

Testimony of

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U.S. Department of Defense**



**Hearing before the
U.S. House Committee on Oversight and Government Reform
Subcommittee on Government Management, Organization, and
Procurement**

On

**Federal Contracting: Removing Hurdles for Minority-Owned
Small Businesses**

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Chairman Towns, Ranking Member Bilbray and Members of the House
Subcommittee on Government Management, Organization, and Procurement:

Good afternoon. I am Anthony Martoccia, Director of the Department of Defense (DoD) Office of Small Business Programs (OSBP), in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD AT&L). Thank you for inviting me to appear before you to discuss minority-owned small business contracting within the Defense Department. I welcome the opportunity to participate in this hearing because this is a topic that is very important to the Department.

DoD recognizes that small minority-owned businesses are of vital importance to the job growth and the economic strength of the country. The small disadvantaged business (SDB) community plays an important role in the Department's overall mission to deter our enemies and protect the security of the United States. I am very proud to report to you that every year since fiscal year (FY) 2000 through FY 2006, the Department has met or exceeded the 5 percent Government-wide statutory goal for small disadvantaged business. Preliminary analysis of FY 2007 data indicates that DoD will again achieve this goal.

Today I will focus on the Department's continuing success with this important segment of the small business community. I will also discuss the initiatives DoD has taken to make us even more effective in reaching out to minority-owned small business firms.

Mitigating Potential Barriers

The Federal Government is required to provide all small businesses, including SDBs the maximum practicable opportunity to participate in its procurements. This guiding principle, in combination with progressive legislation and a healthy economy has created an optimal environment for minority entrepreneurs. Due to

the unique requirements, terms, and conditions imposed on Federal procurement however, the ability of DoD and the other agencies to achieve the statutory SDB goals may be inhibited. The following discussion considers a number of these potential barriers, and how they are addressed within the Department:

Contract Consolidation and Strategic Sourcing - In the mid-1990s, Congress passed several statutes requiring the Government to buy products and services more efficiently. DoD acquisition professionals became adept at leveraging the immense buying power of the Defense Department to enable prudent stewardship of public funds. The consolidation of several requirements into a single contract to save money and gain other benefits became one such strategy. Consolidation occurs when requirements previously performed by either large business or small business under two or more separate, smaller contracts are combined into one contract or order. Benefits of such consolidated actions must be documented, justified, and approved prior to such action being taken.

Since October 2005, the Office of Management and Budget has required Federal agencies to use strategic sourcing as a means to streamline the procurement process. Strategic sourcing uses an agency's spend analysis to make informed business decisions about acquiring commodities and services more effectively and efficiently. This process helps agencies optimize performance, minimize price, increase achievement of socio-economic acquisition goals, evaluate total lifecycle management costs, improve vendor access to business opportunities, and otherwise increase the value of each Federal dollar spent.

Although consolidation and strategic sourcing reduces the number of available contract opportunities, both consolidated and strategic sourcing actions are awarded to small businesses and may even be awarded under one of the special small business set-aside or sole source authorities.

One such example is the U. S. Department of Navy Clerical Support Services contracts awarded October 13, 2006. This consolidated solicitation limited competition to 8(a) small disadvantaged businesses, Historically Underutilized Business Zone (HUBZone) small business concerns, and service-disabled veteran-owned small business (SDVOSB) firms. Over 100 proposals were received and evaluated, and nine contracts were awarded. Contracts were awarded to one SDVOSB firm, one SDVOSB that is also a HUBZone concern, one SDVOSB that is also a woman-owned small business, one HUBZone small business that is also a veteran owned small business, one 8(a) SDB that is also a veteran owned small business, three 8(a) SDB's that are also woman owned small businesses, and one 8(a) SDB.

Contract Bundling - Contract bundling occurs when requirements that previously

were, or could have been, performed by small business are consolidated into a single procurement, resulting in an acquisition that is unsuitable for award to small business. The bundled action may be unsuitable for award to a small business due to its dollar value, geographic dispersion, technical diversity, size or specialized nature, or any combination thereof.

Bundled actions not only reduce the number of available contract opportunities but displace small business as well. Due to the negative effect it has on small business, DoD discourages the practice of contract bundling. Any acquisition strategy that contemplates bundling must undergo an extremely rigorous justification and approval process prior to the action being taken. The Federal Acquisition Regulation requires contracting officers and/or DoD acquisition teams to consult with the Small Business Administration (SBA) Procurement Center Representative (PCR) as soon as feasible once it has been determined that a bundled contract will result from the solicitation. Early consultation with the SBA PCR helps to focus the contracting officer's/DoD acquisition team's market research, aid in the development of a more effective acquisition strategy, and minimize any adverse impact on incumbent small business. Bundling may only be used when the Department has determined it will derive a measurable and substantial benefit can this type of acquisition strategy.

The Department requires analysis of alternatives including methods for mitigating the impact on small business, even if the bundling or consolidation can be justified by its anticipated benefits. If small business prime contracting opportunities are not available, DoD acquisition professionals are obliged to develop strategies that set aggressive small business subcontracting goals, including methods for ensuring that the goals are achieved.

Subcontracting – It is the responsibility of both DoD contracting officers and small business specialists to ensure prime contractors put forth their best efforts to achieve subcontracting goals. In particular, DoD procurement regulations require contracting officers to challenge any SDB subcontracting goals that are less than 5 percent. A small disadvantaged business goals of less than 5 percent must be approved one level above the contracting officer.

Military Departments and Other Departmental Agencies (ODAs) use various techniques to encourage prime contractors to subcontract and team with small business concerns. Contractual incentives that reward prime contractors for exceptional subcontract performance is one technique. Another effective approach is to use prime contractors' proposed subcontract performance as a source – selection factor.

Since monitoring subcontracting achievements can be very complex and time-

consuming, many Military Departments and ODAs delegate this responsibility to the Defense Contract Management Agency (DCMA). Such delegations may involve the administration of individual subcontracts and/or the prime contractor's entire subcontracting program. DCMA has developed extensive guidelines to evaluate prime contractors' individual subcontracting plans and overall compliance with their small business program. DCMA also negotiates individual, divisional, and corporate-wide subcontracting goals with major defense contractors and, when delegated, the goals for an individual subcontracting plan.

DCMA conducts annual small business program compliance reviews to assess the effectiveness of a prime contractor's overall small business subcontracting program. These reviews are conducted for major DoD prime contractors, i.e., those contractors that have been awarded \$100 million or more during the past fiscal year. The reviews focus on the prime contractor's deficiencies in small business subcontracting performance based upon completed subcontracting plan reports. In accordance with the Memorandum of Understanding (MOU) between DCMA and the Small Business Administration (SBA), the SBA shall be notified of an anticipated compliance review. DCMA must perform all small business program compliance reviews in accordance with the MOU.

By September 30, 2007, DCMA will have completed 94 compliance reviews. The review findings will give the Department a better understanding of the difficulties minority-owned business encounter as subcontractors under DoD contracts.

If a contractor fails to make a good faith effort to achieve its subcontracting goals, contracting officials note this information in the contractor's official past performance record. Past performance information is maintained in the Government-wide Past Performance Information Retrieval System (PPIRS). PPIRS is used by DoD contracting officers to make required contractor responsibility assessments. DoD contracting officers must evaluate the extent to which small business, SDB, HUBZone, SVOSB, SDVOSB, and women-owned small businesses are proposed for participation contract performance in all negotiated procurements that are required to have a subcontracting plan.

Competition – The Administrator, Office of Federal Procurement Policy's memorandum of May 31, 2007 underscores the importance of competition as a means to save taxpayer money, improve contractor performance, curb fraud and promote accountability for results. Within DoD, competition is the preferred method for acquiring goods and services. The importance of competition and the need to dedicate even greater emphasis towards its promotion was recently addressed in the Director, Defense Procurement and Acquisition Policy's memorandum of July 26, 2007. The Department's preference for competition extends to SDB and 8(a) procurements and in procurements involving 8(a) Alaska

Native Corporation (ANC) firms. Noncompetitive acquisition strategies are the exception to the norm and the rationale for not using competitive techniques must be justified.

Accountability

One of the concerns that carried over from the Federal downsizing period of the 1990's is the effect it may have had on Government accountability. With regard to DoD's Small Business Program, there is a process in place to ensure the Department is accountable for its small business performance. The DoD Small Business Program Strategic Management System (SMS) is used to administer the DoD Small Business Program, to drive continuous improvement, and to promote consistent reporting to the Office of the Secretary of Defense (OSD) by all DoD components, including the Military Departments and ODAs.

In accordance with the DoD SMS, each Military Department must submit two Small Business Program reports each year including a mid-year and a year-end (annual) report. The annual report serves to document the Component's Defense Small Business Program results for the ending fiscal year, describes progress in implementing its small business initiatives, and identifies any new initiatives to improve the Component's Small Business Program. These individual reports are consolidated into the DoD Small Business Report that is reviewed by the Secretary of Defense and used in DoD's Annual Report to Congress, and used to establish appropriate DoD-wide goals for future fiscal years.

In addition, the SBA's Small Business Procurement Scorecard has brought an added degree of transparency to the Federal Government's small business contracting performance. The Scorecard rates Federal agencies' progress in providing small business opportunities and is part of a larger movement in new procurement regulations toward accurately tracking small business contracting.

Contracting with 8(a) Alaska Native Corporation Firms

The Department adheres to statutory and regulatory requirements when contracting with 8(a) Alaska Native Corporation (ANC) firms to ensure that the interests of the taxpayers are safeguarded. (The term "8(a) ANCs" refers to small businesses owned and controlled by ANCs.) Section 8(a) of the Small Business Act, as amended by Public Law 85-536, the SBA's 8(a) Business Development Program (the 8(a) Program) and the Alaska Native Claims Settlement Act and Title 13 of the Code of Federal Regulations provide the framework for the Department's 8(a) ANC acquisition policy. Under Title 13 of the Code of Federal Regulation, 124. 506(b) the SBA may award a sole source 8(a) contract to an 8(a) Program Participant owned or controlled by an Indian tribe or an ANC where the

anticipated value of the procurement exceeds the applicable competitive threshold if the SBA has not accepted the requirement into the 8(a) Program as a competitive procurement.

The Department is monitoring the dollars obligated under 8(a) ANC contracts. In FY 2005, approximately 17.3 percent of the 8(a) dollars obligated by the Defense Department were in support of 8(a) ANC contract actions. By FY 2006 this percentage had dropped to 15.8 percent. The DoD Office of Small Business Programs (OSBP) will continue to closely monitor 8(a) ANC award data.

The Government Accountability Office (GAO) Report # GAO-06-399 “Contract Management – Increased Use of Alaska Native Corporations’ Special 8(a) Provisions Calls for Tailored Oversight” noted that oversight was an area of vulnerability under 8(a) Alaska Native Corporation (ANC) contracts. DoD addressed the GAO’s findings in its FY 2007 Small Business Training conference. The Military Departments have also stepped up their training efforts within their respective organizations.

On February 28, 2007, a new 8(a) Partnership Agreement between the SBA and the DoD was signed. The 8(a) Partnership Agreement between the SBA and the DoD allows for much more expeditious award of 8(a) contracts. Under the Partnership Agreement, the SBA delegates to the USD AT&L its authority to enter into 8(a) prime contracts and to award performance of those contracts to eligible 8(a) firms. In keeping with the findings noted in GAO-06-399, the new Agreement provides greater clarification of the responsibilities of the SBA and DoD, and emphasizes the need to include and adhere to monitoring and oversight provisions for all DoD 8(a) contract actions directly awarded to the 8(a) Participants via SBA’s delegation of authority.

Ongoing Initiatives To Improve DoD’s SDB Performance

The Department of Defense has implemented numerous initiatives aimed at improving its small/small disadvantaged business performance:

Minority Contract Enhancement Program – The DoD OSBP has been provided funds by Congress to develop a Minority Contract Enhancement Program. The funds will be used to award a contract to a minority-owned 8(a) firm for the development and support of a DoD Minority Contract Enhancement Program (MCEP). Once the program has been implemented by the Defense Department, the contractor will then provide specialized and professional assistance to small, minority-owned businesses, including 8(a) Participants, to help these firms become successful DoD suppliers. The assistance provided will be in addition to, and not duplicative of, the services already provided by Government agencies to

small businesses. The DoD MCEP will also include measurable goals and metrics to assess the success of the program.

The Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs – SBIR and STTR have long provided excellent opportunities for minority-owned small businesses to participate in technology research and development for the Department of Defense. Historically, about 10 percent of both Phase I contract awards for technology feasibility and Phase II contracts for technology prototyping and demonstration have gone to minority-owned firms. In FY 2006, 296 Phase I and Phase II contracts were awarded to minority-owned firms, with a total value of over \$101 million.

The DoD Mentor-Protégé Program (MPP) – The DoD MPP was initiated in late 1990 by Public Law, and was formulated to incentivize large Defense prime contractors to work with small disadvantaged businesses to enhance their capabilities and their competitiveness within the defense supplier base. Since then, women-owned small businesses and service disabled veteran-owned and HUBZone small business concerns have also been extended eligibility under amended legislation.

Of the 803 small businesses that have participated in the DoD MPP since its inception, fully 522 or 65 percent of the small businesses helped as protégés qualified as SDBs. These protégés, about 150 active agreements each year, are located in virtually every state in the union. More significantly, SDB protégés have accounted for an average of 12 percent of all SDB prime contract awards made by the Department for the last four years, over \$1.5 billion in prime contract awards annually. Equally significant is the fact that the average prime contract award for SDB protégés in the program was over \$5 million, nearly three times that of a normal non-protégé SDB concern. In the last three years DoD MPP has made an effort to instill a more technology based manufacturing focus to the DoD MPP to better address the evolving needs of the warfighter. This has included an emphasis on such joint programs as Robotics, where three of the ten protégés are SDBs.

Training the Acquisition Workforce – The Department has placed increased emphasis on educating the acquisition workforce in key areas of small business contracting, especially in the area of bundling and consolidation. DoD has established a small business training program as a joint initiative between DoD OSBP and the Defense Acquisition University (DAU). As part of this project, in FY 2006, a member of the DoD OSBP staff presented a live Webcast on contract bundling and consolidation that is available for viewing online. (The Air Force small business office has also developed an online bundling course that is available on their Web site.) Subsequent to DoD OSBP's initial Webcast this

office featured a presentation on subcontracts and in the near future we will Webcast a segment on the DoD's SBIR/STTR programs. In addition to these on-line presentations, DoD OSBP staff has provided train-the-trainer sessions at many conferences throughout the past two years.

DoD Small Business Community of Practice – Recently, DoD OSBP and DAU collaborated with representatives from the Army, Navy, and the Air Force to develop a Small Business Community of Practice to provide an easy to use, online source of small business program information for the acquisition workforce. The intent of DoD's Small Business Community of Practice is to provide a "one stop" location to easily access best practices and lessons from acquisition professionals throughout DoD. The site was unveiled in March of 2007 and may be accessed at <https://acc.dau.mil/smallbusiness>.

Small Business Size Standards – Department is concerned that a number of size standards in critical Defense industries have not kept pace with the U.S. economy. We believe an upward adjustment of the small business size standards in these industries will improve small business's ability to take on an even greater role in DoD procurement. Earlier this year DoD OSBP met with representatives from the SBA and the Office of Federal Procurement Policy, Office of Management and Budget to discuss this issue at length. All parties agreed that a comprehensive review of the size standards is needed.

Commitment to Achievement of SDB Goals by Senior DoD Management

As the Director of DoD OSBP, I am a member of the USD AT&L staff. This affords the Director the opportunity to meet with senior level management staff at weekly AT&L staff meetings and share DOD OSBP's small business agenda with them. Through these interactions I have obtained leadership commitment to promote small business programs within their organizations. DoD small business programs are an integral part of the USD AT&L Strategic Goals Implementation Plan.

At the Component level, the Small Business Program Directors at the Army, Navy, Air Force, and Defense Contracts Management Agency have each implemented small business strategic plans for their respective departments and agencies. While Small Business Programs are not specifically mentioned in the Defense Logistics Agency's strategic plan, it is included as part of the agency's existing goals requiring compliance with the integrity of the procurement process.

Conclusion

Today I have given a brief overview of a number of DoD issues and initiatives that

effect minority-owned small businesses. I wish to thank our minority-owned business firms, including our 8(a) firms for their outstanding support of our men and women in uniform.

I appreciate the Committee's continued interest and oversight of DoD's Small Business Program and look forward to your questions and to any comments you may have that will guide us toward working more effectively with small business. This concludes my testimony.

Thank you.