

**PROCUREMENT POLICIES OF THE PENTAGON
WITH RESPECT TO SMALL BUSINESSES AND
THE NEW ADMINISTRATION**

HEARING

BEFORE THE

**COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES**

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

WASHINGTON, DC, JUNE 20, 2001

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CONTENTS

Hearing held on June 20, 2001	Page 1
WITNESSES	
Lee, Ms. Deidre, Director, Defense Procurement, Office of the Secretary of Defense	3
Walthall, Ms. Susan, Acting Chief Counsel, Office of Advocacy	5
McLaughlin, Mr. Ken, Small Firms Council, American Council of Engineering Companies	7
Allain, Mr. Maurice, President, Phoenix Scientific Corp.	9
Diamond, Ms. Kathleen, Member, GrassRoots Impact, Inc.	11
Weidman, Mr. Rick, Director, Government Relations, Vietnam Veterans of America	13
APPENDIX	
Opening statements:	
Manzullo, Hon. Donald	28
Velázquez, Hon. Nydia	30
Prepared statements:	
Lee, Ms. Deidre	32
Walthall, Ms. Susan	42
McLaughlin, Mr. Ken	56
Allain, Mr. Maurice	88
Diamond, Ms. Kathleen	90
Weidman, Mr. Rick	94
Additional Information:	
Letter to Mr. Udall from Vanessa Morganti	99
Letter to Ms. Lee from Mr. Donald DeRossi	104

PROCUREMENT POLICIES OF THE PENTAGON

WEDNESDAY, JUNE 20, 2001

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

The Committee met, pursuant to call, at 10:12 a.m., in room 2360, Rayburn House Office Building, Hon. Donald A. Manzullo (chair of the Committee) presiding.

Chairman MANZULLO. The small business committee will come to order. Welcome to this hearing of the Committee on Small Business. A special welcome to those who have come some distance to participate and attend. Annually, the Federal Government spends approximately \$200 billion on goods and services purchased from the private sector. Of the Federal agencies, the Defense Department is by far the largest Federal market place accounting for over \$122 billion in prime contract awards, or more than 60 percent of the Federal procurement dollars. The Pentagon purchasing is important to small businesses. The procurement policies that the new administration adopts are important to small business and to main street America.

In the past, small businesses have had major problems with the way the Pentagon does business. Problems include the failure of the Pentagon to meet procurement goals, the bundling of contracts and the diminished number of prime contracts going to small businesses. These are key issues for the small business community.

We welcome Deidre Lee from the Pentagon, who is filling in for the Under Secretary of Defense for Acquisition and Technology, Mr. Aldridge. He is at the Paris air show this week. We hope he will bring back some contracts for small businesses in the aerospace industry. We will have him at a hearing in the near future. He is the one that ultimately sets the procurement policy of the Pentagon with respect to small business, and ultimately responsible for success or failure of those policies.

[Chairman Manzullo's statement may be found in appendix.]

Chairman MANZULLO. My ranking minority member has a lot of energy today, she always does. Again, we thank you for participating in the hearing and thank you for your attendance and I will now yield for the opening statement for the ranking member, Mrs. Velázquez.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman and welcome. Well, here we go again. After six hearings over the past eight years and the markup of several pieces of legislation aimed at retaining equity in the contract process, we are still at square one. Today, once again, we will hear from the Department of Defense who will talk

about the importance of small businesses to the Pentagon. For all their promises and quote, unquote, rhetoric on their commitment to small businesses, very little has changed. My father always said that actions speak louder than words. And what is being done to small businesses by their departments speak loud and clear. The Department of Defense may talk about more ways to give small businesses opportunities, but their actions are only achieving a 21 percent small business goal, which is costing small businesses 2 billion in contract opportunities, speaks much louder. They say they are striving to provide opportunities to women, but their action of achieving 2 percent, that is less than one half of the statutory goal for women-owned businesses, depriving them of \$4 billion in contracts. That speaks volumes.

This cavalier attitude was simply unscored by a recent policy initiative from the new administration that not only did not address several critical small business goals, but in many areas like women small businesses, they do not comply with the statutory requirements. That is sheer arrogance. This lack of commitment by agencies to small businesses led this Committee last Congress to introduce and pass common-sense legislation. The Small Business Contract Equity Act would change in fundamental ways how agencies will do business.

It is based on a simple premise. To agencies, if you want to continue using contract bundling, then you must meet your small business goals. If not, then you must get your bundles approved by the Small Business Administration. It also does away with the current system where agencies are the judge, jury and executioner of their own contracts. Whether it is bundling third party, logistics, prime vendor, virtual vendor, long-term contract or outsourcing, if it looks like a bundle and sounds like a bundle, it is a bundle, regardless of what the agency calls it. This legislation will finally put some teeth into contracting oversight by establishing SBA as the final arbiter over whether these contracts meet the necessary cost savings and requirements for contract efficiency.

Unfortunately the last Congress ended with no further action. Earlier this year, we introduced the Small Business Contract Equity Act. It is my hope that with its support and the strong backing in the small business community, we can pass H.R. 1324. This legislation will go a long way of providing small business in the committeeing process. Make no mistake, the stakes are very high as we will hear from the small business owners today. While the Department of Defense would like to simply brush this off as nothing more than a rule or definition change, this is about keeping small businesses in business.

What is most troubling that while then-entrepreneurs hang in the balance, DOD has still failed to produce even one instance of saving taxpayers dollars. As a result, we have no concrete benefits, but we do know these practices are forcing small businesses out of business. I thank the panelists who took the time to be here today, especially those members of small business community who will share their horror stories about contracting. I look forward to hearing what you have to say, and I thank the Chairman for having this hearing today. Thank you, Mr. Chairman.

Chairman MANZULLO. I appreciate your comments. I am a co-sponsor of Ms. Velázquez's bill, H.R. 1324. I realize that the Small Business Committee does not have a tremendous amount of jurisdiction, but I want you to know that as a result of hearings that we held dealing with the issue of berets, that it is the direct result of this bipartisan team up here, both of us working together, that it is going to be a very rare incident where the American military will ever again be wearing uniforms or any part of the uniforms made out of foreign material or made by companies that are off-shore. And I am convinced that as a result of that hearing that we have saved literally, if not thousands of jobs in this country.

So I exercise the power of subpoena liberally, that is the only liberal strain in my body. And we are going to be asking for exact answers. If we don't get the documents we want, I do not request them. I subpoena them in and give the agencies 5 days to bring them into my office and to Ms. Velázquez. We mean business on this. The government is too big. Bundling is a horrible thing that has happened and does not save the taxpayers dollars.

So on that basis, our first witness is Deidre Lee. She is the director of Defense Procurement, Office of the Secretary of Defense. We have these lights up here that give you 5 minutes to give your testimony. When the green light goes on, when it is yellow you have a minute to wind up, and when it is red, we get anxious up here. I look forward to your testimony.

Ms. LEE. Thank you, sir.

**STATEMENT OF DEIDRE A. LEE, DIRECTOR, DEFENSE
PROCUREMENT, OFFICE OF THE SECRETARY OF DEFENSE**

Ms. LEE. Good morning, Chairman Manzullo, Ms. Velázquez members of the Committee. I appear before you today as the Department of Defense representative to their—the Department's procurement practices and their impact on small businesses. I am pleased to discuss this subject and to respond to any questions. The Department recognize the critical role that small businesses play in supporting DOD's accomplishment of its mission and the overall strength of the U.S. Industrial base.

DOD is fully committed to fostering the inclusion of the small businesses as prime contractors, subcontractors, and vendors. As the Department of Defense accounts for approximately 65 percent of total Federal procurement dollars, we now see how important it is to ensure our procurement practices include small business opportunities. In fiscal year 2000, \$48 billion of DOD procurement spending was with small business firms, with 26.9 billion of this to small business prime contractors. For small disadvantaged businesses, the Department awarded 10 billion. The Department is also emphasizing improved performance for the small business subcategories such as women owned small business, historically under utilized business, hub zones and veteran owned small business. In fiscal year 2000, 4.9 billion of DOD procurement spending went to small business concerns. Yet we must do much better. We at the Department recognize that we need to be more attuned with small business, and we are committed to improving the small business performance.

Several recent initiatives put emphasis on small business. On May 16, 2001, just 5 days after he was sworn in, the new Under Secretary of Defense for Acquisition, Technology and Logistics, Mr. Pete Aldridge issued, as one of his first initiatives, a policy that emphasizes the importance and assigns accountability at the highest levels within DOD for achieving small business program performance improvement. Under his new policy, each DOD activity and the Department as a whole will be responsible for annual small business improvement plans, including the identification of at least three initiatives to improve small business participation. Targets will be established for each year, and each DOD activity will be rated on its performance to the plan and the established targets.

Under the new policy the secretaries of the military departments and the directors of defense agencies will report to Mr. Aldridge, and he will report semi-annually to the Deputy Secretary of Defense. With this new program, Mr. Aldridge challenges the services and agencies and requires steady improvement in those areas in which the Department is not meeting its goals.

DOD is also increasing its focus on small business subcontracting with the prime contractors. We will increase oversight of large contractors' performance against negotiated subcontract goals, and we hold annual performance reviews with these primes during those reviews. We will now start discussing with them how they are performing against their subcontracting commitments.

Let me turn now to another related subject, which I know you are very concerned, bundling. The Department is committed to avoiding contract consolidations that result in bundling. Unless market research and benefit analysis support that, there are measurably substantial benefits. The Department is also committed to ensuring vigorous small business participation at the subcontract level. We have additional initiatives planned to ensure appropriate emphasis and analysis is placed on avoiding bundling.

We are instituting the Office of the Secretary of Defense reviews of high-dollar service acquisitions similar to those we have conducted for a long time on weapons systems. We now spend more dollars on services than weapons and found that we were not reviewing those with the same rigor that we thought was important, and we think it will serve as a significant aid in ensuring that small business interests are included in this service acquisition arena.

Additionally the Department has drafted, and we plan to issue a benefit analysis guide through our SADB office that explains to people and the folks who are here in the office today on what we expect them to do in considering a new acquisition and its impact on small business. We continue to have small business specialists, procurement technical assistance centers, regional small business conferences to provide outreach and training. We continue to do procurement fairs with Members of Congress to ensure we have outreach to our small businesses, and in addition, we have tried to emphasize new electronic commerce initiatives where the opportunities to put out electronically, small businesses can register through ProNet and can receive E mails of business opportunities government-wide that they may participate in.

In short, we know we need to do better. I am here to tell you that the Department of Defense and the procurement folks, we will make that commitment. We know there is a lot of work to do and we will reaffirm the DOD commitment to small business.

Thank you for the opportunity to appear here today and I look forward to your questions.

Chairman MANZULLO. Thank you very much.

[Ms. Lee's statement may be found in appendix.]

Chairman MANZULLO. Our next witness is Susan Walthall. Susan is the acting chief counsel for advocacy of the Office of Advocacy in the U.S. Small Business Administration. Even as an acting chief, Susan, I would want to commend you publicly when Ms. Velázquez's staff and ours went to you and you worked with another committee and you stopped a contract for 114,000 Air Force hats when the Air Force had decided that the GPO was going to do the procurement, violated all procurement laws, and the company to whom that contract was awarded would make those hats in China.

We are active in this Committee. We are using all the resources we have and we are very serious about protecting American jobs and following the procurement laws. Susan.

STATEMENT OF SUSAN M. WALTHALL, ACTING CHIEF COUNSEL, OFFICE OF ADVOCACY ACCOMPANIED BY MAJOR CLARK, ASSISTANT ADVOCATE FOR PROCUREMENT, AND PAUL MURPHY, PRESIDENT, EAGLE EYE PUBLISHERS, INC

Ms. WALTHALL. Thank you, Mr. Chairman. Good morning, Mr. Chairman, and members of the Committee. I would ask that my entire testimony be made a matter of the record, and I wish to state that the views expressed here are not meant to reflect the views of administration or the U.S. Small Business Administrator.

Chairman MANZULLO. All the statements of the witnesses and Members of Congress will be made part of record without objection. Thank you. Proceed.

Ms. WALTHALL. I am Susan Walthall, honored to be acting chief counsel for the Office of Advocacy. Congress created the Office in 1976 to be an independent voice of small business in forming public policy. From the beginning, advocacy has actively analyzed Federal procurement policy and its impact on small business. It is good that you are focusing on the largest buying activity, the Department of Defense. There is enormous opportunity for DOD to do more for small business. At the same time, however, the Federal procurement policy issues that create problems are universal and impact the entire Federal marketplace.

As an example, let me start with the government credit card. Advocacy is currently studying the use of government credit cards and their impact on small business. We will have a report available later this year. I feel it is safe to say that small business does not appear to be getting a proportional share of these Federal dollars. In the last 3 years use of credit cards has increased nearly 150 percent, from under \$5 billion in 1997 to slightly more than \$12 billion in 2000. But the small business share is less. In fiscal year 1995, small businesses received 72 percent of small purchase dollars. In fiscal year 2000, that number is down to 65 percent.

We are also concerned about the use of multiple contracts and government-wide contracts. Agencies use these tools to fill requirements quickly by simply issuing orders against these contracts instead of starting new procurement actions. This is convenient for the agency, but it reduces opportunities for small business. These contracts are usually too large in scope for small business to participate.

Likewise, the GSA schedule which has increased from 2.8 billion in fiscal year 1996 to 10.2 billion in fiscal year 2000 has also hurt small business. Although the Small Business Act specifically requires purchases of goods or services between \$2,500 and \$100,000 be reserved for small business orders from the GSA schedule do not follow this requirement.

Mr. Chairman, the Office of Advocacy has also studied the buying habits of Federal procurement centers across the country. Our study ranked the small business friendliness of the centers based on the percentage of awards to small businesses. We have found that almost two-thirds of Federal prime contract dollars were controlled by centers that awarded the least to small business. 260 of the centers awarded no prime contract to small business, while 213 centers awarded 100 percent. So it is doable.

One of the most powerful forces reducing Federal procurement opportunity for small business is contract bundling. The convenience to the government is obvious, but the negative impact on small business is equally obvious. In 1997, we contracted with Eagle Eye Publishers to look at the impact of bundle contracts. Our recent update of the study is even more alarming.

Consider the following: The average bundle contract was valued at \$8 million in fiscal year 1999, representing a 21 percent increase over the past 8 years. For every increase of 100 bundle contracts, there was a decrease of 106 individual contracts awarded to small business. And in fiscal year 1999, large businesses received 67 percent of all prime contract dollars and 74 percent of all bundled dollars, while small firms received 18.7 percent of all prime contract dollars and 15.7 percent of all bundle contract dollars.

It is clear that the well-intended acquisition reform movement of the 1990s has been detrimental to small business. We simply must do more to increase opportunities for small business. Mr. Chairman, the commitment of the Small Business Act to assure fairness for small business must be strongly and forcefully reinstated so that government does not save pennies in acquisition costs while losing the soul of what this country is all about.

That concludes my remarks. I have a number of recommendations that are in my written statement. Mr. Major Clark of my staff, who is assistant advocate of procurement, and Paul Murphy, president of Eagle Eye Publishers, join me today. We will be happy to answer any questions you have. Thank you very much.

Chairman MANZULLO. Thank you very much.

[Ms. Walthall's statement may be found in appendix.]

Chairman MANZULLO. Our next witness is Ken McLaughlin who is a professional engineer. He is representing the American Council of Engineering Companies and the Small Firm Council. I look forward to your testimony.

**STATEMENT OF KEN McLAUGHLIN, SMALL FIRMS COUNCIL,
AMERICAN COUNSEL OF ENGINEERING COMPANIES**

Mr. McLAUGHLIN. Mr. Chairman, Ranking Member Velázquez and members of the Committee, I would like to request that the written full text of my testimony be made a matter of record and I be allowed to summarize at this time. I would also like to thank you for affording me the opportunity to express before the Committee the interests of many small business enterprises in the engineering community. As a matter of background, the American Council of Engineering Companies is the premier business association of consulting engineering industry representing more than 5,000 engineering companies throughout the United States. ACEC was founded in 1956 and is headquartered here in Washington, D.C., and since 1990, the Small Firm Council has represented and advanced the business interests of ACEC's small business enterprises.

The Small Firm Council is composed of 75 percent of ACEC's total membership and this represents companies of 35 members or less. The distinction of firms where 35 members or less is important not only because it is 75 percent of our membership, but because it represents the general size of a firm which does approximately \$4 million annually in business, therefore qualifying those firms under the Federal guidelines as a small business.

On a more personal level, I am founder and president of IMC Consultant Engineers located in Metairie, Louisiana. IMC also designs services in the mechanical, electrical engineering field. We design heating, ventilating, air conditioning, lighting systems for commercial buildings very much like the building we are sitting in today. My firm works within two basic frameworks as do most small engineering firms. That is as prime consultant to the owner, and there is a subconsultant to another engineer and architect.

As you might expect, we prefer to work as a prime consultant, and therefore look forward to those opportunities in the marketplace. As a prime consultant, we are in control of our destiny and totally responsible to our clients, and we directly benefit in recognition of a job well done. We are assured prompt payment as the prime contractor.

The Department of Defense offered procurement opportunities on the order of \$120 billion in 1999. It appears from Congresswoman Velázquez's report, "Failing to meet the Grade" that the Department of Defense, the largest government contractor, has failed to meet the goals set for procurement from the small business sector. In fact, the report provided a grade of D to the agency and termed the performance dismal. My colleagues and I have particular interest in bringing before you today the problems of contract bundling.

"Bundling" is defined as the consolidation of two or more contracts for goods or services into one contract that is often too large for a small business to participate as a prime contractor. Within the solicitation of engineering contracts, bundling is commonly recognized within two formats. The first format being geographic dispersion of the contract performance site to the point of exclusion for small firms due to territorial coverage that simply becomes impractical. The second format being the broadening of the project

scope to the point of exclusion of the small firm specializing in a field.

Bundling is having profound effect on small engineering firms with its use, often precluding small firms the opportunity to work as a prime consultant. This is especially apparent within many indefinite delivery contracts. The problems within the procurement solicitation can be better examined by example. Provided within the written text are three examples of that.

What I would like to do is point out one in particular at this time. It is a solicitation by the Department of Navy. Let me quote from that solicitation the geographical constraints of the project. And I am quoting, "the majority of the work will be located within the Commonwealth of Virginia, the State of West Virginia, the Commonwealth of Puerto Rico, and western Europe, but may include the State of North Carolina, the States of Delaware, Pennsylvania, New Jersey, New York, Rhode Island, Massachusetts, Maine, Vermont, New Hampshire, Maryland, and the District of Columbia; or at locations under the cognizance of engineering field activity, Mediterranean (Europe and Bahrain)."

I think maybe the Navy could have pinpointed this a little more. This is a classic example of bundling. There are two more examples within the written text. If I might, another one issued by the Corps of Engineers for projects primarily in "northern and central California, but may also be within the Sacramento district, civil works area of responsibility, California, Nevada, Utah, Colorado, Wyoming, parts of Oregon and Idaho, and areas in the south Pacific division boundaries.

It is our belief that these types of requirements listed in these actual Department of Defense requests for qualifications would preclude the vast majority of small engineering firms as prime contractors.

Our hope is that all the Department of Defense contracting agencies would properly evaluate the proposed work associated with indefinite delivery orders and solicit professional services matching that work. This would provide small businesses the opportunities to work as a prime contract consultant, or at least be assured as a subconsultant that they will have meaningful work once the prime is selected. Bundling is forcing small business to shift from being a prime contractor to being a subconsultant to a large firm. This accounts for a decrease in small firm contracts between 1997 and 1999. As a result small business—

Chairman MANZULLO. I have to interrupt here.

Mr. McLAUGHLIN. I have run over?

Chairman MANZULLO. You have run over, but let me say this to the panel and the people here in this room. If you are a small business person and you get a piece of garbage that is a proposal as the one that Mr. McLaughlin just talked about, the Office of Advocacy and the Small Business Administration, Susan, there are 40 employees.

Ms. WALTHALL. Yes, sir.

Chairman MANZULLO. Plus we have half a dozen—how many attorneys?

Ms. WALTHALL. Right now we are down to 10 to 12.

Chairman MANZULLO. We have six attorneys on staff in the Small Business Committee. If you get something like that, please contact our office immediately and we will make some inquiries. I may even have to use the famous subpoena duces tecum to bring the people who draft those into my office and personally explain why they do that. That is a shot across the bow to any Federal procurement officers that would come up with garbage like that, and the reason for the geographical limitations is to knock out small engineering firms because they are obviously not licensed in all those jurisdictions.

[Mr. McLaughlin's statement may be found in appendix.]

Chairman MANZULLO. The next witness is Maurice Allain. You are the president and CEO of Phoenix Scientific Corporation, and we look forward to your testimony.

**STATEMENT OF MAURICE ALLAIN, PRESIDENT, PHOENIX
SCIENTIFIC CORPORATION**

Mr. ALLAIN. Thank you. Can everyone hear?

Chairman MANZULLO. That is fine. Thank you.

Mr. ALLAIN. Good morning, Mr. Chairman, and members of Committee, for inviting me again before you on a subject of major concern to us and other members of the small business community. My invitation to attend this morning's hearing came this time from the minority members of the Committee. My last appearance was at the behest of its majority members. I note with satisfaction that concern with procurement policies at the Department of Defense with regard to small business is shared by both sides of the aisle.

Since the decline of the Soviet state, the Department of Defense has undertaken some 40 major acquisition initiatives. Some of them have been successful; for others it is too early to completely evaluate. However, the record is clear that contract consolidation, or bundling, has adversely affected small businesses. It is also clear that from work by the General Accounting Office and the DOD Inspector General, that bundling has failed, except in rare instances, to show the substantial efficiencies claimed for it. In actuality, the DOD IG has shown that multi year, multiple awards bundled contracts have cost the government more than otherwise would be the case.

In the 19 months since my last appearance before you, my company has been devastated by DOD's bundling policy, in particular, the Flexible Acquisition Sustainment Tool, or FAST has or will absorb most of the opportunities, my company may have had to compete for work at the Air Force material command for the next 7 years. Over this period, we have strenuously objected to the FAST procurement, we have challenged the assignment of NAICS codes, violations of the Competition in Contracting Act, and violations of the Small Business Reauthorization Act, all to no avail.

Before the GAO, we have demonstrated that the FAST procurement failed to show substantial savings to the Department of Air Force, a point on which they agreed. However, our challenge failed as a result of peculiar interpretation of SABRA. In order to determine that FAST was suitable for small business, which was the basis for denying our protest, and therefore not in violation of SABRA, the GAO accepted that some firms who claimed to be

small by the Air Force were competing for FAST, and therefore FAST was not unsuitable for small business participation. A thin reed indeed.

We certainly were not alone in our contentions. The Small Business Administration formally appealed the decision to procure FAST to the Secretary of the Air Force and to the White House. An unanswered letter was sent from the Black Presidents Roundtable Association to the Secretary of Defense condemning FAST. A letter urging this SBA administrator to more vigorously challenge FAST was sent by almost 40 members of this House.

And finally, a letter urging the GAO to strongly consider ruling against the FAST procurement was sent by the ranking minority member of this Committee. Again, to no avail. And finally, the FAST procurement was vetted by the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics. The report, the report on FAST by Mr. Ivory Fisher, which I believe this Committee has a copy, unambiguously showed that the FAST procurement was wrong, again, to no avail.

All that can be shown from these efforts is a questionable agreement by the Air Force and the SBA to play nice. It is ironic that two of the parties to this agreement, the procurement officer, Mr. Burton, will be retiring this November, and the Under Secretary of the Air Force, Mr. Deluca, will most likely beat him out the door, leaving the FAST mess to others. And here, 19 months later, with my company standing in ruins, this Committee has failed to report out H.R. 1324. There would never have been a FAST or the injury to my company if this legislation had been in being as recently as May of this year. This legislation will clarify the semantical loopholes which allowed the FAST to wriggle through.

Mr. Chairman and members of this Committee, I urge you to act swiftly on this legislation. I have every reason to believe that the current administration joined by bipartisan majority in the House is committed to resolving these issues once and for all. Careful review of the statements made by then-candidate George Bush at the second presidential debate in remarks made to the editors of the MBE Magazine, and later reiterated by the Right Reverend Kirby John Caldwell earlier this year as guests on the O'Reilly Factor talk show make it clear that access to competitive contract opportunities by small business is essential for the continued good working of our economy. Thank you for the time permitted me and I am available for any questions you might have.

Chairman MANZULLO. I appreciate your testimony.

[Mr. Allain's statement may be found in appendix.]

Chairman MANZULLO. We will look at this FAST mess and what I would like to do, Mr. Allain, is if you are going to be on the Hill sometime today, what time is your plane leaving?

Mr. ALLAIN. I am driving, I don't have enough money for a plane fare.

Chairman MANZULLO. Back to Phoenix?

Mr. ALLAIN. Yes.

Chairman MANZULLO. If you could work with our staff, I think Ms. Velázquez and I would like to spend some time with you today.

Mr. ALLAIN. Certainly. I am at your disposal.

Chairman MANZULLO. We appreciate that. Thank you very much.

Our next witness is Kathleen Diamond. Kathleen is president and CEO of Language Learning Enterprises incorporated of Washington, D.C.. Speaking on behalf of GrassRoots Impact, Inc. And I look forward to your testimony.

**STATEMENT OF KATHLEEN DIAMOND, PRESIDENT AND CEO,
LANGUAGE LEARNING ENTERPRISES, INCORPORATED,
MEMBER, GRASSROOTS IMPACT, INC**

Ms. DIAMOND. Thank you. Good morning, Mr. Chairman and the Committee. Thank you very much for giving me this time this morning. My name is Kathleen Diamond. I am the president and CEO of Language Learning Enterprises. We are a full service language company headquartered in D.C., and we provide foreign language support to public and private organizations across the United States. I would like to share that I was recognized by my peers in 1999 as being named the International Woman Entrepreneur of the Year. Today I am testifying on behalf of GrassRoots Impact, Incorporated. This company represents approximately 200,000 business owners on Capitol Hill with special focus on minority- and women-owned businesses.

In 1979, when I founded LLE, I quickly learned that the United States government was a major purchaser of language services. Accordingly, I began the process of educating myself on the arcane process of Federal contract procurement. My efforts were rewarded in 1981 when LLE was granted its first contract with the United States Information Agency since it folded into the Department of State much to my company's detriment. It was a multi-vendor, indefinite quantity, indefinite delivery, fixed-price contract for language training. The bidding was a small business set aside with no consideration of gender or race of owner.

As a result of the 1988 Women's Business Ownership Act, "women-owned" was added to the boxes to check under section K certification and representation in all Federal requests for proposal. LLE began responding to requests for proposals from the Department of Defense for language training as well as translation in the mid 1980s. Competition in the language training area was limited in the early days to a handful of capable vendors, most of them were small businesses given access to Federal contract by virtue of the set-aside clause.

Today there are twice as many companies in the language business; the majority male-owned and no longer classified as small businesses. Procurement policies changed to accommodate the growing size of the business by no longer making the procurement a small business set-aside, thereby making it harder for smaller and newer companies to compete. Although the gender of the owner continues to be solicited, it bears no weight on the final outcome and the allocation of dollars to the winning bidders. There is simply no incentive to award a contract to a woman-owned business, all things being equal.

Notwithstanding the above, LLE has been successful for nearly two decades in winning contracts with the Pentagon and other agencies of the DOD for language training. We have been considerably less fortunate in our attempts at winning translation contracts. I believe this is because government contracts are written

in such a way to preclude access to unknown and small enterprises. From my company's perspective, I cite as a case in point a very large multi-year contract for language services, translation/interpretation put out to bid by NASA in 1996. LLE was compelled to team with a "wired" engineering company that would be the prime contractor, even though the scope of work was primarily for language services. The DOD practice of low bidding is especially damaging to small business. In a small company, every contract must sustain itself. There is no room for a "loss leader" as there might be in a large company with numerous possible contract to carry the low ball. My experience is that small business in general, and women-owned businesses in particular, can ill-afford debt to finance the Federal government. And yet, this is frequently what happens. I am talking here about SLOW pay.

I believe that small women-owned businesses are capable of providing the highest of standards to DOD needs, products and services. I understand that the types of products and services purchases are predominantly made/offered by large main stream businesses in the military infrastructure with decades of experience and track records. Nonetheless, if the government intends to respect its own mandate to increase the Federal contracting to women-owned businesses to the 5 percent as set forth in the 1994 Federal Acquisition Streamlining Act, then different consideration must be given to bids for these companies.

I recommend that DOD update its list of products and services purchased to reflect today's market. Women-owned businesses are excellent sources for computer support, graphic design, consulting, management, personnel development, and a myriad of other businesses and services not classified in the search engines of the current procurement directories.

Secondly, although DOD is doing a better job in reaching out to small business through marketplace showcases, et cetera, where buyers set up booths and invite vendors to visit, there should be more follow up afterwards. And further, more a concerted effort should be made to invite an appropriate mix of vendors. No sense inviting my company, for example, to a showcase for hardware buyers.

Thirdly, it is my observation that more contracts will be awarded to women-owned businesses if these businesses could bid on smaller contracts and bid as prime. In other words, I do not think the practice of bundling, i.e., combine several projects into one for contracting purposes is helpful to small businesses. In fact, I am not even sure it is beneficial to government either. In my earlier example of the NASA request for proposal, LLE could have bid as prime and offered a high quality, fairly priced language service had the scope of work not included oversight and other administrative responsibilities, such as visa arrangements and other geographic concerns.

In closing, I would like to thank the chairman and his Committee for their initiative in this important aspect of government fact finding. Thank you very much. I am here for questions.

Chairman MANZULLO. Thank you very much.

[Ms. Diamond's statement may be found in appendix.]

Chairman MANZULLO. Our next witness is Rick Weidman. He is the director of government relations of the Vietnam Veterans of America. Mr. Weidman, we look forward to your testimony.

STATEMENT OF RICK WEIDMAN, DIRECTOR, GOVERNMENT RELATIONS, VIETNAM VETERANS OF AMERICA

Mr. WEIDMAN. Mr. Chairman, Ms. Velázquez, distinguished members of the panel, thank you very much for allowing Vietnam veterans of America to participate in the panel of procurement this morning. I am here representing not just Vietnam veterans of America, but I have the honor of serving as chair of Task Force on Veterans Entrepreneurship, which includes all of the veterans' organizations and many military retired organizations and private businesses. Although not formerly a member, the American Legion works pretty closely with us in all of our endeavors. Our interest is the implementation of 106-50, the Veterans Entrepreneurship and Small Business Act of 1999, for which we were deeply grateful to this Committee and all of the members, both presently and those who were present at that time on the Committee for that landmark piece of legislation for the first time, marking into law veterans and disabled veterans as an important part of the business community and small business community.

There are approximately 4 million veteran business owners in the United States. No one really knows how many service-disabled businesses there are because we have never counted them, and because efforts to do so in response to a congressional mandate in 1997 were blocked by the Office of Management and Budget. However, our best scientific guess in working closely with the folks at SBA, both in the Office of Advocacy and in veterans business development offices is that there is somewhere between 100- and 200,000 small businesses owned by service-disabled vets, and probably another hundred to 150,000 to single entrepreneurs in micro-business if you will.

One of the biggest problems we are having with DOD is something that I have no doubt other small businesses encounter only more so, it is difficulty in obtaining information. 106-50 was enacted into law on August 15, 1999. As of this week, we went on to the defense Web site, DefenseLINK, and from there there is no linkage from there to the Office of Small and Disadvantaged Businesses for information on any of the set-asides and goals.

And when you get to the SADBUs website, you click on service connected disabled vet, and it takes you to the service connected disabled vet, which has a title and in prominent letters, "under development." It is currently being developed. It has been currently being developed for a year and a half now. We think it is time that they step out smartly. Some of the problems that were outlined by the distinguished individuals to my right, these five individuals, are the problems all small businesses confront when trying to do business with any part of the Federal Government, but particularly with the Department of Defense.

Why are we so concerned with the DOD? It is like Willy Loman said when asked why do you rob banks? That is where the money is. We have more than half the Federal procurement that comes from the five military services and other entities associated with

DOD. So, of course we are interested. Service-disabled veterans are particularly interested because they are our former employer, and it is because of our former employers that we happen to be service-connected disabled, and therefore there is a natural interest there.

In point of fact, not much has happened at DOD for implementing 106-50, nor has it happened at other Federal agencies. We would ask your assistance of the Committee, both minority and majority joining together to try and help us get the final regulations out of the council by bringing it to the attention of the President that it has been stuck there in that log jam for some time. Three years is enough time to get a Federal regulation out on service-disabled vets.

Secondly, that the Committee call for a GAO report to examine the priorities, the practices and the policies of DOD in regard to acquisition from disabled veterans, business owners, but also for all business owners. It is the practices that were so eloquently elucidated by the folks to my right that affect all of the players in this small business area. We also ask to introduce legislation that would make sure that all of the small business requirements apply to GSA and any other electronic way, whether it is a credit card or otherwise including the 3 percent for service-disabled veterans.

And last but not least, that you institute by law a holdback of 1 percent of all prime or bundled contracts to see if the agreement on subcontracting was actually met. We all are familiar with the game where they say they are going to do it and they declare the small business unresponsive because of some of the reasons outlined by the folks to my right. This would help all of the small business community and all votes would rise, including service-disabled veterans.

Mr. Chairman, I thank you very much for this meeting and would like to note one last thing. Veterans often don't get mentioned, they do not get thought of. With all due respect to all of the eloquent statements to my right, not a single person mentioned the service-disabled veterans. It is really a problem with the procurement officers here in the audience as well as key players from the various entities of the Department of Defense. You wouldn't think we had to strive to make these folks understand the problems that their former employees who are struggling to make it in business, but that is the case. And any help you can give this Committee can give in encouraging them to do so, we would be deeply grateful for.

Mr. Chairman, thank you very much for the opportunity to be here today.

Chairman MANZULLO. Thank you for the excellent testimony of everybody.

[Mr. Weidman's statement may be found in appendix.]

Chairman MANZULLO. Ms. Velázquez.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. Ms. Lee, throughout your testimony, you talk about the Department of Defense's commitment to small business. So let's talk for a little bit about the numbers of contracts to small businesses over the past few years. In 1997, DOD awarded over 3.8 million contracts to small businesses. In 2000, that figure dropped to 2.2 million, a decrease of over 41 percent. In 1997, DOD awarded over 185,000 contracts to

small disadvantaged businesses. In the year 2000, that figure dropped to 83,000, a decrease of over 55 percent.

In 1997, DOD awarded nearly 53,000 contracts to SBA 8a program firm. In 2000, that figure dropped to 39,000. A decrease of over 25 percent. In 1997, DOD awarded 235,000 contracts to women-owned businesses. In 2000, that figure dropped to 132,000, a decrease over 43 percent. So all of these decreases occurred over a time period of fiscal year 1997 through fiscal year 2000 when total DOD procurement increased by over \$13 billion.

So Ms. Lee, tell me what specifically are you doing to reverse this downward trend in the number of contracts opportunities for small businesses with the Department of defense?

Ms. LEE. Ms. Velázquez, as you know, we track numerous measures, including the number of contract actions, the dollars spent, as well as the percentage, and depending upon the base, of course they vary. From that time frame, as mentioned, we have changed procurement practices significantly, including the cards and GSA schedule in IDIQ contracts, so the number of transactions has decreased, and so we track both dollars, percentages and numbers of transaction.

Ms. VELÁZQUEZ. Ms. Lee, do you know that the numbers of last year are worse?

Ms. LEE. I know there are fewer contract actions, but there are more—

Ms. VELÁZQUEZ. Fewer when we talk about dollars . \$13 billion less. Do you consider that fewer dollars?

Ms. LEE. There are more dollars—

Ms. VELÁZQUEZ. Ms. Lee, I issued this in the year 1999. I am prepared to issue another report card in the year 2001. This coming summer now. The title of this report “Failing to Meet the Grade.” would you please suggest to me what the title should be in this coming report?

Ms. LEE. I am familiar with your report and what we want to do is meet the grade, and we have got a program in place to do that and to focus on those and to emphasize the goals that what we have to do.

Ms. VELÁZQUEZ. So you have this report. You know very well we have conducted here over the last 7 years so many hearings on contract bundling, and however the Department of Defense, who control 65 percent of Federal procurement dollars, 65 percent, the largest, and a year later you come here and I tell you that the number of contracts, while the amount of Federal dollars is increasing, the number of contracts that are going to small business firms is decreasing. And then the arrogance of the Department of Defense to set statutory goals that are lower than the 5 percent for women-owned businesses, for example. Let me tell you, I hope that you get this message clear. And you were the messenger here, I want, Mr. Chairman, the Under Secretary of Acquisition here.

Chairman MANZULLO. We will ask him to come here, and if he doesn't want to come, we will issue the subpoena.

Ms. VELÁZQUEZ. Thank you. Ms. Susan Walthall, do you think Federal agencies that cannot meet their small business goal should be able to bundle contract at will when it is clear that bundling is preventing agencies from meeting their business goal?

Ms. WALTHALL. No, Congresswoman.

Ms. VELÁZQUEZ. Do you think that having the SBA being the final arbiter over bundled contracts makes sense?

Ms. WALTHALL. I personally think it makes a lot of sense.

Ms. VELÁZQUEZ. Thank you.

Mr. Allain.

Mr. ALLAIN. Yes, ma'am.

Ms. VELÁZQUEZ. You refer in your testimony to a peculiar interpretation of the Small Business Reauthorization Act of 1997, which caused your GAO protest of the Air Force Fast Track to fail. Would you please expand on what you mean by peculiar interpretation?

Mr. ALLAIN. While I have great respect for Ralph O. White and other members of the staff of GAO, after determining that the Air Force justification for substantial savings which gives them the authority to bundle under SABRA, the problem came up that the Air Force said to the GAO we have reserved now not set-aside, we have reserved two awards for small business, and they are not set-aside, so since we are going to award for two small businesses, therefore the whole thing cannot be unsuitable for small businesses. It makes sense on the surface, until you look below and see that only the small business has statutory authority for making any size standards determination.

What the Air Force provided the GAO with was two firms that alleged they were small, no way to challenge since it is not set aside, no way for them to demonstrate that they were small under current law.

Ms. VELÁZQUEZ. Mr. Allain, do you believe that if the Small Business Contract Equity Act had been law at the time of your FAST, that the result of your GAO protest would have been different?

Mr. ALLAIN. I certainly do. A good bit of the material that does not get digested for general public, a lot of consideration was given to our multiple award schedules, bundles. I mean, we just went around and around and around on definitional language. The weasel word—you give a bureaucrat a weasel word, he will find it and use it.

And you know, I personally, when I have to take my time and spend money for legal counsel out of my pocket, and I am against the Department of Defense, the Air Force or their minions, and they are all getting paid a Federal salary. I resent the weasel wording. We knew what you guys intended. This has been going on in this Committee for, as you mentioned, Ms. Velázquez, for 7 years. The Department of Defense can't tell you today what their small businesses do for them. They lost visibility into the lower tiers of industrial bases, and Mr. Aldridge's predecessor, Dr. Gansler, put that in writing in understanding the defense business almost years ago. They have no clue what we have to do out here.

Ms. VELÁZQUEZ. Thank you. Thank you, Mr. Chairman. I will come back.

Chairman MANZULLO. I appreciate that very much. Mr. Shuster.

Mr. SHUSTER. Thank you, Mr. Chairman. My question is, first of all, a request to the Department of Defense. Could you provide the Committee a listing of the small firms that do businesses with the various installations around the country?

Ms. LEE. Yes, sir, we can draw that out of the Federal procurement data system and get you that information.

Mr. SHUSTER. My question is what were the policies in place you say you want to make the correction and make the grade what policies or procedures are in place and are you advocating to do business in communities with local businesses what types of things are you doing concrete.

Ms. LEE. We certainly have a broad spectrum. I think Mr. Aldridge's memo has a tremendous impact, and I agree with Congresswoman Velázquez that the numbers in our memorandum are our internal grading department, and at the same time, we have issued a memorandum to the SBA asking for the 2002 and 2003 goals to be established, and they all meet or exceed the statutory requirement. Those are the goals we are asking back from SBA. And we have long worked and SBA is a wonderful partner, in the years before, we used to establish the goals half way through the year.

So that was not much of an incentive. So SBA and the DOD and the other agencies have now stepped up, and we are establishing these goals early. At the Department, we are actually asking for them on a two-year cycle because some of our programs do run long, and we want to make sure that emphasis is placed. The additional reporting by Mr. Aldrich requiring the services to meet these target reports to him get mid year data, and then further go up to the Deputy Secretary of Defense is a significant change in your program, and I think it would increase the emphasis.

In addition, too, that we have training for folks that are here like, today, the contracting officers to talk about how we do include small businesses. We have recently been allowed per the last legislation to now have, for the first time ever, an option to have a woman set-aside. It used to be we would try to get women involved, but we cannot set aside the procurement statutorily. The Defense Department right now we are not allowed to use the small business disadvantaged price preference because we have authorization that says if we have to meet the 5 percent goal, we cannot use that price preference.

So the civilian agencies use that. We do not. But we do use small business set-asides and 8a contracting, which are the price preferences that we are allowed to use. So what we have done is increase the goals, increase the emphasis, increase the training and just try to focus and drive.

Mr. SHUSTER. On women business is the 5 percent, you haven't reached that. What are the reasons for that?

Ms. LEE. We have not reached it as to the best of my knowledge, there may be one agency who has. Prior to 1 year, we had a woman-owned goal, but we had no preference, which meant we could do a small business set-aside; women would compete, veterans could compete. SDB's could compete, but based on the election and selection criteria we had to make the selection on, that basis we could not give weighted consideration to gender or service preference because we did not have that statutory authority.

Mr. SHUSTER. Final question you talked about all the goals and the paperwork and the training, is that occurring in the field or is it occurring here in Washington? Are you going out to communities

educating small businesses and assisting them on how they get on board?

Ms. LEE. Every one of us, including our SADB program, is out there talking to each other. I was actually doing a procurement fair last Friday in the Fairfax area talking about small business and our goals and our program. We are inculcating it in our training program. We are also trying to with a program manager. As all these contracting officers will tell you, we are a community and we need the program managers or the person with the requirement to understand that they too have to help us seek out small businesses to participate in this and all our programs.

Mr. SHUSTER. Are you willing to send somebody to come up to my district if we request somebody to come up?

Ms. LEE. Yes, sir, I would be happy to do personally, or we can match you with a person that you would be most comfortable with.

Mr. SHUSTER. Thank you very much.

Chairman MANZULLO. Mr. Udall.

Mr. UDALL. Thank you, Mr. Chairman and the ranking member. I want to acknowledge the good work you have done in bringing this hearing to occur today. It is interesting to me, I have been hearing some of the same concerns in my far flung district in Colorado, and this is a very serious situation, and I know Ms. Lee, as the ranking member, suggest you are the messenger, but I think, nonetheless, also a lot of passion that surrounds this issue, but I will note that not only are we dealing with an issue of fairness, but as Congressman Velázquez pointed out, that there is money being spent that could be saved and put to better uses on behalf of use of taxpayers.

In that spirit, I have just wanted to talk a little bit about my district, and then extend a couple of questions your way. I have met with some small business people in the district, and it appears to them that Federal contracting guidelines, approved under Vice President Gore's reinventing government initiative, instituted a past performance criteria in awarding contracts. And in short, those who have received government contracts in the past have a huge leg up in getting these future government contracts and the requirement, while it is probably well attended, has created a form, I think, of an old boy network. In my district we have a lot of new economy efforts under way. It probably has an even larger impact because there are often situations when a mere handful of employees that produce goods or services move down the street and form their own venture, you have the same folks doing business with the government one day and the next day they don't have that potential.

Mr. Chairman, I had a letter and a number of people who have signed on to the letter that run small businesses that I would like to include in the record, if I might.

Mr. MANZULLO. Without objection it will be included.

[The information may be found in appendix.]

Mr. UDALL. It speaks to this particular issue. If I could, let me then direct my question to you. Do you know the specific statute and regulation that allows the Department of Defense to preclude contractors from working with the DOD that haven't worked with the DOD before.

Ms. LEE. No, sir, we don't preclude people. In using past performance, what we do is keep performance information not unlike the business Chamber of Commerce would keep information about a business. But what we do say is anybody who has not previously done business with the government cannot have a negative past performance. In other words, we say they have an opportunity and they get what we call a no past performance available, or they can submit performance data about what they have done in the commercial sector that is all acceptable and usable. We are just asking, tell us about your previous customers and how your work has gone for them and that can be a consideration in the selection. Actually some people that have done business with the government may be at a disadvantage because when we have those that who have not performed as well as they could, they would have some negatives in their record versus those who would not. We have tried to look at it as a businessperson would as well with your percentage money and say who is a good performer, and we should consider that in spending the taxpayers dollar.

Mr. UDALL. It strikes me, the policy in its implementation is being misunderstood by some of the procurement officers. And again, when I visit with these constituents, they talk about sitting down with some of these officers, and they have extensive experience in the area in which they're bidding 10 years or more. And they simply are lacking the experience working with the Department of Defense, and they have been told literally you don't have a snowball's chance in working for Department of Defense.

And I know that is not what I hear you saying, but it concerns me, and again, I look to the chairman and the ranking member, do we need to do something statutorily to change this, or is there a way that you could issue a policy directive that makes it clear to rank and file contracting officers that past performance is to be interpreted in this way and not in the way that it certainly appears to be in Colorado.

Ms. LEE. I can certainly do that and should increase—you know, we have a lot of training to do; we have some 19,000 people in the Department of Defense that are involved in the contracting arena, and there is never enough training, and I think that information and education process continues. I would be happy to address that.

Mr. UDALL. Could you please provide the Committee with a clarification of this policy directive if and when you issue it. I think it would at least begin to move us down the road to clarify this.

Chairman MANZULLO. If you could suspend for a second, if you could reduce your request to writing, we will put it on our small business letterhead and then we will have you sign it, along with Ms. Velázquez, and if that is okay with you.

Mr. UDALL. Mr. Chairman, I would be happy to do that and I appreciate the offer.

Chairman MANZULLO. Could you get it to us in 5 days or so?

Mr. UDALL. We can probably get it to you in the next 4.

Chairman MANZULLO. Thank you.

Mr. UDALL. Thank you, Mr. Chairman. I yield back.

Chairman MANZULLO. Thank you, Mr. Grucci.

Mr. GRUCCI. Thank you, Mr. Chairman.

Ms. Lee, as the director of defense procurement, you are, I assume, very familiar with the bid aspects that go out on a variety of different contracts, and one of the things that I have noticed, and I come from a small business background, in fact, I have done, in my prior life, some work for the military in pyrotechnical simulator defense items, and while the making of the item, which is generally where the small points are or the small businesses, whether it is a pyrotechnical guise or whether it is in a service or whether it is in the making of whatever, a widget, the company has a base knowledge of but we can't seem to get past of the myriad of paperwork and the mountain of information that has to be provided. Do you see that as an impediment to the small business community? And is there a way to get by that?

I mean, I will give you a classic example. When we put a proposal in for the government to do some military work, the cost of preparing the proposal before you even had a chance to be reviewed and considered was considerable. Tens of thousands of dollars in the cost of engineers and the cost of accountants and the costs of attorneys and the cost of all the professionals necessary just to get your bid in so that you can be considered. Now, small guys and small business people and small women-owned businesses and the backbone of our economy doesn't have those kind of resources.

Do you see an opportunity to streamline that process, to help with some sort of an offset to the small businesses, to at least get their opportunity to be heard before they get discouraged and not go forward?

Ms. LEE. Sir, streamlining is certainly at the top of our list, our process is complex. I wish I could tell you it is very simple. What we have tried to do—we have a new part of the Federal acquisition regulations, part 12 for commercial items, and what it is is a streamline list of the statutes and the requisite clauses that accompany that are required when we spend taxpayer dollars.

Right now I have on my personal agenda to see if we can export some of that simplification to other noncommercial agreements, or streamline the process so that we can make it easier for people to enter. We do collect a lot of certifications, we do collect clauses, et cetera, many of them based on our statutory framework here, most of them based on our statutory framework, so we would be happy to work with the Committee or individual members to say how could we streamline that for all involved.

Mr. GRUCCI. Are you suggesting the streamlining could require some statutory action be done by Congress.

Ms. LEE. Yes, sir.

Mr. GRUCCI. You do not have any administrative ability to make some decisions administratively?

Ms. LEE. We do, and we are continually trying to review those. We have reduced the number of certifications required of small businesses because those that were regulatory, and we are continually looking. Right now we are trying to streamline government property, and how we can make it easier for contractors to have that property. We are looking at intellectual property to see if we can streamline the regulations so that small businesses can maintain what I consider the heart in many of their high tech is their intellectual property so they can continue to be competitive rather

than the government having unlimited rights. We are looking at all of those things in trying to streamline the process as a whole.

Mr. GRUCCI. I will just finish up on that subject by saying, having firsthand experience with it if we have gotten through that process and we were successful in getting the awards, had we been able to have gotten through that process quicker, easier without detracting from the quality of the item that was to be made, the product could have been delivered to the government for substantially less money than it was delivered to the government. And I just think there was a lot of money being wasted in the attempt to ensure that taxpayer dollars were being spent wisely. The quest to do that, in my opinion, is actually costing taxpayers more dollars in the final outcome of the construction of that project. Another question I have, and I am not sure if this is for you, and if it is not, anyone else on the panel may feel free to answer it.

In the instance that a small business does get a contract, and for whatever reason their bid was not right for the product, meaning that once into the manufacturing of the item, a small business maybe not having the opportunity to have experience with building that item, finds themselves losing money or getting hurt on the item, is there some mechanism that's involved with a relook at the bid specifications? Is there a way, short of filing bankruptcy and/or walking away from the contract, that the government works with small businesses?

Ms. DIAMOND. I will take the question. We provide language training to the Department of Defense, and we have to bid on a per hour of instruction, and these bids, these contracts are sometimes 5 years long. So it is very difficult for one to figure out in year 2000 what an hour of teaching Spanish is going to be worth, and what an hour of teaching Spanish is going to be worth in the year 2006 as to what the labor and cost of goods is going to be. In my experience, I have been doing this for 20 years, I have never had recourse to change my bid once it was in place.

Mr. GRUCCI. Is that the policy of the Department of Defense? Or maybe the advocate might be in a better position to answer that question. I see I have run past my time. Mr. Chairman, I apologize for going over.

Ms. LEE. Sir, there are remedies, but in many cases 85804, which is a specific extra contractual remedy, it is very difficult to obtain. It requires a high level of approval. But generally, what we try to do is doing just good day-to-day contract and relationship management, and understanding what is happening and taking the appropriate action to not only not get the contract, but amend the contract as necessary. But just generally saying the bid was incorrect and then going back and making a change, we do not do that. We hold people to their commitments.

Chairman MANZULLO. Thank you very much. I have one question that I want to ask, and then I will recognize Ms. Velázquez again.

Ms. Lee, you said the Department of Defense has 19,000 employees that work on procurement.

Ms. LEE. The approximate number I use for considering education training and planning is about 19,000 people, yes, sir.

Chairman MANZULLO. With that number of employees, then why do you do contract bundling?

Ms. LEE. We are certainly focusing on not doing inappropriate consolidation.

Chairman MANZULLO. I think it is a valid question. What we hear all the time is we do not have enough employees to do the job of procurement. What is happening is the prime contractors are getting all the money, the small retailers that used to provide services and goods to the military and others are getting bypassed, and then you tell us that you do not have enough employees to do the procurement. Is that the case?

Ms. LEE. We have about 19,000 now from a little over, from almost 30,000. So we have the same workforce spending about the same amount of dollars in a very different manner.

Chairman MANZULLO. You know, maybe we should have an oversight hearing on what all these people are doing. I am very serious, go right to the core because so often we are told the Federal agency doesn't have enough people involved in procurement. And I would much rather pay Federal salaries to make sure that procurement is evenhanded than to do all this contract bundling and have this man be so upset with this issue that he gets in his car when it is 100 degrees and drives from Phoenix to Washington, D.C. I guess that is more of a comment than a question.

Ms. Velázquez.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Mr. McLAUGHLIN, I'm sorry if I didn't pronounce your name correctly. First, I am glad that you found the report that we issued last year helpful, and we did it to help small businesses for them to see how our Federal agencies, their lack of commitment in terms of Federal procurement for small businesses, and to deal with the issue of contract bundling. In your testimony, you talk about the need for agency accountability for goal achievement, so legislation that I introduced in May includes a provision that says if an agency does not meet its small businesses and small disadvantaged and women-owned businesses goal, it may not bundle contracts for the next full fiscal year. Do you think this will improve agencies' attentiveness to small businesses?

Mr. McLAUGHLIN. I certainly think it would be a start in the right direction. It would even address Mr. Grucci's comment on trying to streamline the process. One of the problems with streamlining the process is related directly to bundling. As we try to prepare these proposals that cost us the thousands of dollars that he is talking about, it is because in many cases, this bundle covers such a large area of the country or so many specialties. If this could be broken down into smaller projects, then smaller businesses could spend a few thousand dollars to make application for the solicitation.

Ms. VELÁZQUEZ. Another provision in any bundling legislation requires that agencies must provide proof of cost saving before they are allowed to bundle and equally importantly agencies must address the issue of quality. And quality will not be allowed to be less than what the quality was prior to bundling. Do you think this will help level the playing field for small businesses?

Mr. McLAUGHLIN. Yes, I think it will very much so. I think the small business can usually provide a higher quality product because we were familiar with the local problems, whether it is soil

problems or humidity problems that we have to resolve in the engineering process. The small company local to that area will usually provide a higher quality product.

Ms. VELÁZQUEZ. Ms. Diamond, you want to comment on that?

Ms. DIAMOND. I would agree 100 percent. Thank you.

Ms. VELÁZQUEZ. Ms. Lee, in your testimony, you talk about an initiative to have the Office of the Secretary of Defense reviewing high dollar service acquisition. In fact, OSD performed a review of the FAST contract and recommended against approval of the Air Force strategy for a number of reasons, including that savings for the FAST contract were based on expectation that a program manager would want to use FAST. Two, there was not baseline of work to be accomplished under the FAST contract available for a cost analysis. And third, FAST savings are based on avoidance of surcharges on an Army contract. Your testimony does not address whether OSD's reviews will actually be followed.

Ms. LEE. Yes, this is a new process. I think one of things that really hit me in joining the Department about a year ago was that we have quite a detailed process for a weapons system. Yet we are spending a large number of dollars on systems, and we don't have an attendant concentration of what we are doing on these service systems. So what we are going to do now is look at all the services dollars, how we are spending them and where we are spending them, and then focus on that commitment. And yes, we will follow up and do follow-up, and document those reviews as to what action was taken.

Ms. VELÁZQUEZ. Ms. Lee, are you familiar with the audit conducted by the Department of Defense Inspector General in 1999 of multiple award contracts?

Ms. LEE. Yes, ma'am.

Ms. VELÁZQUEZ. This report points out that 62 percent of the task orders on DOD's multiple awards contracts were sole source, defeating the purpose of having a multiple award contracts and driving cost up. The report contains the recommendation that, and I quote, to improve oversight and competition for multiple award contracts for services. The Department needs to accomplish goals, performance measures and strategies. Until the Department collects data and tracks the impact of policy changes, the Department will not know if the problem is corrected. Are you aware of any changes that were implemented by the DOD in accordance with its own Inspector General recommendations?

Ms. LEE. We do have a program to look at the use of GWAX, MAX, IDIQ—alphabet soup here—but the multiple award contracts. And what we are going to do is look across the Department of Defense, match it to our Federal procurement data system, and find out where these programs are going to be used. And then, of course, those numbers are used in measurement of our goals towards our overall procurement goals. So we do count those transactions in the overall goal achievement.

Chairman MANZULLO. Thank you very much.

Mr. LoBiondo.

Mr. LOBIONDO. Thank you, Mr. Chairman. I apologize that I had to leave. I appreciate the opportunity to come back.

Ms. Lee, it is my understanding that as a result of recent concentration on the beret issue, that the DOD is reviewing its procedures on granting any waivers on the Berry amendment; that is correct?

Ms. LEE. Yes, sir. We have changed the Berry amendment waiver process where it actually has to come up to the Under Secretary for Acquisition and Technology and Logistics. Previously, there were some delegations to the field, which means people are going to really have to sharpen their pencils and focus, and it probably will require a little more advance planning.

Mr. LOBIONDO. It is true that some of the waivers needed to be granted are because of legitimate reasons. Often it is because small components of a finished item are not available in the U.S. That is my understanding. Would you comment on that? Is that correct?

Ms. LEE. Yes, in fact we recently, as recently as yesterday, completed a Berry amendment waiver at that level because we had a small business who was manufacturing a particular clothing item and is found that they, in fact, had some material that was not a U.S. Component. So that small business came forward and told us what the problems were and we had to process a Berry Act waiver.

Mr. LOBIONDO. It is my understanding that in the apparel sector, and I have confirmed with the Apparel Trade Association, there are few companies who have contracts dependent on being granted these legitimate waivers. I fully support the intent of the Berry amendment, but my concern is that we don't throw the baby out with the bath water. The Berry amendment is designed to protect small domestic businesses, and I want to make sure in the spirit of law as well as the letter of the law is honored, and Mr. Manzullo, with your permission, I would like to ask Ms. Lee to maybe provide us with some guidelines to ensure that these small businesses, who are awaiting independent waivers, don't get shut out of the process. I understand for some of these companies, the clock is ticking and time is running out, and it is of a serious concern. So with the chairman's permission.

Chairman MANZULLO. I can assure you, Mr. LoBiondo, we are preparing legislation that will require that before a Berry amendment can be waived, that 30 days notice will be served upon Members of Congress. I think DLA, every time they consider waiving a Berry amendment, they probably will contact our office so they don't get dragged before this Committee.

Mr. LOBIONDO. The guidelines are of some concern because the clock is ticking, and some of these folks could find themselves in a bad situation.

Chairman MANZULLO. What is it that you are seeking, Mr. LoBiondo?

Mr. LOBIONDO. The guidelines that they are going to work with for the waivers for small businesses, what these guidelines will be so these small businesses will know.

Chairman MANZULLO. Do you have something like that to furnish?

Ms. LEE. Right now what we have is that anybody that needs a Berry Act amendment goes to their service or buying, in this case, DLA, Defense Logistics Agency. DLA then has to analyze the request, and they have to forward it up to the Office of Secretary of

Defense, AT&L, for such approval for a waiver and we would follow that process.

Chairman MANZULLO. So if there is a procedural statement or something or guidelines that you can give to Mr.—does that presently exist.

Ms. LEE. That is the current process. I don't know if it is written in a letter, but we would be happy to give it to you.

Mr. LOBIONDO. If you could commit the guidelines to paper so we would be able to share them.

Chairman MANZULLO. How much time would you need to complete that?

Ms. LEE. We should be able to do that in a week.

Chairman MANZULLO. Is that sufficient time?

Mr. LOBIONDO. That would be very good.

Chairman MANZULLO. If you could give a copy of that to Mrs. Velázquez and me also, I would appreciate it.

Mr. LOBIONDO. Just to wind up, Mr. Chairman, I understand that the Defense Personnel Support Center in Philadelphia is about to submit a number of waivers to you, including a waiver for chest pieces on jackets. Apparently, there is a very small component on the chest piece which is made from a very specific type of goat hair which cannot be obtained in the United States. I have a letter from a constituent that is very concerned about this, Mr. DeRossi, who manufactures these chest pieces, and I would look, with the chairman's permission, to give Ms. Lee a copy of the letter, and possibly you can review the letter and promise us that you will take a look at it and get back to me.

Ms. LEE. Yes.

Chairman MANZULLO. Could you be more specific on what that contract is about? Did you want to get specific?

Mr. LOBIONDO. Yes, I will try to be very specific. The manufacturing small business, manufacturing defense clothing, chest jackets, there is a small component that has to be in there according to the specification, it is a goat hair that is not available in the United States. So in order to produce the jacket and comply with the Berry amendment there would need to be a waiver.

Chairman MANZULLO. You would have to have a waiver.

Mr. LOBIONDO. There would have to be a waiver because this very small component is not available in the U.S.

Chairman MANZULLO. Would you yield for a question?

Mr. LOBIONDO. Yes.

Chairman MANZULLO. Ms. Lee, if you are confronted with an American manufacturing that has 99 percent or 90 percent American, say, 10 percent or even 1 percent foreign, and there is nobody else in the United States that could come up to 100 percent, do you even consider manufacturing this item in a foreign country in competition to an American manufacturing.

Ms. LEE. In this case, if we have to have an item or products, we have a lot of foods that fall into this category, and even processing of food. The Berry amendment that requires if we have foreign content depending on what item it is, that we have a waiver to the Berry amendment, so what we would do is look for, first, we should ask ourselves about the requirement, and then we should say okay if that, in fact, is the requirement, how can we—does it

make sense to waive the Berry amendment? And you may even have to waive it for a U.S. Firm.

Chairman MANZULLO. That's the law.

Ms. LEE. Yes, sir, yes, sir.

Chairman MANZULLO. But do you even look outside the country to have this requirement made overseas?

Ms. LEE. First, we would see if we could get it done with all U.S. Mailed in the U.S. With U.S. Content.

Chairman MANZULLO. What if 100 percent is not possible? Then you go down the line?

Ms. LEE. Then we go down the line.

Chairman MANZULLO. Is that what you are looking for?

Mr. LOBIONDO. Yes, because of specifications that this very particular, very small percentage of goat hair, which is not available in the U.S.—

Chairman MANZULLO. What kind of a goat is this?

Mr. LOBIONDO. I would be interested in that as well. This is the Department of Defense requiring that this be part of specification, and it is not available in the U.S. We don't have these type of goats here, I guess.

Chairman MANZULLO. I guess we have our own homegrown goats.

Mr. LOBIONDO. Ms. Lee, I will provide you with a letter.

Chairman MANZULLO. Would you like the letter to be made a part of the record?

Mr. LOBIONDO. Yes.

[The information may be found in appendix.]

Chairman MANZULLO. Mrs. Capito, do you have a question?

Mrs. CAPITO. Yes, I have a question for Ms. Lee, please. I represent the second district of West Virginia, and I am not as familiar with those small businesses that are involved in procurement, so I would like to ask you, if you could, provide that list to me for my office of West Virginia firms, and if you have some firms that maybe had expressed an interest and were maybe unable to be meet the requirement, I don't know if you are allowed to release something like that to my office. That would be helpful as well.

Ms. LEE. We have a record of people we are currently doing business with. We also have a contractor registration process by which they can indicate an interest with doing business with Department of Defense, but we do not track individually those that bid and were not successful.

Mrs. CAPITO. Thank you.

Chairman MANZULLO. Do you have goats in West Virginia?

Mrs. CAPITO. We have lots of goats.

Chairman MANZULLO. We can check the hair on them. The things you learn in this Committee. I want to thank the witnesses for your response to the excellent testimony. Ms. Lee, I look forward to working with you on changing some of these laws. As these abuses come up it is obvious to me that you have an open spirit and that your heart is in doing what's in the law and doing the correct thing on it. That is your only agenda and we really commend you for that. And to the rest of the witnesses, the testimony is powerful. We are just scratching the surface with respect to contract bundling. We look forward to more hearings and to substantial leg-

isolation coming forth on this. And I want to thank the members of panel for being here, and this Committee is adjourned.

[Whereupon, at 11:38 a.m., the Committee was adjourned.]

Congress of the United States
House of Representatives
107th Congress
Committee on Small Business
2501 Rayburn House Office Building
Washington, DC 20515-6515

June 20, 2001

OPENING STATEMENT

**CHAIRMAN DONALD A. MANZULLO
COMMITTEE ON SMALL BUSINESS**

Good morning and welcome to this hearing of the Committee on Small Business. A special welcome to those who have come some distance to participate and to attend this hearing.

Annually, the federal government spends approximately \$200 billion on goods and services purchased from the private sector. Of the federal agencies, the Defense Department is by far the largest federal marketplace accounting for over \$122 billion in prime contract awards or more than 60 percent of the federal procurement dollars.

Pentagon purchasing is important to small businesses. The procurement policies that the new Administration adopts are important to small business and to main street America. In the past, small businesses have had major problems with the way the Pentagon does business.

These problems include the failure of the Pentagon to meet procurement goals, the bundling of contracts, and the diminished number of prime contracts going to small businesses. These are key issues for the small business community.

We welcome Deidre Lee from the Pentagon who is filling in for the Under Secretary of Defense for Acquisition and Technology. The Under Secretary is at the Paris Air Show this week. I hope that he brings back some contracts for small businesses in the aerospace industry.

We will have the Under Secretary at a hearing in the near future. He is the one that ultimately sets the procurement policy in the Pentagon with respect to small business and ultimately responsible for the success or failure of those policies.

Again thank you all for participating in this hearing. And thank you in the audience for attending this hearing. I now yield for the opening statement by the Ranking Member, Ms. Velazquez.

Congress of the United States
House of Representatives
 107th Congress
Committee on Small Business
 2501 Rayburn House Office Building
 Washington, DC 20515-6515

Opening Statement
Congresswoman Nydia M. Velázquez
Ranking Democratic Member
Committee on Small Business
Hearing on Procurement Policies of the Pentagon with
Respect to Small Businesses and the New Administration
June 20, 2001

Thank you Mr. Chairman.

After six hearings over the past eight years, and the mark up of several pieces of legislation aimed at retaining equity in the contract process, we are still at square one. Today once again we will hear from the Department of Defense, who will talk about the importance of small businesses to the Pentagon. For all their promises and quote-un-quote "rhetoric on their commitment to small businesses", very little has changed.

My father always said that actions speak louder than words --- and what is being done to small businesses by the department speaks loud and clear. The Department of Defense may talk about more ways to give small businesses opportunities --- but their actions of only achieving a 21 percent small business goal which is costing small businesses 2 billion in contract opportunities speaks much louder.

They say they are striving to provide opportunities to women, but their action of achieving 2 percent --- that's less than one-half the statutory goal for women owned businesses -- - depriving them of 4 billion dollars in contracts --- that speaks volumes.

This cavalier attitude was simply underscored by a recent policy initiative from the new administration that not only did not address several critical small business goals, but in many areas like women's small businesses, they do not comply with the statutory requirements. That is sheer arrogance.

This lack of commitment by agencies to small businesses led this committee last congress to introduce and pass common sense legislation, The Small Business Contract Equity Act, which changes in a fundamental way how agencies will do business. It is based on a simple premise --- to agencies if you want to continue using contract bundling, then you must meet your small business goals. If not, then you must get your bundles approved by the Small Business Administration. It also does away with the current system where agencies are the judge, jury and executioner of their own contracts.

Whether it is bundling, third party logistics, prime vendor, virtual vendor, long term contract or outsourcing --- if it looks like a bundle and sounds like a bundle, it is a bundle, regardless of what the agency calls it. This legislation would finally put some teeth into contracting oversight by establishing SBA as the final arbiter over whether these contracts meet the necessary cost savings and requirements for contract efficiency. Unfortunately, the last congress ended with no further action.

Earlier this year, we reintroduced the Small Business Contract Equity Act. It is my hope that with its bipartisan support and the strong backing in the small business community, we can pass H.R. 1324. This legislation will go a long way to providing small businesses with fair treatment in the contracting process.

Make no mistake, the stakes are very high as we will hear from the small business owners today. While the Department of Defense would like to simply brush this off as nothing more than a rule or definition change --- this is about keeping small businesses in business. What is most troubling is that while many entrepreneur's businesses hang in the balance, DOD has still failed to produce even one instance of saving taxpayer dollars. As a result, we have no concrete benefits -- but we do know these practices are forcing small businesses out of business.

I thank the panelists who took the time to be here today, especially those members of the small business community who will share their horror stories about contracting. I look forward to hearing what you have to say and I thank the Chairman for having this hearing today.

TESTIMONY OF THE DIRECTOR, DEFENSE PROCUREMENT
OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY & LOGISTICS
BEFORE THE U. S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS
JUNE 20, 2001

TESTIMONY OF THE DIRECTOR, DEFENSE PROCUREMENT
OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY & LOGISTICS
BEFORE THE U. S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS
JUNE 20, 2001

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today as the Department of Defense (DoD) representative to discuss the Department's procurement practices and their impact on small businesses. I am pleased to discuss this subject and to respond to questions.

The Department recognizes the critical role that small businesses play in supporting DoD's accomplishment of its mission and the overall strength of the U.S. industrial base. DoD is fully committed to fostering the use of the small business community as prime contractors and subcontractors or vendors; to structuring its requirements to facilitate competition by and among small business concerns; and to avoiding unnecessary bundling of contract requirements that precludes small business participation as prime contractors.

As the Department accounts for approximately 65% of total federal procurement dollars, we understand how important our procurement practices are to the health of the small business industrial base. Typically, for the Department, as for other federal agencies, our small business program has been judged by performance against procurement goals, many of which Congress has established.

In FY 2000, \$48 billion of identifiable DoD procurement spending went to small business firms, with \$26.9 billion of this going to small business prime contractors¹. This is an increase over FY 1999 in both dollars and the percentage awarded to SBs as primes. For small disadvantaged businesses (SDB), the Department awarded \$10 billion, with \$7 billion being at the prime contract level². Yet we must do better.

The Department is still striving to also improve performance for some of the newer small business subcategories, such as woman-owned small business (WOSB), historically underutilized business (HUBZone) concerns, and veteran-owned small business. In FY 2000, a record \$4.9 billion of

¹ This represents 21.9% of prime contract award dollars and 39.4% of subcontracts.

identifiable DoD procurement spending went to WOSB concerns, with \$2.6 billion of this going to prime contractors³.

DoD was recognized for aggressive actions undertaken by the Northeast Regional Council, which is comprised of small business offices from large defense contractors, Defense agencies and Procurement Technical Assistance Centers, to identify problems in implementing the HUBZone program and to work aggressively to solve them. It was recognized that this type of aggressive action is exactly what is necessary to transform the HUBZone Act into a program that helps real people and real communities⁴.

The Department recognizes that it needs to do more with small business and is committed to improving its small business program performance. Several recent initiatives put emphasis on small business.

On May 16, 2001, just five days after he was sworn in, the new Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L)) Pete Aldridge issued, as one of his first initiatives, a policy that emphasizes the importance of, and

² This represents 5.7% of prime contract award dollars and 5.4% of subcontracts.

³ This represents 2.1% of prime contract award dollars and 4.3% of subcontracts.

⁴ Congressional Record, Volume 146, Number 65, dated May 23, 2000.

assigns accountability at the highest levels within DoD for, achieving small business program performance improvement. Each DoD activity and the Department as a whole will be responsible for annual small business improvement plans and will be rated on its performance to the plan and established targets. Under the new policy, the secretaries of the military departments and directors of the defense agencies will report semi-annually to the USD(AT&L) and the USD(AT&L) will report semi-annually to the Deputy Secretary of Defense on performance against the targets and small business improvement plans. I want to stress that this new program is highly challenging and requires steady improvement in those areas in which Department is not meeting its goal. The memorandum also directs the establishment of an annual small business awards program and annual small business program training.

DoD is also increasing its focus on small business subcontracting performance with its prime contractors. Prime contractors performance in meeting their subcontracting commitments will be emphasized. DoD now holds annual contractor reviews with the leaders of the major defense firms and intends to add to these, discussions of the status of small business subcontracting performance for each firm. The DoD Office of Small and Disadvantaged Business Utilization (SADBU) also plans

to establish a small business forum that meets periodically to discuss small business issues that can then be raised at the Secretary of Defense's semi-annual meeting with the defense Chief Executive Officers.

In addition to increasing the emphasis on improving small business performance with the acquisition community and the major defense prime contractors, the Department is also looking at ways the Department can improve it's routine oversight of other large contractors' performance against negotiated subcontracting plans.

DoD is also moving out with an Interim Rule to implement section 807 of the National Defense Authorization Act for Fiscal Year 2001 (P.L. 106-398) that expands the DoD mentor-protégé program to WOSB. This has the potential to become a valuable tool that will facilitate the Department's efforts to leverage this market and increase the DoD dollars awarded to WOSBs.

Let me turn now to another related subject with which I know you are concerned, namely, bundling⁵. DoD is aware of small business concerns regarding bundling. The acquisition

⁵ Bundling is defined in the Small Business Reauthorization Act of 1997 (P.L. 105-135) as the combination of previously separate requirements into a single contract that is unsuitable for award to small business.

environment has changed considerably within DoD over the past years as a result of acquisition reform, organizational realignments, base closures, downsizing and outsourcing. The result is that, in some instances, DoD uses consolidated contracts as a means to gain efficiencies or realign to meet mission demands. Because of our commitment to provide prime contracting opportunities to small businesses, the Department is committed to avoiding contract consolidations that result in bundling unless market research and a benefit analysis support that there are measurably substantial benefits. In these cases in which bundling is warranted, the Department is committed to ensuring vigorous small business participation at the subcontract level. The Department has additional initiatives planned to ensure appropriate emphasis and analysis is placed on avoiding unjustified bundling.

The first initiative involves instituting Office of the Secretary of Defense reviews of high dollar service acquisitions similar to those it now has long done for large weapon systems. Recently, the Department has seen a shift in what it buys, so that it now spends more on services than on equipment. One of the purposes of these reviews will be to ensure that the interests of small business are protected in the Department's large acquisitions of services.

Additionally, the Department has in draft and plans to issue a Benefit Analysis Guide that provides detailed guidance on performing a benefit analysis and addresses strategies for avoiding bundling, or mitigating the adverse impact on small business, if bundling is justified. This Guide will provide significant assistance to acquisition personnel in dealing appropriately with proposed contract consolidations.

Let me conclude by telling you about other steps we are taking to assist small businesses and to strengthen our small business program. The Department small business specialists, Procurement Technical Assistance Centers, and Regional Small Business Councils continue to provide outreach, training and technical assistance to small business firms that are interested and/or participating in the DoD marketplace. Our Procurement Technical Assistance Centers frequently partner with congressional offices to sponsor Procurement Conferences to address the needs of the small business community. Additionally, contracting officers regularly consult with DoD Small Business Specialists and Small Business Administration Procurement Center Representatives located at DoD contracting activities to ensure that small business interests are

considered on DoD procurements, including bundled contract scenarios.

In addition, with advances in Electronic Commerce/ Electronic Business, small businesses will have greater visibility and access to DoD procurement opportunities. Beginning October 1, 2001, a government-wide single point of entry system called FedBizOpps (<http://www.fedbizopps.gov>) will include synopses and solicitations for procurement opportunities that exceed \$25,000 across the Federal government. FedBizOpps will provide access to DoD opportunities located at <http://www.dodbusopps>. FedBizOpps is intended to broaden the marketplace and minimize the effort and cost associated with finding government business opportunities. The FedBizOpps site interfaces with the SBA Pro-Net (<http://www.sba.gov>) system; thus affording small businesses registering in Pro-Net the opportunity to also register in FedBizOpps. Once registered in FedBizOpps, small business can receive e-mail notifications of opportunities in areas of specific interest. This should be a significant benefit to the small business community.

Finally, in addition to the reviews by the Secretary of Defense, Deputy Secretary of Defense and the USD(AT&L), I hold monthly staff meetings with the senior procurement executives of

the military departments and defense agencies where I regularly stress small business performance and initiatives to improve opportunities for small business participation. I also meet monthly with the Director, SADBUs to review the status of on-going initiatives and the Department's performance toward our goals. The Director, SADBUs similarly meets monthly with the Directors, SADBUs, of the military departments, Defense Logistics Agency and Defense Contract Management Agency.

I would like to reaffirm the DoD commitment to small business. Thank you for the opportunity to appear here today. I will be happy to answer your questions.

Testimony of

**Susan M. Walthall
Acting Chief Counsel for Advocacy
Office of Advocacy
U.S. Small Business Administration**

**Before the
Committee on Small Business
U.S. House of Representatives**

on

Government Procurement Policies and Their Impact on Small Business

June 20, 2001

Good morning, Mr. Chairman and members of the Committee. My name is Susan Walthall and I am the Acting Chief Counsel for the Office of Advocacy at the U. S. Small Business Administration. I am pleased to address small business procurement issues with the Government's largest buying activity, the Department of Defense. As you may know, the Department of Defense's annual acquisition budget is nearly 65 percent of all goods and services purchased by the Federal Government. The balance, 35 percent, is distributed among the rest of the Federal agencies. In FY 2000 DOD spent \$122 billion for goods and services. Notwithstanding the enormous ability of DOD to do more for small business; Federal procurement policy issues such as bundling, Federal Supply Schedules, Government-wide acquisition contracts and agency downsizing of the acquisition work force impact the department's ability to do more. Small businesses are facing roadblocks throughout the Federal Government. My testimony will address the impact of these problems on small businesses. Before proceeding, however, I wish to

state that the views expressed here are my own and are not meant to reflect the views of the Administration or the SBA Administrator.

In 1953, your predecessors passed the Small Business Act, Public Law 163-83, Title II, Section 202, to address barriers to small business growth. The preamble to this historic law states:

The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well being but to the security of this Nation. Such security and well being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small business enterprises, and to maintain and strengthen the overall economy of the Nation.

“From the beginnings of our Nation, small business has provided us with some of our best ideas and inventions and it has considerably accelerated the growth of our industry and our science. Today, small business remains one of the strongest forces in the country.” These words hold as much truth today as they did when they were spoken by President Richard Nixon on August 1, 1973, 20 years after President Eisenhower signed the 1953 Small Business Act. Notwithstanding these monumental proclamations, small businesses have not been fully adopted as equal partners in this Nation’s economy. As such, Congress has to continue its vigilance to ensure a level playing field for small business.

Congress established the Office of Advocacy in 1976 within the U.S. Small Business Administration to be an independent voice of small business in the formulation

of public policy across the entire Federal Government. The Office is headed by a Chief Counsel appointed by the President and confirmed by the Senate. The duties of the Office are several, among which are (1) generating research on small business trends, characteristics, and contributions to the economy, and (2) monitoring agency compliance with the Regulatory Flexibility Act of 1980 as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

Since its establishment, the Office of Advocacy has been actively engaged in the analysis of Federal procurement policy and its impact on the small business community. A primary concern in recent years has been whether the top-to-bottom Federal acquisition reform of the mid-1990s in the form of the Federal Acquisition Streamlining Act of 1994 (FASA), the Clinger-Cohen Act of 1996 and the Federal Acquisition Reform Act of 1996 (FARA) has helped or hindered the Federal Government in achieving its mission as cited in the 1953 Small Business Act and subsequent amendments to this national policy statement.

As a brief recap, FASA repealed or substantially modified more than 225 provisions of law to reduce paperwork burdens, facilitate the acquisition of commercial products and enhance the use of simplified procedures for small purchases. FARA eliminated the procurement authority of the General Services Administration for information technology. FARA also repealed the authority for the General Services Board of Contract Appeals to decide bid protests for information technology acquisitions. The General Accounting Office was assigned to handle all bid protest disputes. Finally, the Clinger-Cohen Act of 1996 provided for the use of multi-agency contracts known as

Government-wide agency contracts (GWACs) for agencies to access each other's information technology contracts.

Mr. Chairman and members of the Committee, let me without reservation state that the Office of Advocacy supports appropriate and carefully implemented acquisition reform. Streamlining is important to small business as well as to the government. Many of the changes that have occurred in the Federal acquisition system as a result of the reform movement of the 1990s have been well intended. For example, today the use of the government credit card has increased by about 150 percent in a three-year period. In FY 1997 the Federal Government purchased goods and services worth about \$5 billion with credit cards. In FY 2000 the use had increased to slightly more than \$12 billion.

The Office of Advocacy is currently studying the effects of the use of government credit cards on small businesses. The study should be ready for publication by the end of this year. We can, however, say at this time that small businesses do not appear to be getting a fair or proportional share of these Federal dollars. The following supports this preliminary conclusion:

- (1) Prior to acquisition reform, micro-purchases of \$2,500 or less were reserved exclusively for small businesses. Today, these purchases are no longer reserved for small businesses because many of these purchases are being acquired through the use of the government credit card. Nearly one-half million Federal employees may use the government credit card with any authorized merchant. There are few if any acquisition controls on the use of the card. Other than convenience, there is very little data to reveal that the Government is getting the best price with the use of the credit card.

(2) In FY 1995, small business received 72 percent of small purchase dollars, compared with 65 percent of small purchase dollars in FY 2000. During the same period, the number of small purchase actions decreased from 9,959,358 in FY 1995 to 3,794,647 in FY 2000. The data strongly suggest that the credit card has had a dramatic impact on the downward spiral of small purchases from small businesses.

Small purchases and the number of small businesses participating in the Federal marketplace are decreasing. At the same time, the dollar value of contracts is increasing, thus freezing out entry-level small business participants. As previously stated, the use of multiple award contracts (MACs), Government-Wide Acquisition Contracts (GWACs) and Federal Supply Schedules is primarily the product of acquisition reform. Agencies are using these tools to fill requirements quickly by simply issuing orders against these contracts rather than starting a new procurement action. MACs and GWACs reduce opportunities for small business in part because they are usually too large in scope for small businesses to participate in the competition. Moreover, these procurement tools make it particularly difficult for small businesses to increase capacity and capabilities because the smaller contracts which traditionally allowed them to gain a foothold in the Federal market are disappearing.

The Federal Supply Schedule has also hurt small business. The use of this acquisition tool has increased dramatically, from \$2.8 billion in FY 1996 to \$10.2 billion in FY 2000. Although the Small Business Act specifically requires that purchases of goods or services between \$2,500 and \$100,000 be reserved for small businesses, orders

from the Federal Supply Schedule do not follow this requirement. Further, in most cases, the General Services Administration (GSA) does not restrict Federal Supply Schedule contracts to small businesses as required by the Small Business Act. Even though 70 percent of the vendors are small businesses, they received only 38.7 percent of the \$10.2 billion spent in FY 2000 on the Federal Supply Schedule. Prior to procurement reform, small purchases of less than \$25,000 were primarily restricted for small business awards, giving them close to 75 percent.

These procurement reform tools have had a dramatic impact on the number of new contract actions. As noted earlier, the number of new small purchases (or simplified acquisition actions) has decreased significantly to about one-third of the level of five years ago. Similarly, the number of new contracts above \$25,000 has also significantly decreased. This number has declined from a high in FY 1995 of 70,088 to a low in FY 1999 of 41,075. There has also been a corresponding decrease in dollars relating to these contracts from 23 percent in FY 1995 to 16 percent in FY 1999. Federal opportunities for small businesses are dwindling, making new small businesses less likely to enter the Federal marketplace. This results in a concentration of awards to fewer small firms thus reducing competition and potentially raising costs.

Mr. Chairman, the Office of Advocacy has also examined the buying habits of Federal Procurement Centers across the United States. There are approximately 2,235 procurement centers in the United States. Advocacy's study ranked the small business friendliness of these centers based on the percentage of their spending awarded to small firms in FY 1998. The study also provided a list of the major types of industries supplying the goods and services.

This study was designed to assist small business owners in marketing to the Federal Government. Almost two-thirds of the Federal prime contract dollars spent in FY 1998 were controlled by the Federal Procurement Centers that awarded the least to small firms. The summary findings of the study are: (1) 260, or 11.6 percent, of the centers did no prime contract work with small business. Of these centers, about 150 belonged to the Department of Defense. Together, these 260 centers controlled more than 6 percent of all prime contract dollars spent in FY 1998. (2) Of the 2,235 centers studied, only 213, or 9.5 percent, awarded 100 percent of their prime contract dollars to small firms.

The results of the procurement centers study raised additional questions regarding the impact of acquisition reform on small businesses in the Federal marketplace. Of specific concern was whether the Federal Government was in fact meeting its statutory procurement goal mandating that 23 percent of prime contract dollars be awarded to small business. Two different methods were used to measure the attainment of the 23 percent goal:

- (1) Congress in 1988 established an annual Government-wide goal of awarding not less than 20 percent of all prime contract dollars to small businesses without exclusion. In 1997 Congress increased this goal to 23 percent. Discretion was built into the goaling guidance process to the point that some contracts are specifically excluded. The exclusions include, among other things, contracts for foreign military sales, contracts with directed sources of supply such as the Committee for Purchase from the Blind and Other Severely Handicapped, contracts to the Federal Prison Industries, and contracts with an

performance outside the United States. The rationale for these exclusions was the belief that there were certain types of contract work that small businesses could not perform as prime contractors, and that the base for measuring goal achievement should reflect that fact.

- (2) Advocacy assesses whether the agencies met the 23 percent goal, without the exclusions.

Thus, the Government's basis of total contract dollars available in a fiscal year is lower than Advocacy's. As an example, in FY 1998 all Federal agencies reported \$197.3 billion in Federal contract dollars being spent. Based on the Goaling Guidelines, which included the exclusions, the total base was \$181.8 billion or about \$15 billion less. Notwithstanding this difference in measurement, the Office of Advocacy's assessment revealed that both measurements indicate a decline in the percentage of prime contract dollars to small business. The Government's percentages have been declining from a high of 25.5 percent in FY 1996 to a low of 22.3 percent in FY 2000. In looking at the goaling process, the Office of Advocacy also reviewed the percentage of awards from the largest buying agency, the Department of Defense. The Department of Defense percentage also declined during this same period from a high in FY1996 of 23.3 percent to a low of 21.9 percent in FY2000.

While agencies are finding it more difficult to meet the Government-wide procurement goal of 23 percent, they are also failing to meet their other socioeconomic program goals. The HUBZone and women-owned business goals are not being met. As an example, the Department of Defense has yet to achieve its 5 percent goal for women-

owned businesses. In FY 2000 the Department of Defense awarded only 2.1 percent of its procurement dollars to women-owned businesses. In a similar context, the DOD dollar amount being awarded to 8(a) companies has been on the decline since FY 1996, which was the high point for 8(a) contracts. In FY 1996, DOD awarded \$3.6 billion to 8(a) companies. By FY 2000 this amount had dropped to \$3.2 billion. Another figure that gives rise to alarm is the percent of contracts being awarded by DOD under the small business set-aside program. In FY 1995 DOD awarded 9.1 percent of its contracts through this mechanism. By FY 2000 the percent had dropped to a low of 6.3 percent or \$7.7 billion of a total \$26.8 billion awarded to small businesses. This low of 6.3 percent was below DOD's negotiated goal of 7 percent for small business set-asides.

Procurement reform has made it more difficult for small businesses to challenge questionable decisions by procurement officials. According to Prof. Steven Schooner of George Washington University Law School in an article in the March 2000 issue of *Government Contractor*, "while each reform initiative or event has merits, and most serve important purposes, the cumulative effect is a weakened oversight function. (1) The confluence of micro-purchases authority and purchase cards has rendered tens of millions of smaller transactions (which soon will account for 10 percent of the procurement budget) immune from competition requirements and meaningful procurement oversight. (2) The rapid growth of multiple-award task and delivery order contracts permits billions of dollars in information technology to be procured without meaningful competition at the task order level; moreover, these procurements are not subject to protest. (3) More than 10 million purchases each year above \$2,500, but below the simplified acquisition threshold of \$100,000, can be awarded based upon three phone

calls. Absent the standard *Commerce Business Daily* notice of these procurement actions, contractors have no knowledge when they are denied an opportunity to compete and, accordingly, lack meaningful protest rights.”

The General Accounting Office has reported in a recent study that the number of bid protests has declined. This further supports the observation that the implementation of procurement reform has not been a totally positive experience for small businesses. Another unfortunate statistic is the reduced number of Certificates of Competency (COC) that contracting officers have requested from SBA. The number of COCs has dropped from a high of 1,257 in 1996 to a low of 531 in 1998. The procurement reforms of the 1990s simply do not encourage a contracting officer to refer these cases to SBA. Thus, small businesses never get a chance to compete for the Federal procurement dollar.

Mr. Chairman, it is recognized that small business participation is vital to the growth of this Nation’s economy. America’s small businesses generate more than half of the Nation’s gross domestic product and employ more than 50 percent of the domestic work force. If given a chance, small business can be competitive both in terms of cost and quality. The opportunity for small businesses to remain this Nation’s economic backbone is being eroded, not only by the areas previously discussed, but also by other overwhelming acquisition forces. One of the most prominent forces today is “bundling,” contract consolidation or umbrella contracts.

Bundling is defined as the consolidation of two or more smaller contracts into one very large contract. The SBA Reauthorization Act of 1997 established guidelines to assist agencies in evaluating their planned bundled acquisitions. The statute provides that

consolidation of contracts is permissible when the agency proves that there are measurable substantial benefits associated with bundling the contract.

Evidence of the negative impact of contract bundling on small business was first presented in the U.S. Small Business Administration's 1993 report, *Study of the Impact of Contract Bundling on Small Business Concerns and Practical Recommendations*. The study relied mainly on a survey of small business owners and others involved in the Federal procurement process. The study recommended more systematic and detailed analysis of prime contract data to substantiate or disprove the claims of small business owners that umbrella contracts were harming their companies.

The Office of Advocacy contracted in 1997 with Eagle Eye Publishers, Inc. to develop new analytical techniques in an effort to fulfill the mandate of the SBA study and to analyze the impacts of bundled contracts. This study revealed a number of important facts. First, despite the overall drop in Federal spending FY 1991-1995, large contracts greater than or equal to \$100,000 constituted a significantly larger percentage of all contracts in FY 1995 than they did in FY 1991. Second, between FY 1991 and FY 1995 small businesses, which make up the majority of small business Government contractors, saw total dollars, market share and numbers of contracts decline, while average contract size increased. Third, in FY 1992, there were 37,906 small businesses doing work for the Federal Government that had not done work in the previous year. From there, new small businesses proceeded to decline to 37,380 in FY 1993, 25,160 in FY 1994 and finally to 21,058 in FY 1995, a four-year loss of 44 percent. If bundling was occurring, one of the negative impacts would be the decrease in the number of new small businesses entering the Federal marketplace as demonstrated above.

The Office of Advocacy went a step further in 1998 and contracted with Eagle Eye Publishers, Inc., to update the above study on contracting bundling. This new study was for the period of FY 1992-FY 1999. The results were published in the year 2000 under the title, *The Impact of Contract Bundling on Small Business: FY 1992-FY 1999*. The findings of this new study were more critical of bundling than was the first study. The following are highlights: (1) The average bundled contract was valued at \$8 million in FY 1999, representing a 21 percent increase in the value of the average contract award over the past eight years; (2) for every increase of 100 bundled contracts, there was a decrease of more than 106 individual contracts awarded to small firms; (3) in FY 1999, large businesses received 67 percent of all prime contract dollars and 74 percent of all bundled dollars. Small firms received 18.7 percent of all contract dollars and 15 percent of bundled contracts; and (4) the two areas fueling the growth of contract bundling are construction and non-research services—both sectors dominated by small businesses.

Contract bundling or contract consolidation does not make good business sense when savings are not available. The cost to the American taxpayer for senseless bundling and consolidation is far more than the cost of the contract. The American taxpayer absorbs a long-term debt with the decline in small business participation in government contracting.

Mr. Chairman and members of the Committee, it is clear that aspects of the acquisition reform movement of the 1990s have had a detrimental impact on the survival of small businesses in the Federal marketplace. This negative impact is not only harmful to small businesses, it is a strike at the heart of this Nation's industrial military base. If small businesses are no longer running tool-and-die shops, spare part shops, electronic

components firms and other critical devices to keep our planes flying and our ships afloat, then who is? Mr. Chairman and members of the Committee, there are alternatives to this negative decline in the number and percentage of dollars being awarded to small business firms.

- **First**, each agency should include in its strategic and annual performance plans a commitment to achieve their small business goals. Each senior manager involved in acquisition should have a performance appraisal that includes a performance element relating to the small business goals. This should be the case particularly for Federal Procurement Executives and Program Managers. It is my understanding that the U.S. Department of Transportation (DOT) currently uses this approach, and has had very good results. In FY 2000, small business participation at DOT was 53.45 percent of direct prime contracts awarded.
- **Second**, Congress should not exempt agencies from complying with the Federal Acquisition System and the Small Business Act as amended.
- **Third**, a more modern-day balance must be achieved between competing entities such as the mandatory sourcing of the Federal Prison Industries and small businesses.
- **Fourth**, Streamlining and implementing commercial-like procurement practices in the name of Acquisition Reform should not be at the expense of small business. Bid protest, Certificate of Competency and other such tools have had a historic role in helping small businesses maintain a competitive

playing field. To stem the tide of a decline in small business prime contract dollars, these tools must be reinvigorated.

Finally, Mr. Chairman, let's not forget that if Congress had not aggressively acted on behalf of small business owners, then we would not have such companies as Microsoft and Federal Express and such products as the airplane, personal computer, pacemaker, optical scanner and many more. Until the time arrives that small businesses are co-partners in this Nation's economy, the Office of Advocacy looks forward to working with you to explore ways of achieving this goal.

This concludes my testimony. Mr. Chairman, I am also joined by Mr. Major Clark of my staff who is the Assistant Advocate for Procurement and Mr. Paul Murphy, President of Eagle Eye Publishers, Inc., primary author of our bundling studies. We will be happy to answer any questions you may have.



AMERICAN COUNCIL OF
ENGINEERING COMPANIES

Testimony to the United States House of Representatives
Committee on Small Business
The Honorable Donald Manzullo, Chair
The Honorable Nydia M. Velázquez, Ranking Member

Congress of the United States
House of Representatives
107th Congress
2301 Rayburn House Office Building
Washington, D.C.

By

Kenneth H. McLaughlin, P.E.
American Council of Engineering Companies
Small Firm Council

June 20, 2001

Testimony to the House Committee on Small Business

By
Kenneth H. McLaughlin, P.E.
American Council of Engineering Companies
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Mr. Chairman, Ranking Member Velasquez, and members of the committee, I would like to thank you for affording me the opportunity to express before the committee the interests of many small business enterprises in the engineering community.

As a matter of background, the American Council of Engineering Companies (ACEC) is the premier business association of the consulting engineering industry representing more than 5,000 independent engineering companies through out the United States. ACEC was founded in 1956 and is headquartered here in Washington, D.C. Since 1990, the Small Firm Council (SFC) has represented and advanced the business interests of ACEC's small firms nationwide. Approximately 75% of our membership (3,700 firms) are small business enterprises composed of 35 employees or less. This distinction of firms with 35 employees or less is an important point not only because it is 75% of our membership, but because it represents the general size of a firm which does approximately \$4,000,000 of business or less annually; therefore, qualifying those firms under the federal guidelines as a Small Business. In addition, FMI Corporation and ACEC compiled data earlier this year which illustrated the demographics of the Engineering and Architectural community throughout the U.S. Within these studies, it was revealed that there are 50,000 Architectural and Engineering firms in the United States that fall within the Small Business Administration (SBA) size standard. This data is available in the written text as Appendix A.

On a more personal level, I am the founder and president of IMC Consulting Engineers, Inc., which is located in Metairie, Louisiana, a suburb within the New Orleans Metropolitan area.

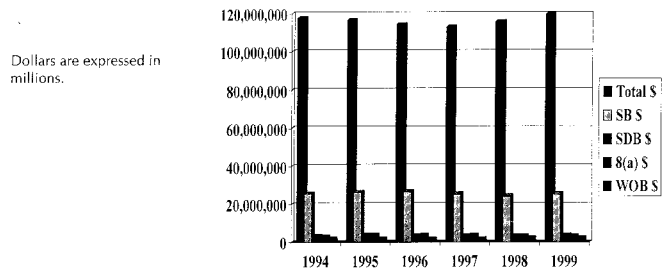
IMC offers design services in the electrical and mechanical engineering area. We design heating, ventilating and air conditioning systems, lighting, power, fire alarm and sprinkler systems for commercial buildings, hospitals, schools, etc. This building for instance, required an architectural/engineering team to develop design documents illustrating those systems that I just noted so that we could sit here today comfortably and discuss these matters.

I have been practicing engineering since I graduated in 1973 from Louisiana State University and I founded IMC in 1988. Some of IMC's larger projects to date have been worth \$8 to \$10 million in construction. My firm works within two basic frame works, as do most small engineering firms, that is, as a prime consultant to the owner or as a subconsultant to another engineer or architect. As you might expect we all prefer to work as prime consultants and therefore look for those opportunities in the marketplace. As a prime consultant, we are in control of our destiny and totally responsible to our clients, and we directly benefit in the recognition of a job well done. We are also assured prompt payment as the prime contractor.

The Department of Defense offered procurement opportunities on the order of \$120 billion in 1999 as illustrated below. It appears from Congresswoman Velazquez's Report "Failing to meet the Grade" that the Department of Defense, the largest government contractor, has failed to meet the goals set for procurement from the small business sector. In fact, the report provided a "D" grade to the agency and termed its performance "dismal."

Congresswoman Velazquez's report could simply be read within this testimony and it would cover the concerns of the Small Firm Council quite well. I would therefore like to commend her on an excellent effort and encourage all members to review this report card on the matter of agency performance with respect to meeting the federal procurement goals. We also believe this report would be an extremely beneficial resource as an annual report.

Small Business Participation in Federal Procurement 1994 - 1999



Source: "Failing to Meet the Grade"
Velazquez Report

My colleagues and I have particular interests in bringing before you today the problems of contract bundling. Bundling is defined as the consolidation of two or more contracts for goods or services, which were previously performed by small businesses as prime contractors, into one contract that is often too large for small business to participate as a prime contractor. Within the solicitation of engineering contracts, bundling is commonly recognized within two formats. The first format being the geographic dispersion of the contract performance sites to the point of exclusion for the small firm due to territorial coverage that simply becomes impractical. The second format being the broadening of the project scope to the point of exclusion of the small firm specializing in a field. Bundling is having a profound effect on small engineering firms, with its use often precluding small firms the opportunity to work as the prime consultant. This is especially apparent within many indefinite delivery contract solicitations. An indefinite delivery contract is a contract that obligates a firm and its manpower to provide professional services sometime in the future through a "delivery order" issued under the contract that defines

a specific task.

The above problems within the procurement solicitation may be better examined by example. Appendix B contains a number of solicitations issued by various DOD agencies. The following are excerpts:

Example 1

Published:05/15/01 Seq#:08-29066 Type: CBD Bid

• ***** CBD BID *****

Department of The Navy Naval Facilities ENGINEERING Command, Atlantic Division, Contracts Office, Code AQ22D, 1510 Gilbert Street, Norfolk, Virginia 23511-2699

C – **INDEFINITE QUANTITY CONTRACT FOR ACCOMPLISHMENT OF SERVICES IN SUPPORT OF THE NAVY SOL N62470-01-R-3008 DUE 061801**
 POC Ms. Bayla L. Mack, 757-322-8271 – Ms. Christine L. Foskey, Contract Specialist, 757-322-4165 ARCHITECT-ENGINEER or ENGINEERING Services are required for preparation of studies, plans, specifications, cost estimates and all associated ENGINEERING services at various Stateside and overseas activities within the Atlantic Division, Naval Facilities ENGINEERING Command s corporate AOR (area of responsibility) (including ENGINEERING Field Activity, Chesapeake and ENGINEERING Field Activity Northeast areas). The majority of the work will be located within the Commonwealth of Virginia, the state of WEST Virginia, the Commonwealth of Puerto Rico, and WESTern Europe, but may include the state of North Carolina, the states of Delaware, Pennsylvania, New Jersey, New York, Rhode Island, Massachusetts, Maine, Vermont, New Hampshire, Maryland, and in the District of Columbia; or at locations under the cognizance of ENGINEERING Field Activity, Mediterranean (Europe and Bahrain) and any other areas within the aforementioned AOR. The contractor s experience, through its own forces or its consultants, for locations in Virginia, North Carolina, WEST Virginia, Puerto Rico, and Europe will be given greater weight during selection. The requested evaluations will be in support of the Navy s Petroleum Storage Tank (PST) Program (consisting of underground and aboveground storage tanks) and will conform to applicable DOD instructions; and EPA, State and local regulations and guidelines. This contract will involve the accomplishment of the following under two major categories: (1) PST Compliance Program to include the completion of PST inventories, notification forms, and management plans; integrity evaluations of PSTs including API 653 certified tank inspections; design of PST and fuel facility improvements including, but not limited to, permanent leak monitoring systems, spill prevention equipment, and corrosion protection;

(Complete solicitation text not included for Clarity).....

- **The A&E must demonstrate his and each key consultants qualifications with respect to the published evaluation factors for all services with particular emphasis on work in Virginia, Puerto Rico, and WESTern Europe. Evaluation factors (1) through (5) are of equal importance; factors (6), (7) and (8) are of lesser importance and will be used as tie-breakers among technically equal firms. Specific evaluation factors include: (1) Specialized Experience – Identify specific project experience and specialized experience of the firm, and list team members who will perform this work. Explain both firm and team experience in the following functions: (a) completion of PST inventories, management plans, leak detection projects, corrosion protection surveys, integrity evaluations; and SPCC Plans; (b) familiarity with Federal, State, and Overseas PST regulations (with emphasis on Virginia, WEST Virginia, Puerto Rico, and WESTern Europe), and local PST regulations (both existing and pending); (c) preparation of reports and project documentation, plans, specifications, and cost estimates for PST projects, including correction of SPCC and FRP/OHS deficiencies, fuel facility repairs and upgrades, and implementing Management Plan recommendations; (d) similar past projects at Navy/DOD facilities; (e) training personnel in inventory control procedures and maintenance/inspection procedures for PSTs; and (f) firms will be evaluated on their knowledge of local codes, laws, permits and construction materials and practices of the geographical area of the contract (greater weight will be given to the States of Virginia, WEST Virginia, the Commonwealth of Puerto Rico, and WESTern Europe);** past experience in preparing FRPs, OHS spill prevention and contingency plans; Navy regional NOSC plans; drills and exercises, and Spill Response Training. These plans, drills and

(Complete solicitation text not included for Clarity).....

- **Firms will be evaluated in terms of work previously awarded to the firm by DOD with the objective of affecting an equitable distribution of DOD A&E contracts among qualified A&E firms, including SMALL and SMALL disadvantaged BUSINESS firms and firms that have not had prior DOD contracts; and (8) SMALL BUSINESS and SMALL Disadvantaged BUSINESS Subcontracting Plan – Firms will be evaluated on the extent to which they identify and commit to the published SMALL BUSINESS Subcontracting Program. *the following are the published Naval Facilities ENGINEERING command goals expressed in terms of percentages of total planned subcontracting dollars for utilization of SMALL BUSINESSES as part of its contract performance: SMALL BUSINESS (SDB) – 12%; SMALL Disadvantaged BUSINESS (SDB) – 12%; Women-owned SMALL BUSINESS (WOSB) – 5%; Historically Black Colleges/Universities/Minority Institutions (HBCU/MI) – 5%; Veterans Owned SMALL BUSINESSES (VOSB) – 3%; Services Disabled Veteran Owned SMALL BUSINESSES (SDVOSM) – 3%; HUBZone SMALL BUSINESSES***

Example 2

Published:02/14/01 Seq#:11-27881 Type:CBD Bid

• ***** CBD BID *****

USAED, Sacramento, Corps of ENGINEERS, Attn: A-E Negotiations Section, 1325 J Street, Room 1079, Sacramento, CA 95814-2922

C -- **INDEFINITE DELIVERY**, INDEFINITE QUANTITY CONTRACT FOR ENGINEERING STUDIES IN SUPPORT OF WATER RESOURCES PLANNING AND DESIGN; RESERVOIR REGULATION; OR FLOODPLAIN MANAGEMENT, INCLUDING ENVIRONMENTAL RESTORATION PROJECTS, LOCATED WITHIN THE SACRAMENTO DISTRICT, U.S. ARMY CORPS OF ENGINEERS, CIVIL WO SOL DACW05-01-R-0012 DUE 031901 POC Mr. Stanley Shibata, Unit Leader, A-E Negotiations Unit, (916) 557-7470 A-E services required may encompass all aspects of hydrologic and water management analysis for water resource public works projects and environmental restoration projects primarily in Northern and Central California but may also be within the Sacramento District's Civil Works area of responsibility (CA, NV, UT, CO, WY and parts of OR and ID), and areas within the South Pacific Division boundaries. The physiographic setting of the study area may be coastal, valley, or mountainous; the climate could be humid or arid. The projects may be in the pre-authorized phase or authorized by Congress to proceed to construction and may include any aspect of the Sacramento-San Joaquin River Comprehensive Study. Services may also be used to support the Corps of ENGINEERS (COE) during flood emergencies. A specific scope of work and services required will be issued with each task order. The ;

(Complete solicitation text not included for Clarity).....

•More than one firm will be selected from this announcement; at least two contracts will be awarded. **One contract is set-aside for SMALL BUSINESS; the other is unrestricted and open to all interested parties regardless of BUSINESS size. All SMALL BUSINESS firms responding MUST state in their response their intention to participate in the unrestricted contract as well as the SMALL BUSINESS set-aside contract. If a SMALL BUSINESS is silent on this issue, the SMALL BUSINESS will be considered only for the SMALL BUSINESS set-aside selection and will NOT be considered in the unrestricted selection. No one contractor will receive both awards.** Since more than one contract will be awarded as a result of this announcement for the same or similar work...

(Complete solicitation text not included for Clarity).....

..... The unrestricted selection is open to all firms regardless of size; the **SMALL BUSINESS** set-aside selection is open to all **SMALL BUSINESS**

firms. All interested **ARCHITECT-ENGINEERS** are reminded that in accordance with the provisions of PL 95-507, they will be expected to place subcontracts to the maximum practicable extent consistent with the efficient performance of the contract with **SMALL** and **SMALL disadvantaged BUSINESS**s. If a large **BUSINESS** is selected, it must comply with FAR 52-219.9 regarding the requirement for a subcontracting plan on that part of the work it plans to subcontract. **The recommended goal for the work intended to be subcontracted is 62% for SMALL BUSINESS. It further states that out of that 62% to SMALL BUSINESS, 10% is for SMALL disadvantaged BUSINESS (subset to SMALL BUSINESS) and 5% is for SMALL BUSINESS/woman owned (subset to SMALL BUSINESS).** If a large **BUSINESS** is selected for one of these contracts, the large **BUSINESS** contractor will be required to submit a detailed subcontracting plan at a later date. If the selected firms submit a plan with lesser goals, they must submit written rationale of why the above goals were not met.

Example 3

Published:02/28/01 Seq#:11-00022 Type:CBD Bid

- ***** CBD BID *****
 U.S. Army Corps of ENGINEERS, 600 M.L. King, Jr. Pl., Rm 821, Louisville, KY 40202-2230
 C – INDEFINITE DELIVERY TYPE CONTRACT FOR ENVIRONMENTAL AND ENGINEERING SERVICES **PRIMARILY AT FORT CAMPBELL, KY** WITHIN THE GREAT LAKES AND OHIO RIVER DIVISION **BUT COULD BE ANYWHERE WITHIN THE DIVISION MISSION BOUNDARIES** SOL W22W9K-1052-4074 DUE 032801 POC Contract Specialist, Denise Bush (502) 315-6209 CONTRACT INFORMATION: The Louisville District plans to procure an INDEFINITE Delivery Type contract for Environmental and ENGINEERING Services primarily for Fort Campbell but could be anywhere within the Division Mission Boundaries. The contract will be accomplished by issuance of individual task orders not to exceed \$1,000,000 for the base period not to exceed one year, with an option for two additional extensions of one year each with a new \$1,000,000 amount for each option period awarded. The maximum contract value is \$3,000,000. Task Orders will be firm fixed price.

This announcement is 100% SMALL BUSINESS Set-Aside.
 SEE NOTE 1. The contract will involve the preparation of various environmental documents, studies, and specifications for various military installations and civil works projects supported by the Louisville District, Corps of **ENGINEERS**. The scope of work and services will include all projects assigned to the Louisville

District and may include any effort assigned to a District within Ohio River and Great Lakes Division Mission Boundaries when such work and services are considered applicable under the scope of this acquisition. To be eligible for award, a firm must

(Complete solicitation text not included for Clarity).....

- Firms shall provide two resumes for each discipline and at least one will be registered/certified in each discipline. **Firms must have state licensing for professionals, trade certifications, and licenses as required for projects located in Kentucky, Illinois, Indiana, Ohio, Michigan, and Tennessee.** The states of registration and certification must

(Complete solicitation text not included for Clarity).....

- (Evaluation factors.....) f. Knowledge of the locality of the project and state and federal regulatory requirements for the states of Kentucky, Tennessee, Indiana, Ohio, Illinois and Michigan. g. Volume of DOD contracts awarded in the last 12 months to the prime A-E firm.

It is our belief that the above requirements and/or suggestions listed in these actual DOD Request for Qualifications would preclude the vast majority of small firms in the engineering industry from participating as prime contractors.

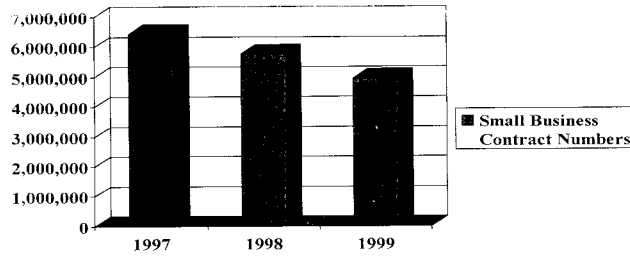
The indefinite delivery order (IDO) presents further problems for the small business. The IDO is often prepared by the agency to cover all possible varieties of work over the next year so that a firm is committed to projects defined by the agency. Yet, the actual work that materializes over the contract period utilizes only a small portion of the team assembled. This shotgun approach to professional service procurement is not suited to the small business. For a 10 employee firm to be considered for an IDO they may need to assemble a team including many other disciplines such as mechanical and electrical engineers, structural engineers, interior designers, geographical technologists, asbestos abatement specialists, cost estimators, etc. The delivery orders issued over the life of the contract may only require a small portion of the

original staff assembled and submitted. It is also not unusual that delivery orders are not issued under the contract and the subconsultant typically ends up with a "hollow contract." IMC has been on a team with a very large prime consultant for two years now and we have yet to receive any mechanical and/or electrical work under the contract.

Our hope is that all of the DOD contracting agencies would properly evaluate the proposed work associated with the IDO and solicit professional services matching that work. This would provide small businesses the opportunity to work as a prime consultant or at least be assured that as a subconsultant they will have meaningful work once the prime consultant is selected.

Bundling is also forcing small businesses to shift from being the Prime Consultant to being the Subconsultant to a large firm. This accounts for the decrease in small firm contracts as illustrated within the graph below and addressed within the Velazquez report card on federal procurement.

Small Business Contracts in Federal Procurement



Source: "Failing to Meet the Grade"
Velazquez Report

As a result, we are losing our identity, control of our resources and cash flow, and our statutory protection. The Government also loses when the effects of bundling discourage or eliminate small firm participation in engineering and other professional service projects. In many cases, the firm best qualified to handle the project is a small firm located within the area because of their knowledge of the soils, the climate, the local supply and service entities, etc. Utilization of local firms usually result in lower design costs and often lower project construction cost because the local conditions that effect the design are accounted for by the design team.

In the opinion of our membership, Qualifications Based Selection (QBS) continues to be the most appropriate method of procuring professional services. QBS helps to ensure that the most appropriate firm is chosen for the project, and that the client will receive the maximum amount of value and quality from the project.

The combination of a QBS program and a SBA initiative that discourages the indiscriminate use of contract bundling and helps small businesses to secure work as the Prime Consultant would benefit both the government and the small business owner alike.

It is our opinion that there needs to be more accountability with respect to meeting the SBA goals and consequences when the goals are not met. We strongly agree with Ms. Velazquez's conclusion that there should be a "suspension of bundling for those agencies that fail to meet their small business goals".

Along these lines of accountability, I would like to shift to the evaluation methods of the SBA program. As a professional service industry, we are concerned that there is a disparity between the awards going to the companies providing "goods" and the companies providing "professional services." We believe the procurement statistics, which are typically used to evaluate an agency, do not distinguish between "goods" procured and "services" procured. We

are suggesting that the guidelines for SBA procurement goals distinguish between goods purchased and services purchased and that the goals be evaluated in each of these two sectors. We also suggest that an evaluation of contracts be instituted with respect to the goals. IMC has participated as a subcontractor on numerous contracts for the DOD agencies such as the United States Army and Navy and has never been required to submit any information that may have been used as verification of the Prime Contracting goals.

In summary, the Small Firm Council encourages the House Committee on Small Business to review the following with respect to the procurement practices of the DOD and all of the Federal Agencies:

1. Contract Bundling -- in that it discourages use of Small Business as the Prime Contractor and is becoming the procurement tool of choice by the DOD.
2. Agency compliance with the SBA initiatives presently in place-- in that without accountability the agency is destined to fall short of its goals.
3. Separation of "goods" and "professional services" within the process so that outstanding performance in one area does not compensate for poor performance in another. Of course, this must be wrapped within accountability measures.

Finally, I would like to thank the committee once again for inviting the Small Firm Council to provide this testimony today. The Small Firm Council is especially supportive and appreciative of Chairman Manzullo's, Congresswoman Velázquez's, and the committee's effort

to help increase US Federal Government contracting opportunities for small businesses. If we can be of assistance to you in the future we would welcome the opportunity to serve.

APPENDICES

- A. FMI Corporation/ACEC Study Summary
- B. Web Address – “Failing To Meet The Grade”
Nydia Velazquez – www.house.gov/velazquez/Table-of-Contents.htm
- C. The Brooks Act: How to use Qualifications Base Selection (QBS)
- D. Solicitation
- E. Solicitation
- F. Solicitation

APPENDIX A**Corey Hessen, FMI**

1999 US Engineering & Architectural Firm Demographics

Small Firm:	1 – 99 employees	63,350 firms
Medium Firm:	100 – 499 employees	500 firms
Large Firm:	500 – 10,000 employees	140 firms
Mega Firm:	10,000+ employees	<u>4 firms</u>
		63,994 firms

96% of Engineering Firms and 98% of Architectural Firms have less than \$5,000,000 in annual revenue.

Joe Lyman, ACEC

2000 ACEC Member Firm's Demographics

Small Firm:	1 – 30 employees	3,553 firms
	31 – 35 employees	148 firms
	36 – 99 employees	593 firms
Medium Firm:	100 – 499 employees	338 firms
Large Firm:	500 – 10,000 employees	53 firms
Mega Firm:	10,000+ employees	<u>1 firm</u>
		4,686 firms

SBA Size Standards

<u>NAICS</u>	<u>SIC</u>	<u>Description</u>	<u>Size Standard</u>
541330	8711	Engineering	\$4,000,000
541310	8712	Architecture	\$4,000,000
541370	8713	Surveying	\$4,000,000

Typically an engineering firm will realize an annual revenue of approximately \$100,000 per employee. With an additional 15% of "pass through" expenses a \$4,000,000 annual revenue firm will have approximately 35 employees.

ACEC membership has 3,701 firms, 79% of total membership, with 1 to 35 employees. If the same percentage is true for all US firms then 79% or 50,542 engineering and architectural firms in the US fall within the SBA Size Standard.

APPENDIX B

Failing To Meet The Grade

*How the Federal Government
is Failing America's Small Businesses
in the Federal Procurement Process*

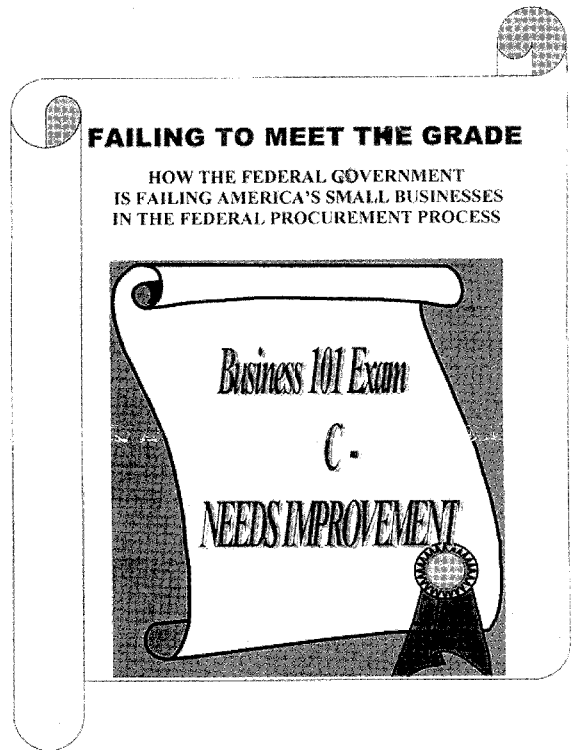


TABLE OF CONTENTS

I. Introduction	
II. Executive Summary	
III. Conclusion	
IV. Appendix A	
1. Department of Defense	analysis graphs
2. Department of Energy	analysis graphs
3. National Aeronautics and Space Administration	analysis graphs
4. General Services Administration	analysis graphs
5. Department of Health and Human Services	analysis graphs
6. Department of Veterans Affairs	analysis graphs
7. Department of Justice	analysis graphs
8. Department of Agriculture	analysis graphs
9. Department of the Treasury	analysis graphs
10. Department of Transportation	analysis graphs
11. Environmental Protection Agency	analysis graphs
12. Department of the Interior	analysis graphs
13. Department of Commerce	analysis graphs
14. Department of Labor	analysis graphs
15. Department of State	analysis graphs
16. Department of Housing and Urban Development	analysis graphs
17. Department of Education	analysis graphs
18. Social Security Administration	analysis graphs
19. Agency for International Development	analysis graphs
20. Office of Personnel Management	analysis graphs
21. Small Business Administration	analysis graphs
V. Appendix-B	
1. Federal Agency Scorecard Recap	
2. Small Business Participation in Federal Procurement, 1994 - 1999 Graph	
3. Small Business Goal Achievement in Federal Procurement Graph	
4. Small Disadvantaged Business (SDB) Goal Achievement in Federal Procurement Graph	
5. 8(a) Program Goal Achievement in Federal Procurement Graph	
6. Women-Owned Business Goal Achievement in Federal Procurement Graph	
7. Small Business Contracts in Federal Procurement Graph	
8. Small Disadvantaged Business Contracts in Federal Procurement Graph	
9. 8(a) Contracts in Federal Procurement Graph	
10. Women-Owned Business Contracts in Federal Procurement Graph	
11. Goal Achievement Worksheet	
12. Total Procurement Dollars Worksheet	

APPENDIX C**The Brooks Act:****How to use Qualifications Based Selection****(Originally produced by the Texas Society of Architects)**

The Brooks Act (Public Law 92-582), also known as Qualifications Based Selection (QBS), which was enacted on October 18, 1972, establishes the procurement process by which architects and engineers (A/E)s are selected for design contracts with federal design and construction agencies. The Brooks Act establishes a qualifications-based selection process, in which contracts for A/E's are negotiated on the basis of demonstrated competence and qualification for the type of professional services required at a fair and reasonable price. Under QBS procurement procedures, price quotations are not a consideration in the selection process.

This QBS process, as established by the Brooks Act, has long been enthusiastically supported by every professional A/E society.

There are seven basic steps involved in pursuing federal design work under QBS:

1. Public solicitation for architectural and engineering services
2. Submission of an annual statement of qualifications and supplemental statements of ability to design specific projects for which public announcements were made
3. Evaluation of both the annual and project-specific statements
4. Development of a short-list of at least three submitting firms in order to conduct interview with them
5. Interviews with the firms
6. Ranking of at least three of the most qualified firms
7. Negotiation with the top ranked firm.

A brief explanation of each of these steps, along with a description of what is involved in each, follows. The user must be reminded that while QBS procedures are mandated by law, agencies

may modify the procedures slightly, within the confines of the act and the Federal Acquisition Regulation.

1. Public Announcement

QBS calls for public announcement of opportunities for design contracts. The government fulfills this obligation by publicizing opportunities in the Commerce Business Daily. The Commerce Business Daily, or "CBD," as it is known, is published Monday through Friday by the U.S. Department of Commerce. The CBD lists proposed government procurements, subcontracting leads, and contract awards. A proposed procurement action appears in the CBD only once.

All intended procurement actions of \$25,000 or more, whether for military or civilian agencies, are published in the CBD. Also, this publication identifies contracts that have been awarded, if the contract amount exceeds \$25,000 for civilian agencies and \$100,000 for the Department of Defense. The CBD does not list procurements that are:

- Classified for reasons of national security
- For perishable items
- For certain utility services
- Required within 15 days
- Placed under existing contracts
- For personal professional services
- Made only from foreign sources
- Not to be given advance publicity, as determined by the Small Business Administration

These notices in the CBD give the location and scope of a project and may also contain such information as:

- Estimated construction contract award range
- Project schedule and the date and time limit for receiving replies
- Categories of evaluation criteria and weight factors
- Any requirements for submitting supplemental information.

Usually, opportunities for A/E services are listed under the "R" section. However, design

opportunities can be included in other sections, such as those for design/build services (listed under "Y," Construction of Structures and Facilities).

2. Statements of Qualification

A/E firms with an interest in being considered for design services contracts must submit the required statements of qualifications to each agency with which the A/E wants to contract. The Standard Form 254 (SF 254), Architect-Engineer and Related Services Questionnaire, may be filed each year with a field office of each agency with which the architect intends to do business. This form can also be updated and resubmitted at any time. A completed form furnishes the federal agency with general information on the size, capabilities, personnel, and past experience of an interested firm.

Many federal agencies keep the SF 254 on file and review this file for prospective design firms if they have a small project that will not be advertised. The A/E firm can submit this form at the same time as the required project-specific form is submitted.

The next statement of qualifications that a firm is to submit is the Standard Form 255 (SF 255), Architect-Engineer and Related Services Questionnaire for Specific Project. Following the review of the notices in the CBD, if an A/E firm wants to be considered for a specific project listed in it, then it must submit Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project. This form is submitted in response to a specific solicitation and, when completed, contains the data relative to the specific project.

When a project is advertised in the CBD, the agency does not usually notify firms directly that have filed a SF 254. The project advertisements, or notices, that appear in the CBD are tailored to each specific project and invite interested firms to submit both the SF 254 and the SF 255, along with any supplemental data requested in the announcement. Firms that have a current SF 254 on file with the listed procurement office are not required to resubmit that form; however, they must submit a SF 255, Architect-Engineer and Related Services Questionnaire for Specific Project, to be considered for each separate project.

Instructions on how to complete Standard Forms 254 and 255, which include substantial guidance on what information to add to your 254 and 255 and what information to add, are contained in the forms. For example, the instruction in Standard Form 254 stress that additional data, brochures, photos, etc. should not accompany this form unless specifically requires. On the other hand, the instructions for Standard Form 255 state that when appropriate, respondents may supplement this proposal with graphic material and photographs that best demonstrate design capabilities of the proposer for the specific project.

3. Evaluation of Statements

The evaluation/selection process for architectural/engineering evaluation boards composed of members who, collectively, have experience in architecture, engineering, construction, and government and related acquisition matters. The members of the boards are usually appointed from among the professional employees of the agency or other agencies. In some situations, private practitioners sit on these boards if authorized by agency procedures. Of course, when these private practitioners sit on an evaluation board, they or their firms are not eligible for award of a design contract.

The evaluation boards then review the statements of qualifications (Standard For 254 and 255). The boards must evaluate them in accordance with the criteria contained in the CBD notice. For example, some of the criteria in the CBD notice may include the following: professional qualifications and experience of the firm with design of a specific type of project; experience and professional qualifications of the firm's staff to be assigned to the project; location of the main office of the proposing firm and its consultants; overall performance record of the firm; and analysis of the firm's current workload.

4. Development of a Short-list

Following the evaluation of the statements of qualifications, the boards prepare reports that recommend the firms to be on the short-list. The reports rank at least three of the firms for the purpose of discussing the project with them. The boards are not limited in the number of firms that they can select for these "interviews"; it is left to the discretion of the boards.

5. Interviews/Discussions With Firms

The interviews usually involve discussions on project concepts and the relative utility of alternative methods of furnishing the required services. Before the interview, some agencies send detailed selection criteria and other information about the project to the firms recommended for further consideration. Under the system established by QBS, the architect-engineer designer does not produce any design product in competing for the project.

Usually these interviews are held at the agency's office. Occasionally, and in special circumstances, phone interviews are conducted. The interviews are brief, usually lasting only 30 to 60 minutes.

6. Ranking of the "Top Three" Firms

Following the interviews, the boards' reports are presented to the agency head or a person who is designated to act in the head of the agency's behalf. The reports list, in order of preference, at least three firms that are considered to be the most highly qualified to perform the services. This is considered to be the final selection of the competing firms. If the firm listed as the most preferred is not the firm that was recommended as the most highly qualified by the evaluation board, the head of the agency must provide a written explanation for the reason for the preference. The head of the agency, or that person's designee, may not add names of other firms to the final report. The report reviews the recommendations of the evaluation board and, from that, the agency head makes the final selection.

7. Negotiation with the Top-Ranked Firm

When the final selection is made by the agency head, the contracting officer is authorized to begin negotiations with the top-ranked firm. The negotiations are conducted pursuant to the procedures set forth in the FAR. Usually, the firm is requested to submit a fee proposal listing direct and indirect costs as the basis for contract negotiations. Contract negotiations are conducted following an evaluation of the fee proposal and an audit when the proposed design fee is more than \$100,000.

If a fee is not agreed upon within a reasonable time, the contracting officer will conclude

negotiations with the top-ranked firm and initiate negotiations with the second-ranked firm. If a satisfactory contract is not worked out with this firm, then this procedure will be continued until a mutually satisfactory contract is negotiated. If negotiations fail with all selected firms, the contracting firms, which are ranked by competence and qualifications, are identified. The negotiation process will then continue until an agreement is reached and a contract awarded. As a practical note, it is rare that a contract is not successfully negotiated with the top-ranked firm.

The 6 Percent Fee Limitation on Federal Design Contracts

Since 1939, federal construction agencies have been required by law to limit the fee payable to an architect or engineer to 6 percent of the estimated construction cost. Presently, there are at least four statutes that prescribe limitations on architect-engineer fees and apply to all civilian and military construction agencies with the exception of the U.S. Department of State.

Federal agencies have interpreted the statutory fee limitations as applying only to the part of the fee that covers the production and delivery of "designs, plans, drawings, and specifications." The agencies, therefore, consider that the 6 percent fee limitation does not apply to the cost of field investigation, surveys, topographical work, soil borings, inspection of construction, master planning, and similar services not involving the production and delivery of designs, plans, drawings, and specifications. Most direct federal awarding agencies have, as a part of their supplement to the Federal Acquisition Regulation, a list of those items exempt from the 6 percent fee limitation.

Source: American Council of Engineering Companies

APPENDIX D**Bid-Search - View Archive Document**

Published:02/14/01 Seq#:11-27881 Type:CBD Bid
 ***** CBD BID *****

USAED, Sacramento, Corps of **ENGINEERS**, Attn: A-E Negotiations Section, 1325 J Street, Room 1079, Sacramento, CA 95814-2922

C – **INDEFINITE DELIVERY, INDEFINITE QUANTITY CONTRACT FOR ENGINEERING STUDIES IN SUPPORT OF WATER RESOURCES PLANNING AND DESIGN; RESERVOIR REGULATION; OR FLOODPLAIN MANAGEMENT, INCLUDING ENVIRONMENTAL RESTORATION PROJECTS, LOCATED WITHIN THE SACRAMENTO DISTRICT, U.S. ARMY CORPS OF ENGINEERS, CIVIL WORKS DIVISION, DACW05-01-R-0012 DUE 031901 POC Mr. Stanley Shibata, Unit Leader, A-E Negotiations Unit, (916) 557-7470** A-E services required may encompass all aspects of hydrologic and water management analysis for water resource public works projects and environmental restoration projects primarily in Northern and Central California but may also be within the Sacramento District's Civil Works area of responsibility (CA, NV, UT, CO, WY and parts of OR and ID), and areas within the South Pacific Division boundaries. The physiographic setting of the study area may be coastal, valley, or mountainous; the climate could be humid or arid. The projects may be in the pre-authorized phase or authorized by Congress to proceed to construction and may include any aspect of the Sacramento-San Joaquin River Comprehensive Study. Services may also be used to support the Corps of **ENGINEERS** (COE) during flood emergencies. A specific scope of work and services required will be issued with each task order. The end result of these studies/projects will be Hydrology Office Reports, technical appendices to Planning documents, and Water Control Manuals. The NAICS code is 541310 with **BUSINESS** size standard of maximum \$4 million of average annual receipts for its preceding 3 fiscal years. Products provided by the contractor in electronic digital format to the Government must be compatible with Intergraph MicroStation format Version 05.05 without conversion or reformatting, and on the target platform specified herein. The target platform is a Pentium with a Windows NT Version 4.0 or 2000 operating system. Advanced application software used in preparing drawings shall be delivered in Version 5.01 MicroStation electronic digital format. Drawings produced by scanning drawings of record or containing photographic images shall be delivered in a raster format compatible with the native Intergraph IRAS, Version 5, electronic digital format. Documents provided by the contractor to the Government must be compatible with MS Word 2000 on the target platform. Spreadsheet products provided by the contractor to the Government must be compatible with Excel 2000 on the target platform. Rainfall runoff modeling done by the contractor for the Government must be performed using HEC-1 or HEC-HMS/GEOHMS. Flow-frequency analysis done by the contractor for the Government must be performed using HEC-FFA or HEC-WRC. Reservoir routings must be done in HEC-5 or HEC-RESSIM. Data provided to the Government must be provided in an HEC-DSS database, if the data type is appropriate for this utility. Geographic Information System (GIS) products provided

by the contractor to the Government must be compatible with ARC/INFO 7.1.2 run on a Sun Ultra Sparc platform under Solaris 2.5.1.1. The contractor must have ARC/INFO GRID and TIN modeling capability. More than one firm will be selected from this announcement; at least two contracts will be awarded. One contract is set-aside for **SMALL BUSINESS**; the other is unrestricted and open to all interested parties regardless of **BUSINESS** size. All **SMALL BUSINESS** firms responding **MUST** state in their response their intention to participate in the unrestricted contract as well as the **SMALL BUSINESS** set-aside contract. If a **SMALL BUSINESS** is silent on this issue, the **SMALL BUSINESS** will be considered only for the **SMALL BUSINESS** set-aside selection and will **NOT** be considered in the unrestricted selection. No one contractor will receive both awards. Since more than one contract will be awarded as a result of this announcement for the same or similar work, selection for task order awards will be made as follows: (1) All awardees will be given a fair opportunity to be considered for each task order award in excess of \$2,500. (2) In making selection of the awardee to receive a specific task order, the Contracting Officer will consider past performance of previous task orders, quality of previous task orders, timeliness of previous task orders, cost control, the firm's strengths and previous experience in relation to the work requirements and geographic location described in the scope of work for each task order. Details of the selection process will be included in the resultant contracts. Firm, fixed-price **INDEFINITE** delivery, **INDEFINITE** quantity contracts will be negotiated and the first is anticipated to be awarded in April 2001. All contracts awarded from this solicitation must be awarded no later than one year from the date that the responses to this synopsis are due. Each contract will be for a one-year period not-to-exceed \$1,000,000 for the basic year and two one-year options not-to-exceed \$1,000,000 each. Each task order will be for an amount not-to-exceed \$1,000,000. The options may be exercised at the discretion of the Government. At the discretion of the Government, the option years may be exercised early if the Total Estimated Price is exhausted or nearly exhausted; any alteration in rate changes from one year to the next as negotiated into the contract will be negotiated as needed between the Government and the A-E. If the Total Estimated Price of the base year or any option year is not awarded within that year's 12-month performance period and the Government has elected to exercise a subsequent option year, the remaining unused dollar amount may be added on to the Total Estimated Price of the option period being exercised. However, the Total Estimated Price of the contract, all three years (if the Government elects to exercise both option years) will be exceed \$3M. Task Orders shall not exceed the annual contract amount. The unrestricted selection is open to all firms regardless of size; the **SMALL BUSINESS** set-aside selection is open to all **SMALL BUSINESS** firms. All interested **ARCHITECT-ENGINEERS** are reminded that in accordance with the provisions of PL 95-507, they will be expected to place subcontracts to the maximum practicable extent consistent with the efficient performance of the contract with **SMALL** and **SMALL disadvantaged BUSINESS**s. If a large **BUSINESS** is selected, it must comply with FAR 52-219.9 regarding the requirement for a subcontracting plan on that part of the work it plans to subcontract. The recommended goal for the work intended to be subcontracted is 62% for **SMALL BUSINESS**. It further states that out of that 62% to **SMALL BUSINESS**, 10% is for **SMALL disadvantaged BUSINESS** (subset to **SMALL**

BUSINESS) and 5% is for **SMALL BUSINESS**/woman owned (subset to **SMALL BUSINESS**). If a large **BUSINESS** is selected for one of these contracts, the large **BUSINESS** contractor will be required to submit a detailed subcontracting plan at a later date. If the selected firms submit a plan with lesser goals, they must submit written rationale of why the above goals were not met. A detailed plan is not required to be submitted with the SF 255; however, the plans to do so should be specified in Block 10 of the SF 255. **SMALL BUSINESS** firms are required to comply with FAR 52.219-14 that states at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern. All offerors, regardless of size, **MUST**, in their response, inform the Government of its **BUSINESS** size relative to the NAICS Code and Size Standard (see above).

2. **PROJECT INFORMATION:** Task orders to be issued under this contract may include collection, review, and evaluation/ analysis of hydrologic data. Analysis may include determining watershed physiography, rainfall-runoff relationships, hydrologic flood routing coefficients, flow-frequency analysis, flow-duration analysis, concurrent precipitation and flow, temporal and spatial distributions of rainfall, and/or determining wind-wave action. Additionally, reservoir optimization and systems optimization will be included. Work tasks may be principally either technical analysis or technical writing in nature. Technical writing assignments will consist of preparing reports and correspondence describing watershed characteristics, basic data compiled, hydrologic procedures used, study results, and reservoir regulation. Written materials may be in the form of Hydrology Office Reports, Survey Reports, Water Control Manuals, Post Flood Reports, or memoranda. Contractor will be responsible for obtaining independent technical review (ITR). If agreed, the ITR may be performed by the Corps.

3. **SELECTION CRITERIA:** See Note 24 for general selection process. The selection criteria are listed below in descending order of importance. Criteria a through d are the primary selection criteria. Criteria e through g are secondary criteria and will only be used as tie-breakers among the highly qualified firms.

a. Specialized experience and technical competence in hydrologic investigations following guidance presented in COE **ENGINEERING** Memoranda (EM s), **ENGINEERING** Regulations (ER s), and **ENGINEERING** Circulars (FC s), including the following areas: (1) Flow-frequency analysis following WRC Bulletin 17B guidelines, including regional analysis and separation of snowmelt, cloudburst, and general rainstorm floods. Analysis may require evaluation of non-homogeneous flow data. (2) Rainfall-runoff modeling to develop hypothetical floods, and reproduce observed events. Analysis may include determining watershed physiography, hydrologic flood routing coefficients, concurrent precipitation and flow, loss rates, impervious areas, snowmelt, precipitation frequency, and the temporal and

APPENDIX E

Published:02/28/01 Seq#:11-00022 Type: CBD Bid
 ***** CBD BID *****

U.S. Army Corps of **ENGINEERS**, 600 M.L. King, Jr. Pl., Rm 821, Louisville, KY 40202-2230

C – **INDEFINITE DELIVERY TYPE CONTRACT FOR ENVIRONMENTAL AND ENGINEERING SERVICES PRIMARILY AT FORT CAMPBELL, KY WITHIN THE GREAT LAKES AND OHIO RIVER DIVISION BUT COULD BE ANYWHERE WITHIN THE DIVISION MISSION BOUNDARIES SOL W22W9K-1052-4074 DUE 032801 POC Contract Specialist, Denise Bush (502) 315-6209 CONTRACT INFORMATION:** The Louisville District plans to procure an **INDEFINITE** Delivery Type contract for Environmental and **ENGINEERING** Services primarily for Fort Campbell but could be anywhere within the Division Mission Boundaries. The contract will be accomplished by issuance of individual task orders not to exceed \$1,000,000 for the base period not to exceed one year, with an option for two additional extensions of one year each with a new \$1,000,000 amount for each option period awarded. The maximum contract value is \$3,000,000. Task Orders will be firm fixed price. *This announcement is 100% **SMALL BUSINESS Set-Aside**.* SEE NOTE 1. The contract will involve the preparation of various environmental documents, studies, and specifications for various military installations and civil works projects supported by the Louisville District, Corps of **ENGINEERS**. The scope of work and services will include all projects assigned to the Louisville District and may include any effort assigned to a District within Ohio River and Great Lakes Division Mission Boundaries when such work and services are considered applicable under the scope of this acquisition. To be eligible for award, a firm must be registered in the DOD Central Contractor Registrations (CCR) Registrar via the CCR Internet site at: <http://ccr2000.com> or by contacting the DOD Electronic Commerce Information Center at 1-800-334-3414. **PROJECT INFORMATION:** The work under this contract may involve areas of environmental compliance, including but not limited to: preparation of biological assessments [Endangered Species Act], environmental assessments and environmental impact statements [National Environmental Policy Act], 404 Permit Applications [Clean Water Act], archaeological surveys, site testing and data recovery [National Historic Preservation Act], and Historic **ARCHITECTURE** studies [National Historic Preservation Act], preparation of planning studies for military installations and civil works projects (including, but not limited to, risk assessments, mitigation planning and specification, environmental baseline surveys, biological monitoring (including preparation of monitoring plans), privatization support, integrated natural resource management plans [including component plans], endangered species management plans, integrated cultural resource management plans, wetlands management plans, aquatic ecosystem restoration (Water Resources Development Act), emergency stream bank restoration (Flood Control Act), pesticide management plans, preparation of military educational materials, various other military and civil works supporting studies; and preparation

and/or updating of existing databases (including but not limited to mapping, geographic information systems [GIS], and computer-aided design and drafting [CADD]). This should include what type of CADD system they employ and how they translate if required to intergraph. Use of global positioning system (GPS) is required. SELECTION CRITERIA: Submittals will be evaluated against the general evaluation factors listed in Note 24 in descending order of importance. The specific requirements must be identified in the SF 255. Items a through e are primary evaluation factors and f through g are secondary evaluation factors. a. Specialized Experience – Responding firms and proposed teams should demonstrate specialized experience and technical competence in the following areas: (1) Specialized experience and technical competence in the expected activities identified below, as evidenced by the resumes of the personnel assigned to this project, as well as the firm; Only resumes identifying the professionalism and specialized experience is necessary. (2) Demonstrate specialized experience in completing projects listed in Section 2, Project Information, for DOD including Army, Air Force, Navy and National Guard sites primarily within Louisville District, especially in those areas pertaining to the compliance with the procedural provisions of the Endangered Species Act. (3) Demonstrate specialized experience in completing projects listed in Section 2, Project Information, for DOD sites primarily within Louisville District, especially in those areas pertaining to preparing Federally Endangered Species studies. The contractor must possess detailed knowledge and have demonstrated experience in working with Federally-listed threatened and endangered species including the Indiana bat, gray bat and bald eagle. (4) Demonstrate specialized experience in completing projects listed in Section 2, Project Information, for DOD sites primarily within Louisville District, especially in those areas pertaining to conducting natural resource surveys for wetlands, flora, insects, mussels, birds, and bats. (5) Demonstrate specialized experience in completing projects involving radiotelemetry studies of endangered bats at DOD sites primarily within Louisville District. (6) Demonstrate specialized experience in completing projects involving Biological Assessments in accordance with the ESA and NEPA compliance for proposed Multipurpose Training Ranges at DOD sites primarily within Louisville District. (7) Demonstrate specialized experience in completing projects requiring preparation of Ecological Risk Assessments for DOD sites primarily within Louisville District. (8) Demonstrate specialized experience in completing projects requiring BASH Management planning and NEPA Compliance for DOD sites primarily within Louisville District. (9) Demonstrate specialized experience with preparation of educational materials for DOD sites primarily within the Louisville District. (10) Demonstrate specialized experience in ecosystem restoration (Section 206 WRDA). (11) Document specialized experience in emergency stream bank protection (Section 14, FCA). (12) Demonstrate specialized experience in working cooperatively and productively with U.S. Fish and Wildlife Service offices in Reynoldsburg, OH, Cookeville, TN, Bloomington, IN, and Rock Island, IL. Demonstrated ability to obtain US Fish and Wildlife issued permits to conduct studies of Indiana and gray bats, and the ability to meet future permit requirements. (13) Document specialized experience in working cooperatively and productively with the Louisville District Corps of **ENGINEERS** on matters related to Clean Water Act Compliance. (14) Demonstrate specialized

experience in working cooperatively and productively with State Historic Preservation Offices in Ohio, Kentucky, Indiana, Illinois, Michigan, and Tennessee. (15) Technical competence in preparing documents specified in Army Regulations (AR) 200-1, 200-2, 200-3 and 200-4; and **ENGINEERING** Regulation (ER) 200-2-2. (16) Quality Management Procedures. A brief Design Management Plan including an explanation of the firm's management approach, management of subcontractors (if applicable), quality control procedures and an organizational chart showing the inter-relationship of management and various team components (including subcontractors) must be included in paragraph 10 of the SF-255. b. Professional Qualifications. (1) Responding firms shall demonstrate capability in these primary disciplines (in order of priority): environmental sciences, wildlife biology, endangered species biology, ecology, aquatic/wetlands biology, ecotoxicology, ecological and human health risk assessment, botany, civil **ENGINEERING**, chemistry, program/project management, economics (as it pertains to natural resources and environmental impact assessment), soil science/geology, zoology, hydrogeology, prehistoric and historic archeology, history, historic **ARCHITECTURE**, and GIS/CADD. Firms shall provide two resumes for each discipline and at least one will be registered/certified in each discipline. *Firms must have state licensing for professionals, trade certifications, and licenses as required for projects located in Kentucky, Illinois, Indiana, Ohio, Michigan, and Tennessee.* The states of registration and certification of each team member must be included in each resume of Block 7. Include a matrix that shows the discipline, degree, years of experience, state(s) of registration/certification in each of the specialized experience categories for each person on the proposed team. c. Past performance on DOD and other contracts with respect to cost control, quality of work, and compliance with performance schedules. d. Capabilities to complete the work in the required time. e. Technical competence and capability to perform work within Corps of **ENGINEERS** and Department of Defense environmental programs and environmental compliance as it pertains to NEPA, Clean Water Act, and the Endangered Species Act. Specific knowledge of local conditions and project site features within the Louisville District area of responsibility. f. Knowledge of the locality of the project and state and federal regulatory requirements for the states of Kentucky, Tennessee, Indiana, Ohio, Illinois and Michigan. g. Volume of DOD contracts awarded in the last 12 months to the prime A-E firm. In Block 10 of the SF 255, responding firms should cite all contract numbers, award dates and total negotiated fees for any DOD contract awarded within the last 12 months to the office expected to perform this work. Please indicate all delivery orders awarded your firm by DOD agencies within the last 12 months under an **INDEFINITE** delivery type contract, regardless of the award date of the contract itself. Indicate date of delivery orders and fee for each.

APPENDIX F

Published:05/15/01 Seq#:08-29066 Type: CBD Bid

***** CBD BID *****

Department of The Navy Naval Facilities **ENGINEERING** Command, Atlantic Division, Contracts Office, Code AQ22D, 1510 Gilbert Street, Norfolk, Virginia 23511-2699
 C – **INDEFINITE QUANTITY CONTRACT FOR ACCOMPLISHMENT OF SERVICES IN SUPPORT OF THE NAVY SOL N62470-01-R-3008 DUE 061801 POC Ms. Bayla L. Mack, 757-322-8271 – Ms. Christine L. Foskey, Contract Specialist, 757-322-4165**
ARCHITECT-ENGINEER or ENGINEERING Services are required for preparation of studies, plans, specifications, cost estimates and all associated **ENGINEERING** services at various Stateside and overseas activities within the Atlantic Division, Naval Facilities **ENGINEERING** Command s corporate AOR (area of responsibility) (including **ENGINEERING** Field Activity, Chesapeake and **ENGINEERING** Field Activity Northeast areas). The majority of the work will be located within the Commonwealth of Virginia, the state of **WEST** Virginia, the Commonwealth of Puerto Rico, and **WEST**ern Europe, but may include the state of North Carolina, the states of Delaware, Pennsylvania, New Jersey, New York, Rhode Island, Massachusetts, Maine, Vermont, New Hampshire, Maryland, and in the District of Columbia; or at locations under the cognizance of **ENGINEERING** Field Activity, Mediterranean (Europe and Bahrain) and any other areas within the aforementioned AOR. The contractor s experience, through its own forces or its consultants, for locations in Virginia, North Carolina, **WEST** Virginia, Puerto Rico, and Europe will be given greater weight during selection. The requested evaluations will be in support of the Navy s Petroleum Storage Tank (PST) Program (consisting of underground and aboveground storage tanks) and will conform to applicable DOD instructions; and EPA, State and local regulations and guidelines. This contract will involve the accomplishment of the following under two major categories: (1) PST Compliance Program to include the completion of PST inventories, notification forms, and management plans; integrity evaluations of PSTs including API 653 certified tank inspections; design of PST and fuel facility improvements including, but not limited to, permanent leak monitoring systems, spill prevention equipment, and corrosion protection; preparation/modification of Spill Prevention, Control, and Countermeasures Plans (SPCC Plans); preparation of environmental reports and special project documentation (DD Forms 1391); preparation of plans and specifications to correct SPCC deficiencies; and the preparation of cost estimates for PST projects; use of direct push technology, installation of monitoring wells, soil and groundwater sampling, and completion of site checks at suspected leaking PST sites (including disposal of petroleum contaminated soil from boring/well installations), training of tank custodians in inventory control procedures and operations/inspections/maintenance of PSTs and supporting equipment; and (2) Oil Spill Response and Planning Program to include Facility Response Plans (FRP) under the Oil Pollution Act of 1990 (OPA 90); Oil and Hazardous Substance (OHS) Spill Contingency Plans; Overseas OHS Spill Response Plans (SPCR or Spill Prevention, Control, and Reporting) under the Final Governing Standards (FGS); Integrated Contingency Plans (ICP) as developed by the National

Response Team's ICP Guidance; OHS Spill Prevention Control and Countermeasures Plans (SPCC) (when part of an ICP or other integrated plan); Operations Manuals under 33 CFR 154, subpart B; Drills and Exercises to meet the National Preparedness for Response Exercise Program (PREP) Guidelines; Navy On-Scene Coordinator (NOSC), 29 CFR 1910.120(q) and other Spill Response Training; and Design of OHS Spill Contingency Plan facilities identified by FRPs, ICPs, OHS spill response plans for overseas. The A&E must demonstrate his and each key consultant's qualifications with respect to the published evaluation factors for all services with particular emphasis on work in Virginia, Puerto Rico, and WESTern Europe. Evaluation factors (1) through (5) are of equal importance; factors (6), (7) and (8) are of lesser importance and will be used as tie-breakers among technically equal firms. Specific evaluation factors include:

(1) Specialized Experience – Identify specific project experience and specialized experience of the firm, and list team members who will perform this work. Explain both firm and team experience in the following functions: (a) completion of PST inventories, management plans, leak detection projects, corrosion protection surveys, integrity evaluations; and SPCC Plans; (b) familiarity with Federal, State, and Overseas PST regulations (with emphasis on Virginia, WEST Virginia, Puerto Rico, and WESTern Europe), and local PST regulations (both existing and pending); (c) preparation of reports and project documentation, plans, specifications, and cost estimates for PST projects, including correction of SPCC and FRP/OHS deficiencies, fuel facility repairs and upgrades, and implementing Management Plan recommendations; (d) similar past projects at Navy/DOD facilities; (e) training personnel in inventory control procedures and maintenance/inspection procedures for PSTs; and (f) firms will be evaluated on their knowledge of local codes, laws, permits and construction materials and practices of the geographical area of the contract (greater weight will be given to the States of Virginia, WEST Virginia, the Commonwealth of Puerto Rico, and WESTern Europe); past experience in preparing FRPs, OHS spill prevention and contingency plans; Navy regional NOSC plans; drills and exercises, and Spill Response Training. These plans, drills and exercises will be prepared following current Federal, State, and Navy guidelines; (2) Professional qualifications and competence of the technical team proposed to accomplish this work in environmental, civil, cost estimating, mechanical, structural, geological and hydrological disciplines with emphasis in the interaction with UST regulators and familiarity with Federal, State, and local regulations and requirements relating to USTs. This includes: (a) active professional registration for prime and consultants in Virginia, North Carolina, WEST Virginia and Puerto Rico; (b) past experience (with present and other firms) and roles of proposed team on projects addressed in evaluation factor number one; and (c) ability to manage multiple projects at various stages of completion, and maintain quality and meet established deadlines; (3) Ability to perform work to schedules – Firms will be evaluated in terms of impact of this workload on the staff's projected workload during the contract period and in terms of ability to promptly respond to Government requests for services; Capacity to accomplish the work in the required time – Demonstrate the firm's ability to manage multiple projects at various stages of completion while maintaining quality and meeting established schedules. The A&E may be required to manage up to 40 different taskings concurrently at various stages of study and design over the life of this contract, and

maintain schedules for the required services including 24 hour response in urgent cases; (4) Past Performance – Firms will be evaluated in terms of past performance with Government agencies and private industry in terms of demonstrated long term **BUSINESS** relationships and repeat **BUSINESS** with Government and private customers, and performance awards/letters of recommendations received; (5) Quality Control Program – Firms will be evaluated on the acceptability of their internal quality control program used to assess technical accuracy in reports, to assure overall coordination between **ENGINEERING** and technical disciplines, their means of ensuring quality services from their subcontract laboratories; and to ensure technical accuracy and discipline coordination of plans and specifications; (6) Firm location (provided that application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the contract); (7) Volume of Work – Firms will be evaluated in terms of work previously awarded to the firm by DOD with the objective of affecting an equitable distribution of DOD A&E contracts among qualified A&E firms, including **SMALL** and **SMALL** disadvantaged **BUSINESS** firms and firms that have not had prior DOD contracts; and (8) **SMALL BUSINESS** and **SMALL** Disadvantaged **BUSINESS** Subcontracting Plan – Firms will be evaluated on the extent to which they identify and commit to the published **SMALL BUSINESS** Subcontracting Program. The following are the published Naval Facilities **ENGINEERING** Command goals expressed in terms of percentages of total planned subcontracting dollars for utilization of **SMALL BUSINESS**es as part of the contract performance: **SMALL BUSINESS** (SB) – 65%; **SMALL** Disadvantaged **BUSINESS** (SDB) – 12%; Women-owned **SMALL BUSINESS** (WOSB) – 5%; Historically Black Colleges/Universities/Minority Institutions (HBCU/MI) – 5%; Veterans Owned **SMALL BUSINESS**es (VOSB) – 3%; Services Disabled Veteran Owned **SMALL BUSINESS**es (SDVOSM) – 3%; HUBZone **SMALL BUSINESS**es – 2%. Large **BUSINESS** Firms shall submit their Navy-wide SF 295 (Standard Form 295, Summary Subcontract Report) with their Standard Form 255. The slated firms will be required to provide a preliminary subcontracting plan (support for **SMALL BUSINESS** subcontracting) as part of the interview. The contract requires that the selected firm have an on-line access to E-mail via the internet for routine exchange of correspondence, and have Central Contractor Registration. The contract scope may require evaluation and definition of asbestos materials and toxic waste disposition. Fee negotiations would provide for laboratory testing and disposition of all hazardous and nonhazardous waste materials generated during field investigations. Firms responding to this Mack (W-131 SN50L8Q8)

HOUSE COMMITTEE ON SMALL BUSINESS

"Procurement Policies at the Pentagon"

June 20, 2001

Prepared Remarks of Maurice Allain
Phoenix Scientific Corporation

Good Morning Mr. Chairman and Members of the Committee. Thank you for inviting me to speak again before you on a subject that is of major concern to us, and to other members of the small business community. My invitation to attend this morning's hearing came this time from the minority members of this committee. My last appearance was at the behest of its majority members. I note with satisfaction that concern with procurement practices at the Department of Defense with regard to small businesses is shared by both sides of the aisle.

Since the decline of the Soviet state, the Department of Defense (DOD) has undertaken some 40 major acquisition initiatives, some of them have been successful, for others it is too early to completely evaluate. However, the record is clear that contract consolidation, or bundling, has adversely affected small businesses. It is also clear from work by the General Accounting Office and the DOD Inspector General (IG) that bundling has failed, except in rare instances, to show the substantial efficiencies claimed for it. In actuality the DOD IG has shown that multiple year, multiple award bundled contracts have cost the government more than would otherwise be the case.

In the nineteen months since my last appearance before you, my company has been devastated by DOD's bundling practices. In particular, the Flexible Acquisition Sustainment Tool or FAST has, or will absorb, most of the opportunities my company may have had to compete for work at the Air Force Materiel Command for the next seven years. Over this period we have strenuously objected to the FAST procurement, we have challenged the assignment of NAICS codes, violations of the Competition in Contracting Act (CICA) and violations of the Small Business Reauthorization Act (SABRA), all to no avail.

Before the GAO we demonstrated that the FAST procurement failed to show "substantial savings" to the Department of the Air Force, a point on which they agreed. However, our challenge failed as the result of a peculiar interpretation of SBRA. In order to determine that FAST was suitable for small business, which was the basis for denying our protest, and therefore not in violation of SBRA, the GAO accepted that some firms who claimed to be "small" by the Air Force were competing for FAST and therefore FAST was not unsuitable for small business competition. A thin reed indeed.

We certainly were not alone in our contention; the Small Business Administration formally appealed the decision to procure FAST to the Secretary of the Air Force and to the White House; an unanswered letter was sent from the Black Presidents Roundtable association to the Secretary of Defense condemning FAST; a letter urging the SBA Administrator to more vigorously challenge FAST was sent by almost 40 members of this House; and finally a letter urging the GAO to strongly consider ruling against the FAST procurement was sent by the Ranking Minority Member of this committee. Again to no avail.

And finally, the FAST procurement was vetted by the Office of the Undersecretary of Defense for Acquisition, Technology and Logistics. The report on FAST by Mr. Ivory Fisher, which I believe this committee has a copy, unambiguously showed that the FAST procurement was wrong. Again to no avail.

All that can be shown for these efforts is a questionable agreement made by the Air Force and the SBA to play "nice." It is ironic that two of the parties to this agreement, the procurement officer Mr. Burton will be retiring this November and the undersecretary of the Air Force; Mr. Deluca will most likely beat him out the door leaving the FAST mess to others. And here, nineteen months later, with my company standing in ruins, this committee has failed to report out HR 1324. There would never have been a FAST, or the injury to my company, if this legislation had been in being as recently as May of this year. This legislation will clarify the semantically loopholes which allowed FAST to wriggle through.

Mr. Chairman and Members of the Committee, I urge you to act swiftly on this legislation. I have every reason to believe that the current administration, joined by a bipartisan majority in the House, is committed to resolving these issues once and for all. A careful review of the statements made by, then candidate, George W. Bush at the second presidential debate, in remarks made to the editors of MBE Magazine in November 2000, and later reiterated by the Right Reverend Kirbyjohn Caldwell earlier this year as guest on the "O'Reilly Factor" talk show, make it clear that access to competitive contract opportunities by small businesses is essential for the continued good working of our economy.

Thank you for the time permitted me. Are there any questions.

90

TESTIMONY OF
KATHLEEN K. DIAMOND
PRESIDENT & CEO
LANGUAGE LEARNING ENTERPRISES, INC
WASHINGTON, DC
On behalf of
GRASSROOTS IMPACT, INC.
BEFORE THE
COMMITTEE ON SMALL BUSINESS
OF THE
CONGRESS OF THE UNITED
HOUSE OF REPRESENTATIVES
FOCUS ON PROCUREMENT POLICIES
OF THE
DEPARTMENT OF DEFENSE
JUNE 20, 2001

Good morning, Mr. Chairman and members of the committee. Thank you for this opportunity to testify before you this morning about my experience with the procurement policies of the United States Department of Defense.

My name is Kathleen K. Diamond. I am the President and CEO of Language Learning Enterprises, Inc. (LLE), a full service language company headquartered in Washington, DC, which provides foreign language support to public and private organizations across the United States. In other words, we facilitate communication between speakers of different languages either by translation, interpretation or instruction. LLE employs 18 full-time staff and more than 300 independent contractors. Our annual receipts are just under 2 million dollars. We have been in business 20 years.

In addition to managing and growing LLE, I have also played an active role on the National Association of Women Business Owners (NAWBO) Board of Directors as VP International and I am currently serving on the Board of Directors of the National Foundation for Women Business Owners (NFWBO). I was recognized by my peers in 1999 as the "International Woman Entrepreneur of the Year" award in Brussels, Belgium.

Today, I am testifying on behalf of Grassroots Impact, Inc. This company represents approximately 200,000 business owners on Capitol Hill with special focus on minority and women owned businesses.

In 1979 when I founded LLE I quickly learned that the United States government was a major purchaser of language services. Accordingly, I began the process of educating myself on the arcane process of federal contract procurement. My efforts were rewarded in 1981 when LLE was granted its first contract with the United States Information Agency (since absorbed by the Department of State). It was a multi-vendor, indefinite quantity, indefinite delivery, fixed price contract for language training of Foreign Service personnel scheduled for overseas assignment. The bidding was small business set-aside with no consideration for the gender/race of the owner.

As a result of the 1988 Women's Business Ownership Act "woman-owned" was added to the boxes to check under section K certifications and representations in all federal requests for proposal. LLE began responding to request for proposals from the Department of Defense for language training, as well as for translation in mid 1980. Competition in the language training area was limited in the early days to a handful of capable vendors. Most of whom were small businesses, given access to federal contracts by virtue of the set-aside clause.

Today there are twice as many companies in the language business; the majority male owned and no longer classified as small businesses. Procurement policies changed to accommodate the growing size of the business by no longer making the procurement a small business set-aside thereby making it harder for smaller and newer companies to compete. Although the gender of the owner continues to be solicited it bears no weight on the final outcome in the allocation of dollars to the winning bidders. There is simply no incentive to award a contract to a woman-owned firm all things being equal.

Notwithstanding the above, LLE has been successful for nearly two decades in winning contracts with the Pentagon and other agencies of the DOD for language training. We have been considerably less fortunate in our attempts at winning translation contracts. I believe this is because government contracts are written in such a way as to preclude access to unknown and small enterprises. From my company's perspective I cite as a case in point a very large multi-year contract for language services—translation and interpretation—put out to bid by NASA in 1996. LLE was compelled to team with a “wired” engineering company that would be the prime contractor even though the scope of work was primarily language services. Requirements for non-language related “deliverables” were also imposed making the bid most certainly outside of LLE's reach without the engineering firm's imprimatur.

Such “alliances” generally do not result in winning bids as they are forged only to meet unreasonable requirements. Subsequently, and quite frankly, LLE has not responded to DOD request for proposal in the translation/interpretation domain. We have found the process too cumbersome, often requiring LLE to bid as a sub-contractor to a large business and most importantly, the fixed price, indefinite quantity format forces a low bid over high quality award.

The DOD practice of low bidding is especially damaging to small business. In a small company every contract must sustain itself; there is no room for a “loss leader” as there might be in a large company with numerous profitable contracts to carry the low ball. My experience is that small business, in general and women-owned business in particular, can ill afford debt to finance the federal government and yet this is frequently what happens. A woman-owned firm bids low to win, is awarded the contract only to find that not only is her price low, she also has to deal with government payment practices (i.e., SLOW) and the like. Personally, I have been relieved not to win certain DOD contracts where the winning bids were so low I was convinced it would have been a losing proposition to have serviced the contracts. In fact, small companies sometimes do not survive, thereby extending the perception that government should be wary. This need not be so.

I believe that small, women-owned businesses are capable of providing the highest of standards to DOD procurement needs—products and services. I understand that the types of products and services purchased are predominantly made/offered by large mainstream business in the military infrastructure with decades of experience and track records. Nonetheless, if the government intends to respect its own mandate to

increase the federal contracting to women-owned firms to 5% as set forth in the 1994 Federal Acquisitions Streamlining Act, then different consideration must be given to bids from these companies.

I recommend DOD update its list of products and services purchased to reflect today's market. Women-owned businesses are excellent sources for computer support, graphic design, consulting, management and personnel development and a myriad of other business services not classified in the search engines of the current procurement directories. It is difficult for government buyers to locate small business vendors, as they do not fit into the old manufacturing codes.

Secondly, although DOD is doing a better job in reaching out to small business through its "marketplace showcases" where buyers set up booths and invite vendors to visit, there should be more follow up afterwards. Furthermore, a concerted effort should be made to invite an appropriate mix of vendors. No sense inviting LLE a language company, to a showcase for hardware buyers.

Thirdly, it is my observation that more contracts would be awarded to women-owned businesses if these businesses could bid on smaller contracts and bid as prime. In other words, I do not think the practice of "bundling", i.e. combining several small projects into one for contracting purposes, is helpful to small business. In fact, I am not even sure that it is beneficial to the government either. In my earlier example of the NASA request for proposal, LLE could have bid as prime and offered a high quality, fairly priced language service had the scope of work not included oversight and other administrative responsibilities such as visa arrangements, security clearances and the like.

Lastly, as an entrepreneur, I cannot help but believe that there are many activities currently undertaken by government that could be better handled by industry. As part of your investigation into DOD procurement policies you may well discover that small business would have more business if more non-governmental tasks were put out to bid. In my own industry, for example, LLE competes against deeply entrenched, well-funded government agencies with language missions of their own. Without interfering with national security, I believe small and big businesses in the private sector can offer cost effective, high quality language service. The same must be true for many business and professional services, not to mention computer and technical support.

In closing, I would like to thank the Chairman and his committee for their initiative in this important aspect of government fact finding. It is one thing to place statutes on the books and establish procurement goals. It is another to breath life into them so that government and business alike can thrive.

I am happy to take any questions you might have.



Vietnam Veterans of America

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A Not-For-Profit Veterans Service Organization Chartered by the United States Congress

Testimony

of

Vietnam Veterans of America

**Richard F. Weidman
Director of Government Relations**

Before the

**Committee on Small Business
United States House of Representatives**

Regarding

**Pentagon Procurement Policies and Their Impact on
Veteran-owned Businesses**

June 20, 2001

Chairman Manzullo, Ranking Member Velasquez, and distinguished Members of the Committee, Vietnam Veterans of America (VVA) appreciates the opportunity to share our views here today. VVA was a strong advocate of the legislation that became Public Law 106-50, and continues to press for full and proper implementation of the law at the earliest date. We are grateful to this Committee and all of the other many key players in the Congress who helped shape and pass this landmark legislation.

A significant part of the current efforts of VVA and other veteran small business advocates is our concern in regard to the Department of Defense (DoD) procurement policies, practices, and performance as they pertain to small business, particularly service disabled veteran owned businesses. As DoD does more than half of the procurement activity of the Federal government, it is natural that we should look to them as well as the Department of Veterans Affairs (VA) to be the leaders by example in the Federal government in surpassing the 3% minimum for procurement from service disabled veteran owned businesses.

The Small Business Administration (SBA) estimates that there are more than 4 million veteran-owned businesses in the United States. Between two and three hundred thousand of these are service disabled veteran owned businesses, although nobody knows the true number of service disabled veteran owned businesses because nobody has counted. Even when Congress mandated that such a study be done in late 1997, the Office of Management & Budget prevented any scientifically valid survey being done.

Many of these service disabled veteran business owners are Vietnam veterans. Many are members of our organization. Given its enormous and multifarious needs, one would think that the Defense Department would take maximum advantage of the talents and services offered by these former service members-turned-business owners. Unfortunately, this is simply not the case.

Even acquiring data on the number of veteran-owned businesses DoD contracts with is difficult. For example, on June 15 of this year, my office contacted the DoD Directorate for Information Operations and Reports' Washington Headquarters Service seeking information on the number of service disabled owned businesses and other veteran-owned businesses with either prime or subcontracts with DoD. We were told that 2001 was the first year that their office had actually added a field in their database to track this kind of information...an astonishing admission that speaks volumes about the low priority the Department places on this issue.

As of this date DoD estimates that there are 32 veteran owned businesses with prime contracts totaling .02% of all procurement activities. As of yet, DoD has no mechanism for even tracking the service disabled owned businesses, and thus has no figures. Similarly, no information regarding subcontracts is apparently available.

DoD's outreach efforts regarding procurement opportunities are also anemic. There is no hyperlink on the Department's internet portal site—DefenseLINK (<http://www.defenselink.mil/>)—to DoD's Office of Small and Disadvantaged Business

Utilization (<http://www.acq.osd.mil/sadbu/>). Even OSDBU's own website does not yet contain information specific to the needs of veteran business owners. OSDBU's "Veteran Owned Small Business Program" page is "currently being developed." This is also astonishing in light of the fact that it has been nearly three years since Congress passed PL 106-50, The Veterans Entrepreneurship and Small Business Development Act of 1999. Section 502 (a)(2) of PL 106-50 mandates that

"The Government-wide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year."

The bi-partisan intent of Congress was quite clear when it passed this law: each federal agency, department, and entity was to move out smartly to actively encourage and otherwise assist service disabled veteran entrepreneurs to secure a minimum of 3% of federal contracts and subcontracts. To date, we have no evidence that this has happened at DoD. Indeed, the Department seems not to have noticed that PL 106-50 even existed until just this year.

VVA would also note that the Small Business Administration (SBA) has made no move to ensure that agencies are taking reasonable steps toward implementation. In a hearing before this panel a month ago, it was revealed that SBA has even allowed agencies to illegally establish minimum standards of less than 3%, even some with 0% minimum! (Some cynics in the advocacy community for service disabled owned business report that those agencies are not even achieving the 0% goals.) To our knowledge, SBA has not yet corrected this illegal activity.

We must note, however, that the new Administration itself has not as of yet issued implementing regulations regarding PL 106-50. Our understanding is that while said regulations have been drafted, they still await final concurrence from the Federal Acquisition Regulations Council and OMB. It is our understanding that there is a "logjam" of paperwork that is pending as a result of all regulations being returned to the agency of issue on January 20, 2001. We believe that it is highly unlikely that President Bush even knows that this problem exists. That makes it incumbent on this Committee to let him know that it is his duty to cut the bureaucratic red tape and move forward on this commitment to service disabled veteran business owners.

VVA is having great difficulty understanding why this Administration—which campaigned on a "veteran friendly" plank—are taking so long to implement a law that will only enhance the well being of the economy as a whole and the lives of veteran entrepreneurs in particular. We believe that it is because his staff has not informed him and key advisors to the President, who have the power to move forward quickly, that this chronic problem has developed.

Mr. Chairman, while VVA realizes that implementing new policies and statutes can sometimes take time, we also expect that executive branch agencies will work to implement said policies and laws in good faith and with all due and deliberate speed. In

the case of opening up Pentagon procurement opportunities to veteran entrepreneurs, this has simply not happened.

The Task Force for Veteran Entrepreneurship (Task Force) has virtually all of the veterans organizations represented, from the American GI Forum to the Veterans of Foreign Wars (VFW) to the Disabled American Veterans (DAV) to the Black Veterans for Social Justice to the Paralyzed Veterans of America (PVA), plus more than twenty other groups and veteran owned business leaders. Although not formally a part of the Task Force, The American Legion works closely with the Task Force and often hosts our meetings at their Washington headquarters. This collection of advocates has worked together since 1999 for the goals set forth in Public Law 106-50. The Task Force continues to meet monthly (except August) pressing for full implementation of both the letter and the spirit of the 1999 law.

The Task Force charged the Chairman with writing the attached letter to the President in regard to this issue of no progress on procurement minimums for service disabled veteran owned businesses. A copy is attached. A similar letter from this Committee and your distinguished partners in the other body of Congress would be helpful as well.

The Task Force also had Mr. Tim Forman of the Office of Small & Disadvantaged Business Utilization (OSDBU) at DoD as a speaker at our last meeting, on June 12, 2001. Mr. Forman expressed a willingness to work with us, and admitted that not nearly enough has been done thus far to even begin to properly implement the law.

We have proposed to Mr. Forman that Task Force members continue to meet with him informally to devise workable strategies, tactics, and program models that will be effective in advancing the objectives of P.L. 106-50. We are attempting to arrange for our regular July meeting and conference call at the Pentagon. The Task Force has urged DoD to issue a "Policy Letter" on the 3% minimum for service disabled veteran business owners to all of DoD, as it apparently takes up to seven years to get a Policy Directive issued by the Secretary of Defense.

In order to help rectify this problem, VVA strongly believes that the Committee should commission the General Accounting Office to:

1. Investigate the specific plans, practices, and performance as to how each Federal department, agency, and other entity are moving to implement PL 106-50.
2. Monitor each agency's compliance with PL 106-50 on an annual basis for a period of not less than 10 years beginning in FY 2002.
3. Whether there is any evidence of an informal network, practices, or tacitly agreed methodologies for circumventing the 3% minimum for disabled veteran owned businesses at Federal agencies.

VVA also believes that this Committee should consider what sanctions might well be appropriate for agencies or for individual managers and procurement decision makers who

fail, deliberately or otherwise, to comply with PL 106-50 requirements, or with other goals for procurement set by the Congress.

VVA urge the Committee to also consider legislation that would accomplish several things to make the intent of the Congress crystal clear to the bureaucracies. First, VVA urges that it be made clear that the 3% minimum applies to both contracting and subcontracting at each and every Federal agency. Second, that the Congress make it clear to the General Services Administration (GSA) and to each Federal agency that purchases from the GSA Schedule are subject to the same 3% minimum for special disabled veteran owned businesses, as well as other similar goals established by law. Third, that the Congress mandate that all agencies hold back 1% of all prime contract payments until such time at the end of the contract and until the prime contractor can demonstrate that all subcontract volume and percentage pledged to service disabled veteran owned businesses and all other small businesses has been in actuality met. (This would go a long way toward correcting the problems of "bundling" for all small businesses.

Mr. Chairman, both Vietnam Veterans of America (VVA) and the Task Force on Veterans Entrepreneurship are not interested in giving Federal officials who are sent up here a hard time, nor in wholesale bashing on "bureaucracy." We do, however, believe in accountability of Federal officials in both appointed and civil service/senior executive service being held accountable, including subject to criminal sanctions if and when such officials act in an illegal manner or collude to acting in an illegal manner.

VVA is interested in results of actual contracts and that Public Law 106-50 be implemented in such a manner as to achieve that objective. Right now many of the permanent employees of agencies within the Department of Defense and each of the components of the major services (e.g. Army, Navy), SBA, the Department of Transportation, an on and on think they can ignore the Congress and the law with impunity.....and thus far the true bureaucrats (as opposed to the true public servants) have been proven to be correct in this assumption. We ask that this Committee, Mr. Chairman, take the steps to ensure that flaunting the law is punished and mocking the Congress is ended.

Mr. Chairman, Vietnam Veterans of America (VVA) deeply appreciates your commitment to helping ensure that our nation's veteran entrepreneur's receive the maximum opportunities to realize the American dream. On behalf of our National President George C. Duggins, please accept VVA's sincere thanks for providing us with the opportunity to share our views with you today.

June 8, 2001

Congressman Mark Udall
115 Cannon HOB
Washington, D.C. 20515

Dear Congressman Udall:

This letter is a collective effort on behalf of the undersigned companies to thank you for your efforts on behalf of small businesses. We collectively encourage hearings to be held in the Small Business Committee regarding contract bundling and the relationship between government agencies and small businesses.

While we recognize that Congress has made extraordinary efforts to improve opportunities for small businesses in this country, the reality is that few of us are being given the opportunity to benefit from these programs. Contract bundling has reduced bidding opportunities and directed most government contracts towards large companies. Agencies encourage teaming in these bundled contracts but the reality is that these opportunities never materialize for all but a select few companies.

Furthermore, government contracting procedures put most small businesses into a Catch 22 situation. As part of Past Performance evaluations in awarding contracts, government agencies require previous experience working with the government. As an example, we have actually been told by officials at the undersecretary level that we had a "snowball's chance" (their words) of getting any work with the Department of Defense. This has effectively precluded all but existing contractors from government contracts. This is in spite of the fact that our companies are able to demonstrate proven performance over many years in the commercial and international sectors.

All we are asking is that we be given a level playing field when bidding government contracts. As any of us that has gone through a failed proposal debriefing can tell you, government agencies use any and every reason to eliminate us from competition.

As taxpayers and as small business owners, we feel it is important to first eliminate policies such as contract bundling which limit competition and thereby increase costs and stifle innovation. Secondly, previous government contract experience needs to be eliminated as a criterion for awarding contracts. Let us be judged on our abilities not on a relationship, or lack thereof, with an agency. Third, re-evaluate the concept of "best value" in awarding a contract. Agencies abuse this process to eliminate companies without adequate justification. Additionally, Congress should look at small business size standards. Currently, we are forced to compete against "small businesses" with up to 500 employees and revenues of \$50 million or more.

Small businesses have and continue to be the backbone of our economic system. We provide the highest quality services because our survival in today's competitive markets depends on it. It is small business that provides most of the jobs in this country.

Please feel free to contact the following companies should you need any additional information or input. Any of us can provide a litany of frustrations we have experienced as small businesses trying to provide service in the government contracting arena.

Sincerely,

Linda Fucik
President, The SeaCrest Group

And on behalf of the following:

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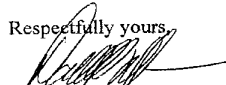
June 19, 2001

Ms. Deidre A. Lee
Director of Defense Procurement
Office of the Secretary of Defense

Dear Ms. Lee,

DeRossi & Son Company is a major supplier of Class A dress coats for the Armed Services. We have submitted information to the Defense Supply Center Philadelphia for a waiver to use a foreign yarn that is part of a fabric used in the manufacture of "chest pieces". These chest pieces, produced in the United States, are a component of all uniform Class A coats for the military. This yarn is goat hair and can not be woven in the United States. I have just been informed that this goat hair was foreign. Before this I had no knowledge. My supplier informed me and in turn I immediately informed DSCP. It is urgent that this waiver is granted before the production of uniform coats for the military comes to a grinding halt. Hundreds and hundreds of people will be out of work, causing irreparable damage to DeRossi & Son Company and other American companies producing this item that are all Small Business concerns.

Respectfully yours,


Donald DeRossi
President