

Testimony Submitted for the Record by

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Before the

Subcommittee on Management, Information and Technology

Committee on Government Reform

United States House of Representatives

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Chairman Horn, Representative Turner and the Members of the Subcommittee:

Introduction and Summary: My name is Jere W. Glover and I was appointed by the President and confirmed by the Senate to serve as Chief Counsel for Advocacy. Our office is located in the Small Business Administration and was created over twenty years ago to gather information about and represent the interests of small businesses in matters before the executive agencies and Congress. The opinions I express are those of the Office of Advocacy and may not necessarily reflect the opinion of the SBA or any other federal agency.

I regret that because of prior commitments, I am unable to attend the hearing personally. This is a very important hearing on issues that touch upon small business access to federal contracting and loans and the impact that tax related debts have on small businesses. These issues are important to small business owners.

My Office has been asked to review HR 4181, the Debt Payment Incentive Act of 2000, a proposal to amend the Debt Collection Information Act (DCIA) to include tax indebtedness under its umbrella for the first time. The proposal would allow an agency to prevent the award of a contract to a business that has not paid assessed taxes, interest or penalties. We will limit our remarks to the impact on small businesses and not address

the administrative problems for federal agencies trusting that the agencies can best address whether there is a problem in that area.

The proposed procedure will have some impact on small business, but we feel that any concern can be overcome by:

- a) not applying it to simplified acquisitions;
- b) having the agency seeking the consent of the bidder and reviewing the bidder's records provided by the Treasury Department only after it is clear that the small business is the likely contract winner, rather than before; and,
- c) allowing a small business 10 days to address the problem unless the business declines to pursue the contract.

Discussion: The fair application of the law is important to small business owners. Small businesses are taxpaying citizens and they believe in fair competition. The vast majority of them do not want other businesses, perhaps less responsible businesses, evading taxes while competing for federal contracts or for any other purpose. Therefore, small businesses would not ordinarily oppose the equal application of tax policies.

However, in practice, this bill will only apply to small businesses. Cash flow is a problem for any business but the lines of credit used to solve cash flow problems are much more available to large businesses. For small businesses the most prevalent way to solve everyday cash flow problems in today's system (aside from family resources) is the credit card. For a variety of reasons, a credit card is not the best solution for solving tax problems. In a cash crunch, small businesses are left with very limited options to keep the business up and running. Choosing between paying a tax bill and meeting the payroll are often painful.

This is not to say that cash flow problems are unique to small businesses that are poorly run with a bad track record. Cash flow problems can strike any business for a variety of reasons. Even in the federal contracting environment, a contractor or sub-contractor can not always rely on the Prompt Payment Act to work efficiently enough to provide the

necessary capital to meet payrolls or pay tax obligations on time. Many federal contracts have progress payments or performance criteria that delay payment pending certain performance benchmarks. Yet benchmarks or not, the small business owner must still meet the payroll; obtain the tools and materials; make timely tax payments, and monthly loan payments. Without a major line of credit to smooth out the peaks and valleys, one interruption in the chain compounds the problem for small businesses. Suppliers might start demanding cash up front for materials needed to start the job. From there, it is a short step to a shortfall on the tax payments. The amendment as proposed could put a small business that is perfectly capable of performing the contract at a tremendous disadvantage compared to a large business with stronger credit line even if that large business is not as well qualified to actually perform the work.

One other point, it is always important (and federal policy) to reduce the amount of paper a small business must file to the absolute minimum. The proposed bill would require a new form to be filed by every federal contract bidder; millions of pages of paper. This is a significant increase in paperwork that should be reduced as much as possible. I think we can solve the small business end of this problem by only requiring the form as part of the due diligence from the apparent contract winner.

Suggested Amendments - We believe our concerns about this bill can be resolved with a simple amendment that makes it clear that the procedure does not apply in the case of a purchase under the simplified acquisition procedures (currently purchases under \$100,000 -we believe that is probably what is intended here anyway). The amendment should also allow a small business 10 days to “perfect” its debt report after receiving notice that the contract would go to the business except that an unfavorable report based on a Treasury inquiry has been received. Granting ten days moves the responsibility for proceeding with the award of the contract out of the discretion of the contract officer (and the agency) and into the hands of the business owner who can now correct or perfect the report.

If in fact the problem is unpaid taxes, interest and penalties that have been assessed and remain in arrears, then the business can pay them or work out an agreement with the IRS. The business may even be able to use the pending contract to secure a line of credit. Even more important, however, is the case where the bad report results from a mistake in the record or a difference of opinion over the nature and amount of the debt. Under such circumstances, the changes we recommend give the small business a chance to present its side of the case to the agency. For example, the business can show the Treasury computer may not have the latest or most accurate records. It could produce evidence of payment to the IRS or an approved payment plan agreed to by the IRS. Likewise, in a dispute over the amount owed, the business could present mitigating circumstances to the contracting agency that would warrant a waiver in this case.

We hope that this information is helpful to the Committee's consideration. I would be happy to answer any questions that the Committee might have.