.

No, I think of solving problems, and that is a big problem to solve.

Mr. LARSEN. No, we don't have problems like that in the Northwest also, if anybody wants to send the stuff there, it is fine.

Ms. SUTTON. It is good because we can actually—we do it in the United States.

Mr. SHUSTER. Absolutely, absolutely.

Well, again, I want to thank all of our panelists for being here. Appreciate you taking the time and providing us with your insights. And again, we are going to continue to do our work here. We are charged with coming up with some concrete language for legislation to help improve the environment for the folks that are working in the defense industrial base. And it is my thought that this—we were set up for 6 months. It is my thought this is going to take more than 6 months to really get at the core because when we talk about things like changing the culture and how do you get people to not be risk-averse, it is a difficult challenge. But it is something I think we are going to need to do, especially facing the kind of budget constraints we are going to have for the foreseeable future and also the need to continue to come up with new and better ways to defend our country, to give our warfighters the tools they need to keep America safe and secure.

So, again, thank you for being here today. Appreciate your time.

And the hearing is adjourned.

[Whereupon, at 4:17 p.m., the panel was adjourned.]

APPENDIX

JANUARY 17, 2012

PREPARED STATEMENTS SUBMITTED FOR THE RECORD

JANUARY 17, 2012

Statement by Chairman Bill Shuster,
Panel on Business Challenges within the Defense Industry

Hearing on "Doing Business with DOD: Unique Challenges Faced by Small and Mid-Sized Businesses"

January 17, 2012

Good afternoon. The House Armed Services Committee panel on Business Challenges in the Defense Industry meets today to continue our dialogue regarding the health and future of our nation's Defense Industrial Base. Today, we are specifically looking at the unique challenges that small and mid-size businesses face in trying to do business with the Department of Defense.

Members of the panel just returned on Friday morning from meeting with businesses in southern California and Honolulu. As I've said before, these roundtable discussions are extremely valuable to the panel and the meetings we had last week provided us a great deal of insight into many of the challenges in the defense industry. We were honored to have Chairman McKeon join us in Santa Clarita and we also had Duncan Hunter and Susan Davis join us in San Diego.

In addition to the three industry roundtables, we also had the opportunity to meet with Admiral Willard, the Commander of US Pacific Command, and we toured many of the DOD industrial facilities that support our Navy in the Pacific.

While we were in Hawaii, one of the small business owners commented that DOD takes the view that small businesses should take a small role. In reality, small businesses are the backbone of this economy. According to the Small Business Administration, small businesses play "a leading role as the driver of economic growth and job creation" in the national economy and that "more than half of working Americans own or work for a small business and small businesses are responsible for two of every three net new private sector jobs created in recent years."

This is why we are here today. If the folks in the Pentagon have a notion that small business should only play a limited role in the defense industrial base, we're in a lot of trouble. There is no doubt that the DOD acquisition community is very risk averse—we've got to find ways to meter that risk aversion, reduce the bureaucracy, and leverage this critical sector of our economy to meet our national security requirements.

We have three terrific witnesses with us today to explore this topic and to assist us in trying to change the paradigm. We have:

Mr. A. John Shoraka,
Acting Associate Administrator for Government Contracting and Business Development for the Small Business Administration

Ms. Linda Hillmer
Chair of the Small Business Division at NDIA

Ms. Lynn M. Schubert
President of The Surety & Fidelity Association of America

While Ms. Hillmer and her organization are very familiar with the HASC, I know Mr. Shoraka and Ms. Schubert are probably a bit out of their comfort zones. It is not often that someone from the SBA or the world of surety bonding is called to testify before one of the defense committees. However, your experience, insight, and recommendations are very important to us and we are honored that you would join us today. I also want to thank Mr. Dan Else, and the rest of his team at Congressional Research Service, for their assistance in preparation for this hearing.

I'm looking forward to the discussion and with that, I'll turn to my good friend Rick Larsen for any remarks he might like to make at this point.

Statement by Ranking Member Rick Larsen,
Panel on Business Challenges within the Defense Industry

Hearing on "Doing Business with DOD: Unique Challenges Faced by Small and Mid-Sized Businesses"

January 17, 2012

Thank you, Mr. Chairman. I'm pleased to be joining you and the other panel members here today.

Recently, President Obama, Secretary of Defense Leon Panetta and Chairman of the Joint Chiefs of Staff Martin Dempsey, released a new military strategy pivoting our national interests towards the Asia-Pacific. In a couple weeks, the Department of Defense will send the Congress a budget that gives greater clarity on how this strategy will unfold. This budget will also have profound implications on small and medium sized businesses who seek to do business with DOD.

Since this panel was convened, my fellow panel members and I have gained valuable insight from many stakeholders—from industry groups, officials at the DOD, notable outside experts, and from dozens of small and medium sized business owners.

A key message that has been shared by each stakeholder is the importance of the Defense Industrial Base to our nation's security, and the importance this base has in ensuring our women and men in the Armed Forces are armed with the world's finest weapons and support systems.

The Defense Industrial Base is a force multiplier to our military, but it is not a monolithic entity. It is comprised of both very large, multi-national corporations, and small companies that provide important subsystems and parts to major weapons programs.

This Panel has the responsibility of recommending actions to not only bolster the existing defense industrial base supporting our military, but to also take steps towards creating a 21st century defense industrial base that is more diverse, more agile, and more able to respond to an array of potential threats.

This past year, the House Armed Services Committee took positive steps towards helping small and mid-size companies adjust to the changing defense landscape. We reauthorized the Small Business Innovative Research Program

(SBIR) and the Small Business Technology Transfer Programs for another 6 years. We also reauthorized the Mentor-Protégé program for another 5 years.

These programs are invaluable in assisting small and mid-size companies gain access to venture capital funds and to gain access to contracting opportunities with DOD.

I would like to thank each of our witnesses for appearing before the Panel this afternoon.

I hope they offer the Panel a brief overview of what they feel are the key elements hindering small and mid-size businesses' ability to contract with DOD, and what steps can be taken to open up business opportunities with the Department of Defense.

I am also interested in hearing from our witnesses about why the Department of Defense has not been able to meet its small business contracting goals. According to the Small Business Administration, DOD has fallen short of its stated goals in contracting with Small Businesses, Women-owned Small Businesses, and Service-disabled Veteran-owned Small Businesses.

Last, I am interested in DOD's use of Indefinite Delivery/Indefinite Quantity—or ID/IQ—contracts and what, if any, opportunities small and medium size businesses have in landing these contracts.

Thank you to Mr. Shoraka, Ms. Hillmer, and Ms. Schubert for their participation this afternoon and I look forward to hearing from each of you.

Thank you again, Chairman.

U.S SMALL BUSINESS ADMINISTRATION

WASHINGTON, D.C. 20416

TESTIMONY OF

JOHN SHORAKA
ACTING ASSOCIATE ADMINISTRATOR
GOVERNMENT CONTRACTING AND BUSINESS DEVELOPMENT
U.S. SMALL BUSINESS ADMINISTRATION

BEFORE THE

HOUSE COMMITTEE ON ARMED SERVICES
U.S. HOUSE OF REPRESENTATIVES

"Doing Business with DOD: Unique Challenges Faced by Small and "Mid-Sized" Businesses"

JANUARY 17, 2012

Chairman Shuster, Ranking Member Larsen, and members of the House Armed Services Committee, thank you for inviting the U.S. Small Business Administration (SBA) to testify today. My name is John Shoraka and I am the SBA's Acting Associate Administrator of Government Contracting and Business Development.

Our top priority at the SBA is to maximize opportunities for small businesses and ensure that the benefits of our programs flow to the intended recipients. My office works each day to get federal contracting dollars into the hands of small and disadvantaged businesses. Contracting with small business is a win-win. Small businesses, who are drivers of the American economy, get the revenue they need to grow and create jobs. Meanwhile, the federal government has the opportunity to work with the most innovative and responsive companies in the country.

My office's primary objective is to ensure that eligible small businesses receive their fair share of federal prime and subcontracting dollars. One way we do that is through our oversight of the federal government's efforts to meet the statutorily mandated small business goals, which include prime contracting dollars, awarding:

- 23% to Small Businesses;
- 5% to Small Disadvantaged Businesses;
- 5% to Women-Owned Small Businesses;
- 3% to Service-Disabled Veteran-Owned Small Businesses; and
- 3% to Historically Underutilized Business Zone (HUBZone) firms.

Over the last two years, the federal government has made significant improvements in contracting to small businesses. For example, in fiscal year 2010, small businesses won nearly $100 billion, or 22.7% of federal prime contracting dollars. This marks the second consecutive year of percentage and dollar increase after three consecutive years of decline and was the largest two year increase in over a decade. Small businesses also won $74 billion, or 35.4% of subcontracting dollars, which was a marked increase from 2008 and 2009 when 28.6% and 31.8% of subcontracting dollars were awarded to small businesses, respectively. The SBA remains committed to working with federal agencies to get even more contracts and subcontracts into the hands of small businesses in coming years.

Small Business Procurement Scorecard

Throughout the fiscal year, we track and monitor federal agencies' small business contracting performance closely and publish the annual Small Business Procurement Scorecard. These scorecards reflect the percentage of federal prime contracting and subcontracting dollars that are awarded to small businesses and provide a quantitatively-driven assessment of the government's performance for all of our stakeholders. Each Scorecard shows achievement in three primary categories: (1) Prime Contracting, (2) Subcontracting, and (3) Plan Progress. In addition, each Scorecard contains an overall letter grade, "A+" through "F", based on the weighted score from each of the categories. The DoD's Scorecard, as are all federal agencies' Scorecard, is calculated based on goals set and agreed-upon during the goal setting process.

In Fiscal Year 2010, DoD achieved a "B", reaching 95.8% of its small business contracting goals. The Department awarded 20.94% ($61.120 billion) of its federal contracts to small businesses. The Department awarded $10.472 billion in prime contracts to Women-Owned Small Businesses, $20.773 billion Small Disadvantaged Business, $5.303 billion to Service-Disabled Veteran-Owned Small Businesses, and $8.753 billion to Historically Underutilized Business Zones (HUBZones). In FY2010, DoD significantly exceeded its overall subcontracting goal of 31.70% to small businesses, awarding 37.30%. The Department awarded 6.30% of subcontracting awards to Women-Owned Small Businesses, 5% to Small Disadvantaged Business, 1.90% Service-Disabled Veteran-Owned Small Businesses, and 2.40% to Historically Underutilized Business Zones (HUBZones). DoD submitted a fully responsive plan to increase small business contracting within its procurement. In addition to outreach and training events mentioned above, the Department was fully receptive to SBA during the reporting period and demonstrated its procurement data was fully and accurately reported.

Recent Key Small Business Contracting Initiatives

Accelerated Payments to Small Businesses

The Administration has implemented a handful of key initiatives to create an environment where small businesses can find more success in the federal procurement marketplace. For example, in September 2011, the President asked all agencies to cut the amount of time it takes them to pay small business contractors in half, from 30 days to 15 days. The QuickPay initiative means that small business contractors will get paid more quickly for the innovative products and services they provide. This is important because when you consistently pay a small business more quickly, it results in a permanent increase in their cash flow levels. That allows small businesses to put more capital towards expanding their businesses, marketing their products, and creating jobs - all while helping to eliminate many expensive interest payments that are usually required to finance a small business.

The Department of Defense was a leader among the federal agencies of the QuickPay initiative, changing the Defense Federal Acquisition Regulation Supplement (DFARS) in April 2011 to extend the Department's accelerated payment policy uniformly to all small businesses. DoD estimates that approximately 60,000 small businesses will benefit from the use of accelerated payments, increasing their cash-flow nearly one-third faster than they would normally get paid.

The Small Business Jobs Act of 2010

Congress passed the most significant piece of small business legislation in a decade with the Small Business Jobs Act (SBJA) of 2010, and we continue to roll out the many benefits to small businesses. Along with OMB and the Department of Commerce, in 2010 the SBA led the Interagency Task Force on Federal Contracting Opportunities for Small Businesses to address key barriers for small businesses in federal contracting. The Task Force provided thirteen recommendations, many of which were adopted in the SBJA.The SBJA contains 19 contracting provisions that will help redirect billions of contracting dollars into the hands of small businesses and create an environment where more small businesses can succeed in contracting. The SBJA is a huge win for small business government contracting.

The SBA has been busy implementing these 19 provisions with extensive input from the small business community. These provisions will have a significant impact on not only small businesses, but also in improving the contracting processes. Among changes already enacted include:

- Helping federal agencies to meet each of the government's small business contracting goals by reaffirming "parity" to ensure that contracting officers will be free to choose equally among businesses owned by women and service-disabled veterans, as well as businesses participating in HUBZone programs and 8(a) programs.
- Repealing the Competitiveness Demonstration Program and reinstating the ability to set-aside contracts in 11 industries where small businesses typically excel.
- Conducting a detailed review and making appropriate adjustments to industry size standards to ensure the requirements for small businesses reflect current market conditions.
- Clarifying guidance to prevent unjustified contract bundling, a practice that makes it more difficult for small businesses to compete.
- Holding large prime contractors more accountable to their own subcontracting plans by requiring written justification when plans aren't met and when small businesses subcontractors aren't paid on time or in full.
- DoD's Office of Small Business Programs (OSBP), communicating to senior procurement executives and senior program managers the importance of achieving small business goals to the acquisition community.
- Strengthening the skills of the federal acquisition workforce by developing small business training that is accessible to all of the acquisition workforce and revising existing certification requirements to include information on strategies for increasing small business participation in federal contracts. .

Small Business Administration Collaboration with the Department of Defense

While the SBJA has made marked improvements to the federal procurement environment for small businesses, contracting with a large and complex agency like the Department of Defense naturally comes with unique challenges. My office works regularly works with all of the branches of DoD and their small business communities – conducting outreach and training events and finding new ways to support small businesses and help DoD hit and exceed its small business contracting goals. We have significantly increased our collaboration with the Department to help get more DoD contracts into the hands of small businesses.

For example, DoD's OSBP conducts frequent small business procurement conferences around the country. In May 2011, DoD teamed up with SBA to host a small business training conference in New Orleans. The conference focused on new developments (changes to size standards, updates to the HUBZone program, and implementation of the SBJA), and requirements specific to applying for and winning DoD contracts. The conference was unanimously considered a success and has set the precedent for future engagement.

Because of the significant amount of contracts coming from DoD, my office is in constant contact with the DoD's OSBP and other Agencies' Office of Small and Disadvantaged Business Utilization (OSDBU) to track and monitor small business contracting goals. Monthly, SBA chairs the Small Business Procurement Advisory Council (SBPAC) meeting, where we collaborate with OSDBUs from across the federal government, including DoD, to find out how we can best support agencies and address any issues they have with their small business contracting work. In collaboration with the White House, SBA is further engaging senior officials at DoD to meet and hold them accountable to the small business procurement goals.

The Department of Defense's Commitment to Small Business Contracting

DoD has continued to work to increase small business contracting opportunities for small businesses, demonstrating strong top-level commitment to small business contracting. For example, in August 2011, Secretary of Defense Leon Panetta issued a memorandum urging the Department's acquisition workforce to identify opportunities to increase contracting with small businesses. The Secretary's prioritization of small businesses was praised by Senator Mary Landrieu, Chair of the Senate Committee on Small Business and Entrepreneurship. In addition to Secretary Panetta, the senior leaders of each Military of the DoD issued detailed memoranda to their respective acquisition teams and program buyers to encourage the increased use of small businesses. Acquisition teams were urged to take immediate short term steps, including:

- utilize market research and the Small Business Maximum Practicable (MaxPrac) Opportunity tool to identify the capabilities of small businesses,
- consider socio-economic status when identifying contracting opportunities from the Federal Supply Schedules (FSS),
- encourage small business set-asides when using Indefinite Delivery Indefinite Quantity (IDIQ) Multiple Award Contracts (MAC), and
- reward highly qualified small business prime contractors that are participants in DoD's Mentor Protégé Program.

In addition, the teams were asked to improve long-term acquisition processes for small business engagement.

Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs

Other significant tools that encourage small business participation and innovation in the defense industry are the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. **We at SBA want to thank Congress for recently reauthorizing the SBIR and STTR for another six years.** This long-term reauthorization increases allocations and award levels, shortens timelines for award decisions, increases the focus on commercializing innovative products that will change the world, and provides certainty and stability for the small businesses that leverage these programs to create jobs. The reauthorization strengthens SBIR and STTR, providing more funding for small businesses to drive innovation, create jobs, and grow our economy.

SBIR and STTR invest about $2.5 billion a year in America's most promising small research and development companies through a highly competitive award process administered in phases by large federal agencies and overseen by the SBA. Through SBIR and STTR, DoD provides competitive awards to help small businesses bring their best innovations from the drawing board to the defense marketplace. SBIR and STTR operate in three phases, providing support for research, development, and commercialization. The reauthorization has also provided small businesses the opportunity to compete for higher awards, giving DoD the discretion to allow companies to skip Phase I and apply directly to Phase II. Ultimately, SBIR and STTR are a win-win. They help DoD meet their R&D needs, while small businesses get the chance to bring their innovations into the defense marketplace, and, in many cases, go on to achieve significant commercial success in applications in many other industries throughout the private sector. The reauthorization ensures that small businesses will have access to much needed investments.

Moving Forward

In working to hit the Department's small business contracting goals in FY2012, SBA and DoD are working together and building off of our great collaboration in FY2011. We are redoubling our efforts early on in the Fiscal Year to reach our goals and optimize small business opportunity to the greatest extent possible. My office is in regular communication with DoD's OSBP and together we continue to develop new strategies and tactics that will increase small business participation in the defense industry and put more DoD contracts in the hands of small businesses.

As demonstrated by our initiatives and collaboration outlined in this testimony, the SBA is committed to maximizing the contracting opportunities available to small businesses and are continuously looking for ways to increase small business participation in federal contracting. The DoD shares our commitment to hitting and exceeding our small business contracting goals and increasing small business participation in the defense marketplace.

Thank you for allowing me to share SBA's views and initiatives with you today, and I will be happy to answer any questions you may have.

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John Shoraka
Acting Associate Administrator
Government Contracting and Business Development

A. John Shoraka currently serves as the Acting Associate Administrator of Government Contracting and Business Development at the U.S. Small Business Administration (SBA). His team supports thousands of small businesses every year as they compete for over $500 Billion in federal prime contracts and billions more in subcontracts.

Prior to his current role, A. John Shoraka served as Regional Administrator for the SBA. As Regional Administrator for Region 3, Shoraka was responsible for the delivery and management of SBA's small business programs, financial assistance, and business development program initiatives throughout the region.

With a background in business development, international trade, government contracting, and management, Shoraka works on behalf of small businesses and entrepreneurs across the region as they turn to the SBA for the tools they need to start, grow, succeed and create jobs.

Shoraka previously served as vice president at The Aries Group in Silver Spring, Md., a business and financial consulting firm where he was responsible for implementing multi-year projects throughout the world.

Prior to accepting the appointment as Regional Administrator, he served as chair of the Small Business Association for International Contractors, where he represented 26 small business contractors that provide services to the United States Agency for International Development.

Shoraka has collaborated with USAID officials and Congress to promote equity in small business contracting and opportunities for small business contractors within USAID. In addition, Shoraka served as adjunct faculty at Catholic University of America where he taught courses in international business and management science.

Shoraka holds a B.S. from the University of Maryland, College Park and an MBA from George Washington University.

Testimony to House Armed Services Committee Panel on Business Challenges within the Defense Industry

January 17, 2012 at 3pm

Hearing: Doing Business with DOD: Unique Challenges Faced by Small and Mid-Sized Businesses

Provided by:

Ms. Linda Hillmer

Chair, Small Business Division

National Defense Industrial Association

Good afternoon Chairman Shuster, Ranking Member Larsen and other distinguished members of the Committee.

My name is Linda Hillmer and I am the Chair of the Small Business Division of America's leading defense industrial association promoting national security. The National Defense Industrial Association (NDIA) has 95,000 members worldwide, more than 1,700 corporate members, and nearly 900 small business division members.

In addition to volunteering as the Chair of the NDIA Small Business Division, I am a small business owner whose company has supported the federal government since 2001. I am also a former federal government contracts professional, which means I'm bilingual: I speak both Plain English and the arcane language of Federal Acquisition.

In Fiscal Year 2010, which is the latest information available to the public, the Department of Defense (DoD) awarded over 61 billion dollars in prime contracts to small businesses.

I am here today to talk about some of the challenges small businesses face in doing business with the Department of Defense. One of the key obstacles to more participation by small businesses in DoD contracts is the choice by DoD to bundle requirements into huge contracts.

We know why DoD bundles contracts: it's easier, faster and less work for the government to bunch contracts together, have the details managed by one or a handful of contractors, and simply oversee those primes versus scores of contractors on separate projects. During a war on two fronts, increasing budgets, and a stretched acquisition staff, bundling appears to be a logical answer to meeting wartime requirements.

We are now in a different time however and austere budgets require strategic solutions for meeting short term needs. DoD is very concerned – and rightly so – with avoiding what it calls a "hollow force" inside the military. I believe the Department ought to also be concerned about a "hollow" small business industrial base. One of the acquisition approaches bringing about this "hollow" small business industrial base is the increasing use of bundling.

Let me give you just one example of how bundling hurts small business. Bundling puts small businesses in a dependent, usually minor subcontracting role, well hidden from government decision makers. The minor subcontracting role keeps small business at arm's length from the government program managers who set requirements. It also means government contracting leaders who determine acquisition strategies do not see the small business performing the work behind the prime.

Bundling contracts not only hurts small business, it hurts the Department of Defense. Bundling means the government pays twice on overhead – once for the prime, which is usually a larger business, and again for the sub. But, more important than dollars, bundling hurts the government by attacking quality. As DoD is awarding more and more IDIQ contracts based on lowest price, the large primes are putting the squeeze on their smaller subcontractors. This may result in lower prices for DoD but at what cost? Small business, in an effort to stay alive, will cut quality OR will leave the defense market space entirely. Both decisions ultimately result in lower quality products and services in support to the Warfighter.

Keep in mind, bundling is an acquisition approach, it is only one symptom of a much larger issue... and that is the issue of reputation, perception and culture of small business in DoD.

It is an issue that requires a longer term cultural and organizational shift. One that makes the meaningful inclusion of small business in all funded requirements the responsibility of three players: (1) the requirements community, which has the need, the money and can forecast requirements; (2) the acquisition community, which commits funding and sets future acquisition strategy; and (3) the small business Directors, who have the responsibility to meet federal small business goals.

As budgets decrease and the Department must make tough personnel decisions, we need to ensure that small business expertise within the acquisition workforce is not only maintained but encouraged. We need to make sure that small business experts are entrenched in the requirements and acquisition communities and that small business expertise is valued by DoD leadership. Through deliberate organizational approaches and strategic cultural changes, DoD can ensure maximum small business participation, smartly stretching limited budgets to meet our nation's defense and security needs.

Thank you again for the opportunity to speak with you regarding small business challenges in doing business with the Department of Defense. I am happy to take your questions.

Linda Hillmer
President and CEO

Linda Hillmer founded the company in 2001 after more than a decade of service in the federal government, including leadership positions in acquisition and contracts management as well as strategic communications for civilian agencies, military commands, and major weapons systems. She began her career at the Voice of America, and later joined the Naval Air Systems Command as a contracting intern, and ultimately led outreach and government communications efforts for the Defense Contract Management Command, now the Defense Contract Management Agency. She has also worked in various communications positions of increasing responsibility for the Defense Logistics Agency, the U.S. Customs Service, American Management Systems, and the Uniformed Services University of the Health Sciences. Today, Linda directs the efforts of a dedicated, creative team of communications professionals, program managers and IT experts to fulfill Hillmer's mission: to deliver highly effective, innovative solutions that inspire participation, drive success and provide measurable results.

While sharpening her marketing and communications acumen and gaining expertise in the procurement and acquisition arenas, Linda recognized an emerging need in government for a new kind of consultancy, one that could extract and combine best practices from seemingly disparate professional disciplines, to more effectively advance programs.

Under Linda's leadership, Hillmer is that new kind of consultancy. Linda's strength is in assembling the best team for the challenge—leveraging the right mix of strategic communications, program management, and technological savvy—to create and implement plans that engage stakeholders and produce results. She is a sought-after speaker whose industry credentials make her widely recognized as a small business federal acquisition expert, so respected that she has provided testimony to Congress regarding the role and challenges faced by small businesses in the defense acquisition life cycle. Her knowledge of government acquisition policies coupled with her small business expertise and passion for engaging target audiences in developing solutions to government challenges help Hillmer's clients accomplish their goals.

A Phi Beta Kappa, Linda graduated cum laude from the University of Maryland with a bachelor of arts in Radio/Television/Film Production. A recipient of the Department of Defense Superior Civilian Service Award Medal, she is a member of several professional organizations, including the National Contract Management Association, and is chair of the National Defense Industrial Association's Small Business Division.

DISCLOSURE FORM FOR WITNESSES
CONCERNING FEDERAL CONTRACT AND GRANT INFORMATION

INSTRUCTION TO WITNESSES: Rule 11, clause 2(g)(4), of the Rules of the U.S. House of Representatives for the 112th Congress requires nongovernmental witnesses appearing before House committees to include in their written statements a curriculum vitae and a disclosure of the amount and source of any federal contracts or grants (including subcontracts and subgrants) received during the current and two previous fiscal years either by the witness or by an entity represented by the witness. This form is intended to assist witnesses appearing before the House Armed Services Committee in complying with the House rule.

Witness name: Linda Hillmer

Capacity in which appearing: (check one)

___Individual

_X_Representative

If appearing in a representative capacity, name of the company, association or other entity being represented: National Defense Industrial Association (NDIA)

FISCAL YEAR 2011

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant

FISCAL YEAR 2010

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant

FISCAL YEAR 2009

Federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant

Federal Contract Information: If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) with the federal government, please provide the following information:

Number of contracts (including subcontracts) with the federal government:

Current fiscal year (2011):________________________;
Fiscal year 2010:________________________;
Fiscal year 2009:________________________.

Federal agencies with which federal contracts are held:

Current fiscal year (2011):________________________;
Fiscal year 2010:________________________;
Fiscal year 2009:________________________.

List of subjects of federal contract(s) (for example, ship construction, aircraft parts manufacturing, software design, force structure consultant, architecture & engineering services, etc.):

Current fiscal year (2011):________________________;
Fiscal year 2010:________________________;
Fiscal year 2009:________________________.

Aggregate dollar value of federal contracts held:

Current fiscal year (2011):________________________;
Fiscal year 2010:________________________;
Fiscal year 2009:________________________.

Federal Grant Information: If you or the entity you represent before the Committee on Armed Services has grants (including subgrants) with the federal government, please provide the following information:

Number of grants (including subgrants) with the federal government:

Current fiscal year (2011):__________________;
Fiscal year 2010:__________________;
Fiscal year 2009:__________________.

Federal agencies with which federal grants are held:

Current fiscal year (2011):__________________;
Fiscal year 2010:__________________;
Fiscal year 2009:__________________.

List of subjects of federal grants(s) (for example, materials research, sociological study, software design, etc.):

Current fiscal year (2011):__________________;
Fiscal year 2010:__________________;
Fiscal year 2009:__________________.

Aggregate dollar value of federal grants held:

Current fiscal year (2011):__________________;
Fiscal year 2010:__________________;
Fiscal year 2009:__________________.

THE SURETY & FIDELITY ASSOCIATION OF AMERICA

Testimony of Lynn M. Schubert

Before the U.S. House of Representatives Armed Services Committee Panel on Business Challenges within the Defense Industry

"Doing Business with DOD: Unique Challenges Faced by Small and Midsize Businesses"

The Surety & Fidelity Association of America

Serving the Industry Since 1908

January 17, 2012

Thank you for inviting us here today to testify on a matter that is critical to the surety industry, to the construction industry, and to small and mid-sized businesses, including veteran-owned and controlled firms.

The Surety & Fidelity Association of America (SFAA) is a trade association of more than 450 insurance companies that are licensed to write surety and fidelity bonds. SFAA members collectively provide the vast majority of performance and payment bonds on federal and state construction projects in the United States.

We are here to provide our assessment of the ability of small contractors to do business with the Department of Defense (DOD). In particular, we can provide information on underwriting performance and payment bonds and how to enhance the bonding of small and emerging contractors and increase their participation in DOD construction projects.

One of the many requirements for performing construction projects for the DOD as well as other federal agencies is to provide surety bonds to protect the taxpayers and the workers on the construction project. For small and mid-sized contractors this requirement provides both protections and challenges.

The Role of Surety Bonds in Federal Construction Projects

There is good public policy for the universal requirement of surety bonds on public construction projects. These performance and payment bonds guarantee that the project will be completed and that the subcontractors, suppliers, and laborers on the job will be paid. If the surety bonds a contractor that defaults on a project, the full amount of the surety bonds is available to complete the work and pay those who worked on the job. Congress, all states, and many municipalities recognize the value of these bonds and have bond requirements in place.

A performance bond secures the contractor's obligation to perform the construction contract. A payment bond secures the contractor's obligation to pay its laborers, subcontractors, and suppliers. In determining whether to provide the required bonds to a contractor, a surety company makes an assessment of the contractor's ability to perform the construction contract. The surety's assessment must take into account the size and scope of the underlying obligation, the construction contract. The surety examines the contractor's expertise in the work, character, ability to work in the region where the project is located, current work in progress, and overall management as well as its capital and financial record in paying its obligations. A surety's evaluation of a contractor is designed to avoid defaults on public construction projects. When a surety is willing to issue bonds to a contractor, the surety is giving the public contracting entity the benefit of an independent third party opinion that the contractor is capable of performing under the construction contract. The surety's own assets are at stake if the contractor fails. The public contracting entity can safely accept the lowest bidder because the contractor is bondable.

If the contractor defaults and additional funds are needed for completion, the surety pays the excess cost to complete, up to the dollar amount of the bond. The performance bond ensures that the project is completed for the contract price. The payment bond assures that subcontractors, suppliers, and workers on the job will be paid. Mechanics liens cannot be asserted against public property. Laborers, subcontractors, and suppliers on public projects must rely on the general contractor's payment bond for protection. Because small and emerging contractors most likely start on federal projects as subcontractors, they need the payment bond to be in place. Without a payment bond, such persons have no other remedy if they are not paid. For a small and emerging contractor, not being paid on the last job can be devastating.

What Will Work to Assist Small and Emerging Contractors to Contract with the DOD?

Award Reasonably Sized Contracts
There is a direct connection between a contractor's capability and its bondability. If a contractor is bidding for a job too large for its business to perform, it will have difficulty in obtaining the required surety bonds. Over recent years the size and dollar value of contracts being let by DOD has increased, yet the ability of small and mid-sized contractors to perform, almost by definition, cannot match that increase. Therefore, many of the contracts from the DOD and other agencies simply are too large for small contractors to perform. Such contractors can and should work on such large projects as subcontractors.

Unbundle Contracts
However, not only are individual contracts too large, frequently contracts that do not need to be bundled together are bundled into one contract and one bid. While this may assist in administration of the contract for the DOD, it directly impacts the ability of small and mid-sized contractors to perform the contract and, consequently, the ability to obtain the necessary surety bonds.

To address the needs of small businesses, federal procurement rules should contain both mandates and incentives to break construction contracts into smaller parts to create genuine opportunities for small businesses. A federal court recently held that federal construction projects were not explicitly subject to the anti-bundling provisions in the federal regulations, and, therefore, contract bundling cannot be challenged in the construction arena. Federal construction contracts need to be subject to the current anti-bundling regulations.

SFAA also recommends that any federal agency letting construction contracts should let 5% of its total construction budget in contracts of no more than $5 million. These contracts would be part of the agency's federal small business participation goals. Any contract under $5 million in excess of this 5% requirement should be credited as $5 million towards the agency's small business participation goal, regardless of the actual dollar amount of the contract.

Address Set-Aside Goals and Projects
All federal agencies have a goal that requires 23% of the total dollars awarded in

government contracts to go to small businesses. This ambitious goal combined with a stretched procurement work force within the federal government leads to project opportunities that are set aside for small and emerging contractors but are too large for them to perform. Contracting agencies argue that they do not have a sufficient number of contracting officers to manage a higher number of low-dollar projects. The high dollar value of some federal government construction projects, however, makes these projects impossible for a small contractor to undertake. SFAA staff is aware of instances of DOD small business construction project opportunities valued in excess of $50 million. In the construction business, small really means small. Qualified small contractors that are "small" in accordance with the applicable regulations (up to $33.5 million in annual revenues under the SBA standard for general contractors) can get bonding at some level, and could perform some of the work, but cannot take on a $50 million project. There often is a disconnect at the federal level between the size of projects that are advertised to meet small business goals and the size of construction projects that small construction contractors are qualified to perform. To address the disconnect, the federal government should set its procurement policy to give small contractors access to projects they are capable of performing.

Allow the Joint Venture and Mentor-Protégé Programs To Work More Effectively
Mentor-protégé programs and joint ventures with larger contractors provide a means for small contractors to participate in public construction projects too large for them to perform alone. The current federal regulations, however, lack clarity and standardization among the procuring agencies as to what arrangements are acceptable. In addition, the regulations present a disincentive for smaller contractors to participate in federal construction projects with larger contractors in joint ventures or mentor-protégé programs. For example, a small business may lose its status as "small" if it participates in a joint venture in which the joint venture partner does not qualify as a small business or, in some cases, such as the 8(a) mentor-protégé joint venture, the protégé does not control the joint venture. Once an otherwise qualified small business loses its status for that particular set-aside opportunity, the small contractor cannot take advantage of the set-aside opportunity and the federal agency letting the construction contract faces an obstacle in meeting its small business participation goal. Yet, just because a contractor is too small to complete all of the work on that project, does not mean that it cannot do a significant part.

SFAA suggests that small businesses should not lose their status and be disqualified from bidding on a small business opportunity because of their participation in mentor-protégé programs or joint ventures or because bonds were issued based on the strength of the other joint venture partner. SFAA recommends that federal regulations explicitly permit open joint ventures between a small contractor and a larger contractor. The larger contractor's indemnity to the surety for losses under the bond should not threaten the small contractor's status. These new rules could apply to construction contracts under a certain dollar value, such as $50 million, to assure that only small businesses benefit from them. An additional requirement could be that on any project in which the small contractor is in a joint venture with a larger contractor, the small contractor must self-perform at least 10% of the work on jobs between $25 million and $50 million and 15%

of the work on jobs under $25 million. Finally, Congress should consider allowing federal agencies letting construction contracts on this basis to count some multiple of the small contractor's self-performed work (such as two to three times the amount of work self-performed by the small contractor) towards their small business participation goals.

Improve Small Business Programs
The Surety Bond Guarantee Program (Program) of the Small Business Administration (SBA) was created to assist small and emerging contractors in obtaining bonds. Over the years, however, the Program has become increasingly less effective. Significant reform is necessary to enhance the opportunities for small businesses, and the Program needs to be changed to maximize the number of bonds made available to small businesses. Many of the changes needed would be similar to those that have been made to the SBA loan programs. The Program should increase the SBA guarantee to sureties so that they are up to 95% of the bond amount. Congress also should increase the size of contracts that can be guaranteed to $5 million and up to $10 million if a federal agency's contracting officer certifies that the guarantee is necessary. The existing Prior Approval Program and the Preferred Program should be combined into one bond guarantee program, creating a unified model based on the Preferred Program concept and implemented in a manner consistent with this concept. These are changes that SFAA continues to work on with the House Small Business Committee.

Improve Access to Capital
Many times, what is perceived to be a bonding problem is not. Small and emerging contractors that are having difficulty in obtaining bonding actually may have a capital problem. In the current credit crunch, they may not be receiving the bank lines of credit that they need to provide the financial stability to their business. Small contractors need capital, capacity, and experience in order to obtain bonds. A capital access program combined with a surety bond access program would be the best solution for some contractors.

Consider a Surety Bond Program
Just as the surety's underwriting is based on the contractor's ability to manage contracts successfully, the focus of any effort to assist small and emerging contractors to obtain the necessary bonding should be on enhancing the contractor's financial and operational capabilities. This is the proven recipe for success in enhancing job opportunities for small and emerging contractors.

For over a decade, SFAA has assisted small and emerging contractors to become bondable through its Model Contractor Development Program (MCDP)®. In the past three years alone, more than $150 million in bonding has been offered or issued by Treasury-listed surety companies, all of whom also are licensed by the insurance departments in the states in which they do business, through the MCDP.

The current MCDP is comprised of two distinct components: education and bond readiness. The educational component offers eight comprehensive workshops on topics that include construction accounting, bonding and insurance, and estimating and bidding.

These workshops are designed to assist contractors in improving their operations and make it easier for them to obtain bonds. Most of the classes are taught by local volunteers from the surety companies and bond producers. The surety industry has a great incentive to participate in these programs as every company and agent always wants to write more bonds. They look for ways to develop relationships with small and emerging contractors who will grow and move on to bigger projects.

After the workshops are completed, the bond readiness component provides one-on-one interactions with surety bond producers, underwriters, and other professionals who work with the contractors in assembling the materials necessary for a complete bond application and in addressing any omissions and/or deficiencies that might deter the successful underwriting of a bond. The Construction Financial Management Association (CFMA), Associated Builders and Contractors (ABC), Associated General Contractors (AGC), and National Association of Surety Bond Producers (NASBP) provide local instructors and assistance in the bond readiness component. The MCDP has been implemented on a national, statewide, and local basis to address bonding issues.

Through the MCDP, SFAA has partnered with more than a dozen states, counties, and municipalities, as well as agencies of the federal government. Most recently, SFAA and the U.S. Department of Transportation (DOT) jointly launched a national program of bonding education and assistance for small and emerging contractors. This is the first national implementation of our MCDP to date. SFAA entered into a Memorandum of Agreement to assist DOT to design, develop, and implement a pilot component of the DOT Bonding Education Program (BEP). Initial workshops were conducted in three pilot cities—Chicago, Dallas, and Atlanta. More than 50 contractors completed the workshop phase of the program, several have been bonded, and the remaining contractors are engaged in various stages of bond readiness activities.

After the successful pilot phase, in 2011 DOT/SFAA embarked on a national rollout of the program in ten additional cities around the country. Already, workshops have been completed in Baltimore, Raleigh, Miami, Orlando, Los Angeles, New Orleans, Denver, Seattle, Minneapolis, and New York City, in that order. Bond readiness activities, in which volunteer bond producers work one-on-one with the contractors, are now underway in all these cities, and some bonding already has been approved or still is pending as a result of these programs.

Planning now is underway for the 2012 round of initiatives, and cities identified thus far include Chicago (a second round), Columbia, SC, Norfolk, VA, Philadelphia, San Francisco/Oakland, Little Rock, Oklahoma City, Portland, OR, Salt Lake City, Milwaukee, and Nashville/Memphis. Three cities currently are scheduled for 2012: Montgomery, AL, Louisville, KY, and Albany, NY. A system has been developed that is tracking the status of the program at each location, including the number and amount of bonding offered or put in place.

In implementing the BEP, SFAA is utilizing the DOT network of Small Business Transportation Resource Centers (SBTRCs). The DOT's Office of Small and

Disadvantaged Business Utilization (OSDBU) enters into Cooperative Agreements with business-centered community-based organizations, transportation-related trade associations, colleges and universities, community colleges, and chambers of commerce to establish SBTRCs on a region-wide basis. Industry underwriters and broker/agents throughout the country are voluntarily participating in the educational workshops and bond readiness activities of this program.

The MCDP works well because it is more than just a series of workshops. The MCDP demonstrates the surety industry's commitment to making bonding available to all sectors of the construction community. The MCDP introduces these small and emerging contractors to professional bond producers and regulated surety companies who are committed to providing surety bonds to small contractors. The MCDP provides both information and access to other resources that small and emerging contractors need to better manage their companies and improve their bondability. Furthermore, the MCDP results in successful bonding outcomes and relationships that allow the contractors to manage growth and increase their chances for long-term viability.

If there are problems with contractors not being able to obtain bonds for DOD construction projects, SFAA would be happy to assist the DOD with such a program specifically designed for small and emerging DOD contractors.

Protect the Federal Bond Threshold

Payment bonds protect small and mid-sized contractors and their workers. In 1894, Congress enacted the Heard Act to codify the existing practice of requiring public works contractors to furnish a bond to assure completion of the contract work and payment of laborers, subcontractors, and suppliers. In 1935, the Miller Act replaced the Heard Act and required separate performance and payment bonds. The minimum amount below which bonds are not required, the "bond threshold," was set at $2,000 in 1935 and raised to $25,000 in 1978. In 1994, the Miller Act was amended to raise the threshold to $100,000 but to require payment security for the protection of subcontractors and suppliers on contracts between $25,000 and $100,000. The Miller Act was reviewed again in 1999, and the amount of protection under the payment bond was increased to 100% of the contract price. This was done after persuasive testimony from small contractors and subcontractors that this payment protection was critical to the survival of their businesses. Congress decided not to increase the threshold below which bonds were not required, and the final regulations provided that a payment bond is one of the preferred types of payment security for contracts between $25,000 and $100,000.

In 2008, a provision was added to the National Defense Reauthorization Act that requires inflation adjustment of all acquisition-related thresholds every five years. Certain thresholds, meant for public protection, however, specifically were excluded from this provision.

The threshold for bonding construction contracts under the Miller Act should be added as an exclusion, since increasing this threshold exposes more small construction businesses to loss of payment protection on federal construction projects. The Miller Act is a statute enacted for protection for laborers, subcontractors, suppliers, and U.S. taxpayers.

The Federal Acquisition Regulatory Council already has relied on the revised law to increase the threshold for payment security under the Miller Act. In 2006, the contract size threshold for payment security on federal construction projects was increased from $25,000 to $30,000 under the Federal Acquisition Regulation. In 2010, the Council increased the threshold for performance and payment bonds from $100,000 to $150,000, significantly increasing the number of contracts in which protection to small businesses and taxpayers is not provided. This again was done by regulation. This dramatic increase is a bad idea but one mandated by the law. In addition, H.R. 1540, enacted this year, increases the specific statutory threshold for military construction and military housing from $100,000 to $150,000.

As stated above, many laborers, subcontractors, and suppliers often find that their best entry into the federal procurement arena is as a subcontractor. Surety bonds, in the form of payment bonds, ensure that they are properly paid. Such protection cannot be compromised as a result of periodic adjustments for inflation. Each increase, which may occur every five years, means that more federal subcontractors and suppliers work on projects without the protection of a payment bond. Periodic adjustments to address inflation should not decrease the protection that performance bonds provide to the U.S. taxpayers. These bonds protect the taxpayer from loss if the contractor on a federal project defaults.

<u>Summary and Conclusion</u>

The challenge for Congress in addressing the needs of small and mid-sized companies is to strike the right balance among operational efficiency, opportunity, and fairness. There are programs available to the DOD that can be effective in enhancing bonding access and contracting opportunities. In addition, SFAA's procurement recommendations provide methods to significantly increase small business participation in federal construction work and help all procurement agencies meet their goals.

SFAA would be happy to work with the DOD on this important issue.

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Lynn M. Schubert is President of The Surety & Fidelity Association of America (SFAA), a trade association of over 500 member companies that write fidelity and surety insurance. The SFAA is licensed as a rating or advisory organization in all states, as well as in the District of Columbia and Puerto Rico, and it has been designated by all state insurance departments as a statistical agent for the reporting of fidelity and surety experience. The SFAA represents its member companies in matters of common interest before various federal, state, and local government agencies. Ms. Schubert also is a member of the Executive Committee of the International Surety Association, headquartered in Amsterdam, a confederation of associations from around the world specializing in surety bonds. Ms. Schubert currently serves as Secretary Treasurer of The Surety Foundation, a non-profit organization created to fund and administer the SFAA INROADS Surety and Fidelity Intern Program and the Surety and Fidelity Industry Scholarship Program to promote surety and fidelity as viable career choices and increase diversity in the surety and fidelity fields.

Prior to joining the SFAA, Ms. Schubert was Counsel in the Law and Regulatory Affairs Department of Aetna Life and Casualty Company with responsibility for all legislative and regulatory developments in the Mid-Atlantic and Southeast Regions for all property/casualty and life insurance and annuity issues, and nationwide for fidelity and surety issues. Previously Ms. Schubert was Corporate Secretary and Assistant General Counsel with the American Insurance Association in Washington, D.C., in charge of the issues of fidelity and surety bonds and insurance access and availability ("redlining") and all coordination with the National Association of Insurance Commissioners. She received her undergraduate degree magna cum laude in Business Administration from East Carolina University in 1977 and her law degree from the University of Notre Dame in 1980. She is admitted to the bar in Georgia and the District of Columbia.

Ms. Schubert *co-authored* "Damages Beyond the Limits of Fidelity Policies," presented to the Fidelity and Surety Law Committee of the Torts and Insurance Practice Section of the American Bar Association, August 8, 1982, "Public Regulation of Insurance Law: Annual Survey," XXV, Number 2 Tort and Insurance Law Journal 402 (Winter 1990), "Annual Survey of Fidelity and Surety Law," XXVIII, Number 2 Tort and Insurance Law Journal 251 (Winter 1993), "Annual Survey of Fidelity and Surety Law," XXIX, Number 2 Tort and Insurance Law Journal 412 (Winter 1994), "Annual Survey of Fidelity and Surety Law," XXX, Number 2 Tort and Insurance Law Journal 394 (Winter 1995), and "Annual Survey of Fidelity and Surety Law," XXXI, Number 2 Tort and Insurance Law Journal 269 (Winter 1996), *authored* "The Surety's Obligations Are Not Always Co-Extensive With Those of Its Principal," presented to the Fidelity and Surety Law Committee and the Forum Committee on the Construction Industry of the Torts and Insurance Practice Section of the American Bar Association, January 22, 1987, "Legislative Trends Affecting Sureties," presented to the Fidelity and Surety Law Committee of the Torts and Insurance Practice Section of the American Bar Association, August 13, 1991, "Regulation of Surety and Financial Guaranty Insurance: Today and Tomorrow," The State of Insurance Regulation, American Bar Association (1991), "Legislative Solutions to an Unfavorable Court Decision," 15 Suretyscope 11 (Winter 1991), and "Chapter Two: An Overview of Modern Contract Bonds" The Law of Suretyship, American Bar Association (1993), "Current Surety Trends In The United States And Canada," presented to the Fidelity and Surety Law Committee of the Torts and Insurance Practice Section of the American Bar Association, August 2, 1998, "Chapter Three: Why Obligees Buy Bonds" The Law of Suretyship, Second Edition, American Bar Association (2000), "Using Surety Bonds To Protect Your Construction

Projects", IRMI.com (International Risk Management Institute), March (2000), "Be Sure Your Surety Bond Isn't a Fraud!", IRMI.com, June (2000), "Surety Industry Addresses Increases in Surety Losses" IRMI.com, July (2001) and was *Editor*, Hazardous Waste on the Construction Site: Who is Liable?, American Bar Association (1992)

Ms. Schubert currently is a member of the Business Advisory Council of the East Carolina University School of Business; the Construction Business Review Editorial Advisory Board; Board of Directors, Surety Claims Institute; the Construction Group Advisory Board for Federal Publications; and the Forum Committee on the Construction Industry and Public Contract Sections of the American Bar Association and an Expert Commentator for IRMI.com. She is a Past Chair of the Torts and Insurance Practice Section - Fidelity and Surety Law Committee and a former Membership Chair and member of the Council of the Torts and Insurance Practice Section of the American Bar Association, and formerly a member of the Board of Directors of the Atlanta Council of Young Lawyers. Ms. Schubert currently serves on the Board of Directors of the National Capital YMCA.

Prior to joining the AIA, Ms. Schubert was a partner with an Atlanta, Georgia law firm specializing in fidelity and surety law and a supervising bond claims attorney for the Continental Insurance Companies.

Ms. Schubert is a frequent lecturer on the topics of international surety bonds in addition to the areas of U.S. fidelity and surety market issues and law.

Ms. Schubert is a recipient of the Women Builders Council 2008 Champion Award and the 2008 Private Sector Leadership Award of the Jamaica Business Resource Center for her work in leading the surety industry in efforts to assist women and minority contractors to become bondable businesses.

DISCLOSURE FORM FOR WITNESSES
CONCERNING FEDERAL CONTRACT AND GRANT INFORMATION

INSTRUCTION TO WITNESSES: Rule 11, clause 2(g)(5), of the Rules of the U.S. House of Representatives for the 112th Congress requires nongovernmental witnesses appearing before House committees to include in their written statements a curriculum vitae and a disclosure of the amount and source of any federal contracts or grants (including subcontracts and subgrants) received during the current and two previous fiscal years either by the witness or by an entity represented by the witness. This form is intended to assist witnesses appearing before the House Armed Services Committee in complying with the House rule.

Witness name: Lynn M. Schubert

Capacity in which appearing: (check one)

x Individual

___Representative

If appearing in a representative capacity, name of the company, association or other entity being represented: The Surety & Fidelity Association of America

FISCAL YEAR 2011

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
None			

FISCAL YEAR 2010

federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
None			

FISCAL YEAR 2009

Federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
None			

Federal Contract Information: If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) with the federal government, please provide the following information:

Number of contracts (including subcontracts) with the federal government:

Current fiscal year (2011): None ;
Fiscal year 2010: None ;
Fiscal year 2009: None .

Federal agencies with which federal contracts are held:

Current fiscal year (2011):________;
Fiscal year 2010:________;
Fiscal year 2009:________.

List of subjects of federal contract(s) (for example, ship construction, aircraft parts manufacturing, software design, force structure consultant, architecture & engineering services, etc.):

Current fiscal year (2011):________;
Fiscal year 2010:________;
Fiscal year 2009:________.

Aggregate dollar value of federal contracts held:

Current fiscal year (2011):________;
Fiscal year 2010:________;
Fiscal year 2009:________.

Federal Grant Information: If you or the entity you represent before the Committee on Armed Services has grants (including subgrants) with the federal government, please provide the following information:

Number of grants (including subgrants) with the federal government:

Current fiscal year (2011): None;
Fiscal year 2010: None;
Fiscal year 2009: None.

Federal agencies with which federal grants are held:

Current fiscal year (2011): ______;
Fiscal year 2010: ______;
Fiscal year 2009: ______.

List of subjects of federal grants(s) (for example, materials research, sociological study, software design, etc.):

Current fiscal year (2011): ______;
Fiscal year 2010: ______;
Fiscal year 2009: ______.

Aggregate dollar value of federal grants held:

Current fiscal year (2011): ______;
Fiscal year 2010: ______;
Fiscal year 2009: ______.