PROCUREMENT POLICIES OF THE DEPARTMENT OF DEFENSE WITH REGARD TO SMALL BUSINESSES—FINDING SOLUTIONS TO PROBLEMS THAT EXIST

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

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PROCUREMENT POLICIES OF THE DEPARTMENT OF DEFENSE WITH REGARD TO SMALL BUSINESSES—FINDING SOLUTIONS TO PROBLEMS THAT EXIST

THURSDAY, SEPTEMBER 6, 2001

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

The Committee met, pursuant to call, at 1:10 p.m., in room 2360, Rayburn House Office Building, Hon. Donald A. Manzullo (chair of the Committee) presiding.

Chairman MANZULLO. Good afternoon, and welcome to this hearing of the Committee on Small Business. We should note because of the joint session with the President of Mexico, we had to move this from 10:00 to 1:00. And originally Secretary Aldridge was all set to come, in fact I talked to him yesterday afternoon, and I just wanted to read this letter:

I very much regret not being able to appear before the House Committee on Small Business this morning. I am most grateful to you and the Committee for accommodating the demands of my schedule in the face of your need to reschedule today's hearing.

I have every confidence that our Director of Small and Disadvantaged Business Utilization, Colonel Curtis Wright, will prove an able representative in any stead. I have grown to depend on his experience and judgment in these matters.

As you know, one of my five goals is to improve the health of the industrial defense base. I consider small businesses to be an important part of that base. I look forward to working with you, your Committee and Congress as we grapple with these important questions.

I asked Secretary Aldridge if there is any way possible that he could be at the hearing this afternoon. He went through his calendar in great detail with me, and demonstrated to my satisfaction indeed the fact that he had people coming in from all across the country on three major reviews. It was just physically impossible for him to be here.

He again expressed his desire to come and testify, and we will schedule another date, I think at this point it is going to be around the first part of October, dealing again with procurement and contract bundling.

So I would like to have this letter made part of the record, and the Secretary expresses his regrets for not being here.

[The information may be found in appendix.]

Chairman MANZULLO. Annually the Federal Government spends approximately $200 billion for 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 contractor awards, or more than 50 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—you know, this should be in the present, presently.

Continuing. Small business still has major problems with the way the Pentagon does business. It is the new administration's opportunity to correct those errors. 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.

To resolve these problems there is a need for receptivity to new thinking and new ideas, not just doing things as they were done in the past. This hearing focuses on past problems for the purpose of finding solutions to these problems. I trust the Pentagon will pledge to work with Members of Congress and staff to resolve those issues.

Thank you for participating in the hearing. I thank the audience for coming here.

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

Chairman MANZULLO. I now yield for the opening statement of our Ranking Member Ms. Velázquez, and I trust that you had a good August.

Ms. VELÁZQUEZ. Well, I guess so, yeah.

Chairman MANZULLO. We had a tremendous hearing down in New Mexico at Los Alamos, uncovered absolutely incredible gross incompetence by the Department of Energy, and to the exclusion of the people living down there, and we are in the process of working with you, I just thought that I would let you all know what happened down there.

But it got very, very interesting and really pointed out, I think, the disgrace that is taking place with that agency with regard to the way it is treating small businesses, but that is another agency.

Ms. Velázquez.

Ms. VELÁZQUEZ. Yeah. Today it is the Department of Defense. Thank you, Mr. Chairman.

Today is the seventh in our series of hearings examining Federal agencies' contracting practices. The reason we have paid such close attention to this subject is simple. We all want to ensure fairness and opportunity for small businesses doing business with the Federal Government. So we are here again to ask the Pentagon why it is contracting practices are so unbalanced and so unfair, costing small businesses $2 billion in lost business and the taxpayers untold lost savings. I hope to hear, members of this Committee, this will not happen again, but I don't think we will hear it, because it has happened again over and over for years.

What we will hear is the same old tired talk about how the Department of Defense is making an effort to reach out to and court small businesses, but as our colleagues know, the Pentagon has less than nothing to show for this effort.

On that point this morning, I was joined by Members of Congress and the small business community to release score two—scorecard two, our annual assessment of Federal procurement practices. Our conclusions are simple and straightforward. Unfortunately, they are also bad. Last year the government had its worst record ever of contracting with small businesses.

In particular, the Department of Defense, the government's largest buyer, earned a D minus. This grade placed it among our distinguished failures for its inability to meet any of its small business contracting goals. This year the Department of Defense did not meet its small business goal of 23 percent. Contracts to small business have declined by more than 41 percent since 1997.

Small disadvantaged business and AA program participants fared much worse. Between 1998 and 2000, contracts to disadvantaged firms fell 52 percent. The AA program fell 30 percent. Women-owned business did almost as poorly with a 20 percent drop in contracts during the same time period.

Of course the Pentagon is not alone. For the first time in 7 years, all of the Federal Government failed to meet any of their small business contracting goals. The two main causes of these unfair practices are contract bundling and the lack of personal commitment by officials at the Pentagon.

Bundling, as we all know, is the trend toward supersized megacontracts that only big companies or established prime vendors can bid for. These contracts systematically exclude small business in favor of unproven theories of efficiency or economies of scale. Not once has a government official offered proof of a single cent saved through bundling, not once. In fact, one very limited study commissioned by the Pentagon indicated cost savings in bundling are merely—this is the exact word—intuitive. In other words, contract officers think that they are saving money by bundling, but not one can actually show us the money. Moreover, the Pentagon's own study argued that consolidation of contracts means more subcontracts, which in turn are not monitored for small business goals.

So in the end our study may be overestimating how much business the Pentagon does with small firms, and yet the Defense Department officials still refuse to see the problem. This long-running problem and lack of agency commitment has forced our hand here in Congress. This year we reintroduced H.R. 1324, the Small Business Contract Equity Act. This bill would allow bundling only if agencies met their small business goals. This will change the current system where agencies are both the jury and the court of appeals for their own disputed contracts. This bill has broad bipartisan support and was passed out of the Small Business Committee last Congress.

I hope Congress will take up this legislation soon. Mr. Chairman, the stakes in this debate are very high for small businesses. I hope that the Defense Department representatives here will not simply brush off our well-documented complaints, because this is about

keeping small business in business. It is only fair to let those people who want to compete and can compete.

To close I will thank the witnesses who took the time to be here today, and I look forward to hearing what you have to say.

Thank you, Mr. Chairman.

Chairman MANZULLO. Thank you very much.

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

Chairman MANZULLO. We are going to go in the order of Ms. Bobbie Gentile going first, then to Colonel Wright. Ms. Gentile has to catch a plane. If she gets up in the middle of the hearing and leaves, it is because she is going home.

Ms. Gentile, the rules are if you see the—it is a 5-minute testimony, and if you see the green light, you are okay; yellow light, you got 1 minute; red light is to stop. We look forward to your testimony. Could you move the mike closer to your mouth?

STATEMENT OF BOBBIE GENTILE, PRESIDENT/OWNER, Q-MARK, INC.

Ms. GENTILE. Good morning, Mr. Chairman and members of the Committee—afternoon. Thank you for granting me the opportunity to testify before you today.

My name is Bobbie Gentile, president and owner of Q-Mark, Incorporated, a small woman-owned business in Dayton, Ohio. Q-Mark is a manufacturers representative firm that handles government procurements to companies that we represent. I have five employees, three of whom are the sole providers of their household.

I am the president of the National Association of Manufacturers and Representatives, and I am a member of the National Federation of Independent Business.

Over the past 11 years I have expanded my business successfully. The bulk of my business' income is based on sales to Defense Supply Center in Columbus, Ohio. As DSCC automated their systems, I invested the money to make sure that Q-Mark had the most current equipment necessary to handle government procurement, which was extremely costly.

As president of the National Association of Manufacturers and Representatives, I have been hearing from small businesses nationwide concerning contract bundling. I have with me today copies of letters that these companies have written to their Congressmen. For years these companies have been a valuable partner to the Federal procurement system. Now we find ourselves in the position of being displaced due to the new initiative of contract bundling.

I have attended several meetings and have spoken at length with numerous personnel from DSCC regarding contract bundling. If you were to ask them today if they bundle contracts, their response to you would be no. In order to get around this controversial subject, new names are being assigned to these solicitations, such as third-party logistics, prime vendor, virtual prime vendor, et cetera. All of these avoid the negative name of contract bundling.

While most small businesses agree we need to streamline government spending, I am not sure why it has to be at the expense of the small business. The large prime contractors seem to be receiving a larger piece of the pie and then being rewarded to place a small percentage of their business with selected small business

contractors. Over and over we hear from large primes that they are decreasing their vendor base and will not accept any additional vendors. Once again, the small business is hurt.

I brought with me today a copy of the Trident/TASCI initiative, a solicitation that was issued by DSCC. Although it has been canceled, it is to be reissued. It contained a total of 88,000 part numbers, yet DSCC did not consider this to be a bundle. It was labeled a third-party logistics solicitation. Had this solicitation gone forward, the majority of small businesses would have been unable to participate. The government was requiring that industry have sufficient staff to forecast the needs of the government's customers and have staff available to their customers 24 hours a day, 7 days a week. The solicitation demanded that industry originally submit pricing on 60 percent of the part numbers listed; however, before they canceled the solicitation, they reduced this to 40 percent.

The request for proposal was based on 2 years with option years that would take this business off the street for 10 years. The annual dollar figure on the proposal was estimated to be $2 billion per period or $10 billion for the life of the contract.

I have with me today videotapes of a meeting that I attended at DSCC on this initiative. On these tapes you will hear DSCC state that this is not a bundled contract, that 50 percent of these items had zero demand level, and that they did not know the cost savings that would result from this initiative. At this conference I approached one of the primes about teaming and had my business card handed back to me.

Most recently a business-to-business conference was held by Procurement Technical Assistance Center, which is funded by DLA. At this meeting several primes were available to discuss the teaming concept. Some of the companies asked if small business was willing to inventory the product and hold their price for 10 years. Another vendor stated that they would be marking the product up 80 percent and requested that my small business give them special pricing.

Based on the information obtained at the conference, I did not see any way small business can team with the prime contractors. The companies seemed to want to pass the risk to the small business by requesting us to reduce our profits and stock the inventory while they mark those part numbers up and charge the government outrageous prices.

Recently I have been advised that DSCC is in the process of reviewing for possible solicitation a new initiative called Ticonderoga, which encompasses 100,000 part numbers. Is DOD mandating that all procurement agencies pursue this type of business of contracting?

On behalf of the National Association of Manufacturers and Representatives, we urge you to support Congresswoman Velázquez's bill, H.R. 1324, which will stop contract bundling. I believe that bundled contracts will not only destroy countless small businesses, it will reduce the industrial base, put government in sole-source positions, eliminate competition resulting in higher prices, and put government spending behind closed doors.

Thank you for the opportunity to present before you the views of this small business on this important issue.

Chairman MANZULLO. Thank you. I am also a cosponsor of Congresswoman Velázquez's bill, H.R. 1324, and thank you for your leadership on that.

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

Chairman MANZULLO. Our next witness is Colonel Curtis A. Wright, United States Air Force, who is the Acting Director of Small and Disadvantaged Businesses, Department of Defense, who came to this hearing on 1 day's notice.

And we appreciate your coming and look forward to your testimony, Colonel.

STATEMENT OF CURTIS A. WRIGHT, COLONEL, USAF, ACTING DIRECTOR OF SMALL AND DISADVANTAGED BUSINESSES, DEPARTMENT OF DEFENSE

Colonel WRIGHT. Good afternoon, sir. Secretary Aldridge asked me to relay his regrets for not being able to attend today. He asked that his testimony be read into the record and that I be allowed to present his oral statement to you.

Chairman MANZULLO. Without objection.

Colonel WRIGHT. Yes, sir.

The oral statement of the Honorable Pete Aldridge, Under Secretary of Defense for Acquisition, Technology, and Logistics, before the U.S. House of Representatives Committee on Small Business, September the 6th, 2001.

Mr. Chairman, Madam Ranking Member and members of the Committee, I am very pleased to be with you here today. Thank you for this opportunity to discuss the issue of small business and its relationship to our national security.

As the Under Secretary of Defense for Acquisition, Technology and Logistics, my portfolio oversees the largest portion of the small business contracts anywhere in the United States Government.

I take this responsibility very seriously. I know the members of this important Committee have spent a great deal of time becoming experts on this critical matter. Therefore, I have been looking forward to this hearing and the opportunity to discuss this subject.

One of my jobs is to enhance our national security by bringing forth the very best systems for our military forces. Our airmen, soldiers and sailors risk their lives daily and deserve the best products and services to support the mission. But beyond our moral obligation to them is one of cold practicality. Manpower is no longer an advantage that we can count on in the current geopolitical environment. To mitigate their small numbers, our warfighters are more dependent than ever before on the leverage and force multiplication of the technology and capability of their systems and equipment.

For these reasons we cannot compromise on quality when awarding contracts. Small businesses, like large businesses, will be held accountable for providing quality products in time to support our warfighters. This is only fitting since small businesses are key to the overall industrial base.

Monetary goals for small businesses are important to emphasize their value, but goals without quality are meaningless. I will be monitoring the performance of our small business contractors, and

past performance will be a factor in the awarding of future contracts.

One of the five goals I have established for myself in the acquisition community includes addressing the development and quality of our small business contractors within the larger context of promoting the health of our industrial base. In keeping with that goal, let me highlight a few related points. In fiscal year 2000, $48 billion of DOD procurement spending went to small business firms, with $26.9 billion going to small business prime contractors. The latter figure represents the highest dollar amount ever awarded in the history of the small business program, which extends back to 1953. In 8 out of the last 10 years, DOD has met the small business and small disadvantaged business goals for prime contract awards.

Since my confirmation in May, and in keeping with my commitment to improve the Department's small business performance, I have launched several initiatives. My small business reinventing initiative emphasizes the importance of small business programs and assigns responsibility and accountability at the highest levels within DOD. Each military department and defense agency is 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 the directors of the defense agencies will report semiannually to me, and I will report semiannually to the Deputy Secretary of Defense on the performance against the improvement plans and targets. This initiative has established a very high bar indeed and requires continuous improvement in key areas, especially those where Department goals are not being met.

I have increased the emphasis on small business subcontracting in DOD, with annual reviews with leaders of our major defense firms. Beginning this fall I will include discussion of the status of small business subcontracting performance with each firm. I have asked my DOD Office of Small and Disadvantaged Business Utilization to establish a small business forum that will identify and discuss small business issues and recommend improvement actions that I can discuss with the CEOs of major defense firms.

I have also launched initiatives to improve training, outreach and to recognize outstanding efforts in support of small business programs.

Here are a couple of small business success stories that warrant mention. The first is the largest 8(a) competitive award in the history of the 8(a) program. The award was made this year by the Naval Air Systems Command to TeamQualtec, a joint venture between an 8(a) firm, Qualtec, Incorporated, of Beltsville, Maryland, and CCI, Incorporated, of Alexandria, Virginia. The cumulative dollar value of this contract over its projected life could be as high as $698.5 million.

The Defense Systems Agency awarded the largest small business set-aside in history. On 16 February of 2001, DSA awarded three indefinite delivery, indefinite quantity contracts for the Defense Information Systems Network Satellite Transmission Services. The three winning contractors are Artel, Incorporated, a small disadvantaged business; Spacelink, International, a small business;

Arrowhead Space & Telecommunications, a woman-owned small disadvantaged business. The maximum cumulative face value for all three contracts is anticipated to be $2.1 billion. Each contract was awarded for a base year for 3 years with seven 1-year options. This might possibly change the small business status of these three winning companies.

My objective as the Under Secretary of Defense for Acquisition, Technology and Logistics is first to support the warfighters, and second to make the best use of the taxpayers' hard-earned dollars in the process. Small business is important to both of those goals, and I believe that our record aptly demonstrates that belief. We have done a lot, with more work yet to be done. We have been proactive, and more initiatives are yet at hand.

Our record has been, on balance, a successful one. It is characterized by faith in the face of dizzying numbers of programs that we wish to comply with. We have done a lot, and we will be doing more. I look forward to working with this Committee and the rest of Congress to make this happen.

Chairman MANZULLO. Colonel, thank you very much.

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

Chairman MANZULLO. We are advised that we have a vote that is going to come up very soon. I am going to go a little bit out of order here, and I want to accommodate Ms. Gentile, who has to catch a flight real soon, and I wanted to ask her a couple of questions. And perhaps the bell will ring, then we can get back on and resume our normal testimony.

Ms. Gentile, you had mentioned in my office about a half hour ago about a bundled contract wherein you were outbid by a company that formed an organization or an agreement with FPI.

Would you tell us about this, please?

Ms. GENTILE. Yes. This was the same contract that I testified against FPI at a separate hearing. MIL–C–5015G, which is a specifications for electronic connectors, has been supplied by small businesses for the last 20 years. There are five companies on this QPL, three of whom are small businesses.

We have requested that Federal Prison Industries produce an impact study to state—to show that this will not hurt small businesses. However, I have been trying to get this impact study since a year ago April. They still have not produced it.

It is my understanding that there has been letters written asking DOD or DOA not to award a bundled contract that they issued to Federal Prison Industries for 235 part numbers against this specification.

Federal Prison Industries had teamed with Amphenol/Bendix, one of the largest connector manufacturers in the country. They were unable—Amphenol was unable to compete with us, the small businesses, so consequently they teamed with the Federal Prison Industries. In numerous cases our prices have been low, but unfortunately DLA neglected to even give us an opportunity to bid on this contract. Further, FPI stated to this Committee that they give 90 percent waivers of all—or give 90 permanent of all of the waivers that DLA requests. My question is, why would DLA—if this is the case, why did DLA proceed forward with this contract?

After our hearing here, I went and I requested from DLA and had a sit-down meeting with six people with DSCC in Columbus. I requested that they wait to get a copy of the impact study, to please give us an opportunity to bid. If indeed FPI issues 90 percent of the waivers, why would they want to bundle this contract and not give small business a chance to bid? But I was told 4 days later that the contract was gone, they issued it to FPI, and they felt that this would be the best thing to do.

This contract was worth $1 million. There is another—this spec makes up between 2,000 and 3,000 part numbers. This contract was only for 235 part numbers. They have intentions of continuing to do additional contracts on this.

Chairman MANZULLO. The price that you bid on one of these stock numbers for 233 was $11.98?

Ms. GENTILE. That is correct.

Chairman MANZULLO. How much did the government purchase from FPI those part numbers?

Ms. GENTILE. $19.63.

Chairman MANZULLO. Another one. They ordered 50 of these connectors. Your bid price was $16.10, and DLA—the taxpayers paid how much?

Ms. GENTILE. $19.03.

Mr. PASCRELL. How did that happen?

Chairman MANZULLO. How did that happen?

Ms. GENTILE. Well, the—because FPI is supposed to—I guess there is a law written that they can go to FPI. They went ahead and went to them and did not request a waiver. And FPI has stated if a waiver is requested, they grant 90 percent of them.

Chairman MANZULLO. Here is what we are going to do. First part of October—I have talked to my staff today, and I will talk to the Minority staff after this hearing. We are going to issue subpoenas for the general—what is her name?

Ms. GENTILE. Mary L. Saunders. And it is my understanding that there is a change of command going on there.

Chairman MANZULLO. I am going to issue subpoenas for the person who made the decision and the new people in charge. The people who actually made the decision, I want them before this Committee. We are going to put them under oath.

At the same hearing, that is the one where I want Mr. Aldridge to appear, because I want him to see personally the outrage to the taxpayers, that—we are being lobbied about not wanting to cut back on the spending of the Defense Department because of the necessary expenses that had to be made, and yet what we see here, with the hearing on berets, and the hearing—this one right here, government paid more money than required—what is going on?

Colonial, are you aware at all of this situation?

Colonel WRIGHT. No, sir, I am not. I will certainly look into it when I get back to the office.

Chairman MANZULLO. I appreciate that. But what I have decided is this: We can have these hearings on contract bundling, they are good, but the only way to stop the abuse going on is contract by contract, just as we did with the berets where we canceled three contracts, stopped the foreign procurement, saved literally hundreds if not thousands of American jobs by both sides up here

teaming up to go after the government that has acted outrageously again.

Again, it is the DLA. It is going to come to an end. I am not going to request these people appear, I am going to send subpoenas. That way the Defense Department won't come to me and advise me on who the best witnesses are. I will tell them who we want to testify.

Does anybody else have any questions of Ms. Gentile?

Mr. PASCRELL. Yes.

Mr. Chairman, I commend your actions, and I am—couldn't help but listen to Ms. Gentile.

Ms. GENTILE. Gentile.

Mr. PASCRELL. What concerns me in not only your official capacity is that—and I would like your response. Your last testimony is very different than this testimony in the sense that the times are different. We have lost in the last 7 months a million jobs in this country.

Ms. GENTILE. Yes.

Mr. PASCRELL. Things are hurting. Manufacturing is hurting. It would seem—I think that it wouldn't take too much of logical pursuit to try to get as many small businesses involved, Mr. Chairman, in terms of military procurement. There is a lot of work there, and industries that have been ravaged by things that I am personally involved in, like trade.

Chairman MANZULLO. Mr. Pascrell, can I have a request? Because we are going to get a vote soon, and she has to leave, if any Members here would just very quickly like to ask some questions, and then we can complete her testimony, get her out and then start with the new witnesses. Would that be okay with you?

Mr. PASCRELL. Yes.

Chairman MANZULLO. Let me recognize Ms. Velázquez and then——

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Ms. Gentile, you spoke in your testimony—you stated that your company has all of the most current equipment necessary to handle government procurement.

Ms. GENTILE. Yes.

Ms. VELÁZQUEZ. What types of equipment are we talking about here, and can you give me a ballpark figure on what kind of investment you as a small business owner have to make?

Ms. GENTILE. We have probably had to invest in excess of probably close to $15,000, $20,000. I have to pay—like EDI VANs—$600 a month to be able to participate as they have mandated we go to VANs. And as they continue to update their systems, we continue to update ours so that we can participate in this procedure.

Ms. VELÁZQUEZ. In your testimony you talk about some of the terms that the Department uses in place of—in place of contract bundling; third-party logistics, prime vendor. Do you believe the Department is using these terms to get around bundling regulations?

Ms. GENTILE. Absolutely.

Ms. VELÁZQUEZ. Could you please explain?

Ms. GENTILE. I am not sure how you can call Trident a third-party logistics contract where there is 88,000 part numbers, and

small business has participated in these part numbers. If I went through the contract, I could show you probably a hundred parts that my companies have manufactured and sold to the government. You have Trident coming along. I am not sure what they are going to label Trident as—or I am sorry, Ticonderoga. That is going to be an additional hundred thousand part numbers. You can't call this anything but a bundle. You are just putting different acronyms on.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Chairman MANZULLO. Anyone else on the Committee have any questions that they wanted to ask of Ms. Gentile?

Yes, Mrs. Napolitano.

Mrs. NAPOLITANO. Ms. Gentile, what would you see as a solution, basic, simple?

Ms. GENTILE. I think for years the small businesses willing to team with DLA, we offered to take DLA to some of our small businesses and show them that—how industry goes to market to team with small business, let them sit down and talk about how they have long-term contracts with small business. We talk to the commander, NAMR, National Association of Manufacturers Representatives have, on several occasions.

To date nobody from DLA has recognized that they want to go. We offered to take them to a small business and a large business to see how they team and how they meet their small business goals. Still to date no one from DLA wants to go.

If DLA wants to team with small businesses, why can they not take a percentage, instead of 88,000 part numbers, and put 200 or a hundred part numbers on a solicitation that they know the qualified small businesses manufacture and allow them to do it? We deal just in time right now with our large prime vendors, and we are willing to do that with the Federal Government if they would give us the opportunity.

Mrs. NAPOLITANO. Thank you.

Chairman MANZULLO. Okay. Let's go back to the testimony. Then, again, the next one would be Mr. Robert Spencer, president of Spenro Industrial Supply. Mr. Spencer, I look forward to your testimony. If the bell goes off during your testimony, we will deal with that at the time.

We look forward to your testimony, and I need you to put the microphone in front.

Can somebody check on the P.A.?

STATEMENT OF ROBERT B. SPENCER, PRESIDENT, SPENRO INDUSTRIAL SUPPLY

Mr. SPENCER. Good afternoon. I would like to begin by thanking Mr. Manzullo as well as other members of the panel for giving us the opportunity to voice our concerns. My name is Robert Spencer. I am president of Spenro Industrial Supply. I am proud and humbled to represent hundreds of small and minority-owned businesses that are currently being excluded for competitive bids at opportunities at tax-supported defense contractors.

Since 1979, our 11 employees have worked very hard to provide American-made products at competitive prices. We have dealt with recessions, corporate buyouts, military cutbacks, and even on occa-

sion corrupt purchasing agents. Today we face our biggest threat to competition, the bundling and sometimes we call integrated contract and purchasing agreements at tax-supported defense contractors.

For example, in 1992, Lockheed-Martin Corporation began integrating its contracts. In 1997, Lockheed awarded a multiple sole-source contract to one small business, eliminating any chance for other small or minority suppliers to participate by demanding such restrictive and expensive requirements. Lockheed-Martin limited participation to only one supplier. Our sales at the time were about $120,000 per month. It dropped to zero only because of the integrated contract system.

I wanted to mention something right here. The mission statement on the Lockheed Website for small business states: The small business program is chartered to promote utilization of small, minority, disabled, hub-zone, veteran, women-owned business, historically black colleges, minority institutions on the Lockheed team.

And now I want to show you the principal requirements on their integrated contracts that to me are kind of counterproductive to that.

Chairman MANZULLO. Mr. Spencer, that might be a good opportunity to stop, and we will start again with your testimony as soon as we get back. We have one vote, so we should be back in 15 minutes. We stand adjourned until that time.

[Recess.]

Chairman MANZULLO. Call the Committee back in order here, back in session.

Thanks for your patience. Mr. Spencer, you got truncated by the bells. Would you like to begin your testimony anew, or do you want to do that again?

Mr. SPENCER. Absolutely.

Chairman MANZULLO. I understand we have 2 hours before our next vote, and I am sure you won't be there for 2 hours. Please go ahead.

Mr. SPENCER. Good afternoon. I would like to begin by thanking the Chairman, as well as other members of this panel for giving us the opportunity to voice our concerns.

My name is Robert Spencer. I am president of Spenro Industrial Supply. I am proud and humbled to represent hundreds of small and minority-owned businesses that are currently being excluded for competitive bids at opportunities at tax-supported defense contractors.

Since 1979, our 11 employees have worked very hard to provide American-made products at competitive prices. We have dealt with recessions, corporate buyouts, military cutbacks, and even on occasion corrupt purchasing agents. Today we face our biggest threat to competition, the bundling and integration of purchasing agreements at tax-supported defense contractors.

For example, in 1992, Lockheed-Martin Corporation began integrating its contracts. In 1997, Lockheed awarded a multiple-location, sole-source contract to one small business, eliminating any chance for other small or minority supplier to participate. By demanding such restrictive and expensive requirements, Lockheed-Martin limited participation to only one supplier. Our sales at

Lockheed-Martin went from about $120,000 per month to zero, only because of the integrated contract system.

The following is a list of some of the principal requirements placed on small businesses by Lockheed-Martin: Buybacks of millions of dollars worth of Lockheed-Martin inventory as well as warehousing of that inventory; established sales offices, warehouses and service centers at multiple locations throughout the United States; institute expensive tool inspection equipment and hire inspection employees at each of these service centers; provide total computer interface between Lockheed-Martin facilities and each service center; invoice goods and services once a month only. In these integrated contacts, business must provide a quote of approximately 15,000 to 33,000 line items, many of which are specials. We estimate the cost to quote these integrated contracts of at least $35,000 to $50,000.

Numerous expensive requirements in addition to this list have made it financially impossible for small and minority-owned businesses to compete. Each year competition steadily decreases while the incumbent supplier becomes more and more monopolistic.

Lockheed-Martin valued their 1997 5- to 10-year supply contract at $9 million per year. Now, with the F–22 award of $90 billion and a potential JSF program of $200 billion, a great deal of American tax dollars is at stake.

Historically competition has brought out the best in Americans, while monopolies have proved damaging to business and society as a whole. Boeing bidding against Lockheed-Martin, Bell Helicopter bidding against Sikorski encompassed the value of competition and economics much like the bidding between distributors at our level. These practices are the basics for American business. They enable the buyer to receive the best product at the best price. Due to these restrictive requirements, we at Spenro ask for an immediate and equal opportunity to conduct business at tax-supported aerospace companies.

The following is a list of suggestions concerning some of the immediate actions we feel should be taken to correct these injustices.

Immediately end all integrated contracts at tax-supported defense contractors to protect the stability of affected small and minority businesses, especially the F–22 and JSF programs; give preferential treatment to excluded companies for one year in order to stabilize their finances; allow excluded supply companies the right to protest unjust exclusion to an unbiased panel that will provide appropriate measures to resolve the situation; establish policies, enforcement and education of all procurement employees concerning criminal punishments for receiving any type of kickback; instruct defense contractors to rotate buyers every 2 years so procurement will be based on product quality, price, and delivery rather than on personal relationships; in addition, eliminate sole source products wherever possible; set a 33 percent ceiling on the amount one distributor can receive on any one product category; establish a new and logical system for classifying businesses' size by designating a business with 25 or fewer employees as a true small business rather than the current unrealistic mark of 500 or fewer employees.

In conclusion, I strongly believe excluding small and minority owned businesses from competing as tax-supported defense contractors violates the very spirit of Federal statutes concerning the participation of small businesses. Further, it is imperative that changes be made to contract requirements, not only to protect small businesses from exclusion and discrimination but also to keep the larger firms from creating monopolistic environment in the aerospace industry.

Thank you once again for listening to our concerns. I hope you will consider the recommendations which we so strongly believe. Without your immediate help, many more small family-owned companies will cease to exist.

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

Chairman MANZULLO. Thank you very much. Let me again make the offer to the members of our small business community that if you feel during the course of bidding on a contract that you are being treated unfairly by a government agency, do not hesitate to contact our Small Business Committee office and/or the Office of Advocacy of the Small Business Administration. That is a group of about 13 attorneys set up in the SBA to deal specifically with violations they believe have been occurring against small businesses. So don't hesitate to contact us on it.

Mr. SPENCER. Sir, one thing. A lot of times now with the integrative contracts, we never know when they are up for bid. It is totally going straight to the integrator or the company that is carrying the bundling contract. So we have no notice of when those things happen at all.

Chairman MANZULLO. Okay. The next witness is Janice Hoffmann, President and owner of Hoffmann Fabricating, on behalf of herself and WIPP, Women Impacting Public Policy. We look forward to your testimony, Ms. Hoffmann.

STATEMENT OF JANICE HOFFMANN, PRESIDENT AND OWNER, HOFFMANN FABRICATING, ON BEHALF OF WIPP, WOMEN IMPACTING PUBLIC POLICY

Ms. HOFFMANN. Thank you very much. Good afternoon, Mr. Chairman and members of the Committee. Thank you for the opportunity to appear before you today to discuss my experiences with Procurement with the Department of Defense.

My name is Janice Hoffmann. I am president and owner of Hoffmann Fabricating, a contract cut and sew business in Wichita, Kansas which employs 16 people. I am also a founding partner of Women Impacting Public Policy and a member of the National Association of Women Business Owners. I have joined those organizations to make sure that my voice is heard.

I am a job shop, meaning that I bid on new opportunities that are in my North American Industry Classification System code, or SIC, which most people are familiar with. I don't have a product to sell. I sell the service of building products to the specifications and drawings of my customers, which is the Department of Defense.

I have several years of experience in this type of business and started this company in September of 2000. I would like to say first that there have been improvements in the last few years for me in

dealing with the Department of Defense, and that would be the Procurement Gateway. If anyone is familiar with that, you know it is kind of high tech Internet and it does speed the process up to some degree. However, there are some areas that deal with people that I would like to see more change in.

I have had many opportunities and I spend many of my days on the phone with small business officers and contracting officers at the procurement centers for the Army Tank-Automotive and Armaments Command, Defense Supply Center Richmond, Defense Supply Center Columbus, and Defense Supply Center Philadelphia. I have in the past asked the question of these buyers how does being a woman-owned business weigh in the awarding of a contract? In every instance the answer was that while it is supposed to, it doesn't make any difference at all. One small business—this is the office, not the contracting officer—told me that if a woman-owned business gets a contract it is strictly happenstance. Without the tool of restrictive bidding, the goals that do exist make no difference and the fact that there is no way to award contracts to a woman-owned business other than luck is not an isolated attitude.

I recently attended Senator Ike Skelton's Procurement Conference in Missouri. It is a nice conference. I was anxious to make contact with large companies for subcontracting opportunities. I met a lot of large contractor representatives like Boeing, Lockheed, various companies like that. I gave out lots of business cards, letters of abilities, and shook many hands. All of these representatives seemingly were very excited to meet a woman-owned business, and I am also HUBzone. That is good for them as well. Since the conference I have contacted their offices to remind them of me. The only one I ever heard from again was Motorola, who sent me a letter saying thank you for your interest and we will keep you in our file for a year. That was an expensive conference for me to go to.

In another instance, I recently prepared a large quote for a very large aerospace company which required a great deal of engineering time, and as you heard this gentleman say, it is expensive. They were most anxious to get my quote. I declined on the first request because it was going to cost me a lot of time and money to do the engineering. I declined the second time. Then they called me again and said are you a woman-owned business? And I said yes. I thought, hey, they really want to work with a woman-owned business. So I did it. We did the quote and got it to them on time, making the deadline. Since then I followed up with the buyer on the phone several times. His response was that I wasn't the lowest bidder. Well, you don't always have to be the lowest bidder to get the job. His response was that I couldn't manufacture all of the items. He knew that when he contacted me that I was not able to manufacture all of them. Then he said, "And I just don't know what I am going to do with this." If he went with me, he would have to go through a quality check of my facilities, et cetera. He had many excuses, but my gut feeling is that he satisfied his need to get a woman-owned business quotation, that he was just X-ing the box. He told me he just didn't have time to go out looking for new vendors. I don't have the time or the money to quote for companies that are X-ing a box.

The pool of products that I have the ability to quote on continues to shrink. Federal Prison Industries takes a good share of the work that I could do. Under the Javits, Wagner, O'Day Act, the National Industries for the Severely Handicapped and the National Industries for the Blind also take a chunk. Once these items enter those domains, they are usually gone forever to small business. We as a Nation have already lost millions of jobs in the sewing industry to Latin American countries and Asia. Small businesses have suffered greatly because of this. It is tough enough to compete with a foreign industry. It is even more frustrating to compete with your own government, using your own tax dollars to contribute to your own demise.

I also firmly believe that the Department of Defense Procurement should be done with American owned companies, and I am not just referring to the beret.

Predatory pricing is also an issue in some cases. Well-established large companies with deep pockets are able to keep prices so low that it can be impossible for a small business to successfully bid and make a profit.

These are just a few of the issues that I face as a woman-owned business. There aren't many women in manufacturing because it is a very difficult business at best and extremely hard to make a profit when doing business with the government. Five-year contracts are very difficult.

Do you want me to stop?

Chairman MANZULLO. Well, if you could take a minute and sum up.

Ms. HOFFMANN. Another thing is I heard from one Supplier Diversity Officer in a large company that I think is very interesting and I hope you will too. Word is finally getting to people that Congress is serious about women-owned business. Some small companies are transferring stock and ownership to a woman, hoping it will be sufficient to get woman-owned business contracts. I believe there should be restricted competition for women-owned business. Congress obviously agrees, hence the setting of goals.

I believe women-owned business must be certified. Paper ownership is not the same as running the company. I believe public and private sector must include women-owned business in contracting plants and it must be enforced. I think you need to look closely at agencies such as the Federal Prison Industries. American companies should be doing the work of the Department of Defense.

These are big issues to me, and I have others, such as sole source, drawing availability, source approval, budget holdups, holding prices for long periods of time and more. Small business is just that. We are not banks. If we are going to keep the doors open, the jobs have to come at a reasonable cost at a reasonable time.

The U.S. Business Administration statistics show that women are starting businesses at twice the rate of all business and actually staying in businesses——

Chairman MANZULLO. Janice, we are going to have to——

Ms. HOFFMANN. Fine.

Chairman MANZULLO [continuing]. So we will have time for questions. I appreciate your testimony. Every time we have a hearing, it is totally amazing.

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

Chairman MANZULLO. Our next witness is Dr. William F. Crandell. Dr. Crandell, you testified before us in the past. I look forward again to your testimony. He is with the Association for Service Disabled Veterans. I look forward to your testimony, Doctor.

STATEMENT OF DR. WILLIAM F. CRANDELL, PH.D., DIRECTOR OF GOVERNMENT RELATIONS, ASSOCIATION OF SERVICE DISABLED VETERANS

Mr. CRANDELL. Thank you, Mr. Chairman, Ranking Member Velázquez. The Association for Service Disable Veterans is glad to be back. We commend you for holding this important hearing today on the procurement goals of the Defense Department for small and disabled business. ASDV's goal is to——

Chairman MANZULLO. Could you pull the microphone up, Doctor? Thank you.

Dr. CRANDELL. Working? Okay.

ASDV's goal is to create opportunities for service disabled veterans to achieve and maintain their rehabilitation through economic participation. Several Federal agencies have set procurement goals for contracting and subcontracting with service disabled veteran-owned businesses below the 3 percent minimum set in Public Law 106–50 2 years ago. The Department of Defense has given itself that minimum 3 percent goal but no more than that.

Ms. Napolitano asked the question about what to do. We would like to see accountability with regard to the implementation of the 3 percent procurement goal for service disabled veterans and others in Public Law 106–50. Put specific goals in the performance standards of the bureaucrats—Federal procurement officers and their supervisors. America's veterans want to see a game plan for meeting DOD's 3 percent goal in 2002. We want it to be part of a straightforward strategic plan.

Most Defense procurement is done by separate services. Still the DOD as an umbrella agency must aggressively set and meet its procurement goals in accord with the law. The Secretary of Defense must make certain the separate Departments of the Army, Navy, and Air Force do the same. How has Defense communicated its 3 percent goal to its installations and agencies? Has DOD collected any data yet in compliance with Public Law 106–50?

We looked at the Defense Small and Disabled Business Utilization Web site under its heading for veteran-owned small business programs. This is the screen that we got. It has the phrase "veteran-owned small business program" three times. They even have a logo, and then it says this page is currently being developed. We don't believe that. We would like to see a time line for developing this program. It needs to be an active part of the Web site.

DOD's obligations to the men and women it exposed to danger and disability set a very high bar. We suggest Defense challenge itself and the rest of the Federal Government by setting a DOD-wide goal of 4 percent for contracting and subcontracting with service disabled veteran-owned businesses rather than the bare minimum 3 percent.

Mr. Chairman and Madam Ranking Member, we want the Defense Department to serve its veterans in the same good faith it got from us. Let us work together and fully implement the law this year. Thank you.

[Dr. Crandell's statement may be found in appendix.]

Chairman MANZULLO. Thank you, Doctor. Our final witness is Mr. Tom—is it Kelleher?

Mr. KELLEHER. Kelleher.

Chairman MANZULLO. Kelleher, with the firm Smith Currie & Hancock. And Mr. Kelleher is speaking on behalf of the Associated General Contractors of America. I look forward to your testimony.

STATEMENT OF THOMAS J. KELLEHER, JR., MEMBER, SMITH CURRIE & HANCOCK, LLP, ON BEHALF OF ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Mr. KELLEHER. Thank you. I am the senior partner and managing partner of that law firm, but today I am presenting testimony on behalf of the AGC, 80 percent of whose members are small businesses.

I am going to deviate a little from my written testimony and try to summarize it. The written testimony addresses five issues. Three of them deal with procurement policy. Two are money issues. The procurement policy issues are interesting because I started out in government contracting by attending Government Contracting Officers School at Fort Lee, and then I taught that subject for the Army for 3 years during the Vietnam War.

At that point in time construction was invitation for bids, hard dollar bids. In the early seventies, a client of this firm was terminated for default on a project in North Carolina by the Bureau of Prisons, the same day it was the low bidder on a large Corps of Engineers project in Georgia. There was a question about how could you award that contract? The response was they were low, they had a bid bond, and they were responsive. That is the end of the evaluation.

In that 20-year period, Mr. Chairman, there has been a revolution in how DOD conducts construction procurement. Today 65 percent of construction procurement is done by design build, a collaborative effort between the agency and the contractor. Previously the government obtained a design, put it out for lump sum bid, and then maybe it worked and maybe it didn't. Only 10 percent of the procurement dollar today is spent on IFB's, sealed bids; 90 percent is negotiated. Past performance evaluation has changed how contractors are evaluated. It has changed how they are selected.

All change is not bad. My point is this. There has been a revolution in how DOD and other agencies in the Federal Government conduct construction procurement. We don't need new initiatives today. What we need particularly for the small businesses is a period of assimilation where both the contractors and the agencies get used to this revolution, and there needs to be a series of education programs conducted particularly for small businesses on how to do business with the Federal Government in a new environment.

Many of our clients are small businesses. They are wary of dealing with the Department of Defense. They are concerned about the quality standards, they are concerned about the safety standards.

Both of those are important. Neither should be ignored. What they need to understand is that the government is a more—one, it is financially solvent in an area that we are going into that may not see financially solvent firms in the private sector. The contract vehicle is basically balanced. There needs to be a program to educate contractors on this new process and way of doing business so they will enter into the marketplace and compete. That is important.

Secondly, the two funding issues. There has been discussion of a no contingency funding to DOD construction projects. I think that is a mistake. In my experience when we represent contractors in disputes with this gentleman's agency, Colonel Wright's agency, when there is a problem, the way to make it a worse problem is to delay the resolution. If there is a differing site construction where the ground conditions are different than the way everybody anticipated, the way to have that solved quickly is to have the funds there as a contingency so that the problem can be addressed. If it sits unattended for months, then they hire me. That is not good for the government. It is not good for the contractors.

So those are the areas that I think need to be addressed.

Lastly, outsourcing. Contractors have the ability to mobilize resources, engineers, equipment, talent, to address construction needs from site to site. It would be a poor use of the government's limited resources to keep that inside the government and have that capability at each and every installation. Contractors know how to move people. They know how to move resources.

I thank you for your attention.

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

Chairman MANZULLO. Thank you. All of the statements that are prepared will be made part of today's record.

I have a couple of questions. First I want to ask Mr. Spencer, I was very troubled by a statement that you made on page 1 of your statement about Lockheed Martin places a requirement on small businesses to buy back Lockheed Martin equipment. Could you elucidate on that?

Mr. SPENCER. From what I understand, Lockheed Martin had a huge inventory of supplies and when the integrated contract was up for bid as part of the contract, they were requiring the businesses who quoted that contract to agree to take back all of this inventory, and it was millions of dollars worth of inventory, and they would have the opportunity, I believe, over 18 months to buy it back, but they got it out of their own stores. I don't know if there was an accounting reason they did that or whatever. But that fact was pretty—for small business would be very difficult to handle.

Chairman MANZULLO. Where did this occur?

Mr. SPENCER. Where did it occur? Well, in Fort Worth that we are familiar with, it occurred in packing it up and shipping it——

Chairman MANZULLO. What exactly was the inventory?

Mr. SPENCER. As far as I know, it was like cutting tools and air tools and maintenance tools, the kind of things we normally deal with on a day-to-day basis.

Chairman MANZULLO. Is this illegal to have a tie-in agreement like this?

Mr. SPENCER. I do not know whether it is or not.

Chairman MANZULLO. Colonel Wright, are you familiar at all with the situation or anything like it?

Colonel WRIGHT. No, sir, I am not. But we would certainly be willing to take a look at it, particularly if it involves a government contract.

Chairman MANZULLO. Mr. Spencer, if you could write a letter to this Committee, give it as much detail as possible, we will get that over to Colonel Wright to get an opportunity to look at it. Is that fair enough?

Mr. SPENCER. Absolutely. I will get more details on it and get a letter to you.

Chairman MANZULLO. Thank you. Colonel, I have got one question to ask you, and again thank you for coming in on one day's notice. You made a statement that there had been a competitive award to an 8(a) business. This appears on the bottom of page 7 of Secretary Aldridge's statement. Do you want to dig that out? It is a statement that you read.

Colonel WRIGHT. Yes, sir.

Chairman MANZULLO. It talks about there was the largest Section 8(a) competitive award made to TeamQualtec, a joint venture between the 8(a) firms Qualtec, Inc., of Beltsville and CCI of Alexandria, indefinite delivery, indefinite quantity, and it could total as much as $698.5 million.

Now that is a lot of money, and I guess my question is, is this really a small business, and if it is a small business, why so much was awarded just to one bidder?

Colonel WRIGHT. Sir, it has the potential of going up to that amount. The contract was actually awarded on the first of March and to date they placed orders against it up to $15,600,000, and there are some additional awards before the end of this fiscal year, would probably end up around $19 million.

Chairman MANZULLO. What exactly is it? Is it services? Are you aware of it? Or is it a product? Oh, there it is. Technical and Management Logistics Service. Do you see that on the bottom?

Colonel WRIGHT. Yes, sir. That is correct.

Chairman MANZULLO. Were there other bidders involved for this that you know of?

Colonel WRIGHT. Sir, I will have to get back with you on the specifics on that.

Chairman MANZULLO. We have some people in the audience who are saying yes. Are you with the Colonel?

Ms. BROOKS. It was a competitive award.

Chairman MANZULLO. Could you identify your name for the record, please?

Ms. BROOKS. Teresa Brooks from Defense Procurement.

Chairman MANZULLO. Teresa Brooks?

Colonel WRIGHT. Teresa Brooks from Defense Procurement.

Chairman MANZULLO. I guess my question was why was this awarded to one and not to several? Is there a reason for that?

Colonel WRIGHT. Sorry, sir. What we will do is do the research and get back to you.

Ms. VELÁZQUEZ. Mr. Chairman?

Chairman MANZULLO. Sure.

Ms. VELÁZQUEZ. You come here and read the testimony and you are bragging about this contract. You know we are going to be asking questions; so don't come here and say you don't know the details or if that is the reason why you are here because you don't know anything about any question that we are asking.

Chairman MANZULLO. Colonel, who would know this information?

Colonel WRIGHT. Sir, I will get with the Director of the Navy Small Business Office and I will have the details for you, sir.

Chairman MANZULLO. Did someone else raise their hand? Could you please state your name for the record?

Mr. FOREMAN. My name is Tim Foreman. I work for Colonel Wright. I am the Deputy Director in OSDBU and the Office of Secretary of Defense. It was a joint venture. It was an initiative with two firms. One was Qualtec, Inc., out of Beltsville, Maryland, and the other one was CCI, Inc., out of Alexandria, Virginia. They joined together and bid on this requirement. They won it competitively against other 8(a) bidders. I don't know who the other bidders were, but it was an 8(a) reserved requirement.

Chairman MANZULLO. I would like to know why such a large contract was awarded to one company.

Mr. FOREMAN. It was two companies, sir, a joint venture.

Chairman MANZULLO. Or two companies. Does anybody else on the panel want to comment on that? Does this seem strange?

Mr. FOREMAN. I think it is more than a small business.

Chairman MANZULLO. How many employees do these companies have? Does anybody know? Colonel, do you have any idea?

Colonel WRIGHT. No, sir. But I will——

Chairman MANZULLO. You have no personal knowledge of this; correct?

Colonel WRIGHT. Correct, sir.

Chairman MANZULLO. Do you know the names of the people at DOD that would have personal knowledge of this?

Colonel WRIGHT. Yes, sir.

Chairman MANZULLO. Could you have them make an appointment to see me and Ms. Velázquez in her office as soon as possible?

Colonel WRIGHT. Yes, sir.

Chairman MANZULLO. Bring with them a copy of the contract that was awarded and any other proposals, any complaints that were filed by the companies, the fact that only one contract was given.

Colonel WRIGHT. Yes, sir.

Chairman MANZULLO. Then I know nothing about this. There may be an explanation that you could only make one award. In other words, you could only have one company getting the total award. We just need to know more about it because I want to see if this is—it just seems very unusual to have one contract with that amount of money on it.

How many contractors were involved in this? You don't know? Okay.

Have you asked your questions yet? You haven't?

Ms. VELÁZQUEZ. No.

Chairman MANZULLO. Why don't you go ahead and then we will recognize Mr. Chabot.

Ms. VELÁZQUEZ. Colonel Wright, I have a lot of questions but I am not going to ask them to you because I guess I know the answers. I will wait until October when we are going to have another hearing, but I could ask one or two questions to you. First, on June 20, we held a hearing and as a result of that hearing Chairman Manzullo, Congressman Mark Udall, and myself sent a letter to Ms. Deirdre Lee regarding contractor past performance, and the letter was dated July 11. As of this day, we haven't received a response, and I ask, Mr. Chairman, that a response be provided to us by close of business next Friday.

Chairman MANZULLO. We will make a copy of this letter and, Doug, do you know if we received an answer to this dated July 11?

Colonel WRIGHT. Sir?

Chairman MANZULLO. Yes.

Colonel WRIGHT. I have just been handed a note here the Defense Procurement entered an interim response and the final response was delivered this morning.

Ms. VELÁZQUEZ. Because we were holding this hearing today?

Chairman MANZULLO. There was an interim response? What is that?

Ms. BROOKS. There was an interim response that said——

Ms. VELÁZQUEZ. All it says is that you are going to be sending us an answer. Well, that is not the answer that we are seeking.

Ms. BROOKS. I understand. We have sent out that response.

Chairman MANZULLO. You have a request. How much time do you want to have this answered?

Ms. VELÁZQUEZ. Next Friday.

Chairman MANZULLO. How about this. Let us have it at my office and in your office by Monday at 5:00 o'clock.

Ms. BROOKS. I believe it was delivered this morning.

Chairman MANZULLO. The letter was delivered or the interim response?

Ms. BROOKS. The final letter.

Chairman MANZULLO. The final letter was delivered when?

Ms. BROOKS. This morning.

Chairman MANZULLO. Does anybody have a copy of the letter? Folks, you are preparing for a hearing. This is embarrassing. Could you have somebody get a copy of the letter? Do you want to call your office?

Colonel WRIGHT. Yes. We will get you a copy of the letter.

Chairman MANZULLO. I want to see the letter before you leave. So if you would work with Mr. Thomas, our Staff Director, we will get it faxed here. I am not going to close the hearing until the letter comes.

Ms. Velázquez.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. Colonel Wright, in your testimony you state that under DOD's new policy to improve small business performance the Secretaries of the military departments and Director of the Defense Agency will report semiannually to the Under Secretary and the Under Secretary will report to the Deputy Secretary of Defense.

Colonel WRIGHT. Yes, ma'am.

Ms. VELÁZQUEZ. You stated that. My question is what does all of this reporting mean if the goals still aren't met?

Colonel WRIGHT. Ma'am, what it does, it raises the level of responsibility and accountability from the lower levels in the Department of Defense up to the service Secretaries. The service Secretaries will, in turn, brief Mr. Aldridge, and if the goals are not being met and satisfied, he in turn will ask the military departments and—the other Defense Agencies to submit a plan to correct any goal deficiencies the USD (AT&L) will in turn brief the Defense Secretary.

Ms. VELÁZQUEZ. Let us take, for example, the 5 percent goal for women-owned businesses. What I am trying to tell you is that if there is not a serious commitment from the top down to meet the goal, then it is not going to happen. And it doesn't mean—and it doesn't matter what is the channel of where they have to report and what the person is going to say because I have a memo that Under Secretary Aldridge issued on May 16 that says that even by fiscal year 2006 the DOD doesn't plan on achieving the 5 percent women's business goal. So for you to come here today and tell me that you are now implementing this new policy to improve small business performance, well, it is not going to happen if the Under Secretary Aldridge is stating in a memo that by the year 2006 the Department will not achieve such a goal.

Colonel WRIGHT. Ma'am, we have areas that we realize we have not been meeting the goals our Small Business Reinvention Initiative raises the level of accountability to the service Secretaries to get them involved and making sure they are held personally accountable for not meeting those goals.

Ms. VELÁZQUEZ. So how could you explain then that Under Secretary Aldridge issued a memo that says on May 16 that by the year 2006 the Department will not meet the 5 percent women's business goal?

Colonel WRIGHT. What we recognize in the Department, there are obviously areas we need to improve in and the women-owned business is one area.

Ms. VELÁZQUEZ. No kidding.

Colonel WRIGHT. We have initiated a number of outreach programs in terms of making contact with major prime contractors. We go around the country having a number of forums to educate various women groups about the opportunities within DOD as well as we have our Web site that addresses some of these issues.

Ms. VELÁZQUEZ. I guess that if we ask the question we cannot get an answer, and we might have to wait until the next hearing where we will be able to ask Under Secretary Aldridge.

Ms. Hoffmann, in last year's reauthorization, the small business reauthorization bill, we were successful in getting a program in that allowed restricted competition from women-owned businesses in those industries in which women-owned businesses are underrepresented.

Do you believe this program will be helpful to your business?

Ms. HOFFMANN. Absolutely. Absolutely.

Ms. VELÁZQUEZ. What kind of enforcement would you recommend for prime contractors to ensure that the women-owned business goal is achieved?

Ms. HOFFMANN. Well, I think there are definitely women-owned businesses out there, there is no shortage. But to ensure it is truly

a woman-owned business, they are going to have to certify them. I go to my factory, I load a truck, I look for business opportunities. I don't come in every other day and do accounting work or something. I am truly a woman-owned and woman-run business, and they are going to have to certify.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Chairman MANZULLO. Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman. Colonel Wright, could you elaborate on Secretary Aldridge's plan to reinvent the small businesses program?

Colonel WRIGHT. Yes, sir. Sir, what the plan does, it raises the importance of small business performance to the highest levels and it holds the senior leadership in DOD accountable for its performance. This initiative requires each of the military departments and the other defense agencies to submit a small business improvement plan. The plan will be reviewed by Mr. Aldridge and if the military departments or Defense agencies is not meeting those goals, then they will discuss their improvement plan with Mr. Aldridge. He in turn will brief the Deputy Secretary of Defense.

So it raises the level of accountability I believe to the very highest levels in the Department and for his review and for his oversight.

Mr. CHABOT. Thank you. Could you also comment on how the mix of products and services that the Department of Defense buys impacts on small business opportunities?

Colonel WRIGHT. Yes, sir. The mix of products and services that DOD procures is based on the needs of the Department, and they change from year to year. Some years the product mix is more favorable to the small business community and in some years it is not. Notwithstanding that, DOD awarded $26.9 billion in fiscal year 2000 to small business prime contractors. So there is a commitment on the part of the Department to award contracts to small businesses to the maximum extent practical.

Mr. CHABOT. Thank you. And, finally, could you give the Committee some more detail on how the Department plans to do more outreach with small businesses owned by women as we have discussed and also businesses owned by veterans?

Colonel WRIGHT. Yes, sir. One of the things we have done in the Department is to work very closely with the Small Business Administration. We are also working with the Department of Commerce and with major prime contractors to get the word out. In addition, members of my staff just recently held a meeting with a number of service disabled veterans. We invited them into our office. We listened to their concerns and their needs. One of the things that we are also focusing on is developing a database so we will be able to identify the number of service disabled veterans as well as the products and services they provide. So we have got a number of proactive initiatives ongoing.

Mr. CHABOT. Thank you very much. Any other members of the panel, are there any other points that were either vague or questions that you thought we should have asked that we didn't? Is there anything there that is burning that you would like to say?

If not, I will yield back my time to the chairman. Thank you.

Chairman MANZULLO. I appreciate it. It gets really frustrating when we send a letter out and it gets answered supposedly the day of a hearing. I am not going to tolerate this any more. Who is in charge of Legislative Affairs at the Department of Defense? Do you know the person?

Colonel WRIGHT. Sir, I don't know the name, but we have an individual here from Legislative Affairs. He just stepped out. He would be his direct supervisor.

Chairman MANZULLO. Do you know his name?

Mr. FOREMAN. No, sir.

Chairman MANZULLO. I would like whoever is in charge of Legislative Affairs to make an appointment to see me in my office. I am not going to put up with this any more. I send out a request for a letter. It gets supposedly answered by courier the day of the hearing. Our office doesn't have a copy of it. You come to the meeting today not prepared with a copy of the letter, and this is supposed to be the liaison between the United States Congress and the Department of Defense. But whoever that is in charge of Legislative Affairs I want them to make an appointment to see me in my office as soon as possible.

Colonel WRIGHT. Yes, sir.

Chairman MANZULLO. I also have a suggestion. Colonel, on the testimony on page 4, do you have that in front of you? Let me know when you are there, on the bottom. This is in Secretary Aldridge's statement.

Colonel WRIGHT. Yes, sir, I have it.

Chairman MANZULLO. It says "My initiative also increases emphasis on small business subcontracting. DOD holds annual contractor reviews with the leaders of the major defense firms. Beginning this fall, I will include discussion of the status of small business subcontracting performance for each firm. I have tasked the DOD Office of Small and Disadvantaged Business Utilization to establish a small business forum that will identify and discuss small business issues and recommend improvement actions that I can discuss with CEOs of major Defense firms."

Let me just throw this out for your consideration. Unfortunately what happens, Congress passes a law, an agency attempts in good faith to carry it out, there is a problem, and then Congress is in the role of oversight. There is just something missing. Let me make a suggestion. With regard to this small business forum, that is within your purview; is that correct, Colonel?

Colonel WRIGHT. Yes, sir.

Chairman MANZULLO. That perhaps you might consider having the chairman and ranking member of the House and Senate Small Business Committees be members of that committee so that we can go into these meetings and try to iron out problems before they end up with small business people having to fly all the way to Washington at their own expense to testify as to how they are getting thumped by a Federal agency.

Colonel WRIGHT. Yes, sir.

Chairman MANZULLO. The Assistant Secretary for Legislative Affairs is Powell Moore? Is that individual here?

Colonel WRIGHT. No, sir. There was a gentleman by the name of Bob Wimple who works for Mr. Moore was here. He was here a few minutes ago. I think he stepped out.

Chairman MANZULLO. He probably went to try to get that letter. I have got another meeting. But in any case whoever is in charge, I would like to see that individual in my office, and I want to set down some parameters of how to deal with these documents that are sent out.

Okay. Well, again, thank you all for coming this afternoon. Colonel, thank you for coming at late notice. I appreciate all of your testimony.

As I said at the beginning of this hearing, I am disposed at this point to do an in-depth hearing regarding the egregious situation to which Bobbie Gentile testified concerning what happened with Federal Prison Industries that joined up with another company that bumped some small businesses to the tune of a million dollars. I am convinced that the only way that we can follow the law here is to hone in on those areas where there has been a problem, to expose it, to do whatever is necessary to clean it up, and to let that serve as a seismic shock to the other agencies that are doing the same thing.

I am not going to let up on this issue of contract bundling. I have heard horror stories going around this country. I am very interested in an article here that was in the Washington Post dated Thursday, April 5 on this Qualtec, this $698 million contract to which, Colonel Wright, you had testified, touting 8(a) small businesses, but if you read the article, it says Qualtec provides engineering and logistics information technology and management consulting services, will lead a team of 12 military contractors, including two other minority firms. I want to know what is the size of these 12 military contractors. I want to know who they are, and I want to know most of all if DOD is counting this contract in saying that this makes them in compliance with trying to have a 23 percent set-aside for small business, if that is the case and if big companies are being counted in simply because they got looped in by a small company that did some creative subcontracting here with the government.

And I am are not criticizing Maria Whitmore. She is a very proud lady for what she has done here. But if this is being counted towards small business and towards minority requirements, there is a big problem.

Okay. Thanks again, and this Committee is adjourned.

[Whereupon, at 2:57 p.m., the Committee was adjourned.]

DONALD A. MANZULLO, ILLINOIS
CHAIRMAN

NYDIA M. VELÁZQUEZ, NEW YORK

Congress of the United States
House of Representatives
107th Congress
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515–6315

September 6, 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.

To resolve these problems, there is a need for receptivity to new thinking and new ideas – not just doing things as they were done in the past. The hearing will focus on past problems for the purpose of finding solutions to those problems. And, I trust that the Pentagon will pledge to work with Members of Congress and staff to resolve these issues.

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.

STATEMENT
of the
Honorable Nydia M. Velázquez
Ranking Member, House Small Business Committee
Hearing on Defense Department small business procurement
September 6, 2001

Thank you, Mr. Chairman.

Today is the seventh in our series of hearings examining federal agencies' contracting practices. The reason we have paid such close attention to this subject is simple --- we all want to ensure fairness and opportunity for small companies doing business with the federal government.

So we are here again to ask the Pentagon why its contracting practices are so unbalanced and so unfair --- costing small businesses $2 billion in lost business and the taxpayer untold lost savings.

I HOPE to hear "Members of this committee, this won't happen again." But I don't think we will hear it, because it HAS happened again, over and over, for years.

What we WILL hear is the same old tired talk about how the Defense Department is making an effort to reach out to and court small businesses. But as our colleagues know, the Pentagon has less than nothing to show for this effort.

On that point, this morning I was joined by Members of Congress and the small business community to release Scorecard II, our annual assessment of federal procurement practices. Our conclusions are simple and straight-forward. Unfortunately, they are also bad --- Last year, the government had its worst record ever of contracting with small businesses.

In particular, the Department of Defense, the government's largest buyer, earned a 'D-'. This grade place it among our distinguished "Failing Five" for its inability to meet any of its small business contracting goals.

This year, the Department of Defense did not meet its small business goal of 23 percent. Contracts to small business have declined by more than 41 percent since 1997.

Small disadvantaged businesses and 8(a) program participants fared much worse. Between 1998 and 2000, contracts to disadvantaged firms fell 52 percent. The 8(a) program fell 30 percent. Women-owned businesses did almost as poorly, with a 20 percent drop in contracts during the same time period.

Of course, the Pentagon is not alone. For the first time in seven years, ALL of the federal government failed to meet any of their small business contracting goals.

The two main causes of these unfair practices are contract bundling and the lack of personal commitment by officials at the Pentagon.

Bundling, as we all know, is the trend toward super-sized mega-contracts that only big companies or established prime vendors can bid for. These contracts systematically exclude small businesses in favor of unproven theories of efficiency or economies of scale. Not once has a government official offered proof of a single cent saved through bundling. Not once!

In fact, one very limited study commissioned by the Pentagon indicated cost savings on bundling are merely --- this is the exact word --- "intuitive." In other words, contract officers THINK they are saving money by bundling, but no one can actually show us the money.

Moreover, the Pentagon's own study argued that consolidation of contracts means more subcontracts, which in turn are not monitored for small business goals.

So in the end, our study may be OVERestimating how much business the Pentagon does with small firms. And yet Defense Department officials still refuse to see the problem.

This long-running problem and lack of agency commitment has forced our hand here in Congress. This year, we re-introduced H.R. 1324, the Small Business Contract Equity Act. This bill would allow bundling only if agencies met their small business goals. This would change the current system where agencies are both the jury AND the court of appeals for their own disputed contracts.

This bill has broad, bipartisan support and was passed out of the Small Business Committee last Congress. I hope Congress will take up this legislation soon.

Mr. Chairman, the stakes in this debate are very high for small businesses. I hope the Defense Department representatives here will not simply brush off our well-documented complaints, because this is about keeping small business IN business. It is only fair to let those people who want to compete and can compete, compete.

To close, I want to thank the witnesses who took the time to be here today. I look forward to hearing what you have to say.

Thank you, Mr. Chairman, for having this hearing today.

Statement of

Bobbie Gentile

Q-Mark, Inc.

Subject: **Contract Bundling**

Before: **House Small Business Committee**

Date: **September 6, 2001**

Good Morning Mr. Chairman and Members of the Committee. I would like to thank you for granting me the opportunity to speak with you today regarding the effect that contract bundling will have on my small business and small businesses nationwide.

My name is Bobbie Gentile, president and owner of Q-Mark, Inc. a small woman-owned business in Dayton, OH. Q-Mark is a manufacturers representative firm that handles federal government procurements for the companies we represent. I have five employees, three of whom are the sole providers of their household. I am the president of the National Association of Manufacturers and Representatives (NAMR) as well as a member of the National Federation of Independent Business (NFIB).

Over the past eleven years, I have expanded my business successfully. The bulk of my business' income is based on sales to Defense Supply Center (DSCC) in Columbus, OH. As DSCC automated their systems, I invested the money to make sure that Q-Mark had all the most current equipment necessary to handle government procurement, which was extremely costly.

As President of the National Association of Manufacturers and Representatives (NAMR), I have been hearing from small businesses nationwide concerning contract bundling. I have with me copies of letters these companies have written to their Congressmen.

For years the small business has been a valuable partner to the Federal Procurement system. Now, we find ourselves in a position of being displaced, due to a new initiative called **CONTRACT BUNDLING.**

I have attended several meetings and have spoken at length with numerous personnel from DSCC regarding Contract Bundling. If you were to ask them today if they bundle contracts, their response

would be "no". In order to get around this controversial subject, new names are being assigned to these solicitations, such as Third Party Logistics, Prime Vendor, Virtual Prime Vendor, etc. All of these avoid the negative name of **Contract Bundling**.

While most small businesses agree that we need to streamline government spending, I am not sure why it has to be at the expense of the small business. The large prime contractors seem to be receiving a larger piece of the pie and then being rewarded to place a small percentage of their business with selected small business contractors. Over and over we hear from the large primes that they are decreasing their vendor base and will not accept any additional vendors. Once again, small business is hurt.

We have continually heard from Defense Logistics Agency (DLA) that they want to partner with industry. Several members of NAMR offered to set up a trip to some of their manufacturers and customers to show DLA how other companies have teamed successfully with industry. To date, no one from DLA has accepted our invitation.

I brought with me today a copy of the Trident/TASCI initiative, a solicitation that was issued by DSCC. Although it has been cancelled, it is to be re-issued. It contained a total of 88,000 part numbers, yet DSCC did not consider it to be a bundled contract. It was labeled a Third Party Logistics solicitation. Had this solicitation gone forward, the majority of small businesses would have been unable to participate. The government was requiring that industry have sufficient staff to forecast the needs of the government's customers and have staff available to their customers twenty-four hours a day seven days a week. The solicitation demanded that industry originally submit pricing on 60% of the part numbers listed, however, right before they canceled this solicitation, they reduced this to 40%. The request for proposal was based on two years with option years, which would take the business off the street for ten years. The annual dollar figure on

this proposal was estimated to be 2 Billion per period, or 10 Billion for the life of the contract.

I have with me today video tapes of a meeting that I attended at DSCC on this initiative. On these tapes you will hear DSCC state that this is not a bundled contract, that 50% of the items had zero demand level and that they did not know the cost savings that would result from this initiative. At this conference I approached one of the primes about teaming and I had my business card handed back.

Most recently a business to business conference was held by Procurement Technical Assistance Center (PTAC), which is funded by DLA. At this meeting, several primes were available to discuss the teaming concept. Some of these companies asked if small business was willing to inventory the product and hold the price for ten (10) years. Another vendor stated that they would be marking up the product 80% and requested that my small business give them special pricing. Based on the information obtained at the conference, I do not see any way that a small business can team with the prime contractors. The companies seem to want to pass the risk to the small business, by requesting us to reduce our profits, stock the inventory, while they mark up these part numbers and charge the Federal Government outrageous prices.

Recently I have been advised that DSCC is in the process of reviewing for possible solicitation a new initiative called Ticonderoga, which encompasses a possible 100,000 part numbers. Is DOD mandating that all procurement agencies pursue this type of contracting ?

On behalf of myself and the National Association of Manufacturers and Representatives (NAMR), we urge you to support Congresswoman Velazquez's bill H.R. 1324 which would stop contract bundling.

I believe that bundled contracts will not only destroy countless small businesses, it will reduce the industrial base, put the government in sole source positions, eliminate competition resulting in higher prices and put government spending behind closed doors.

Thank you for the opportunity to present before you the views of small business on this important issue.

TESTIMONY OF THE HONORABLE PETE ALDRIDGE

UNDER SECRETARY OF DEFENSE

FOR ACQUISITION, TECHNOLOGY & LOGISTICS

BEFORE THE U. S. HOUSE OF REPRESENTATIVES

COMMITTEE ON SMALL BUSINESS

SEPTEMBER 6, 2001

TESTIMONY OF THE HONORABLE PETE ALDRIDGE

UNDER SECRETARY OF DEFENSE

FOR ACQUISITION, TECHNOLOGY & LOGISTICS

BEFORE THE U. S. HOUSE OF REPRESENTATIVES

COMMITTEE ON SMALL BUSINESS

SEPTEMBER 6, 2001

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to discuss the Department of Defense's small business program. I am pleased to discuss this subject and to respond to questions.

Small businesses play a critical role in 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, subcontractors and vendors; to structuring our 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 Under Secretary of Defense for Acquisition, Technology and Logistics, one of my jobs is to enhance our national security by bringing forth the very best systems for

our military forces. Our airman, soldiers and sailors risk their lives daily and deserve the very best products and services to support the mission. We cannot compromise on quality when awarding contracts. All businesses, large and small, will be held accountable for providing quality products in time to support our warfighters.

The Department's small business program is judged by performance against government-wide procurement goals which Congress established. In Fiscal Year (FY) 2000, $48 billion of DoD procurement spending went to small business firms, with $26.9 billion of this going to small business prime contractors[1]. DoD prime contract awards to small business accounted for approximately 60% of all federal dollars awarded to small business prime contractors. This is a significant accomplishment since many of DoD's large dollar procurements are for major defense systems which require the resources of large business prime contractors.

I recognize that DoD has work to do to, particularly in achieving the goals recently established for woman-owned small business (WOSB), historically underutilized business (HUBZone), and service-disabled veteran-owned small business. As Undersecretary of Defense for Acquisition, Technology and Logistics, I have established five goals for myself and the acquisition community that contribute directly to the goals and objectives of the President and the Secretary of Defense. One of these goals is to

[1] $26.9B represents 21.9% of prime contract award dollars and $21.6B subcontract awards to small business represents 39.4% of total subcontract dollars.

Improve the Health of the Industrial Base. Included in this goal is addressing the development and quality of our small business contractors, recognizing that they are a key part of our overall industrial base.

To facilitate achievement of this goal, I issued, as one of my first initiatives, a policy that emphasizes the importance of, and assigns accountability at the highest levels within DoD for our small business program. Each military department and defense agency is 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 me and I will report semi-annually to the Deputy Secretary of Defense on performance against the improvement plans and targets. I want to stress that this new program is highly challenging and requires continuous improvement in key small business program areas, especially those areas in which the Department is not meeting its goals. The memorandum also directs the establishment of an annual small business awards program and annual small business program training.

My initiative also increases emphasis on small business subcontracting. DoD holds annual contractor reviews with the leaders of the major defense firms. Beginning this fall, I will include discussion of the status of small business subcontracting performance for each firm. I have also tasked the DoD Office of Small and Disadvantaged Business Utilization (SADBU) to establish a small business forum that

will identify and discuss small business issues and recommend improvement actions that I can discuss with Chief Executive Officers of major defense firms.

With advances in Electronic Commerce/Electronic Business, small businesses 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 broadens the marketplace and minimizes the effort and cost associated with finding government business opportunities. Through a partnership with SBA PRO-*Net,* small businesses receive e-mail notifications of contracting opportunities. This should be a significant benefit to the small business community.

Let me turn now to an area of interest. In some instances, DoD combines or restructures mission requirements as a means to gain efficiencies or realign its organization to meet mission demands, resulting in consolidated contracts. In cases where the mission needs are consolidated and small businesses can no longer compete, the consolidation is referred to as a bundled contract.[2] Logistics Management Institute

[2] 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.

(LMI)[3] examined data available from the Defense Contract Action Data System for FY 1994 through FY 1999 and reported that: "The dollar value of contract actions awarded to small businesses has remained at about 21 to 23 percent, with no discernable trend. For awards over $25,000, where most of the dollar value occurs, the dollar value awarded to small business has remained relatively constant and the number of awards to small businesses has also stayed nearly constant." LMI also found no evidence that the average value of individual awards to small or other types of businesses have increased over the period, such as would be expected with contract consolidations.

Likewise, a recent report by the General Accounting Office (GAO)[4] on government-wide procurement trends in the 1990s indicated that despite an overall decline in contract purchases between FY 1993 and FY 1999, small businesses received a higher share in FY 1999 than in FY 1993 of expenditures on new contracts worth $25,000 or more. In another recent GAO report[5] on construction contracts and the potential impact of consolidations on small business, the GAO found that: "Overall data on military construction contract awards to small businesses revealed that small businesses are generally continuing to win work and that their ability to compete is not being impaired. Specifically, the share of awards going to small businesses increased

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[3] Logistics Management Institute Report AQ001R1 on "Case Studies in DoD Contract Conslidations A Study for the Office of Small and Disadvantaged Business Utilization" of December 2000.

[4] Report GAO-01-119 on "SMALL BUSINESS Trends in Federal Procurement in 1990s" of January 2001.

from 25 percent in 1997 to 32 percent in 2000." These reports do not suggest that contract consolidations have had a major impact on the health of the small business industrial base in general.

I assure you that DoD is committed to avoiding contract bundling that is not properly justified. I will soon issue a memorandum that re-emphasizes the requirements of the Federal Acquisition Regulation regarding bundling and my expectation that acquisition strategies facilitate small business participation to the maximum extent practicable. The memorandum will transmit a Benefit Analysis Guide that includes practical advice on mitigating adverse impacts on small businesses and detailed guidance on performing the required benefit analysis. These documents were developed to ensure appropriate emphasis is placed on avoiding unjustified bundling.

As I have stated, DoD is committed to small business. I would like to mention a couple of DoD small business success stories. The first is the largest section 8(a) competitive award made in the history of the 8(a) program. The award was made this year by the Naval Air Systems Command (NAVAIR) to "TeamQualtec," a joint venture between the 8(a) firms Qualtec, Inc. of Beltsville, MD and CCI, Inc. of Alexandria, VA. It was awarded as an indefinite delivery, indefinite quantity (IDIQ) contract for technical and management logistics services in support of NAVAIR's Headquarters office and

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[5] Report GAO-01-746 on "CONTRACT MANAGEMENT Small Businesses Continue to Win Construction Contracts" of June 2001.

component field activities for a ten-year period of performance. The cumulative dollar value of the contract is anticipated to be $698.5 million over the life of the contract if all options are exercised and the maximum is ordered during each ordering period.

The Defense Information Systems Agency (DISA) awarded the largest small business set-aside in history. On February 16, 2001, DISA awarded three IDIQ contracts for the Defense Information Systems Network (DISN) Satellite Transmission Services - Global (DSTS-G). The contract will provide government-wide global fixed satellite service bandwidth and related business and enterprise satellite-based services and applications. The three winning contractors were Artel, Inc., a small disadvantaged business; Spacelink International LLC, a small business; and Arrowhead Space & Telecommunications, Inc., a woman-owned small disadvantaged business. Under these contracts, the contractors will compete for work on a task order basis. The maximum cumulative face value for all three contracts is anticipated to be $2.196 billion. Each contract was awarded for a base period of three years with seven one-year options.

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 local small business communities. 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 conclusion, I would like to reaffirm the DoD commitment to small business as a valuable and integral part of the defense industrial base. Thank you for the opportunity to appear here today. I will be happy to answer your questions.

SPENRO

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972-988-6161

I'd like to begin by thanking Undersecretary Aldridge as well as the other members of this panel for giving us the opportunity to voice our concerns. My name is Robert Spencer. I am President of Spenro Industrial Supply in Grand Prairie, Texas. I am proud and humbled to represent hundreds of the small and minority owned businesses that are currently being excluded from competitive bid opportunities at tax supported defense contractors.

Since 1979, our eleven employees have worked hard to provide quality, American made products at competitive prices. We have dealt with recessions, corporate buyouts, military cutbacks and, on occasion, corrupt purchasing agents. Today, we face our biggest threat to competition: the bundling and integration of purchasing agreements at tax supported defense contractors. For example, in 1992 Lockheed Martin Corporation began integrating its contracts. In 1997, Lockheed awarded a multiple location sole source contract to one small business, eliminating any chance for other small or minority suppliers to participate. By demanding such restrictive and expensive requirements, Lockheed Martin limited participation to only one supplier.

The following is a list of some of the principal requirements placed on small businesses by Lockheed Martin:

1. Buy backs of millions of dollars worth of Lockheed Martin inventory as well as warehousing of that inventory.
2. Establish sales offices, warehouses and service centers at multiple locations throughout the United States.

3. Institute tool inspection equipment and hire inspection employees at each service center.
4. Provide total computer interface between Lockheed Martin facilities and each service center.
5. Invoice goods and services once a month only.
6. Provide a quote of approximately 15,000 line items, many of which are specials (Cost to quote each integrated contract is around $35,000-$50,000)

* Numerous expensive requirements in addition to this list have made it financially impossible for small and minority owned businesses to compete.

Each year competition steadily decreases while the incumbent supplier becomes more and more monopolistic. Lockheed Martin valued the 1997 5-10 year supply contract at $9 million per year. Now, with the F22 award of $90 billion and a potential JSF program of $200 billion, a great deal of Americans' tax dollars is at stake. Historically, competition has brought out the best in Americans while monopolies have proved damaging to business and society as a whole. Boeing bidding against Lockheed Martin and Bell Helicopter bidding against Sikorsky encompass the value of competition and economics, much like the bidding between distributors at our level. These practices are the basis for American business, and they enable the buyer to receive the best product at the best price. Due to these restrictive requirements, we at Spenro ask for an open and equal opportunity to conduct business at tax supported aerospace companies.

The following is a list of suggestions concerning some immediate actions we feel should be taken to correct these injustices.

1. Immediately end all integrated contracts at tax supported defense contractors to protect the stability of affected small and minority business, especially the F-22 and JSF programs

2. Give preferential treatment to excluded companies for one year in order to stabilize their finances.
3. Allow excluded supply companies the right to protest unjust exclusion to an unbiased panel that will provide appropriate measures to resolve the situation.
4. Establish policies, enforcement and education of all procurement employees concerning criminal punishments for receiving any type of kickback.
5. Instruct defense contractors to rotate buyers every two years so procurement will be based on product quality, price and delivery rather than personal relationships. In addition, eliminate sole source products wherever possible.
6. Set a 33 % ceiling on the amount one distributor can receive on any one-product category.
7. Establish a new and logical system for classifying business size by designating a business with 25 or fewer employees as a "small business" rather than the current unrealistic mark of 500 or fewer.

In conclusion, I strongly believe excluding small and minority owned companies from competing at tax-supported defense contractors violates the spirit of federal statutes concerning the participation of small businesses. Furthermore, it is imperative that changes be made to the contract requirements not only to protect small businesses from exclusion and discrimination, but also to keep the larger firms from creating a monopolistic environment in the aerospace industry. Thank you once again for listening to our concerns. I hope you will consider the recommendations with which we so strongly believe. Without your immediate help, many more small family owned companies will cease to exist.

TERRY NEESE
President

BARBARA KASOFF
Vice President

FOUNDING PARTNERS
Sherry Dale
Oklahoma
Patty DeDominic
California
Kathleen Diamond
Washington, D.C.
Phyllis Hill-Slater
New York
Janice L. Hoffman
Kansas
Allena Kendrick
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Karen McVey
Ohio
Joan Major
New Jersey
Ann Parker Maust, Ph.D.
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COALITION PARTNERS
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National Association of Women Business Owners
National Indian Business Association

TESTIMONY OF

JANICE L. HOFFMANN

PRESIDENT & OWNER

HOFFMANN *FABRIC*ATING

ON BEHALF OF

WIPP: WOMEN IMPACTING PUBLIC POLICY

BEFORE

COMMITTEE ON SMALL BUSINESS

IN THE U.S. HOUSE OF REPRESENTATIVES

Thursday, September 6, 2001

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HOFFMANN *FABRIC*ATING

Jan Hoffmann
President/Owner
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Good morning, Mr. Chairman and members of the committee. Thank you for the opportunity to appear before you today to discuss my experiences with Procurement with the Department of Defense.

My name is Janice L Hoffmann. I am president and owner of Hoffmann Fabricating, LLC, a contract cut and sew business in Wichita, Ks. which employs 16 people. I am also a founding member of Women Impacting Public Policy (WIPP), and a member of the National Association of Women Business Owners (NAWBO). I have joined these organizations to have my voice heard.

I am a "job shop" meaning that I bid on new opportunities that are in my **North American Industry Classification System** code. I don't have a product that I sell. I sell the service of building products to the specifications and drawings of the customer.

I have had several years experience in this type of business and started this company in September, 2000.

I would like to say first, that there have been improvements in the last few years in dealing with DOD procurement. I, like most small business owners, am encouraged by them. However, there are some areas in which I would like to see more change.

I have many opportunities to visit with Small Business offices and contracting officers at procurement centers for Army Tank-Automotive and Armaments Command, Defense Supply Center Richmond, Defense Supply Center Columbus and Defense Supply Center Philadelphia. I have in the past asked the question "How does being a Woman Owned Business weigh, in the awarding of a contract?" In every instance, the answer was that while it is supposed to, it really makes no difference at all. One small business office told me that if a Woman Owned Business gets a contract, it is strictly happenstance. Without the tool of Restrictive Bidding, the goals that do exist make no difference, and the fact that there is no way to award contracts to WOB other than luck is not an isolated attitude.

I recently attended Senator Ike Skelton's Procurement Conference in Missouri. I was anxious to make contact with large companies for subcontracting opportunities. I met a lot of large government contractor representatives, gave out lots of business cards and letters of abilities and shook many hands. All these representatives were seemingly very excited to meet a Woman Owned Business, who happened to be a HUBzone company, as well. Since the conference, I have contacted their offices to remind them of me. The only one I ever heard from again was Motorola. They responded with a form letter saying thank you for my interest and they would keep me in their file for 1 year.

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In another instance, I recently prepared a large quote for a huge aerospace company, which required a great deal of engineering time. They were most anxious to get my quote. I declined to quote on the first or second requests, due to the required amount of time to prepare such a complex quote. Upon their insistent third request, I finally agreed, thinking that they wanted to do business with a WOB. So we did our best making their deadline etc. Since then I have followed up with the buyer several times. His response was that I wasn't the low bidder (which is not uncommon), couldn't manufacture all of the items, (which the buyer understood some were not my manufacture) and he just didn't know yet what he was going to do with it. If he went with me, we would have to go through a quality check etc. He had many excuses. My gut feeling, though, is that he satisfied his need to get a Woman Owned Business quotation…that he was just "x-ing the box". He told me they just didn't have the time to go out looking for new vendors. I don't have the time or money to quote for companies that are just x-ing the box.

The pool of products that I have the ability to bid upon continues to shrink. Federal Prison Industries takes a good share of the work that I could do. Under the Javits, Wagner, O'Day Act, the National Industries for the Severely Handicapped ("NISH") and the National Industries for the Blind ("NIB") also take a chunk. Once items enter those domains, they are usually forever gone to small business owners. We, as a nation, have already lost millions of jobs in the sewing industries to Latin American countries and Asia. Small business has suffered greatly because of this. It is tough enough to compete with foreign industry, but it's even more frustrating to compete with your own government, using my tax dollars to contribute to my own demise.

I also firmly believe that Department of Defense Procurement should be done with AMERICAN owned companies.

Predatory pricing is also an issue in some cases. Well established, large companies with deep pockets are able to keep prices so low that it can be impossible to successfully bid, and make a profit.

These are just a few of the issues that I face as a WOB. There aren't many women in manufacturing because it is a very difficult business at best and extremely hard trying to make a profit when doing business with the government.

Five-year contracts are very difficult to deal with. Indefinite quantity contracts are extremely difficult. We try to build in for inflation, increased labor costs, insurance etc. I have a 5-year contract now; making fitted vehicular covers for the Army.. The covers are used on cargo transport vehicles, and must be waterproof, which makes them more labor intensive. I had to bid this contract so low that I am very close to losing money. By the end of 5 years, I am sure that I will. It is not to the benefit of the DOD or to our country to reduce the number of their suppliers by running them out of business.

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I have heard from one Supplier Diversity Officer in a large company with a comment that I think you will find interesting. Word is finally getting to people that Congress is serious about WOB. Some small companies are transferring stock and ownership to a woman hoping that it will be sufficient to get WOB contracts.
These are possible solutions:

I believe that there should be restricted competition for WOB. Congress obviously agrees, hence the setting of goals. However, goals are not enough to make it happen, they frankly have no teeth, and the goals become meaningless in the real world.

I believe that WOB must be certified. Paper ownership is not the same as running the company.

The public and private sector must include WOB in the contracting plans and it must be enforced. We are out there, we have found you and we can do the work.

Look very closely at Federal Prison Industries, Javits, Wagner, O'Day companies. Small business should be subcontracting to them in their own communities where everyone can benefit.

AMERICAN COMPANIES SHOULD BE DOING THE WORK FOR THE DOD.

THERE SHOULD BE RESTRICTED COMPETITION FOR WOB, TO KEEP PREDATORY PRICING FROM KEEPING US OUT OF THE GAME.

These are very big issues for me. I have others such as source approval, drawing availability, sole sources, budget holdups, holding prices for long periods of time and more. But perhaps we can discuss that at another time.

Small business is just that. We are not banks. If we are going to keep the doors open the jobs have to come at a reasonable cost in a reasonable time. Women Owned Business are very important to this country. The U.S. Small Business Administration statistics show that women are starting businesses at **twice** the rate of all businesses **and** staying in business. We want to do our share, but frankly we are going to need the leg up that Congress can give us to compete.

Thank you Chairman Manzullo and committee members for listening to me today. A special thanks to Terry Neese, president of WIPP, for encouraging me to "get involved".

Janice L Hoffmann

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Testimony of

The Association for Service Disabled Veterans

Presented by

William F. Crandell, Ph.D.
Director of Government

before the

House Committee on Small Business

on

Department of Defense Procurement Goals For FY 2002

September 6, 2001

Good morning, Chairman Manzullo and Ranking Member Velazquez. The Association for Service Disabled Veterans commends you for holding this important hearing today on the procurement goals of the Department of Defense (DoD) for small and disadvantaged businesses.

ASDV's goal is to create opportunities for service disabled veterans to achieve and maintain their rehabilitation through economic participation. We regard the appearance today of Under Secretary for Acquisition, Technology, and Logistics Edward C. Aldridge as a gauge of DoD's seriousness about implementing Public Law 106-50, the Veterans Entrepreneurship and Small Business Development Act of 1999.

It is certainly time to ask how seriously DoD is cooperating in the implementation of this major reform. In the hearing of this committee on May 23, ASDV testified along with others in the veterans community that the Small Business Administration (SBA) was allowing federal agencies to set procurement goals for contracting and subcontracting with service disabled veteran-owned businesses below the 3 percent minimum set in PL 106-50 two years ago. DoD has given itself that minimum 3 percent goal, but no more than that.

Congress *must* see that the 3 percent contracting goal for *every* Federal agency is enforced as set forth in PL 106-50. ASDV's experience in the past year is that Federal contracting officers are willing and eager to support this effort, but they are being told there are no regulations, there is no authority to give contracts to qualified service disabled veterans.

In this committee's hearing of June 20, 2001 on procurement policies of the Pentagon with respect to small business, Director of Defense Procurement Deidre Lee said that DoD "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," and noted that the Department's approximately 65% of total federal procurement dollars and its procurement practices are important to the health of small business.

In fact, $48 billion of identifiable Defense procurement spending went to small business firms in FY 2000, with $26.9 billion of it going to small business prime contractors. DoD is also reported increasing its focus on small business subcontracting performance with its prime contractors. Defense awarded $10 billion to small disadvantaged businesses, 70 percent

of it at the prime contract level in FY 2000. "Yet we must do better," Ms. Lee stated.

She is correct.

We noted that in her testimony Ms. Lee said the Department is still striving to improve performance for "some of the newer small business subcategories," including veteran-owned small business. She testified that Under Secretary Aldridge has issued a policy "emphasizing the importance of achieving small business program performance improvement, and assigning accountability at the highest levels within Defense. 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."

Accountability is to be the key to the new policy. The secretaries of the military departments and directors of the defense agencies will report semi-annually to Under Secretary Aldridge, and Under Secretary Aldridge will, in turn, report semi-annually to the Deputy Secretary of Defense on performance against the targets and small business improvement plans.

We'd like to see accountability with regard to implementation of the 3 percent procurement goal for service disabled veterans in PL 106-50. *Every* Federal agency needs to be encouraged from above to be proactive in looking for veteran-owned and service disabled veteran-owned businesses as suppliers. Nobody responsible for procurement ought to receive a bonus for any year in which the agency has failed to award its full three percent of contracts to veterans, as required by law.

Today Under Secretary Aldridge seems to be playing defense, as well as Defense. This hearing is a follow-up to the one of June 20, in which the DoD was scored for not supporting veterans and the goals in PL 106-50, as well as for its shortcomings with regard to the 8A program and the roadblocks its procurement systems put in the way of small businesses of all sorts.

America's veterans expect Congress to hold Defense fully accountable on veterans procurement. We want to see a game plan for meeting DoD's 3% goal in 2002. We want this to be part of a straightforward strategic plan for the agency.

We recognize that most Defense procurement is done by the separate services. Still, DoD itself must set its benchmark in two ways. The first is that DoD as the umbrella agency must aggressively set and meet its procurement goals for service disabled veteran-owned and operated small businesses in accord with the law. Second, the Secretary of Defense must make certain that the separate Departments of the Army, Navy and Air Force and the defense agencies do the same.

There have been some efforts, particularly at the level of the separate services. Recently the Air Force held a national procurement fair for service disabled veteran-owned businesses. Nothing much has come of it. Follow-through is needed. It was a nice overture, but where is the opera?

How has Defense communicated its 3 percent goal to its installations and agencies? That is $3.76 billion in prime contracts and $1.357 billion in subcontracts. Has DoD collected any data yet, in compliance with PL 106-50? What was the percentage of applicable contracts and subcontracts awarded for 2001 to service disabled veteran-owned businesses, or does Defense know? What steps have been made into policy?

Every contract solicitation should state that Defense has a goal of awarding at least 3 percent of its small business contracts and subcontracts to service disabled veteran-owned businesses. Every prime contractor should be required to state this goal in seeking subcontracts. Defense needs to be dedicated, and to show it. This information should appear on websites showing frequently asked questions (FAQs) and links elsewhere.

We looked at the Defense Small and Disabled Business Utilization (SADBU) web site under its heading for "Veteran-Owned Small Business Program." Although that phrase appeared three times on its single screen, and there was even a logo, all that appeared were the words "This page is currently being developed." Yet SADBU is a well-established office, and PL 106-50 was signed into law in 1999. We would like to have a time line for completion of this web site, and we don't think that is asking very much.

America's Armed Services have the strongest obligation in the federal government to the men and women who have been disabled through service to their country. Neither the Department of Agriculture nor the Government Printing Office ever sent young Americans to war. DoD and the services it

manages outpace other federal agencies in the hiring, for example, of disabled and special disabled veterans as employees, according to the latest data from the Office of Personnel Management (OPM).

The Association for Service Disabled Veterans calls upon Defense to show the same vigor in setting and surpassing its goals for contracting and subcontracting with service disabled veteran-owned businesses. Let's see the Army lead the way again, as an old slogan said, and the Navy, the Air Force and the Marines! DoD's obligations to the men and women it exposed to danger and disability set a very high bar. We suggest Defense challenge itself and the rest of the federal government by setting itself a DoD-wide goal of *4 percent* for contracting and subcontracting with service disabled veteran-owned businesses, rather than the legal minimum of 3 percent.

An American Forces Press Service article dated August 16, 2001 said that within the next five years, 50 percent of DoD's acquisition workforce will be eligible for retirement. There will be a significant turnover within the next five years. Now, as Undersecretary Aldridge creates a strategic plan for the future, he must build into the training and the performance goals an appreciation of the "V" word. The new and rising staff for procurement must not only *include* veterans – for veterans preference must continue to be seen as both a legal obligation and a personnel tool – but they must also learn that veterans in business as in employment are a national resource.

ASDV would like to help DoD create a strategic plan that is tied to the Quadrennial Defense Review. We will continue to work with the services. Plan to hire more service disabled veterans and to do business with more of us as well. We're good at what we do. Defense knows that, having paid for our training and having relied on our ability to get jobs done whatever the odds. Undersecretary Aldridge, it isn't just that DoD owes us – though that is true – but that DoD knows what we can do. Build that knowledge into your strategic plan for restaffing DoD and you cannot go wrong.

Conclusion

Mr. Chairman and Madam Ranking Member, we have made some real progress with the enactment and partial implementation of PL 106-50, but nothing like what Congress intended two years ago. There is a limited window of opportunity for serving veteran entrepreneurs, because age and death overtake more of them every year. We want the Defense Department

to serve its veterans in the same good faith it got from us. Let's work together and fully implement the law this year.

Testimony of

Thomas Kelleher, Esq.

On behalf of the

Associated General Contractors of America

Before the

Small Business Subcommittee

Regarding

Defense Procurement Policies

September 6, 2001

The Associated General Contractors of America (AGC) is a national trade association of more than 33,000 firms, including 7,500 of America's leading general contracting firms. They are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects and site preparation/utilities installation for housing development.

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The Associated General Contractors of America (AGC) is the nation's largest and oldest construction trade association, founded in 1918. AGC represents more than 33,000 firms, including 7,500 of America's leading general contracting firms. AGC's general contractor members have more than 25,000 industry firms associated with them through a network of 101 AGC chapters. AGC member firms are engaged in the construction of the nation's commercial buildings, factories, warehouses, highways, bridges, airports, waterworks facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, site preparation, and utilities installation for housing developments.

I am Tom Kelleher. I am appearing today as AGC's representative because of my role as the Chairman of AGC's Federal Acquisition Regulation Committee, and on behalf of AGC's small business members. Having begun my professional career in government contracting as an instructor in government contract law for the U.S. Army Jag Corps during the Vietnam War, I am now a partner with the law firm of Smith Currie and Hancock in Atlanta, Georgia. Approximately 80% of AGC contractor members are small businesses who need an attorney to wade through the complex maze of federal procurement laws and regulations. Being a lawyer, my firm advises me that I must offer a legal disclaimer—the views expressed today in this testimony are not necessarily consistent or inconsistent with the views of Smith Currie and Hancock and its clients.

AGC is concerned about several procurement initiatives that are either being considered by Congress or being undertaken by the Department of Defense (DOD), or other civilian procurement agencies. These include:

1. An attempt to make construction a commercial item, which is being contemplated by DOD.
2. 0% contingency allowance. Last year DOD requested 0% contingency funding, placing the completion of construction projects in jeopardy.
3. Legislative proposals that would severely restrict outsourcing.
4. Bid shopping legislation (H.R. 1859) that would increase government interference in the contractual relationship between the prime contractor and subcontractor.
5. Finally, AGC is also concerned that the blacklisting regulation has not been permanently withdrawn.

Construction Is Not A Commercial Item

At the present time, the acquisition rules for the procurement of construction projects can be found in Part 36 (Construction and Architect Engineering Services) of the Federal Acquisition Regulation (FAR). AGC is aware that a working group at DOD is examining the procuring of construction using FAR Part 12 (Acquisition of Commercial Items). It is suggested that this change makes acquisition of these projects faster and administratively easier. Unfortunately, this attempt to streamline the procurement process does not take into consideration the unique nature of construction projects as they relate

to differing construction specialties as well as unique structural, geologic and mechanical characteristics of the project that must be considered to ensure a quality, on-time construction project.

Construction is inherently not a commercial item as that term relates to federal acquisition. Part 12 of the FAR is intended to discuss acquisition of products commercially available off-the-shelf, such as computers or vehicles.

The focus of Part 12 appears to be on items that are repetitively manufactured for the commercial market, and is more comparable to the sale and purchase of goods and equipment subject to Article 2 of the Uniform Commercial Code in the private sector. In the private sector, construction contracts are not subject to Article 2 of the UCC; rather, construction contracts are classified as a type of service contract.

Acquisition of commercial items for federal purposes was originally intended to eliminate unnecessary regulations, the goal of the Federal Acquisition Streamlining Act (FASA). Unfortunately, these streamlined procedures have caught the attention of agencies procuring buildings for the federal government. While there are certainly aspects of the construction process that might involve the use of federal commercial items such as shelving, the design and construction of a building on widely varying terrain involves substantially more complex rules than simply purchasing a widget from a store.

Construction projects are not cookie-cutter designs. Geotechnical or subsurface issues vary from project to project. This can occur in similar projects less than 100 yards from each other. Ignoring the varying soil conditions, or even weather conditions, can jeopardize the safety and stability of a project. For example, the government may want to build three new barracks to house soldiers. The plans and specifications may be the same for all three buildings. Differing soil types within the same installation may require wholly different modifications to the structures. The people working on the buildings may be different; the weather conditions will be different. The three barracks may be in three different areas of the country. Snow load on the roof would require a different support structure, while the same basic barracks design in a foreign country could require different safety precautions. Simply put, construction is not manufacturing. The same elements cannot be put into a structure the same way everytime.

In addition to these concerns, DOD officials have readily admitted in a meeting with AGC that many contract clauses under Part 12 would have to be modified for construction. Part 12 does not adequately handle disputes over change orders, progress payments, and other traditional construction issues. Further, there are several requirements unique to construction that would need to be included to provide specific guarantees to the government. The Miller Act, Prompt Payment Act, and Davis Bacon Act all apply to construction, but are not currently listed as laws applicable to the acquisition of commercial items under Part 12.

Federal construction contracts require Miller Act performance and payment bonds. These bonds guarantee two things. First, the performance bond guarantees that if a contractor is unable to complete a project for any reason the guarantor or surety company will be financially responsible for the completion of the project. Second, the payment bond guarantees payment to a subcontractor in privity of contract to the prime contractor should something unforeseen happen to the prime contractor. In this way, the Miller Act places the burden of completion and payment squarely on the shoulders of the prime contractor, as it must provide an indemnity to the surety in order to obtain the bonds.

In addition, the Prompt Payment Act would need to be amended. Prompt Payment Act requirements for construction contractors differ from manufacturers or other service providers. There are progress payments over the course of the project that are not mirrored in service contracts, and retainage is customary in construction contracts. Retainage is the practice of the government holding back a percentage of the total price of a project before acceptance of a project to ensure that both the prime contractor and subcontractor complete work. Construction also operates under the Davis Bacon Act wage requirements, whereas other services must conform to the Service Contract Act requirements. These statutory changes should be discussed before the government even considers making construction a commercial item.

In a meeting with government officials at DOD to discuss the government's interests in moving Part 36 to 12, these topics were brought up for review. The government's solution was to rewrite Part 12 to answer the construction industry's concerns. Very simply put, the government has already investigated this and determined that construction is unique in Part 36 of the FAR. If we need to change a particular area, let's do it where it makes sense – in Part 36. In light of the physical and engineering complexity of construction projects, the legal ramifications, and the fact that construction is already covered by a unique section of the FAR, construction should not be considered as a commercial item.

AGC Encourages the Government to Take Advantage of Outsourcing

AGC supports the use of outsourcing and privatization. It makes little sense for the government to repair potholes, construct base housing, and maintain these facilities. The construction business is not an easy one, and it is capital intensive. Government workers should remain focused on their core mission, and in the Pentagon this is even more imperative. The government has capitalized on a synergistic relationship with government contractors for years, booking millions of dollars in savings and utilizing technical expertise not available in government agencies.

The TRAC Act, H.R. 701, would prevent the Department of Defense from taking advantage of outsourcing and privatization. The bill does exempt construction, but it does not exempt repair and maintenance work. According to the Federal Procurement Data Service, an average of $16 billion is spent annually on construction. Almost half of that money is spent on renovation projects that often combine extensive repairs and

modification of existing projects. For the government to attempt to perform $8 billion of renovation, repair and maintenance work in-house, resources would have to be drained from "inherently governmental functions" in order to match the construction industry's ability to maintain and repair facilities.

We can all agree that bid protests slow down government work. The TRAC Act and similar legislation, such as the Abercrombie Amendment attached to the Department of Defense Reauthorization bill, would increase bid protests. Because construction is often several items in one contract, the possibility exists that a new facility and the renovation, repair or maintenance of an existing facility could be in one contract. Parties could protest this contract action, questioning what should be "in-sourced" as repair and maintenance versus what should be outsourced as new construction. The TRAC Act and similar legislation will not improve the quality of construction projects, will not ensure the timely delivery of construction projects, and will not save the government money.

AGC Opposes Government Interference in Contractual Relationships

AGC is concerned that H.R. 1859, legislation attempting to stop bid shopping in federal procurement, micromanages individual contractual relationships between the prime contractors and subcontractors. Prime contractors estimate the project to determine what can be performed in-house and what needs to be subcontracted.

AGC opposes the practice of bid shopping; however the legislation is unbalanced. H.R. 1859 claims that bid shopping costs the government money and sacrifices quality of construction without any information to substantiate those claims. The bill indicates that bid shopping is pervasive, but offers no evidence to substantiate that claim. The bill states that bid shopping is an unacceptable practice for both prime contractors and subcontractors, but it provides penalties for prime contractors while failing to penalize subcontractors and suppliers who engage in bid shopping. The Clinton Administration opposed similar legislation in the last Congress, and the Bush Administration opposes H.R. 1859 this Congress.

H.R. 1859 fundamentally misses the mark as it relates to construction. Construction contractors work with subcontractors to prepare bids for projects. Once the contract is awarded to the prime contractor, the contractor then works to secure the subcontractors. Often, during the negotiation of subcontract work the subcontractors may clarify that their bid only contained workers and machinery and not the supplying of materials. The prime contractor must consider accepting this or looking for another subcontractor who will perform the work for the original price. This continuation of the negotiations between prime contractor and subcontractor after the award of a contract is not bid shopping, but simply a clarification of the project's requirements and the subcontractor's role in meeting those requirements. The legislation would prevent a prime contractor from accepting a lower bid from another subcontractor even if no contract between the parties had been executed. This could at times prevent the prime from entering into a contractual relationship with a subcontractor able to perform the work.

Additionally, the federal government frequently asks for the prime contractor to review their proposals or estimates and come back with a better (lower cost) figure. When the contracting officer tells the contractor to go back to its subcontractors and suppliers to create a lower price, will it be considered bid shopping? Another issue is simple equity. If there is going to be federal intervention in a contractual relationship between the prime contractor and subcontractor, then it should also be instituted between the subcontractor and their sub-subcontractors and suppliers.

If bid shopping is a pervasive practice in our industry, AGC wants to know about it. AGC represents 33,000 firms including about 7,500 General Contractors and we also represent about 25,000 subcontractors, specialty contractors and suppliers. AGC's conclusion thus far is consistent with the federal government's own testimony on this issue. AGC opposes the legislation, but wants to address problems that exist in the construction industry. Our members—general contractors, subcontractors and suppliers – are scheduled to meet at our midyear board meeting in October to discuss the issue and determine if there is a problem that warrants federal intervention.

AGC Opposes the Elimination of Contingency Funds

In Fiscal Year 01, a proposal was made to eliminate contingency funding in the Department of Defense budget. AGC voiced concern about this proposal and urged DOD not to pursue this course in future funding requests. With the elimination of contingency funds, the safety of the final project would be questionable. A recent example demonstrates the problem. Early in a project for bank stabilization, a substandard fill area was discovered which needed to be eliminated. A government-provided design error was discovered, and the riprap interface needed to be redesigned. Anchors for the spillway did not work in the sand surrounding the area, which required a new anchor design. Without contingency funding for projects, this problem could not have been mitigated, forcing the project to be stopped until funding was identified to cover the additional engineering and construction costs.

As I referenced when discussing commercial items, construction projects are not cookie-cutter designs. Geotechnical issues vary from project to project. This can occur in similar projects less than 100 yards from each other. Ignoring the varying soil conditions or even weather conditions, can jeopardize the safety and stability of a project. Projects that cannot adjust to the varying scope, design issues, and other changes due to the lack of contingency funding will not achieve the quality of construction our nation's defenders require to accomplish any given mission.

AGC Opposes Blacklisting Regulation

AGC appreciates the Chairman and Ranking Member's support for the elimination of the blacklisting regulation. As the FAR Council takes a look at the comments provided, AGC urges the Council to examine the valid legal arguments as to

why this regulation is unworkable and unnecessary. Continuous improvement of federal construction for the taxpayer is a goal we share, but the blacklisting regulatory scheme is not going to achieve its alleged goals.

Conclusion

Thank you for the opportunity to testify on DOD Procurement activity. There are many areas in which industry and the government can continue to work to improve the quality of federal construction delivered to the Department of Defense and ultimately the taxpayer. I would be happy to take questions.

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE
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September 6, 2001

Honorable Donald A. Manzullo
Chairman, Committee on Small Business
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I very much regret not being able to appear before the House Committee on Small Business this morning. I am most grateful to you and the Committee for accommodating the demands of my schedule in the face of your need to reschedule today's hearing.

I have every confidence that our Director of Small and Disadvantaged Business Utilization, Colonel Curtis Wright, will prove an able representative in my stead. I have grown to depend on his experience and judgment in these matters.

As you know, one of my five goals is to improve the health of the defense industrial base. I consider small businesses to be an important part of that base. Consequently, I look forward to working with you, your committee, and Congress as we grapple with these important questions.

Sincerely,

E. C. Aldridge, Jr.

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