CONTRACT BUNDLING AND SMALL BUSINESS PROCUREMENT

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TUESDAY, JULY 15, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT
COMMITTEE ON SMALL BUSINESS
Washington, D.C.

The Subcommittee met, pursuant to call, at 2:00 p.m. in Room 2360, Rayburn House Office Building, Hon. Edward Schrock [Chairman of the Subcommittee] presiding.

Present: Representatives Schrock, Bartlett, Gonzalez, Capito.

Chairman SCHROCK. I think we will begin. I am sure Mr. Gonzalez will be here shortly, but I think he would appreciate it if we would start.

Good afternoon, ladies and gentlemen, and thank you for coming to what I believe will be a very informative hearing. According to a report by the Office of Management and Budget issued last October, the number and size of bundled contracts have reached record levels. This most likely means that efforts to prevent unnecessary bundling are not as effective as we would like.

Contract bundling is not, in all cases, inappropriate. When a well-defined project is literally too massive for small businesses, or if a project's requirements too rapid of complex, in the interest of national security, a bundled contract may, in fact, be necessary. In many cases, however, contract bundling is unjustified and is a lethargic response to a reduced federal acquisition work force. Unnecessary contract bundling is often counterproductive to federal procurement goals. It can end up shrinking the supplier pool and causing higher prices in the long term.

President George W. Bush laid out a strong marker on this issue in his Small Business Agenda, released last year. Believing that our small businesses are the heart of the American economy, he directed that the contracting process should be fair, open, and straightforward. He has also instructed the director of OMB to review practices at agencies with significant procurement activities to determine whether their practices reflect a strong commitment to full and open competition. Congress has certainly weighed in on this issue regularly, most recently, in the Small Business Reauthorization Act of 2000.

The SBA is required to produce a contract-bundling data base, conduct an analysis of bundled requirements, and submit it all in a report to Congress. Included in this report are details about the number of small businesses displaced as a result of the bundled

procurement, a description of the activities of each agency with respect to previously bundled contracts, and the justification for the bundled contracts.

This hearing's first purpose is to glean from government agencies how effective they have been in following the principles of the President's Small Business Agenda. I am anxious to hear from the agencies that are here with us today about their successes and failures in meeting the President's requirements.

We are also interested in your degree of cooperation with the SBA to help them gather the needed data for their yearly report. They have cited numerous data gaps which prevent them for delivering a full report on the impact of contract bundling.

I fear that the problem of decreasing contract opportunities for small businesses may get worse before it gets better. With increasing demands being put on our federal acquisition work force in the form of the A–76 process and performance-based contracting, the temptation to aggregate smaller contracts into ever larger ones will grow.

Again, thanks to each of you for being here. We have two great panels of witnesses before us today, and I look forward to their testimony. Let me now recognize my friend, the Ranking Member, Mr. Gonzalez, for any opening remarks he might have.

Mr. GONZALEZ. Thank you very much, Mr. Chairman. I apologize for being a couple of minutes late, but it is good that you are so punctual. Around here, usually we are 20 minutes behind. Again, this is a great privilege, of course, to be here today to listen to the testimony. The truth is I had a prepared statement. I am not going to go through it because I am really interested in the testimony from both panels.

It doesn't matter what district you go into. You can go into any district, and you are going to have the same small business person out there at the town hall meetings or whatever, and they are going to tell you their frustration when it comes to bundling.

From the other end of the whole, negotiated contract, I understand that we have procurement officers and such, because in San Antonio we have so many military bases and such, that have received mixed signals from their government, and that is streamline, make things simple. So there has been almost kind of a conflicting message out there. How do you both, or can you pull off both? That is why I am so interested in the testimony.

But it is universal through any district, as I have said, and the common denominator is simply the frustration of small businesses that cannot compete the way the present system is operating. And you know that we have a score card that Ranking Member Nydia Velazquez issues every year. No one does that well, and they are doing worse this particular year, and, again, what is the reason? But we are faced with a situation, our responsibility: What do we do to assist small businesses? How do we get people's attention?

So maybe you will understand a little bit more maybe from your viewpoint, but the truth is it looks like it is a pretty dismal performance overall, and the question then becomes, how do we get your attention? How can we assist you? And if we don't have that kind of cooperation, our responsibility really does lie with the small

business men and women in the United States. And with that, Mr. Chairman, I will turn it back over to you.

Chairman SCHROCK. Great. Thank you very much. I am glad to have Mr. Bartlett here today, and I understand, he has no opening comments.

Before we begin receiving testimony from our witnesses, I want to remind everyone that we would like each witness to keep their oral testimony to five minutes. In front of you on the table, you will see a box that will let you know when your time is up. When it lights yellow, you will have one minute remaining, and when five minutes have expired, the red light will come on, and the trap doors open. Once the red light is on, the Committee would like you to wrap up your testimony as soon as you feel it would be comfortable.

We have the first panel today. The Subcommittee will hear, first, from Jo Baylor, who is the director of the Office of Small and Disadvantaged Business Utilization at the Department of Housing and Urban Development. Welcome, Ms. Baylor.

STATEMENT OF JO BAYLOR, DIRECTOR, OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION (OSDBU), U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Ms. BAYLOR. Thank you. Good afternoon Chairman Schrock, Ranking Member Gonzalez, and distinguished members of the Subcommittee on Regulatory Reform and Oversight of the Committee on Small Business. On behalf of Secretary Mel Martinez and Deputy Secretary Alphonzo Jackson, thank you for inviting the Department of Housing and Urban Development to testify about HUD's plans to meet the President's goal of increasing small business opportunities in federal procurements.

My name is Jo Baylor, and I am the director of the Office of Small and Disadvantaged Business Utilization, also known as "OSDBU," or my mother's personal favorite, "ozdebu." Prior to coming to Washington, I was a small business owner for over 20 years in Texas.

This position is not just a job for me but a committed undertaking. After being sworn in as a Schedule C, by President Bush, I know that this job is about results.

On May 16, 2001, Secretary Martinez signed HUD's Small Business Policy, which sets high goals for contracting with small businesses in all preference categories. Our policy states: "It is the ultimate goal of the Department that at least 50 percent of all contract dollars be awarded to small businesses." I am so proud to announce to you today that at the end of the third quarter for Fiscal Year 2003, HUD has awarded 50 percent of its prime contracts to small businesses.

The implementation of this policy has required the close cooperation of all of the staff at HUD, including the Office of the Chief Procurement Officer, who have demonstrated their commitment to achieving the President's small business initiatives. At HUD, we work very hard to support small businesses by helping to eliminate the obstacles often faced by small businesses. I like to call them the "Three As of Access." They are often seen as the largest obstacles for small businesses to success in government contracting. They

are: access to capital, access to information, and access to the decision-makers. At HUD, we concentrate on the last two, since, at HUD, we don't directly lend money to small businesses.

At HUD, we have done the following: "The Forecast of Contracting Opportunities" was completely revamped to be more small business friendly by including e-mail addresses and phone numbers with extensions of contact persons for each procurement. Additionally, we update the forecast weekly rather than yearly so that small businesses are aware of significant changes.

Aggressive outreach activities have been increased across the country so that all small businesses, not just those within the Beltway, can take advantage of HUD's procurement opportunities. We are also taking part in the SBA's matchmaking events and one-on-one counseling sessions.

To assist HUD with unbundling contracts, HUD has done the following: The Department, along with other federal agencies, prepares and submits to OMB quarterly a report on the status of HUD's efforts to ensure that contracts are not bundled. OSDBU and the Office of the Chief Procurement Officer are also preparing the benefit-analysis procedures for consolidated, bundled contracts to provide guidance to HUD program areas.

Equally important, the September 9, 2002 revised policy also extends subcontracting requirements to include government-wide, agency agreements (GWACs) and also GSA schedule awards, and it also includes all modifications, extensions, and options.

We have implemented several changes to ensure that we can identify bundled contracts. First, we trained our agency personnel on contract bundling. Secondly, along with the Office of the Chief Procurement Officer, we developed and implemented the small business review procedures for requests for contract services. We review every contract out of HUD over $25,000 in our office. We also require a bundling review for all tasks and delivery orders under multiple-award, contract vehicles.

HUD also included OSDBU as a member of the contract management review board, and we have reviewed more than 20,000 procurement plans and actions.

We are committed to working with you and the other federal agencies and with the small business community to make sure that these necessary procurement reforms are implemented. At HUD, we are very fortunate because we have the sincere commitment and leadership of Secretary Mel Martinez, Deputy Secretary Alphonzo Jackson, along with Dexter Sydney, our chief procurement officer, who is here with me today, in this movement towards procurement fairness.

The Department is committed to increasing opportunities for small business at HUD and strengthening compliance efforts to monitor subcontracting plans already negotiated with prime contractors. We think that we can do better and provide greater access to small businesses across this country to HUD's direct and indirect dollars.

This concludes my statement, Mr. Chairman. Thank you again for the opportunity to appear before the Subcommittee.

Chairman SCHROCK. Thank you.

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

Chairman SCHROCK. Just exactly five minutes. Man, that is impressive.

Ms. BAYLOR. Thank you, staff.

Chairman SCHROCK. That is right. Thank you, staff. I hope all of our staff is listening to that. And that 50 percent figure you gave is a very high marker. You are to be congratulated on that.

Our next witness is Sean Moss, the director of the Office of Small and Disadvantaged Business Utilization at the Department of Transportation. We are delighted to have you here, Sean. Thank you.

STATEMENT OF SEAN M. MOSS, DIRECTOR, OSDBU, U.S. DEPARTMENT OF TRANSPORTATION

Mr. MOSS. Thank you, Mr. Chairman. Mr. Chairman and other members of the Subcommittee, I am pleased to appear before you today to discuss the Department's policies regarding contract bundling, procurement, and the agency's plan to implement the President's goal to increase small business opportunities within the federal government.

The U.S. Department of Transportation's Office of Small and Disadvantaged Business Utilization was established in 1978, as required by Public Law 95–507. Since this time, DOT/OSDBU, as it is called, the staff has consistently demonstrated a high standard of commitment to providing the highest level of customer service available to small, women-owned, and disadvantaged businesses anywhere in federal government. The DOT/OSDBU's effectiveness is a direct and immediate reflection of their work with partners within and outside of DOT. So utilizing the four lines of business, which are advocacy, outreach, financial services, and organizational excellence, enables the OSDBU to support the agency's management strategy.

As I said, DOT is a leader in federal government procurement. It has developed a culture that has demonstrated its commitment to small and disadvantaged businesses. Over the past three years, DOT has awarded over $3.662 billion in contracts to small and disadvantaged businesses, and that represents over 44 percent of DOT's total contracting dollars during that time period.

In addition, DOT/OSDBU works closely with the Department's procurement officials and program managers, as well as the SBA, and also the SBA/PCR rep. That is important to coordinate policy and direction and to develop new initiatives to address subcontracting issues. Over the past three years, DOT prime contractors have awarded over 50 percent of subcontracting dollars to small and disadvantaged businesses. To implement DOT's subcontracting program, the OSDBU, in conjunction with the SBA/PCR, evaluate and review and make recommendations on subcontracting plans.

Recently, we have achieved success in improving subcontracting opportunities for small businesses through DOT's matchmaking events. These events are held across the country, and what we do is we arrange meetings in advance with small businesses and prime contractors, along with DOT decision-makers, with the expectation to enter meaningful contracting relationships. This initiative has generated an increased awareness of DOT contracting op-

portunities for disadvantaged businesses and improved the pipeline and supply chain opportunities for prime contractors.

Now, the Department supports the President's plan to mitigate the effects of contract bundling for small business. In Fiscal Year 02, DOT reported seven bundled contracts, totaling $30.6 million. Now, this represents less than one percent of total contracting dollars for DOT. Although this amount may be viewed as insignificant, DOT is committed to eliminating all unnecessary bundling and creating every opportunity for small businesses.

Through Secretary Mineta's leadership, the OSDBU is responsible for developing and implementing the agency's plan. The secretary's support is key to raising the institutional awareness of this issue with senior management. However, a contract-bundling policy that is successful must establish a partnership with both the procurement and the program office.

So as a working member of the agency's procurement management council—now, that is the body that is comprised of each operating administration's procurement chiefs—the OSDBU is well qualified to lead the change. Now, the existing partnership has allowed us to partner with the Office of the Senior Procurement Executive to engage the acquisition offices to ensure that contract bundling will be a priority within the respective organizations.

So the OSDBU and the Office of the Senior Procurement Executive have proposed new policies and measures that will strengthen the agency's review procedures for identifying proposed contract-bundling contracts. Now, these guidelines will be added to the Transportation Acquisition Regulation.

So, beginning with program officials, bundled contracts must have the necessary justifications to advance. Without that, the new requirements will not be able to go to the procurement or the small business rep. In addition, the OSDBU will have the final authority for approving bundled contracts, regardless of their dollar value. So having this kind of accountability is indispensable for an effective, contract-bundling policy.

So, for the first two quarters of this year, we are encouraged by the early results of implementing the contract-bundling guidelines to date, and these results have been demonstrated in three areas: one, subcontracting compliance; two, acquisition planning; and, three, contract reviews.

So, just very quickly, in subcontract compliance, so far, the small business reps have seen an additional 25 percent more contracts for review. In acquisition planning, the Department has identified 16 proposed multiple-award contracts over the next 12 months, and the majority of these contracts are recommended either for 8[a] set-aside, partial set-aside, or even small business set-aside. And then, more importantly, I think, for contract review, we have seen 522 contracts for review by the small business specialists.

So, at DOT, our mission is real simple. Our mission statement reads: "To promote customer satisfaction through successful partnerships among our customers that result in an inclusive and effective small business procurement process." So we are very confident that we can roll in the President's agenda to address contract bundling.

Mr. Chairman and the Subcommittee, I thank you for this time to respond.

Chairman SCHROCK. Thank you, Mr. Moss. Thanks for being here.

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

Chairman SCHROCK. Next, we have Linda Oliver, who is the deputy director of the Office of Small and Disadvantaged Business Utilization from the Department of Defense. When I first saw OSDBU, I thought, "OSD," I understand that. Well, I was a little wrong, I think, but that, I thought, I understood. We are glad to have you here today, too. Your department probably has some of the biggest contracts of any department in the government, no question about that. So it is a different animal altogether. We are anxious to hear your testimony. Thank you.

STATEMENT OF LINDA OLIVER, DEPUTY DIRECTOR, OSDBU, U.S. DEPARTMENT OF DEFENSE

Ms. OLIVER. Thank you, Mr. Chairman. Before we begin, I haven't testified before a committee before. Is my written testimony part of the record?

Chairman SCHROCK. It absolutely is.

Ms. OLIVER. All right, then. Thank you. Then I will summarize——

Chairman SCHROCK. Great. Thank you.

Ms. OLIVER [continuing]. What it is I have said, what it is I have written.

Thank you for this opportunity to appear. My boss, Frank Ramos, sends his regrets. He is out of state with activities this week which were much earlier commitments, and so he sent me. I will just proceed with a little summary of bundling and then a summary of subcontracting.

For many procurements, of course, small businesses, in fact, provide the best benefit to the government. Where bundling occurs, what we are really seeing reflected is a tension between acquiring goods and services in a cost-effective way and maintaining a future strong industrial base. Mr. Gonzalez alluded to that in his opening statement.

My written statement summarizes our quite long history at the Department of Defense in managing the problem of bundled contracts. I won't go into the details of it, partly because I am not particularly good at remembering numbers, but you can see from our written statement that the Department of Defense is justifiably proud of our policy and justifiably proud of the results of our policy where bundling is concerned. It is not a major problem in the Department of Defense.

Subcontracting has been of particular interest to my office over the last two years because my boss, Mr. Ramos, is especially interested in it, and his boss, Mr. Wynne, who is the principal deputy under secretary of defense for acquisition, technology, and logistics, is very interested in it. Mr. Wynne, incidentally, is currently the acting under secretary of defense for acquisition technology and logistics.

This Committee understands, I am sure, even better than I do that there have been business changes in the way the Department

of Defense acquires major weapons systems, and, as you know, a major weapons system is ships, airplanes, tanks—big, big procurements. Our prime contractors have become contract integrators, integrating the works of other big contractors. So, for example, the primary, the most important, responsibility of one of our prime contractors might be to integrate a weapons system with a fire-control system with the platform that those things will go on.

The result to small business is that small businesses and the Department of Defense are doing the same work that they have done before, but they are one tier down in terms of contracting. Their agreement is with, now, usually, a subcontractor rather than with a prime contractor. Now, that has been a good thing for the Department of Defense because, as a result, we are now able to hold somebody responsible for timely, quality production at a reasonable price, but it does mean we have to work harder in the Department of Defense to make sure that small business is included and not left out in this subcontracting context.

My statement discusses some of the things that we have done, but they include, as with the other people who have testified so far, increased emphasis on source selection. Is the prime contractor going to see to it what does the small business subcontracting plan look like? We are undertaking more efforts to make sure the prime contractor sees to it that he does what he says he is going to do, and we are judging contractors' past performance more and more on whether they did what they said they were going to do.

My written testimony also discusses our experiments with multitier reporting and our training efforts to involve the contracting officers, the program managers with the DoD small business specialists for early involvement.

We think our plans are working. We think the future of small businesses in the Department of Defense is bright, and I welcome your questions.

Chairman SCHROCK. Thank you very much.

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

Chairman SCHROCK. We are pleased to have the assistant administrator for the Office of Small and Disadvantaged Business Utilization for NASA, The Honorable Ralph Thomas, and Mr. Secretary, we are glad to have you here. Thanks for coming.

STATEMENT OF RALPH C. THOMAS, III, ASSISTANT ADMINISTRATOR, OSDBU, NASA

Mr. THOMAS. Thank you very much, Mr. Chair, and good morning to you and the other members of the Subcommittee, particularly Mr. Roscoe Bartlett, who is my perennial congressman. He represents the best city in the nation, Frederick, Maryland, where I grew up.

Chairman SCHROCK. Now, wait a minute. We will talk about that after the hearing.

[Laughter.]

Mr. THOMAS. But my name is still Ralph Thomas——.

[Laughter.]

Chairman SCHROCK. We didn't take that away from you.

Mr. THOMAS [continuing]. And I am the assistant administrator for small and disadvantaged business utilization at NASA, as you stated.

In accordance with the relevant law that created the Office of Small and Disadvantaged Business Utilization, both in my agency as well as others, I report directly to the administrator, Sean O'Keefe, and I reported to the administrator, Dan Goldin, before that, and I have held this position since 1992 and have been in this field a long time. In fact, I have testified before the chairs of every picture on these walls. I don't mean to make myself sound old, but——.

Chairman SCHROCK. But the ones in the back, I don't think so.

Mr. THOMAS. No, no. I am also the chairman of the Federal OSDBU Directors Interagency Council, which consists of my counterparts at the other federal agencies.

I am pleased to be here representing NASA today, and we are honored to report on how we are supporting the President's small business agenda with regard to contract bundling. I am happy to say, though, that we have been sensitive to the impact of contract bundling on small businesses since early 1992, and we have been very effective in developing and implementing policies since that time that have dramatically increased prime and subcontract dollars to small businesses, including particularly those owned by minorities and women.

For example, we have increased prime and subcontract dollars going to small businesses from $2.5 billion in Fiscal Year 92 to $3.6 billion today, with essentially the same total contracting budget. And during that time, we have almost tripled the total prime and subcontract dollars going to minority-owned businesses and more than tripled the total prime and subcontract dollars going to women-owned businesses.

In 1990, Congress mandated that we award at least 8 percent of our total prime and subcontract dollars to small disadvantaged businesses. Up until 1993, we had never met that goal, and since that time, we have increased the totals virtually every year and now award more than 19 percent of our total prime and subcontract dollars against the 8 percent SDB goal to such firms. We have achieved that in the midst of contract consolidations and procurement reform, some of which make the job harder, and we are still doing it today. We are awarding more of our total prime and subcontract dollars to small businesses than at any other time in our history, and that is in every small business category.

Now, addressing the specifics of this hearing, contract bundling, for purposes of review, "contract bundling" is generally defined as occurring when two or more contracts, in which at least one was previously performed by a small business, are combined together into one contract, which is too large for a small business to perform as a prime contractor.

Now, as I stated earlier, NASA has been sensitive to the potential impact of this practice since early 1992, and at that time we put out a policy that required our NASA field centers to go through the NASA chief of staff at headquarters, who would first seek the advice and counsel of my office, the small business office, as to whether or not it was feasible. And this, along with a number of

special business initiatives at our agency, sent a clear message to all our senior managers that we were serious about this.

There are a lot of signs that it worked. The SBA Office of Advocacy recently released a study entitled, "The Impact of Contract Bundling on Small Businesses, 1992 to 1999," and the report lists the top 25 civilian agencies that have the most bundled-contract dollar growth during these years, and NASA was not even on the list. And for an agency our size, I think that is a testament to how effective we were in this area.

Now, some of the contracts did get large during that time, and that is what was happening everywhere. However, we put processes in place that ensured that small businesses had major roles in those contracts as subcontractors. In fact, we developed a uniform methodology and made it a NASA policy directive on determining subcontracting goals in major contracts.

In terms of subcontracting, NASA, at last count, we subcontracted a higher percentage of our total contract dollars to small businesses and small disadvantaged businesses than any other agency. However, I don't want to leave you with the impression that we are focusing totally on subcontracting as a response to bundling. Small businesses are also winning a higher share of NASA's prime contract dollars than ever before. In the last seven years, we had the highest rate of increase of prime contract dollars to small businesses. In fact, it has almost doubled since I came aboard in 1992. In our top 100 list of prime contractors, 40 are small businesses.

And we are debundling contracts also right now. Our two major contracts, Consolidated Space Operations contract, a 10-year contract with a life value of over $3.4 billion; we recently broke that up after a 5-year base period, and we broke it up into five contracts and made two of them small business set-asides, and we did the same thing with the International Space Station contract, and we broke that up into five contracts, two of those set aside for small business.

So, Mr. Chairman, these are two of our major contracts, totaling billions of dollars, and clearly this indicates our commitment to this area.

That completes my testimony. I would like to offer for the record the contract-bundling report that we sent to the OMB in the first quarter, which is from our NASA deputy administrator. It goes into a lot more detail than I could in this statement. If you would, sir.

Chairman SCHROCK. Thank you. Thank you very much.

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

Chairman SCHROCK. Last, we have Theresa Speake, who is the director of the Office of Small and Disadvantaged Business Utilization—it sounds like the same title for every organization——.

Ms. SPEAKE. We are all OSDBUs.

Chairman SCHROCK.—that is right, OSDBUs—at the Department of Energy. That is how you differ. Thanks for being here.

STATEMENT OF THERESA A. SPEAKE, DIRECTOR, OSDBU, U.S. DEPARTMENT OF ENERGY

Ms. SPEAKE. Good afternoon, Chairman Schrock and members of the Subcommittee. My name is Theresa Speake, and I bring you

greetings from Secretary Spencer Abraham and Deputy Secretary Kyle McSlarrow.

Last year, Secretary Abraham issued a Small Business Policy that specifically supported the President's policy on outreaching to small businesses and making contracts available to small businesses and dealing with the bundling of contracts.

The Department of Energy has over $19 billion that it awards every year. The process that we have at the Department has been that 80 percent of those dollars have gone to the operations of our facilities, site-management offices, and laboratories, which traditionally have been very large businesses and for very complex operations and for long term. The other 20 percent goes to miscellaneous services, of which those contracts are also, in many instances, large.

What are we doing about that? Well, two things. One, we are opening up more of our contracts for competition. Between 1984 and 1994, only three contracts within our M&O labs, operations, had been competed. Since 1994, 26 have been competed, 26 of the 50, and during that competition process, the Grand Junction facility was actually awarded to a small business. Earlier, last month, Secretary Abraham announced that we would be competing the Los Alamos project in New Mexico.

The contract-bundling steps that we have taken specifically are that we have an acquisition letter, or acquisition letters, which are included in the testimony, that addresses the process for contract debundling. What we are looking at is every single contract, prior to review, rebid, or renewal, to make sure if there are any opportunities for small business. Then we pull out those portions of the contract and set it aside for small business.

We are also developing a data base of small businesses that specifically match those needs so that there isn't an excuse, if you want to call it, that we can't find them. If we are going to break out a portion for environmental remediation, then we are going to have a data base of environmental-remediation contractors.

Every single bundled contract must go through a review and must be approved by the DEPSEC. So if we are going to do a bundled contract, it must go through the deputy secretary, and it must contain strong subcontracting goals.

The small business outreach efforts, I think, are what Congressman Gonzalez would appreciate, and that is those small businesses do need to know how to access the Department: What are the opportunities available? When are they available? We have on the Web site names, addresses, and e-mails for the small business managers within every facility, so those small businesses can actually contact a real, live person.

We are putting together an advisory board that consists of trade associations who have entered into memorandums of understanding with the Department of Energy to help us in our outreach.

We have some very, very specific efforts to break out our small business contracts, and that is, currently, as we speak, our environmental management office is holding hearings in Nashville, Tennessee, which is in your booklet there that talks about four or five major, prime-contracting opportunities for set-aside for small busi-

ness. Those range from anything from a $50 million radiation cleanup to a $500 million operation.

So we are looking at how do the small businesses do those sizes of contracts? We are talking to the Small Business Administration about teaming. In order for these small businesses to do these large contracts, just like the big businesses team up to do big contracts, we are bringing in the Small Business Administration to help us with bringing small business and big business together to team so that the small business benefits from the knowledge of that big business, also from the financing and the bonding that that big business can support.

Some of the types of contracts are, as I mentioned earlier, major maintenance projects at our Strategic Petroleum Reserve, an approximately $8 million value this year; construction management at the Strategic Petroleum Reserve, for approximately $4 million; IT at the headquarters. We just awarded this year a $409 million, five-year contract to an 8[a] firm, and at the Oak Ridge operations, we are proposing a $45 million, five-year contract. We have technical and administrative support within the environmental health management area, at $2.9 million.

And we have gone, from the year 2001, a combination of prime and subcontracting—we are talking about the fact that a lot of our large contracts require the subcontracting plan, and that is where we are picking up a lot of dollars, which are real dollars to the small business community. We were, at 2001, at $3.5 billion; 2002, we are at $4.7 billion, and we are projecting to break the $5 billion mark this year.

Chairman SCHROCK. Thank you. Thank you very much.

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

Chairman SCHROCK. Let me start the questioning. The Federal Acquisition Regulatory Council proposed revisions to contract-bundling regulations this past January. I want to ask each of you if you believe that it is going to help you do your jobs and help create more opportunities for small business. Secretary?

Ms. BAYLOR. Most definitely. I think it is really important. I think anything that highlights the contract-bundling issue is very critical for small businesses.

Chairman SCHROCK. Mr. Moss?

Mr. MOSS. Mr. Chairman, I think it will because I think what is key to this effort is that it is changing or enlarging the definition of what a bundled contract is. I think that is what is the heart of what OMB and the President are trying to address, is that, although contract bundling, per se, may not have been significant in many agencies, but when you expand it and look at ID/IQs, the MACs, it puts a different light on it. So I think this effort will increase more opportunities for small businesses.

Chairman SCHROCK. Ms. Oliver?

Ms. OLIVER. I think this is such an interesting example of why small business advocates have to keep watching what is going on in the world. You know that the Federal Supply Schedule contracts, for example, were not significant, I don't know, 15 years ago in terms of potentially bundled contracts, and it sort of sneaked up on us.

I think that having the agencies be responsible for looking at purchases from the Federal Supply Schedule, from the GWACs and the MACs is a good thing, and I think we will, once these rules are implemented, I think we may be able to get focused on it and solve some problems that have existed, and we didn't even realize it.

Chairman SCHROCK. Secretary Thomas?

Mr. THOMAS. Yes. I think it is going in the right direction, but I want to stress that small business offices need to be involved at every juncture. There were follow-ups to those regulations, including just what Ms. Oliver said, the Federal Supply Schedule, which is very important because, in many cases, not at NASA but in many other cases, many other agencies, small business offices are bypassed when something is bought off of the GSA schedule. They obviously cannot promote something that they don't get a chance to see.

Chairman SCHROCK. Why are they bypassed?

Mr. THOMAS. Because I believe that the GSA schedule is looked at as a fast way of doing something, and they are afraid that if they encountered a small business office, it would somehow slow down the process.

Chairman SCHROCK. Ms. Speake?

Ms. SPEAKE. Well, contract unbundling is really important to the Department of Energy, considering the fact that we have always had large contracts. So it is very important that we have that nudge, if you would, to look at how we do business. It allows us to then work with our program offices and say, this is a policy that we need to be adhering to and justify why we should be breaking up those contracts.

Chairman SCHROCK. The Small Business Administration has reported that they are unable to collect enough information from agencies to determine if contract bundling is achieving a cost savings for agencies. How cooperative have you all been, your agencies been, with the SBA? Secretary Baylor?

Ms. BAYLOR. Extremely cooperative. I think that everyone experiences a data problem, and I think we are all updating those systems, and I think that will help a lot.

Chairman SCHROCK. Great. Mr. Moss?

Mr. MOSS. We have a wonderful relationship with the SBA. We are fortunate to have one of the SBA PCRs in our office. Weekly, whenever there is an issue, we work together, and I think the whole issue about data collection, I think we are all looking for the right kind of vehicle with which we can increase that, but we do support SBA's efforts.

Chairman SCHROCK. You shook your head "yes," Ms. Secretary. Do you meet with them as well?

Ms. BAYLOR. I was teasing him because he has got the PCR for HUD in his office, and so we are a little bit jealous. We need more space, and we would love to have them come visit us more often.

Chairman SCHROCK. Oh, okay. That is a plug. Right?

Ms. BAYLOR. Yes.

Chairman SCHROCK. Okay. Thanks. Ms. Oliver?

Ms. OLIVER. Thank you. My answer is slightly different from the prior two answers, I guess. We do have a good working relationship with the Small Business Administration. However, after the report-

ing requirement for the year 2000, the Small Business Administration Authorization Act, after that was put into law, the Small Business Administration proposed a data-collection system, proposed it to the Department of Defense and probably other agencies.

We went back with a reply to the Small Business Administration that said, we are prohibited by statute from creating a brand-new collection system, which we are. We did, however, go back to them with suggestions about what data already exist and how we could collect it. As a matter of fact, I believe we were right. I believe we didn't need to make a new system; we needed to use the information we have in our systems already.

Chairman SCHROCK. Security has a lot to do with that, I am sure. Secretary Thomas?

Mr. THOMAS. Yes. Right. I am not aware of any situation where the SBA has told us that we weren't providing data that they were looking for.

Chairman SCHROCK. Great. Ms. Speake?

Ms. SPEAKE. On March 26th of this year, we were responsive to the Small Business Administration upon their request; however, we have a day-to-day working relationship with them, and we do have the PCR also in our office.

Chairman SCHROCK. Oh, really? Ms. Baylor, we have to got do something about that. Right?

Ms. BAYLOR. Yes, we do.

Chairman SCHROCK. Mr. Gonzalez?

Mr. GONZALEZ. Thank you very much, Mr. Chairman. The question, and I will pose it to all of the witnesses, and it is really a simple one: What are the consequences, or what is the consequence, of not meeting a goal that you set for yourselves or this Committee feels is justified, the SBA, or a President's executive order, any kind of directive? What happens if you don't meet it?

Ms. BAYLOR. Well, at HUD, we would take that very seriously. Being a former small business owner, it was about results, and that is what we are doing at HUD. We need more help. We need to work very strongly on our disabled veteran numbers, our HUDZone numbers. I think you are going to see increased improvement this year. We are working better with our chief procurement officer.

So, yes, there should be some consequence for failing to meet your goals. I don't know what that would be. That would be up to——.

Mr. GONZALEZ. That would be my next question.

Ms. BAYLOR. That would be up to you all. But there should be, and I don't know what that would be.

Mr. MOSS. Firstly, I think the real losers are the small and disadvantaged businesses if the goals are not met. But, secondly, we, as agencies, have to look at the attainment of these goals, top down. I think it has to start with senior management and has to roll down throughout the organization. So it is just not an issue for procurement, per se, but it is also for program management, small business advocates, and also the procurement community.

So I think, if you look at all of those stakeholders and tie it into some kind of performance measure, then I think that would be beneficial to all.

Ms. OLIVER. In the Department of Defense, what happens when a particular piece of the Department of Defense does not meet its goals is they come to the attention of Mr. Wynne, who speaks to the senior procurement officials of the services or other defense agencies, who then speaks to the program manager, et cetera. That doesn't sound like very much, but I am telling you, it is.

Mr. THOMAS. That question is not as simple as it sounds. First of all, it has to be decided who is responsible for meeting the goal, first of all. The law contemplated that if a goal was not met, the agency would tell the SBA why it didn't meet it, and then the SBA would send those results to this body, to the Senate and House Small Business Committee, and this body could do whatever they wanted to do.

From a more practical standpoint,—the law sets it forth, but it is not always done—goals should be negotiated between the SBA and the agency because the agency, then having negotiated, knows what it has signed up to and can do. The problem occurs when goals are applied across the board to all of the agencies. It is like measuring apples and oranges. At that point, an agency that hasn't signed up to a goal but has just been given a goal, it is a lot more difficult to meet it, particularly when there is no chance of meeting because of the agency's makeup.

However, getting back to the specific question, once it has been negotiated, and an agency has signed up to it, if a goal is not met, there is usually a reason for it. From what I have seen in the past, it is usually nothing malicious; something happened. Something happened, and that rationale has to be spelled out, and then corrective actions have to be taken.

Ms. SPEAKE. At the Department of Energy, we have just recently, under Deputy Secretary Kyle McSlarrow, assigned the score card scoring to small business so that every element will be evaluated on red, yellow, or green where they are, which then goes up to OMB on a quarterly basis. So that is one way of holding each of what we call "elements," or the offices, accountable for their individual goals. And within that, we also have recently, this year, included in the personal evaluations of individual managers the ability to meet goals, and that then reflects on their evaluation at the end of the year as to whether or not they get their bonuses.

Mr. GONZALEZ. Well, let us say we entered real meaningful negotiation. What would be a real number that you all could be shooting for, a percentage, based on your mission, because it is different? DoD is different. I am going to try to hurry because my time is up. And we establish that it is something that is realistic for you, and you if you don't meet it, at that point, what would be appropriate? Could it be simply that then you are not allowed to bundle as many contracts that for that next year?

There has to be something, I was thinking, because right now we have goals and numbers that are really just aspirational. Because we are going to have witnesses that will follow you that will tell you and the same people that show up at all of our town hall meetings that simply say that these procurement officers are not driven by anything because there is no consequence. If they don't meet the goal, it does not matter, and it doesn't go into anybody's personnel

record, there is no penalty, and they will continue doing as they always have.

So it is really something that we need to be studying, and I think the thing about negotiating it, making it a real number, something that is attainable, but then after we reach that, maybe there is consequence because you, yourselves, have had something to say about your own destinies. And if you don't meet it then, not to be arbitrary, but surely there has got to be something better than what we have in place at the present time. Ms. Baylor?

Ms. BAYLOR. Maybe mandatory training. I think acquisition strategies are something that would help small businesses, but to require mandatory training in those agencies that didn't meet their goals.

Mr. THOMAS. If I may, if I could just intervene just for a minute, there are a lot of goals that an agency has in terms of small business. There are about eight different goals. We met, for example, all of the goals that we negotiated. We did not meet the goals that were applied across the board, and in one situation, we just barely missed a goal.

A lot of factors play into it. If you have a goal of 20 percent, and you only do 3 percent three years in a row, there is obviously something wrong, something malicious. If the goal is 20 percent, and you hit 19.8, different situations call for different solutions. We also, though, put it in our senior managers' performance plans to make sure that they are meeting our goals, and that works. That makes it important quick. If something decides a person's future, that all of a sudden becomes important real fast. We have been doing that since 1992, so we have found that that has worked.

Mr. GONZALEZ. Thank you very much. Thank you, Mr. Chairman.

Chairman SCHROCK. Thank you. Mr. Bartlett?

Mr. BARTLETT. Thank you very much. My first introduction to bundling, which, before I came to the Congress, I thought was something Amish did when they put that board down the center of the bed, you remember, my first introduction to bundling in business was when movers came to us in panic, and this was DoD, Ms. Oliver. DoD had previously competed moving, and not anybody can move the whole world, but a company would win that bid, and then anybody else could move if that company couldn't move, and obviously they could move only a very small percentage of DoD needs. Any other company could come in and move at those same rates, so the taxpayer was getting the lowest dollars for their moves, the moves of the military.

These people were panicking over that, and we met with DoD, tried to make sure that there would be opportunities for participation under this single contract, first of all, business people. What ever happened to that? Do you know?

Ms. OLIVER. Well, rather than be inaccurate with you, Congressman Bartlett, I would like to take the question for the record and go back and ask the people specifically involved. I do know—this has nothing to do with my official position—I do know, because I was a Navy dependent for a long time,—I do know that the quality of moving in the Department of the Navy is much better than it has been. I will get the details.

Mr. BARTLETT. I would appreciate that.

I want to ask a question of all of you. How do you make sure that the quality of these small business contracts are adequate? For instance, you can meet your goal by having a small business person provide your copy paper for you, and they simply go to MeadWesvaco and they buy the copy paper, and then they deliver it to you. Sorry, this is not a small business participation because you could have bought the paper from MeadWesvaco. How do you make sure that your people are, in fact, letting meaningful contracts to small business—I think what I have described is a pass-through—and not simply meeting your goals with pass-throughs that really don't involve real work of small business people?

Mr. MOSS. Yes, Congressman. For us at DOT, what we try to do is look at our core competency—What do we do well? Where do we spend most of our money?—and really kind of work with those program managers and to partner with them and to seek opportunities for small businesses. As you know, at DOT, we are an infrastructure play. A lot of our dollars are spent with engineering, architectural. The Coast Guard left a lot of ships, airplanes, et cetera. So we try to find where we spend money and try to find opportunities for small businesses.

Mr. BARTLETT. How do you monitor? For instance, I had a young lady come to me who runs a bridge-painting company. Unusual for a pretty young lady to be running a bridge-painting company. One of the prime contractors wanted to meet his goal of subcontracting by having her provide paint for the job. Now, that is not a small business participation. He could have bought the paint for the job.

My question is, how are you monitoring your contracts so that you know that these contracts let to small business are, in fact, meaningful small business contracts and not just a charade, a pass-through, like this buying paint would have been?

Mr. THOMAS. Well, I tell you, that is very sensitive to us, Mr. Bartlett, because we are a high-tech agency, and it is right in our mission, our small business mission, that we want to fully integrate small and disadvantaged businesses into our competitive base, particularly in high-tech areas. We defined "high tech," first of all. We put it in the Federal Register. We send it throughout the agency. Define "high tech." Then we got the SIC codes or the NAICS codes that were consistent with that definition.

And since we had the problem in the small disadvantaged business area years ago, we can tell you that two-thirds of the prime contracts that small disadvantaged businesses get are in the high-tech area, and we can say what contracts they are. And also, when we give awards,—we have awards in the fall that we give to our agency personnel for utilizing small businesses, small and disadvantaged businesses—we stress the high-tech area. So when they have success stories, they sent it to us, and we publish it.

So having small businesses do meaningful, high-tech work is very important. We list the success stories in our annual report as well, and small businesses have been involved in every important technical mission that NASA has ever had in the last 10 or 12 years. So it is very important. I think that is a very important subject because sometimes more important, and one of the things that the score card doesn't cover, sometimes more important than how much money an agency gives to small businesses is what the small

businesses are actually doing for the agency. So I think that is very important.

Mr. BARTLETT. Thank you very much. Thank you, Mr. Chairman.

Chairman SCHROCK. Thank you, Mr. Bartlett.

We are happy to be joined by the gentlelady from West Virginia, Ms. Capito. You are recognized.

Ms. CAPITO. Thank you. I don't have any questions at this time. Thank you very much.

Chairman SCHROCK. Thank you. This question of contract bundling has really come to my attention. For those of you who don't know, I represent Virginia's 2nd Congressional District, and the only way to describe it is massive amounts of military, eight major military bases and 385 commands, so I hear it all of the time.

I am going to ask Ms. Oliver a question, and this question does not apply to hardware—no ships, no planes, no tanks, no hardware. It is infrastructure, and one of the things that small businesses there tell me is that they are often denied a chance to compete for contracts because bonding requirements are too high, and past performance evaluations are used to exclude them.

In fact, I just called the one individual about two hours ago, just to make sure I was correct. He builds some of the largest buildings, largest infrastructure, in the Hampton Roads area yet sometimes has to be a subcontractor, when he could build the whole project himself. I don't understand that.

Ms. OLIVER. I don't understand it either,——.

Chairman SCHROCK. Good.

Mr. THOMAS.—which means that what I need to do is get more information and follow up with it. I have been involved in the Department of Defense contracting world for a long time, but construction contracting has a lot of rules peculiar to construction contracting, and it is not my area of specialization. If I can get more information from you, I would be happy to answer your question better because I don't know off the top of my head.

Chairman SCHROCK. I would like that because, clearly, DoD is the largest department. There is no question about that, and if they take the lead on this and make progress on this, I think that would bode well for the other agencies as well because, frankly, I think more could be done. I hear it all of the time when I am down there, that that would be nice if you could do that.

Ms. OLIVER. We are subject to particular construction contract requirements that are peculiar to the Department of Defense, and that may be part of the explanation, but I need to have more information in order to give you a responsive answer.

Chairman SCHROCK. All right. I would appreciate that because I know that is just parochial to the district I represent, but it probably has an impact on a lot of other areas as well.

Mr. Moss, you said in your testimony that your office has the final say on bundled contracts, the key word, "final." How does that work? I would be interested if the other OSDBUs have that authority. That is a tough word for me, so I am going to just say O-S-D-B-Us, if they have that same authority.

Mr. MOSS. Sure, sure. From the outset, it was important for us to send the right signal, if you will, because, as was said here earlier, that the perception to the small business community is that

the agencies are not sincere. A lot of these regulations don't have the right kind of teeth to it.

So what we did very quickly at the outset was to sit down with the Office of the Chief Procurement Officer, as well as my office, and to really talk about that and to come to the decision that if this is going to have any meaning to it, if we are going to achieve any kind of real results to it, the OSDBU, which is, as the law says, is the chief advocate for small business in the agency, it must have authority. So that is something that is important to senior management, and, like I said, it is something that was proposed, and we are including it in our agency records. So, so far, so good, sir.

Chairman SCHROCK. Ms. Baylor?

Ms. BAYLOR. Well, we actually have a policy that was—I guess it has been about two months now—that actually says that anytime that OSDBU and the procurement staff or program staff disagree on any procurement, it has to go up to the deputy secretary to resolve. So it is not just bundling; it is any acquisition strategy that we disagree on, so it is pretty strong.

Chairman SCHROCK. Who is the decision-maker, Mr. Moss, at DOT? Who did you say makes that final decision? Is it Secretary Mineta or Mike Jackson?

Mr. MOSS. Yes, sir. It goes to the secretary's office.

Chairman SCHROCK. Right to him.

Mr. MOSS. Right, because I report directly to him.

Chairman SCHROCK. Okay. Great. Secretary Thomas?

Mr. THOMAS. I am glad he said "secretary" because I can be very influential on small business at NASA, with the bundling, as well as anybody else, but, naturally, I cannot have the final say on whether a contract gets bundled. There could be very technical, safety reasons involved in terms of bundling, you know. It could be associated with the shuttle or space station, you know. I mean, can we stop, you know, the whole thing because of what the small business office says? But we can be influential enough, though, so that, as I say, we do carry much influence; but, no, we don't have the final say.

Chairman SCHROCK. The administrator does?

Mr. THOMAS. If it gets that far. If it gets that far. Normally, the technical program manager who is in charge of it will say that they want to bundle, and this happens very rarely, but they will say, "We want to bundle it because," and it will usually be such a technical, safety-conscious argument, that we generally can't challenge the technical person and defeat the argument, but what we can do is make sure small businesses get taken care of in the midst of it. We can make sure they get taken care of in terms of subcontracting goals and make sure they are high enough that small businesses have meaningful participation.

Chairman SCHROCK. Thanks. Ms. Speake?

Ms. SPEAKE. I did testify that it does go to the deputy secretary.

Chairman SCHROCK. Mr. Gonzalez?

Mr. GONZALEZ. I don't have any further questions. I know we have a vote.

Chairman SCHROCK. Oh, we do? Okay. Thank you. Mr. Bartlett?

Mr. BARTLETT. Thank you. The chairman mentioned, in his opening statement, legitimate bundling, and there are occasions of that.

The first one that came to my attention was when the Navy and Marine Corps were bundling all of their contracts which had been scores for data acquisition and management. And the reason they were doing that was that our onerous procurement cycles in the government preclude us from buying a product that came on the market yesterday. If it takes 14 months to procure something in the government, and the life cycle of this new technology is 18 months, you are always coming from behind. And so they decided that they would buy performance rather than equipment, and that is a legitimate reason for bundling.

We were concerned that small business was not going to be an adequate player in this, and so when they came to visit us, we asked if they could assure that 35 percent of the money that they got would go to small business, and 10 percent of that would be direct pay. To their great credit, they withdrew their RFP and issued another RFP, and, as far as I know, they have been successfully implementing that contract, with 35 percent of the money going to small business and 10 percent of it direct pay.

The next big bundling that came to our attention was NSA and their groundbreaker that I think most people are familiar with, and for exactly the same reason. They, of all people, need to have the latest equipment, and they couldn't have the latest equipment because our onerous procurement regulations in the government take too darned long to buy anything. And so they were going to let a single contract, called "the big groundbreaker contract," which would now cover contracts that had been let to hundreds of companies before that.

We met with them several times before they finally agreed that they would make an effort, and I think they have done pretty well; they didn't think they could. We asked them to look at their records. We told them we suspected that small business was doing about 35 percent of their work. They had not anticipated that. That is what their records showed. So they are now proceeding with groundbreaker successfully, I think, and coming very close to meeting that goal.

When you have legitimate needs for bundling,—those are two that I think were legitimate needs for bundling—what procedures do you have in your agencies to make sure that you are passing on the requirements for participation of small and disadvantaged businesses to your prime contractors, and what sort of incentives to they have for meeting those goals?

Ms. SPEAKE. If I can begin, sir, we do require a subcontracting plan from that prime contractor, and in that subcontracting plan, they have to outline the type of work, which addresses this type of developmental work as opposed to just——

Mr. BARTLETT. Pass-throughs.

Ms. SPEAKE [continuing]. Pass-throughs. They have to develop the percentage of work, they have to develop the industry that they are going to be focusing on, and we also look at their past history. What is their past history in doing subcontracting with small business? So that is an evaluation factor in that RFP, which, if they have done five contracts in the past and haven't done any small business, they could lose some points in the evaluation factor. That is really important coming in. So you already have a track record

of not doing business. Why would we believe that you are going to? So that, I think, is an important element, going right out the gate.

Then we are going to be monitoring, and we do pay them an incentive, a bonus incentive, for bringing in the small businesses if they perform. So once they have the plan, then we have to monitor the plan to make sure that they did perform on what they said they were going to do.

Mr. BARTLETT. Thank you.

[Discussion off the record.]

Mr. THOMAS. We have, as I said in my testimony, a uniform methodology for determining subcontract goals, and we determine what the subcontracting goals are going to be first, and we put it right in the solicitation, and then they respond to that goal. We do this by determining what the work is going to be, and then we get together our technical procurement and small business people, and then we determine what represents the maximum practicable extent. We also count it as an evaluation factor, but to make sure that they follow it, it counts as 15 percent of the award feed.

Most of our contracts are competitive proposals, so that every six months they get award fee based on passing their technical goals. We tie 15 percent of that to their small business subcontracting goals, and that has worked very well.

Ms. OLIVER. We have guidebook, which is published on the Internet, as a matter of fact, and every place else we can find to publish and bring it to people's attention, which deals with what constitutes a bundled contract, what the justification may be, and what is the steps that someone should go to to mitigate the effects of the bundling. It is quite a long booklet, and I have discussed it some in my written testimony. I would be happy to provide it to you if you are interested in seeing it.

Mr. BARTLETT. Thank you.

Mr. MOSS. So if we come to the conclusion that we must bundle after we have exhausted all options, whether through teaming or find other ways to procure, then we really focus on the subcontracting plan, sir, to really be sure that it really has some value to it, that there is real participation, and that our office is really involved in the monitoring of those plans.

Ms. BAYLOR. First of all, to bundle, you would have to get the deputy secretary's approval, and then there would have to be a justification in the file. But after that, we do have evaluation factors for subcontracting plans. We require substantive work, as you were talking about before, of those people who do the subcontracting work, and it is based on a percentage of the total value. Our goals at HUD are up to 40 percent. We also require that the program areas do market research so that we can determine how many small businesses are available in the pool to do this work. So we work really hard with our program areas and our contract people to make that determination.

Mr. BARTLETT. Thank you very much. Thank you, Mr. Chairman.

Chairman SCHROCK. Thank you, Mr. Bartlett.

This subject is one that every member on this Subcommittee and every member of the full Committee has been interested in, is interested in, and will continue to be interested in because it impacts every single business, big or small, in all of the districts we rep-

resent, and I think it was important to hear your testimony today to try to get further knowledge into this and where we are going to go.

I want to thank you all for coming here. It has been very helpful, and I can assure you that if this thing gets pursued, we may call you back again, but we appreciate your being here today. Thank you very much.

[Whereupon, at 3:11 p.m., a brief recess was taken.]

Chairman SCHROCK. Well, we were lucky. We only had two votes. They canceled the last vote. Don't ask me why. We will probably be voting on that at midnight tonight. I hope not.

Welcome to Panel 2. Next, the Subcommittee will hear from David Sterling, who is the vice president of the VIRTEXCO Corporation, headquartered in Norfolk, Virginia. Dave has served on active duty in the U.S. Army and is a member of the Virginia Air National Guard, and we thank him for that service, and, Dave, we are glad to have you here today. Welcome.

STATEMENT OF DAVE STERLING, VICE PRESIDENT, VIRTEXCO CORPORATION, NORFOLK, VIRGINIA

Mr. STERLING. Thank you, sir. I wish to thank the members of this Committee, especially Congressman Ed Schrock, for inviting me here to testify on a topic so vital to the welfare and survival of a small business. I am vice president of VIRTEXCO Corporation, a 27-year-old general accounting firm headquartered in Norfolk, Virginia. I also serve as vice president of the Associated General Contractors, Tidewater, Virginia, District.

Over the past five years, VIRTEXCO has employed an average of 250 workers and currently does $50 million in annual sales. VIRTEXCO is concerned with the contracting community's increased reliance upon contract bundling and the negative impact it is having, and will continue to have, on small business. I would like to try and express to this Committee, through VIRTEXCO's experience and perspective, why I am so strongly against contract bundling.

As we know, the main control and barrier to bidding on contracts is bonding capacity. Until 10 years ago, the great majority of solicitations we saw advertised ranged from $5,000 to $5 million in value. With so many contracts being let at relatively low dollars, it allowed construction companies to earn greater bonding capacity through performance. This, in turn, kept contracting firms from overgrowing their technical and managerial capabilities.

This system of contracting through many individual, lower-dollar contracts versus bundling contracts into a single, enormous contract helped foster the American Dream. With hard work, determination, and the application of sound construction skill, a company could be formed with relatively little funding and grow slowly, but surely, along with their increased bonding limit, to become a successful, well-respected corporation, just as VIRTEXCO did, a corporation providing jobs for many, training of the trades that benefits all, and a reliable partner with government in the performance of needed repairs and construction.

From VIRTEXCO's observation, the bundled contracts have become increasingly large in both scope and value. This is forcing an

increase in the bond requirement, limiting fair and open competition.

Another limiting aspect has been added to the bidding process connected with bundling, which is past performance evaluation. Contractors are now caught in a Catch–22. For example, a contractor cannot be qualified for a $5 million barracks project unless it can demonstrate having successfully completed at least two such projects, but the contracting firm can't develop the past performance resume until it has been awarded its first barracks project.

The combination of increased bond requirements and past performance evaluation is creating an alarming trend: Contract bundling is making the acquisition of government contracts possible for only a select few, super-sized contracting firms. In my prepared testimony, I gave two recent examples of how drastic an effect contract bundling is having in the Hampton Roads area.

A solicitation was advertised by the Navy for an ID/IQ, indefinite-quantity, job order contract. The solicitation was for a base year plus four option years, with a maximum per-year limit of $50 million. This means the only potential bidders must be able to bond a single job for $50 million. The four-year option means this contract will take $250 million off the street for five years in the Norfolk area for anyone but the few giant bidders large enough to meet the bonding requirement. As of now, the only bidder listed is Kellogg, Brown & Root.

As another example, J.A. Jones has been awarded a $782 million contract for 1,193 housing units at three bases for a 50-year deal. J.A. Jones Community Development has $3 billion in annual revenue. It is very likely that within 10 years, VIRTEXCO will have ceased to perform all but a very limited amount of government work because we cannot compete with the bonding capacity of such companies as Brown & Root, Centennial, and the other construction giants. Contract bundling is destroying the small business base.

I hope I have helped this Committee understand the severity of the impact contract bundling is having on small business. Thank you.

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

Chairman SCHROCK. Thank you, Dave. I will have some questions for you afterwards because I clearly understand the problem.

We will now hear from Mr. Jorge Lozano, who is the president of Condortech Services, Inc., who is here today representing the NFIB, the National Federation of Independent Business. We are very happy to have you here. Thank you.

STATEMENT OF JORGE LOZANO, CEO/PRESIDENT, CONDORTECH SERVICES, INC., ANNANDALE, VIRGINIA

Mr. LOZANO. Good afternoon, Mr. Chairman and members of the Subcommittee on Regulatory Reform and Oversight. Thank you for the opportunity to speak with you today regarding the negative effects of contract bundling on my small business and countless others nationwide. I am testifying before you today on behalf of the National Federation of Independent Business, which represents 600,000 small businesses across the country.

As you said, my name is Jorge G. Lozano. I came to this country as an immigrant from Bolivia, and I started building my dreams to become a successful businessman. I come from a family that created jobs and wealth for others in my native country, and I have used the gifts and wisdom that they gave me as the seed of success in my continuous journey in life. I want to thank America for giving me this opportunity. It has been a long journey filled with many challenges. I have been strengthened by those experiences in life which have made me stronger and wiser. I dedicate myself with passion to achieve my goals so I am able to contribute back to our society. As a leader in my community, I want to plant the seed of success among others so they can also become one day in a small business like me.

I am proud to be a small business owner of Condortech, which started in 1988 in the basement of my place, just like many other entrepreneurs. It was hard work in starting my business. I found myself many times struggling to make payroll and to pay my bills. As my enterprise started growing and gaining more experience, we hired more people and delivered more creativity, innovation, technology, and education to our customers in security and law enforcement.

Condortech provides electronic tools, such as access control, CCTV, intrusion detection, and Biometrics, to protect government and private facilities in America. We are looking to expand our business into new markets, and after the 9/11 attacks, we believe that others can benefit from our expertise and services. My staff also gets involved in community-related activities and initiatives by providing them logistics and also financial support.

The importance of the small business is that it is a component of the success in America. They create opportunities and bring balance to democracy. Small business provides more than 50 percent of the national wealth and 75 percent of all of the jobs in America. Small business brings innovation, new overseas markets, and prepares its employees to be multi-taskers. These are the tools that are important for the new millennium, since we are facing new challenges in the global economy: terrorism and many other challenges out there.

The electronic security industry that I come from is just a young industry, 25 years old. Ninety-five percent of these businesses are a small business like me. The wisdom that is generated through our experience is basically there are many people like me, and we believe that this industry basically must be performed by a small business like myself.

I don't want to get to bore you anymore with all of the stuff, the statistics, that you already read through it. I am going to just pass to page number four, which is the problem.

Condortech Services is now, more than ever, at risk of losing some of our existing contracts. Here are some examples of recent bundled contracts. The FDIC recently sent out a request for proposal suited for a large business to provide security services nationwide. TSA, the same way, awarded a major contract to another defense contractor, who had no experience in security. The U.S. Department of Justice, Executive Office of U.S. Attorneys, did the same thing. Once again, people that have no expertise in this field

are doing it. Other government initiatives are also creating more bundled contracts, and as a result, not allowing us to compete fairly or simply not even allowing us the opportunity to even bid on the projects. I even see new players coming from other industries, like defense and automobile industries, which never offered security services prior to 9/11, now attracted by the new security, which I call the new "security" economy.

Condortech's marketing efforts to federal agencies go through a challenging road full of obstacles, and we wait for weeks, months, or sometimes indefinitely, to meet with the contracting officer or the project manager to make a presentation of our services. That is one of the biggest challenges, just to get to find out that the project was contract bundled.

Mr. Chairman, thank you again for the opportunity to express my views on the current problems with contract bundling. I think I still have some time. I want to create solutions here. When we create——.

Chairman SCHROCK. You came here with solutions? You are probably in the wrong city.

[Laughter.]

Mr. LOZANO. I am very optimistic, and I think the seed of that I am dropping here can be positive. I don't see here many businessmen, although we are deciding the fate of businessmen in here. I think if we create an oversight committee composed of the small businesses, institutions, that will oversee all of this process—I am not saying that contract bundling is bad, after all. It needs some re-engineering. It needs to be monitored. Thank you.

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

Chairman SCHROCK. Thank you very much. Before I ask questions, I want to make sure I understand what you said. You said that the new TSA, the Transportation Security Administration, just awarded a major contract to a company that had no security experience.

Mr. LOZANO. It was a defense contract, yes, to a defense contractor.

Chairman SCHROCK. That had no security experience.

Mr. LOZANO. Not the experience that we have.

Chairman SCHROCK. Okay. I am going to ask both of you, were you both here for the earlier panel?

Mr. LOZANO. Yes.

Chairman SCHROCK. I am going to ask each of you questions. What do you see as the largest, long-term effect if this contract-bundling trend continues for small businesses?

Mr. LOZANO. The impact is going to be, as I said, having to close the door, especially in security, and for us not to be able to provide the excellent services that we provide right now to the Joint Chiefs of Staff. If they trust us to do their security, why not other agencies?

Chairman SCHROCK. David?

Mr. STERLING. There are various areas where contract bundling is impacting. Some of it is obvious; some of it is not as obvious. Everyone understands that when you bundle contracts, you are going to hurt the number of contractors as a whole, and you are going to hurt the development of the trades. We have even acknowledged

the fact that you are going to have multiple layering of overheads and profits on projects because when the giant contractors turn around and sub to the next tier, you are adding more and more tiers to it.

What is not recognized sometimes is the fact that even quality control is affected. The government, I think, if I understand correctly, is going to contract bundling with the understanding that their budgets are being slashed left and right. They want to cut their administrative dollars. So they say it is much easier to manage a single, $50 million contract than five $10 million contracts. There is no doubt about that. But they also cannot offer the quality-assurance side when they cut the number of bodies, so that you are going to have more latent defects, and you are not going to have the same quality that you used to have.

You also have, with minority businesses, with small businesses, you have the management level much closer to the work force, so the oversight on the quality is much greater, obviously, than if you have a company that does billions of dollars a year.

Chairman SCHROCK. You both heard what the representatives from the government agencies said, obviously. What do you think of what they said?

Mr. STERLING. Sir, I am not a professional politician.

Chairman SCHROCK. You are not under oath, David, but, please.

Mr. STERLING. I had a hard time hearing an answer. Questions were asked, and I heard, well, we have this policy set up, or we have that policy set up, but when, as an example, Mr. Bartlett asked, how do you stop the pass-through contracts with minorities, I didn't hear any real answer.

At one time, it used to be, I believe, that minority businesses, 8[a] contracts, were to perform 20 percent of the labor themselves, not just 20 percent of the contract and get it through vendors or get it through pass-through, and that doesn't seem to be the way it is anymore.

I think there has been a fast rush. The government moves slowly to open the door, but once that door is opened, it is like a floodgate, and the contracting community is not ready for what it envisions as the great answer, and I think that it is shortsighted. I don't think there is anybody in the government that is doing anything that they shouldn't be doing. I don't think that there is anybody malicious. I think it is just the system needs some overhauling. It needs to slowed. The process needs to be slowed down.

Chairman SCHROCK. Mr. Lozano?

Mr. LOZANO. I agree with that. There should be a re-engineering in the contract bundling and also more understanding about what a small business goes through. Someone said here, I think, training is important, and somebody else said—I think the lady from Energy said—that we should get involvement of the nonprofit, you know, businesses that are totally in favor of small business being involved in this whole process as a solution. I do agree with that.

I want to sound very positive. I know they are doing their job to do this positively for us, but I think also they are overwhelmed with the facts. Being constructive about what they do is basically understanding more what we go through. That is why I stated how I made this business to you.

Chairman SCHROCK. Dave, you stated that the main barrier to bidding on contracts is the bonding capacity. Explain this and how it impacts small business, please.

Mr. STERLING. Certainly. The federal contracts for the construction side require a bid bond, a bid guarantee, if you will, and that bonding capacity is set by the bonding industry based on cash you have on hand, experience—size of your company, overall. So the larger the company is, the larger the bonding capacity.

If you have a small business that does $10 million, $20 million a year in work, and you have another company that does $300 million, once you set the bar and put out a contract for a $50 million contract, obviously, the small business can't get the bond, so they can't bid on the project.

Chairman SCHROCK. What is the bond? I should know. What is the cost of a $50 million bond for somebody like you?

Mr. STERLING. It depends on the rating of the contractor. It can be anywhere from .6 percent on up to 4 percent, depending on how the company is rated. So the government is paying that in the contract ostensibly to protect them from a contractor bidding on a project and then pulling out.

Chairman SCHROCK. A lot of money, in other words.

Mr. STERLING. Yes.

Chairman SCHROCK. Mr. Gonzalez.

Mr. GONZALEZ. Thank you, Mr. Chairman, and to both witnesses, thank you very much for sharing your experiences, and the truth is, we do hear them back in our individual districts, as you heard me already explain to the previous witnesses. But I think the chairman already pointed out, you were here during the testimony by the previous panel, and they seemed to have their policy down. They know how to implement it. They know how to enforce it. None have met their goals, but maybe those goals are unrealistic and such, which I am always willing to hear, but I think that they have missed it by such a percentage that it wouldn't matter. If they weren't realistic, and we lowered them, it is still a dismal record.

Who goes to bat for you back in your districts? In other words, you know, in San Antonio we have got a great SBA office, and I am sure that you do, too, but when you feel that your voice is not being heard, that you are being overlooked, that the conditions are being placed into contracts to exclude you, in essence, not to allow you to compete, who do you go to? Of course, I always say, go to your congressman, but other than your congressman, do you go to your SBA people, Mr. Sterling?

Mr. STERLING. We have not gone to the SBA. We have gone to Congressman Schrock. It is difficult, to be honest. If you file a protest with the GAO and have a stay of award, it is very costly to follow through, or if you go to the Armed Services Board of Contract Appeals, it is timely and takes a lot of money. And, to be honest, there is certainly not the threat on the part of the government. There is nothing overt, but there is always a concern on the part of the contractor that if you poke them in the eye, then you are going to pay the price in inspections, and you will never get off the next project.

So it took a lot of decision-making, a lot of meetings on our part, to be this vocal about contract bundling, and it came about mostly with the trust in Congressman Schrock.

Mr. GONZALEZ. Mr. Lozano, who helps you?

Mr. LOZANO. A small business, as I am, it is just a challenge for me to even having to find the time to be here. You see, the time constraints that you have in trying to move from one contract that you think you are going to lose it; you sometimes have to think of whether is it worth it for you. Maybe I should move on to the next one.

I did have one time an intervention from Congress into something that really hurts a lot, which was a project in Washington, D.C. here. I was amazed that this agency was bringing in people from North Carolina and South Carolina to perform the job that we could have even done it here locally. They wouldn't even invite us.

You know, it was really something emotional, but I wanted to stay positive and try to send basically a message, and I wrote my congressman, and I think they did an inquiry about it, but the follow-up was just, to me, putting more energy in it. It wouldn't just be dedicating my time to something where it probably was going to be a lot of waste of my time, so I had to move on to do my business as usual.

But let me just tell you about that, too. There was a process in one of the 2002 issues that they had to come back. The agency came back to us anyway. It was one of those large contracts where they gave this through one of those deals that they had, but we ended up assisting them. So you can tell how sometimes bad decisions are made.

Overall, I think we have to learn from our lessons. America is a great nation. Contract bundling has been a journey that we have never been into. Contracting officers have got to learn more about it, and we just have to build on the mistakes that are made right now. They are sacrificing us right now. For every contract bundle that they give, we also lose jobs, you know. We should be booming right now in our business, within security, but we are not.

Mr. GONZALEZ. Well, I have small businessmen and women in San Antonio that claim that they have been told informally by procurement officers that they understand the requirements, they understand the mandates, but that they are not going to comply, and it is really just that simple. You may not have the sensitivity or whatever.

Let us say you have a bid, you have a proposal, and you think you have not been treated justly. I am not talking about a formal protest or anything like that. Is there anything of an informal nature that you go to the SBA just so you can track what is going on, because I don't know how they track them, to be honest with you? Is there anything like that? How does SBA know, after you have jumped through all of the hoops, met all of the conditions, and you qualify, that you are not really being considered seriously?

Mr. LOZANO. I think you hit on a really important problem, and that is tracking it. Businessmen are so in tune to performance and to getting the job done, that they tend to have the attitude of, "This one didn't go my way; I will put my attention to the next project." And so I would have liked to have come here with a lot of examples

of where we were specifically impacted, and there are ones that are in my mind that I know.

I tried to form a joint venture at one time, and I was told, Your joint-venture team is new, so it is untested, so you don't meet the qualification to bid, and that type of thing that goes on, but did not write it down so that, at a later date, I would be able to track it. And I think that some of the problem that the Congress is having now is you are trying to pull up information that just isn't in a data file.

Mr. GONZALEZ. Mr. Lozano?

Mr. LOZANO. I want to tell you something. We are busy enough, just moving from job to job, and it is sometimes hard to, as I said before, getting a hold of the contracting officer. I think I could walk into the White House many more times than I can do with them. So trying to focus myself and also looking for SBA help, at that time, I think it is just my energies are gone. I think I did outreach to some of them. They did assist me, and I also want to thank them for, you know, trying to probably give me some guidance about it, but not to the level that I would like to see it.

Mr. GONZALEZ. Thank you very much.

Chairman SCHROCK. Let me make a comment, Mr. Gonzalez. It seems to me, based on the comments Mr. Sterling and Mr. Lozano just made, if they lose one contract, they have to move on to the next bidding war just to survive, and I think the agencies who turn them down and pay little attention to them know that, and they know they don't have the time to come after them, and I think that is why it is important for people like them to come here so we can poke at them. This Committee does a pretty good job of poking, and I can assure you that the chairman and the ranking member of the full Committee are good pokers, I can assure you, and we don't want this to stop.

Mr. GONZALEZ. Mr. Chairman, I know, all of the members, if they were here, would feel the same as I do. As much as I would like to get the heads of these offices and such up here to give me all of the statistics and such, I am really more interested in a particular procurement officer at my Air Force or Army base that is not treating the small business person justly because they are identifiable. They are the first person, and the only person, that everything depends on. And I may go to the commander or whatever eventually, and then from there you go to the department and so on, and I know that they say it is top down. I really believe you go with that procurement officer, and if you don't have that kind of culture or environment and someone who is ready to attempt to comply in good faith, it is never going to work.

To take these lessons back home, of course, and, of course, I will meet with my SBA people and say, the witnesses there, and I am just wondering about San Antonio, but I already know that the small business person in San Antonio is similarly situated as you are. There is really no one to turn to, and you are right. You have to go to that next contract. Who is going to pay the bills?

Again, thank you so much for your presence.

Chairman SCHROCK. Let me ask you—Mr. Lozano.

Mr. LOZANO. That is why I want to tell you again, the solution will be to get us involved. After all, we are the ones who pay the

taxes. We are the ones who are making the economy grow here. We are the ones who are bringing the innovation. Why not form an oversight committee, get us involved in this practice to monitor, to audit, and to do the re-engineering of all of this? I think that would be positive for everybody.

Chairman SCHROCK. And not to put words in your mouth, but you two are the ones that are being impacted, you know, of some of the people downtown who don't seem to pay attention to you all.

Mr. LOZANO. I will be volunteering for this.

Chairman SCHROCK. Let me ask you both, what do you see the main reason the government increasingly continues to do bundling? What do you think is the reason?

Mr. LOZANO. As I understand, many years ago, the government lost a big size of its employees; and, therefore, I guess, contracting officers just kind of had to deal with the problem, all of these millions of calls they get on a daily basis, I guess, from different vendors. I guess one of the solutions was for them to, okay, let us contract bundle this. By human nature, I guess, we kind of get sometimes numb about certain situations out there.

The government sized down, maybe reduced the staffing in every part of the agency, but by the same token, you know, contracts started also going down. I am not saying that, you know, that was wrong, but it was the first time that we were going into that road; we had never been in there. So it has been what, 10 years almost, 12 years? Let us review it. Let us go over it again, and let us learn from those mistakes, build from those mistakes——.

Chairman SCHROCK. What I hear you saying is there are other people in the agency that they could have released rather than the people who did the contracting business.

Mr. LOZANO. I am sorry, but I didn't understand.

Chairman SCHROCK. You were saying that when there is a down sizing in an agency, they get rid of the contracting people rather than get rid of some of the others in the same agency and keep the contracting people on board.

Mr. LOZANO. Right. So the impact, I guess, was, okay, we can't handle that many contracts now.

Chairman SCHROCK. Yes.

Mr. LOZANO. Let us just give XYZ Company just to do this contract, you know, bundle up three or four or five. But the fact is for every $100, we are losing $33, you know, for small business.

Chairman SCHROCK. David, do you agree?

Mr. STERLING. Yes, Congressman, I would. I don't have the great overview of what is going on in the government, but I do know locally that there has been a great reduction in the number of contracting personnel and in the field inspections personnel, and there continues to be. We are told regularly that there are more early outs planned for the contracting community. I believe that it is probably in response to that they have decided the only way to do the same amount of volume with less bodies is to add it through bundling.

Chairman SCHROCK. Well, believe me, we thank you for coming here. This is an important subject. The reason we wanted to have this hearing is because it had been brought to our attention and mine, in particular, at home, as something that we really needed

to study more, and I think Mr. Gonzalez and I both agree that something has to be done because small business is the backbone of this country.

You know, it is not the mega-corporations; it really is the small person in all of the towns across America that make the economy run and run well, and if we start eroding that, we are going to have a big problem in this country, and we need to look out for folks like you. And, Dave, you said that you don't understand all of the intricacies of the government. You shouldn't have to. That is what folks like us are elected to do, to help you through that mish-mash, and that is something we would like to do, and we will continue to do that.

It is big. It is like grabbing air, you know. I guess I thought I was going to come up here, and in a couple of years, I was going to solve all of the problems. Brother, you know. It just doesn't happen that way. But we are going to keep at this and keep at this and keep at this until we make some headway, until we have some rational decisions that are made and some rational policy that everybody can live with so everybody can survive. All I want is a level playing field, and I think that is all you are asking for. You just want to be treated fairly, and, obviously, that is not the case with you all.

So, again, we thank you very much for your testimony, coming from Annandale and Virginia Beach, and we may be calling you all again. Thank you very much.

Mr. STERLING. Thank you.

Mr. LOZANO. Thank you.

Chairman SCHROCK. The Committee is adjourned.

[Whereupon, at 4:22 p.m., the Subcommittee was adjourned.]

Statement of Ed Schrock
Chairman
Subcommittee on Regulatory Reform and Oversight
Committee on Small Business
United States House of Representatives
Washington, DC
July 15, 2003

Good afternoon, ladies and gentlemen. Thank you for coming to what I believe will be a very informative hearing. According to a report by the Office of Management & Budget issued last October, the number and size of bundled contracts have reached record levels. This most likely means that efforts to prevent unnecessary bundling are not as effective as we would like. Contract bundling is not in all cases inappropriate. When a well-defined project is literally too massive for small businesses or if a project's requirements too rapid or complex in the interest of national security, a bundled contract may in fact be necessary. In many cases, however, contract bundling is unjustified and is a lethargic response to a reduced federal acquisition workforce. Unnecessary contract bundling is often counterproductive to federal procurement goals. It can end up shrinking the supplier pool and causing higher prices in the long term. President George W. Bush laid out a strong marker on this issue in his Small Business Agenda released last year. Believing that our small businesses "are the heart of the American economy," he directed that, "the contracting process should be fair, open, and straightforward." He has also

"instructed the Director of the OMB to review practices at agencies with significant procurement activities to determine whether their practices reflect a strong commitment to full and open competition."

Congress has certainly weighed in on this issue regularly. Most recently in the Small Business Reauthorization Act of 2000, the SBA is required to produce a contract bundling database, conduct an analysis of bundled requirements, and submit it all in its report to Congress. Included in this report are details about the number of small businesses displaced as a result of the bundled procurement, a description of the activities of each agency with respect to previously bundled contracts, and the justification for the bundled contracts.

This hearing's first purpose is to glean from government agencies how effective they have been in following the principles of the President's Small Business Agenda. I am anxious to hear from the agencies with us today about their successes and failures in meeting the President's requirements. We are also interested in your degree of cooperation with the SBA to help them gather their needed data for their yearly report. They have cited numerous data gaps which prevent them from delivering a full report on the impact of contract bundling.

I fear that the problem of decreasing contract opportunities for small businesses may get worse before it gets better. With increasing demands being put on our federal acquisition workforce in the form of the A-76 process and performance based contracting, the temptation to aggregate smaller contracts into ever larger ones will grow. Again, I'd like to thank each of you for being here. I feel that we have two great panels of witnesses before us today, and I look forward to all of your testimony. I will now

recognize the Ranking Member, Mr. Gonzalez, for any opening remarks he would like to make.

STATEMENT OF A. JO BAYLOR,
DIRECTOR, OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

BEFORE THE
UNITED STATES CONGRESS
SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT OF THE COMMITTEE ON SMALL BUSINESS

JULY 15, 2003

Good afternoon, Chairman Schrock, Ranking Member Gonzalez and distinguished members of the Subcommittee on Regulatory Reform and Oversight of the Committee on Small Business. On behalf of Secretary Mel Martinez and Deputy Secretary Alphonso Jackson, thank you for inviting the Department of Housing and Urban Development to testify about HUD's plans to meet the President's goal of increasing small business opportunities in federal procurements and HUD's policies regarding the use of bundled contracts and the treatment of subcontractors in large contracts.

You have asked the Department to discuss specifically its policies regarding the use of bundled contracts and the treatment of subcontractors in large contracts.

The Department is especially appreciative of your concerns regarding the number and size of bundled contracts that have reached record levels and the corresponding effect this trend has on the diminishing number of contract opportunities for small businesses.

On May 16, 2001, Secretary Martinez signed HUD's Small Business Policy, which sets high goals for contracting with small businesses in all preference categories. It stated, " the ultimate goal of the department, that at least fifty percent of contract dollars be awarded to small businesses." I am proud to announce that as of today, HUD has awarded 50 percent of its prime contracts to small businesses for fiscal year 2003.

The implementation of this policy has required the close cooperation of all facets of the Department. In response to the President's initiatives, the Department has taken and is taking a number of steps to improve small business programs including the following:

- "The Forecast of Contracting Opportunities" was completely revamped to be more small business friendly by including e-mail addresses and phone numbers with extensions of contact persons for each procurement. It also contains detailed information about each procurement's time frame as well as a better description of each procurement. Additionally, we update the forecast weekly rather than yearly so that small businesses are aware of significant changes to any procurement on a timely basis. These updates as well as the major document are available electronically and in hard copy. The "Forecast of Contracting Opportunities and its readily availability are crucial to small businesses.

- Aggressive Outreach activities have been increased across the country so that all small businesses, not just those within the beltway, can take advantage of HUD's procurement opportunities.

- HUD makes maximum use of small business programs such as 8(a) awards as set asides and non-competitive procurements as authorized by Part 19 of the Federal Acquisition Regulation also known as FAR. OSDBU, formally named the Office of Small and Disadvantaged Business Utilization, as authorized under Public Law 95-507, and in accordance with FAR Part 19, HUDAR 2419.20. Before any contracting action is approved for processing, OSDBU receives the proposal and

conducts a review to ensure that small businesses have maximum access and opportunity for prime contracts or subcontracting opportunities.

- To ensure that large-scale contracts are scrutinized for potential division into smaller contracts that offer small business opportunities, OSDBU conducts cost benefit analyses. If a major procurement is determined to be one which small business can successfully perform, then the affected program office is requested to reconsider the contracting action.

- OSDBU has also prepared a "Benefit Analysis Procedures for Consolidated and Bundled Contracts, January 2003" to provide guidance to program managers to determine whether a procurement is a consolidated or bundled contract. OSDBU has requested the Integrated Procurement Team to conduct a benefit analysis for pending award contracts over $2 million, to determine if the resultant contract will be identified as a consolidated or bundled contract. If the benefit analysis does support the definition of a consolidated or bundled contract, the integrated procurement team must submit a mitigation plan that will outline the steps to be taken to increase small business participation under the bundled contract.

- **Equally important,** we have also ensured that all bid solicitation documents contain the required federal acquisition language for subcontracting requirements along with HUD's increased policy goals.

- HUD's September 9, 2002 revised subcontracting policy also extends that all possible contracting including Government- wide-agency (GWAC) contracts to large businesses, GSA schedule awards, all modifications, extensions and/or options. This policy informs large businesses submitting a proposal of the agency's current fiscal year subcontracting goals; however it also states HUD will consider the contractor's plan for meeting the small business participation goal as part of the evaluation for award. Criteria evaluations include:

    - Total value of the proposed level of small business subcontracting participation as it relates to the total value of the prospective contract; as well as
    - Contractor's historic performance in achieving stated small business subcontracting objectives.
    - The substantive nature of the work performed by small business and specific goals for each type of small business.

- HUD's small business policy also ensures accountability of senior agency management for improving contracting opportunities for small businesses.

- During FY 2003, HUD has increased OSDBU staff resources by 140% to facilitate increasing small business participation in HUD small business contracting opportunities, monitor subcontracting compliance and providing greater oversight towards mitigating the impact of contract bundling.

- At the beginning of FY 2003, OSDBU reviewed more than 599 contract actions for HUD's Strategic Procurement Plan.

- Further, HUD has implemented several changes to ensure that we identify bundled contracts.

    - First, HUD trained agency personnel on contract bundling. This training included the definition of a bundled contract, procedures to follow if HUD considers awarding a bundled contract (conduct market research to determine whether consolidation of the requirement is necessary and justified and procedures that the Contracting Officer must follow if it is appropriate to bundle a contract). That contracting officer is also required to determine the benefits that would be derived from a bundled contract.

    - Second, the OSDBU developed and implemented Small Business Review Procedures for Request for Contract Services over $25,000 to ensure that small and small disadvantaged businesses are given maximum practical opportunities to participate as prime contractors and subcontractors. HUD has required a contract bundling review for all task and delivery orders under multiple award contract vehicles.

    - Third, HUD has also included OSDBU as a member of the Contract Management Review Board, which has reviewed more than 2,000 acquisition requests as part of the contract bundling initiative envisioned by the President. The Contract Management Review Board is comprised of HUD principal staff and senior executives and is chartered by the Deputy Secretary to ensure the efficiency, effectiveness, and integrity of the Department's procurement plans, operations and results. This underscores the Deputy Secretary's expectation that the CMRB consider small business participation during its review of strategic procurement plans for all major HUD organizations.

    - Fourth, HUD began using new solicitation provisions to evaluate the subcontracting proposed by offerors under new, competitive, negotiated contracts and competitive task orders awarded under the GSA Federal Supply Schedules. For solicitations exceeding $500,000, HUD has established a subcontracting goal of up to 40 percent of the total value of each contract (including task orders and options) and subsequent modifications. Also, prime contractors must include in their proposals subcontracting goals and how they plan to assist HUD in achieving its small business subcontracting participation goal of up to 40%. Contractors that are unable to meet the established goal due to practical considerations must provide the rationale for the proposed level of subcontracting. HUD considers the prime contractor's plan as part of the evaluation for award.

- HUD is in the process of evaluating a subcontracting automated reporting/monitoring system that would allow HUD to monitor prime contractor's compliance with their subcontracting plans. Also, this system would allow the agency to evaluate its progress towards meeting its subcontracting goals in a more efficient manner.

- Our agency plans to measure progress towards mitigating the effects of any potential bundling of contracts by monitoring all primes and their subcontracting plans to ensure compliance. At HUD our subcontracting goal is up to 40% of the total value of each contract not just whatever the prime contractor elects to include. We want to ensure that small and small disadvantaged businesses are given maximum opportunities to participate as prime contractors and subcontractors.

- As with any program HUD will continue to require identification of alternative acquisition strategies for the proposed bundling of contracts above our specified threshold of $ 2,000,000 and require written justification for the bundling of contracts.

- HUD also requires a very stringent market research report on all contracts above $500,000 in order to identify small businesses available for contract awards.

- The Department is committed to increasing opportunities for small businesses at HUD and strengthening compliance efforts to monitor subcontracting plans already negotiated with prime contractors.

- **To further evidence our commitment,** I am pleased to let you know that HUD's Small Business numbers as of July 10, 2003 among the designated preference groups are as follows:

Small Business overall – 50%
8(a) – 19%
Small Disadvantaged Business – 8%
Women Owned Small Business- 34%
Veteran Owned Business – 3%
HUB Zone Business – 7%

Department's Commitment to the President's Small Business Agenda.

In summary the staff at HUD are committed to the President's procurement reform initiatives as outlined in the President's Small Business Agenda. We are committed to ensuring that government contracts are open to all small businesses that can supply the government's needs. To accomplish this objective, all federal agencies must be charged with developing procurement strategies that improve the access of small businesses to government contracts and avoid unnecessary contract bundling.

We are committed to working with you, the other federal agencies along with the small business community to make sure that these necessary procurement reforms are implemented. At HUD, we are very fortunate, because we have the sincere commitment of both Secretary Mel Martinez and Deputy Secretary Alphonso Jackson in this movement towards procurement fairness.

The Department is committed to increasing opportunities for small businesses at HUD and strengthening compliance efforts to monitor subcontracting plans already negotiated with prime contractors. We think that we can do better and provide greater access to small businesses across this country to HUD's direct and indirect dollars.

This concludes my statement, Mr. Chairman. Thank you again for the opportunity to appear before this Subcommittee.

STATEMENT OF SEAN M. MOSS
DIRECTOR
OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION
BEFORE THE SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT
OF THE COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES
JULY 15, 2003

Mr. Chairman and members of the Subcommittee.

I am pleased to appear before you today to discuss the Department's policies regarding contract bundling, procurement and the Agency's plan to meet the President's goal to increase small business opportunities within the federal procurement.

The U.S. Department of Transportation's Office of Small and Disadvantaged Business Utilization (DOT/OSDBU) was established in 1978, as required by PL 95-507. Since this time the DOT/OSDBU staff has consistently demonstrated a high standard of commitment to providing the highest level of customer service available to small, women-owned and disadvantaged businesses anywhere in federal government. The DOT/OSDBU's effectiveness is a direct and immediate reflection of their work with partners within and outside the DOT. Utilizing their four lines of business - Advocacy, Outreach, Financial Services and Organizational Excellence - enables the USDOT/OSDBU to support the agency's management strategy.

DOT is a leader in federal government procurement. It has developed a culture that has demonstrated its commitment to small and disadvantaged business. Over the past three years, DOT has awarded over $3.662 billion in contracts to small, women-owned and disadvantaged businesses representing over 44% of DOT's total contracting dollars

In addition, DOT/OSDBU works closely with DOT's procurement officials and program managers, the Small Business Administration (SBA) and its DOT Procurement Center Representative (PCR) to coordinate policy direction and develop new initiatives on subcontracting issues. Over the past three years, DOT's prime contractors have awarded over 50% of the subcontracting dollars to small, small disadvantaged and women-owned businesses. To implement DOT's subcontracting program, OSDBU, in conjunction with the SBA/PCR evaluate, review, and make recommendations on subcontracting plans. Recently, we have achieved success in improving subcontracting opportunities for small businesses through DOTs matchmaking events held at locations across the country. DOT pre-arranges meetings between small businesses and prime contractors and DOT decision makers with the expectation to enter meaningful contracting relationships. This initiative has generated increase awareness of DOT contracting opportunities for small and disadvantaged businesses and improved supply chain options for prime contractors.

The Department of Transportation supports the President's Plan to mitigate the effects of Contract Bundling for small business. In FY02, DOT reported 7 bundled contracts

totaling $30.6 million, which represents less than 1% of total contracting dollars. Although this amount may be viewed as insignificant, DOT is committed to eliminating all unnecessary bundling and creating every opportunity for small businesses to compete.

Through Secretary Mineta's leadership, the OSDBU is responsible for developing and implementing the agency's plan. The Secretary's support is key to raising institutional awareness of the issue with senior management; however, a contract bundling policy that establishes a partnership with acquisition and program officials is critical for success.

As a working member of the agency's Procurement Management Council (the body comprised of each operating administration's procurement chief) the OSDBU is well qualified to lead the charge. This existing partnership has allowed OSDBU to partner with the Office of the Senior Procurement Executive (OSPE) to engage the acquisition offices to ensure contract bundling will be a priority within it respective organizations. The OSDBU and OSPE have proposed new policies and measures that will strengthen the agency's review procedures for identifying proposed bundled contracts. These new guidelines will be added to the Transportation Acquisition Regulations (TAR). Beginning with the program officials, bundled contracts must have the necessary justifications to advance. Without the proper documentation, new requirements will not be able to advance to the acquisition and small business offices for approval. In addition, the OSDBU will have final approval for bundling contracts regardless of dollar value. Having this kind of accountability is indispensable for an effective contract bundling policy.

We are encouraged from the early results of implementing the contracting bundling guidelines to date. These improvements have been realized by subcontracting plans compliance, acquisition planning, and contract reviews. Listed below are a few accomplishments through the second quarter of this year.

Subcontract Plan Compliance
Small Business Specialist received additional 25% more subcontracts for review.

Acquisition Planning
The Department identified 16 proposed multiple award contracts for award over the next 12 months. The majority of these potential contracts are recommending for 8(a) set-aside, small business set aside, or partial small business set asides.

Contract Review
Small business specialists reviewed 522 new requirements.

DOT mission statement reads, "To promote customer satisfaction through successful partnerships among our customers that result in an inclusive and effective small business procurement process".

DOT is confident it can implement a plan to mitigate contract bundling and provide positive returns to small business community.

Mr. Chairman and members of the Subcommittee, this concludes my prepared remarks. I would be happy to answer any questions you may have.

TESTIMONY OF LINDA B. OLIVER, DEPUTY DIRECTOR

ON BEHALF OF FRANK M. RAMOS, DIRECTOR

SMALL AND DISADVANTAGED BUSINESS UTILIZATION

OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR

ACQUISITION, TECHNOLOGY & LOGISTICS

BEFORE THE U. S. HOUSE

COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT

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JULY 15, 2003

Mr. Chairman and Members of this Subcommittee:

Good afternoon. I am Linda Oliver, Deputy Director, Office of Small & Disadvantaged Business Utilization, in the Office of the Under Secretary of Defense for Acquisition, Technology & Logistics. It is a pleasure to appear before this Subcommittee to discuss the Department of Defense (DoD) policies regarding contract bundling and to discuss the treatment of subcontractors in large contracts.

Small Business is a Critical Component of the Defense Industrial Base

Small businesses provided approximately $60 billion in goods and services to the Department of Defense in fiscal year (FY) 2002. This unprecedented dependence on small businesses included approximately $33 billion in purchases from small business prime contractors and approximately $26 billion purchased from small business via subcontracts. Further, the number of small business prime contractors performing on DoD contracts increased to 33,936 in FY 2002 as compared to 24,130 small business prime contractors in FY 2001. As the DoD contracting history indicates, the Department is increasingly reliant on small businesses. Their technological innovation and flexibility in providing quality goods and services, on time, at competitive prices benefit the warfighter as well as this Nation's taxpayers.

Development of DoD's Bundling Policy

Because DoD relies so heavily on small business, the Department began managing the problems of bundled contracts[1] relatively early. The Department has issued five policy memoranda on small business participation in consolidated

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

and bundled contract requirements. The thrust of the policy memoranda has been to raise awareness to the DoD acquisition community, including contracting and program management officials, of the critical role that small businesses play in supporting the DoD's mission. The first, issued by the Deputy Secretary of Defense in 1982, directed that functions currently being performed by small businesses should not be consolidated and directed that, unless there were overriding national security interests, future solicitations should be packaged so as not to preclude performance by small businesses. The policy has evolved and the most recent policy memorandum, dated January 17, 2002, addressed, for the first time, the award of multiple indefinite-delivery, indefinite-quantity contracts. These contracts now must also be scrutinized to avoid unnecessary bundling. The Department has been, and continues to be, concerned about the potential negative impact that contract bundling may have on small business.

The Department has also been proactive to mitigate the impact on small business when it has been necessary to bundle contracts due to changing business practices, organizational realignments, base closure, downsizing, and outsourcing. The Under Secretary of Defense for

Acquisition, Technology and Logistics issued a memorandum on January 17,2002,[2] that levied the responsibility on program managers, or other officials responsible for acquisition planning, to ensure small business participation is considered from acquisition planning through program execution. A Benefit Analysis Guidebook was disseminated with the memorandum that: includes practical advice on avoiding bundling; outlines how to perform a benefit analysis; and addresses how to mitigate the adverse impact upon small business when the bundled action has been determined to be necessary and justified. The Department is now preparing a supplement to the memorandum. The supplement will be issued in conjunction with the final rules implementing the Office of Management and Budget report recommendations. The Benefit Analysis Guidebook is also being used by other agencies as a model for drafting guidance to their contracting officers.

As the subcommittee members know, the Office of Federal Procurement Policy issued a report in October 2002 entitled "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business." The

[2] USD(AT&L) memorandum of January 17, 2002, Subject "Small Business Participation in Consolidated Contracts" and the Benefit Analysis Guidebook can be found at: http://www.acq.osd.mil/sadbu

report includes recommendations to implement the President's March 2002 initiative to unbundle contracts. The Department participated in the development of the report and had four members on the implementation working group that developed the Federal Acquisition Regulation and the Small Business Administration Regulations coverage[3]. The proposed coverage was published for public comment as proposed rules in the Federal Register on January 31, 2003, with comments due by April 1, 2003.

The Department of Defense is proud of its contract bundling policy record. We have a long record of avoiding contract consolidations and contract bundling when those actions might harm small business; we have been proactive in minimizing harm to small businesses when bundling was really necessary; and we have talented people to provide leadership in developing new policies when a government-wide plan needed to be developed. These policies are in place because DoD understands that we need the talents of small businesses in order to provide the best possible goods and services to our warfighters.

Effectiveness of DoD's Bundling Policy

[3] See Federal Register dated January 31, 2003, Vol. 68, No. 21 pages 5134 through 5142

A June 2001 General Accounting Office (GAO) report[4] on construction contracts and the potential impact of consolidations on small business, 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 from 25 percent in 1997 to 32 percent in 2000."

The DoD initiated an internal review to further investigate concerns about consolidated contracts. Logistics Management Institute (LMI) examined data available from the Defense Contract Action Data System for FY 1994 through FY 1999 and found no evidence that the average value of the individual awards to businesses has increased over the period, such as would be expected with contract consolidations. Although LMI was able to study only a small sample of contracts, the LMI conclusions support the GAO conclusions. LMI reported that: "The dollar value of contract actions awarded to small businesses has remained at about 21 to 23 percent, with no discernable negative trend. For awards over $25,000, where

[4] GAO-01-746, Contract Management - Small Businesses Continue to Win Construction Contracts, June 2001

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."

The DoD contract data system indicates that an insignificant percentage of our contracts involve the bundling of contract requirements. Initial reporting indicates that during the first eight months of FY 2003 the DoD has awarded only six bundled contracts out of 62,300 contracts awarded thus far this year, or one, one hundredth of one percent of the total.

The Department is successfully managing our bundled contracts, however we remain vigilant. Additionally, we are dedicated to ensuring that small businesses continue to receive maximum practicable opportunity to participate as DoD prime contractors and subcontractors.

Treatment of Small Business Subcontractors on Large Contracts

The reality is that small businesses cannot always participate as prime contractors and are, increasingly, participating as subcontractors on large contracts. In fiscal year 2002 small businesses received approximately $26 billion in subcontracts from large business prime contractors as compared to $23 billion in fiscal year 2001.

This Nation's large prime contractors[5] are required to determine the amount of subcontracting anticipated on each contract and establish a plan for small business participation therein. The Department is responsible for the oversight and monitoring of performance against those plans. This is primarily performed by the Defense Contract Management Agency.

One of the key imperatives coming from the Office of Federal Procurement Policy report was to strengthen prime contractor compliance with small business subcontracting plans. We are taking several actions to implement this recommendation. The proposed Federal Acquisition

[5] Public Law 95-507 became law in 1978, requiring large DoD prime contractors (on contracts or modifications over $500,000 or over $1 million in construction) to submit a small business subcontracting plan.

Regulation changes require agencies to modify past performance procedures to assess contractors' compliance with goals when a small business subcontracting plan is mandated. The Department has initiatives in process to do just this. Further, the Department requires that contractors past performance with respect to small business subcontracting plans be addressed in source selections that provide for subcontracting opportunities[6].

Additionally, the Department has several on-going initiatives to strengthen its oversight of contractor compliance. Specifically, we are working with the Defense Contract Management Agency to link its assessments of defense contractors participating in the Comprehensive

[6] Defense Federal Acquisition Regulation Supplement (DFARS) 215.304 and 215.305.

Subcontracting Plan Test Program (Comprehensive Test)[7] to the DoD past performance database. We are drafting revisions to the Comprehensive Test to strengthen oversight and reporting responsibilities and to collect major program specific data. We are also piloting, with Comprehensive Test participants, a multi-tier reporting program, from which we can capture small business subcontracting data down to the third tier.

In addition to our initiatives to strengthen subcontracting plan oversight and compliance, the Department is also looking at the early involvement of small business specialists as key to the success of small business participation in both prime contracts and subcontracts. The proposed rules establish thresholds for contracts or orders that require the early involvement of the small business specialist in acquisition planning (unless the acquisition is entirely reserved or set-aside for small business). Involving the small business specialist as part of the acquisition planning team will ensure that alternative strategies are considered when

[7] Section 834 of Public Law 101-189 - National Defense Authorization Act for Fiscal Years 1990 and 1991, signed into law on November 29, 1989 required the DoD to establish the "Comprehensive Subcontracting Plan Test Program that allows firms to negotiate annual subcontracting plan that encompass all DoD contracts and subcontracts awarded that year within a plant, division or corporation. There are currently 15 participants, representing most of DoD's largest prime contractors.

consolidation of requirements is likely to have an adverse impact on small business.

The Under Secretary of Defense for Acquisition, Technology and Logistics recently emphasized the Department's intent when he stated: "Finally, increase emphasis on small business subcontracting opportunities. Ensure that acquisition strategies address subcontract opportunities for small business, that subcontracting plans aggressively support the DoD Small Business Program, and that subcontracting goals are monitored jointly by the buying office and by the administrative contracting office and are strictly enforced."[8]

We are also actively engaged with the Department's Major Defense Acquisition Program personnel to ensure that small business concerns and participation are addressed as early in the Program process as possible. For example: On the Joint Strike Fighter Program, the prime contractor, Lockheed Martin Aerospace Corporation, is a participant in the Comprehensive Test. As such, Lockheed Martin is required to submit only one comprehensive subcontracting

[8] USD(AT&L) memorandum for the Secretaries of the Military Departments and Directors of Defense Agencies, April 28, 2003, subject: Small Business Program Reinvention, Fiscal Year 2002 and Beyond.

plan and to report against that plan. We were, however, successful in negotiating a Program specific, small business goal for Lockheed Martin to achieve over the life of the Joint Strike Fighter Program. It is our goal to do the same on other major Defense acquisition programs.

Finally, I think that the theme of our upcoming Small Business Training Conference, "Working Together - Building Strength and Unity - Program Managers, Small Business Specialists and Contracting Personnel" best demonstrates our philosophy, our goal and our approach to ensuring successful and continued small business participation as prime contractors and subcontractors. As program managers, small business specialists and contracting personnel collaborate more fully on Programs as one team, developing innovative ideas, methodologies and strategies, while implementing lessons learned and sharing best practices, potential negative impacts on small businesses will be mitigated. Our working as a strong, unified team will equate to overall success for small businesses.

In closing, I would like to reaffirm the DoD's commitment to small business and to its support of the

President's Small Business Agenda. I am available to answer your questions.

National Aeronautics and
Space Administration

Hold for Release Until
Presented by Witness

July 15, 2003

Subcommittee on Regulatory Reform and Oversight

Committee on Small Business

House of Representatives

Statement by:
Ralph Thomas
Assistant Administrator
Office of Small and Disadvantaged
Business Utilization

108th Congress

Statement of
Mr. Ralph Thomas
Assistant Administrator
For the
Office of Small and Disadvantaged Business Utilization
National Aeronautics and Space Administration

Before the

House
Subcommittee on Regulatory Reform and Oversight
July 15, 2003

My name is Ralph C. Thomas III, and I am the Assistant Administrator for Small and Disadvantaged Business Utilization for the National Aeronautics and Space Administration (NASA) Headquarters in Washington, D.C.

In accordance with the relevant law that created the Office of Small and Disadvantaged Business Utilization (OSDBU), both in my agency as well as the others, I report directly to the Administrator. I am also the Chairman of the Federal OSDBU Directors Interagency Council, which consists of my counterparts at the other Federal agencies.

I am pleased to be here representing NASA today. We are honored to report on how we are supporting the President's Small Business Agenda with regard to contract bundling. However, we are also happy to report that NASA has been sensitive to the impact of contract bundling on small businesses since early 1992. In fact we have been very effective in developing and implementing policies since that time that have dramatically increased prime and subcontract dollars to small businesses, including those owned by minorities and women.

Since that time, for example, we have increased prime and subcontract dollars going to small businesses from $2.5 billion annually to $3.6 billion with essentially the same total contracting budget. During that same period we have almost tripled the total prime and subcontract dollars going to minority owned businesses and more than tripled the total prime and subcontract dollars to women owned businesses.

In 1990, Congress mandated that NASA award at least 8 percent of its total prime and subcontract dollars to small disadvantaged businesses (SDB's). This included minority and women owned firms as well as Historically Black Colleges and Universities and other minority educational institutions. Up until FY 1993 we had never met the goal. Since that time we have increased the totals virtually every year and now award more than 19 percent of our total prime and subcontract dollars against the 8 percent SDB goal to such firms. We achieved that in the midst of contract consolidations and procurement reform. And we're still doing it today. NASA is awarding more of its total prime and subcontract dollars to small businesses than at any other time in its history, and that's in every small business category.

Now, we address the specific issue of this hearing: Contract Bundling. For purposes of review, contract bundling is generally defined as occurring when two or more contracts, in which at least one was previously performed by a small business, are combined together into one contract, which is too large for a small business to perform as a prime contractor.

As I stated earlier, NASA has been sensitive to the potential impact of this practice since early 1992. At that time we put a policy in place that required any NASA field center contemplating what is now known as contract bundling to get concurrence from the NASA Chief of Staff at Headquarters, who would first seek advice and counsel from my organization, the Office of Small and Disadvantaged Business Utilization. This, along with a number of other special business initiatives at our agency, sent a clear message to all of our senior managers in the field and at Headquarters on how serious we were about small and disadvantaged business utilization. And the proof is in the pudding as far as its effectiveness on the practice of contract bundling at NASA.

The Small Business Administration's (SBA) Office of Advocacy recently released a study entitled, "The Impact of Contract Bundling on Small Business – FY 1992- FY 1999." The report lists the top 25 civilian agencies that had the most bundled contract dollar growth during these years. NASA was not even on the list. That is a testament to how effective we were in this area.

Now we do concede that during that period some of our contracts got larger. That's what was happening everywhere. However, we put processes in place that ensured that small businesses had major roles in those contracts as subcontractors. In fact we developed a Uniform Methodology for Determining Small Disadvantaged Business Subcontracting Goals in major contracts as a NASA Policy Directive and that has worked quite well.

At last count NASA subcontracted a higher percentage of its total contract dollars to small businesses <u>and</u> small disadvantaged businesses than any other agency. Small businesses reap almost $2 billion dollars a year as subcontractors on NASA contracts and much of it is in the high technology arena.

However, I don't want to leave you with the impression that we are focusing solely on subcontracting as a response to bundling. Small businesses are also winning a higher share of NASA's prime contract dollars than ever before, about $1.7 billion. In the last seven years NASA has the highest rate of increase of prime contract dollars to small businesses than any other agency. In fact our FY 2001 List of Top 100 Prime Contractors for NASA includes no less than 40 small businesses.

Now with regard to the call in the President's Small Business Agenda to de-bundle contracts wherever it makes sense to do so, we have been very aggressive on that front as well.

For example, our Consolidated Space Operations Contract (CSOC) had a ten-year contract life value of over 3.4 billion dollars. We broke it up after the five-year base period into five contracts and made two of them small business set-asides. On the three that are full and open contracts, the small business subcontracting goals range from 18% to 31%.

Similarly, with our International Space Station contract, which totals $1.4 billion per year, we are breaking it up into five contracts into which, once again, two of them will be small business set-asides and the goals on the ones that are full and open range from 11 to 22 percent.

Mr. Chairman, these are two of our major contracts, totaling billions of dollars. Clearly, this should communicate our strong commitment to the de-bundling initiative of the President's Small Business Agenda. What can be expected in the future from NASA in this important area? More of the same. Prime and subcontract dollars to small businesses will continue to increase, and we will continue to break up contracts wherever it make sense to do so in order to assist in that increase.

That completes my testimony, Mr. Chairman, and now I'm ready to answer any questions you might have.

Statement of Theresa Speake
Director, Office of Small & Disadvantaged Business Utilization
U.S. Department of Energy

Before the

Subcommittee on Regulatory Reform and Oversight
Committee on Small Business
U.S. House of Representatives

July 15, 2003

Thank you for allowing me to testify concerning the Department of Energy's efforts to utilize small businesses in the execution of its mission activities. As you may know, Secretary Abraham has issued a Policy Statement on Small Business (*Exhibit A*). That policy clearly stated that the Department of Energy supports the President's "Small Business Agenda", including the assurance that Departmental contract opportunities include provision for small business participation, and avoid unnecessary bundling of Department's requirements.

In Fiscal Year 2002, the Department of Energy (DOE) obligated almost $19 billion. Approximately eighty percent of these obligations are made for the management and operation of DOE facilities, in which DOE utilizes the capabilities and experience of industry and academia to accomplish its missions. Examples of these facilities are the Oak Ridge National Laboratory, the Pantex Plant, and the Strategic Petroleum Reserve. Because of the size and complexity of these contracts, large businesses, universities and nonprofit research institutions are usually selected to perform the research, development, production or environmental clean up activities at these sites. I will note however, that

DOE has awarded a contract to a small business to manage and operate one of its smaller sites at Grand Junction, Colorado.

The Department is continually looking for opportunities, where it makes business sense, to break out activities from the larger contracts in order to make an award to small businesses as prime contractors. We have made significant strides in seeking to set aside environmental remediation projects for small businesses, and are making progress in finding opportunities to ensure that small businesses have important management and technical responsibilities in projects that are not set aside.

The Department has historically provided for the continuing maintenance of its major sites and facilities and their assigned mission responsibilities through the use of non-competitive contract extensions with experienced high performing incumbent contractors. Competitions were relatively infrequent, and generally limited to those circumstances where a new facility was being established or an incumbent chose not to continue its performance at an existing facility. For example, between 1984 and 1994 when the Department had over 50 M&O contracts, only 3 M&O contracts were competed.

In the mid-1990s, however, as a result of a comprehensive initiative to assess and improve its management of M&O contracts, the Department made a policy decision to significantly increase the use of competitive procedures in selecting contractors to manage and operate its facilities. Since 1994 the Department has conducted 26 competitions for its M&O and former M&O contracts, representing over $50 billion in contract value. Approximately 75% of the Department's contract dollars are now

awarded competitively. Recently, Secretary Abraham announced that the Los Alamos contract will be opened for competitive bidding when that contract comes up for renewal in FY 2005.

In FY 2002, DOE obligated $15.6 billion to its M&O contracts; $8.9 billion to large business, $4.8 billion to educational facilities (such as the University of California) and $1.9 billion to non-profit organizations (*Exhibit B*). In the area of subcontracts, a total of $7.5 billion was spent under M & O contracts, of which $3.7 billion went to small business. As these M&O contracts come up in the future, DOE is committed to reviewing the contracts for the potential to break out portions of the work prior to renewal or rebid of the contract. One of the areas under review is whether some of the subcontracts could be pulled out of the larger contract and set aside for small business contracting. The Department also retains the right to withdraw any portion of the work after award, should it later identify small businesses that could perform portions of the work as prime contractors.

In addition to the $15.6 billion obligated to M&O Contracts, $3.5 billion was spent by the Department under non-M&O contracts in FY 2002. Of this amount, only $273.2 million or 8% went for new awards, with just over 50% going to small business. The remaining amount ($3.2 billion or 92%) was obligated to previously awarded contracts, with small business receiving 13% of that amount. It appears, therefore, that as DOE opens up these contracts for competition and allocates portions of the contract scope of work for small business set aside, small businesses can and will rise to the occasion.

CONTRACT BUNDLING:

The efforts of the Department of Energy in the area of reducing contract bundling have been very specific and deliberate. The Department has developed written policy direction (*Exhibit C*) which spells out the steps that must be taken when an acquisition is being initiated.

The steps being taken to ensure that contracts are made available to small business and not bundled include the following:

1) All contracts up for renewal/rebid are being reviewed for their potential to "break out" portions for small business. This review process involves discussions between the program office, the Office of Procurement, the Office of Small & Disadvantaged Business Utilization (OSDBU) and the Small Business Administration (SBA) Procurement Center Representative (PCR).

2) All proposed new contracts require that the program offices that intend to proceed with a consolidated procurement must first consult with the OSDBU to ensure conformance with the statutory requirements regarding bundling and to identify ways to maximize the participation of small businesses in the procurement.

3) Any proposed bundling of a contract must be justified by the contracting officer based on 1) "measurably substantial benefits", 2) criticality of bundling to the Department's mission and 3) plans to preserve and promote small business participation as prime contractors and efforts to include small businesses as subcontractors.

4) All proposed bundling of contracts must be approved by the Deputy Secretary.

5) Any bundled contract approved by the Deputy Secretary must contain small business subcontracting plans and evaluation factors which evaluate past performance indicating the extent to which the offeror attained the applicable small business goals.

6) Outreach activities are being conducted on an on-going basis to identify small businesses and develop an internal data base of firms capable of performing on DOE acquisitions/contracts in order to support the "setting aside" of contracts for small business, thereby supporting the breakout of portions of large contracts for small business.

7) Meetings with small business firms are being scheduled with program offices to educate the end user about small businesses and their capabilities to perform the work being proposed in order to avoid the need to consolidate activities into one large contract.

8) Teaming arrangements are being promoted to ensure that small firms can obtain the capacity needed to perform on mid-size contracts at DOE, eliminating the need to bundle activities into one contract for a large business to perform.

9) Individual divisions (elements) at the Department are being held responsible for meeting their small business goals and encouraged to break out and set aside portions of all large contracts for small business.

10) The Department, along with all Federal agencies, prepares and submits to the Office of Management and Budget a quarterly report on the status of its efforts to ensure that contracts are not bundled unnecessarily and that contracts are made available to small business.

SMALL BUSINESS PROCUREMENT:

Efforts to ensure that DOE contracts are open to small business and that we provide small businesses with the information they need to do business with DOE are in place. Specifically, DOE has designed a massive small business marketing program to reach out to the small business community that includes paid advertising, sponsorship of small business events and conferences, presentations at Chambers of Commerce, participation in the SBA "matchmaker missions," support of the MBDA Minority Enterprise Week events, development of brochures and other marketing materials including website lists, maps of facilities and a Business Resource Guide as well as articles in small business trade publications. (*Exhibit D*)

We host small businesses at the OSDBU office and direct them to the proper program office to present their products/services, we provide information and referral to other agencies and departments and we are developing a customized small business database that will allow the DOE program offices to find small businesses when they

are trying to decide which type of acquisition method to use (*8(a), HUB zone, small business set aside or 8(a) competitive*). We have contracted with an 8(a) firm to assist small businesses in getting on the GSA schedule and to provide technical assistance on how to register to bid for DOE. Finally, we sponsor an annual Small Business Conference to promote small business contracting opportunities and to discuss small business initiatives. The conference was held this year in May in Albuquerque, New Mexico. We partnered with ten other federal agencies, had over 100 small business exhibitors and over 1500 attendees.(*Exhibit E*)

The Department of Energy is comprised of over twenty-five program offices. Every office has its own small business goals in support of the Department's overall small business goal of 3.7%, negotiated with the U.S. Small Business Administration for FY 2002 and FY 2003. Three of these offices control approximately 90% of the procurement dollars. These include the Office of Science, the National Nuclear Security Administration (NNSA), and the Office of Environmental Management.

The OSDBU is working closely with these three offices and has commitments from all three offices that they will be setting aside portions of their upcoming work for small business. The Office of Environmental Management is holding a Small Business Outreach and Pre-Solicitation conference in Nashville, Tennessee on July 15-17 to discuss a number of small business contracting opportunities (*Exhibit F*). Based on the foregoing efforts and commitments, the Department is well on its way to increasing its prime contracting awards to small business.

The Department will continue to seek innovative ways to include small businesses in our large procurements. We have instituted planning policies and procedures that require active involvement of the OSDBU and SBA in the acquisition process of large procurements. We are making progress particularly in the area of environmental restoration projects - many of which are planned to be set aside. We see even greater progress in the future.

This concludes my testimony, and I will be happy to answer any questions which you may have at this time or to provide any further information you may desire or need.

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Statement of
David S. Sterling
Vice President, **VIRTEXCO** Corporation
House of Representatives
Committee on Small Business
Subcommittee on Regulatory Reform and Oversight
Hearing Titled
"Contract Bundling and Small Business Procurement"

July 15, 2003

I wish to thank the Committee, and especially the Chairman, Congressman Ed Schrock, for inviting me to testify today on a topic so vital to the future and preservation of small business. I am currently Vice President of VIRTEXCO Corporation, a 27-year old general contracting firm, headquartered in Norfolk, Virginia, with a satellite office in New Bern, North Carolina. I also serve as 3rd Vice President of the Associated General Contractors of America Tidewater Region, and am a committee member on both the AGC Navy Cooperative Committee and AGC Corps of Engineers Committee. VIRTEXCO Corporation has employed an average of 250 workers over the past five years and currently does over 50 million dollars a year in sales from a combination of federal government, state, local entity, hospital, school board, commercial and retail clients. We are currently in various stages of over 38 million dollars in government contracts.

Due to drastic changes in the way government contracts are awarded, such as bundling, VIRTEXCO Corporation has for the past seven years spent considerable time, energy and money in the development of commercial and retail clients to help offset the shrinking federal government market. In 2002 VIRTEXCO Corporation did only $40 million in sales due to our inability to pick up federal contracts. I think it is important to note we have been more fortunate than most contractors in our area. VIRTEXCO Corporation has been selected for multi-year, multiple award contracts for both the Camp Lejeune and Tidewater regions. If not for those contracts, we would be all but barred from performing government contract work in our area. I have been asked why I

speak out so strongly against contract bundling when VIRTEXCO Corporation seems to be benefiting from it more than our local competition. The answer is based in a fundamentally American sense of fair play; we oppose any practice that restricts fair market competition. The answer also is based on sound economic reasoning. We may be on the sunny side of the street now compared to other contractors in our area that have been almost completely shut out from competing on federal government contracts, but as bundling practices accelerate we could easily suffer even greater loss of revenues.

This type of information, I'm sure, is not news to the members of this Committee. People of much greater stature and who are more eloquent than myself have spoken out on the problem of contract bundling. All one has to do is type in the words *contract bundling* on any Internet search engine to find literally tens of thousands of entries on the topic.

The law office of Mark J. Lane has posted a topic titled *Free Small Companies from Contract Bundling* which states, "Small business has been systematically cheated out of its fair share of federal government contracts. The culprit is 'bundling,' the discriminatory practice of combining several federal projects into one large package that is almost inevitably awarded to big business. By consolidating contracts, government agencies deny small businesses the right to participate: the sheer size, complexity and capital to support large, multifunctional contracts are beyond the grasp of most smaller businesses."

Another site titled *Talking Points on Contract Bundling* states, "Programs that have been veiled as procurement reform or cost-saving reform methods, such as Household goods reengineering, are really a process to bundle smaller contracts into one big contract, which eliminates all but the largest of businesses from the competition for Government business. This practice places small business at such a disadvantage that most are not eligible to compete for government procurement. The practice of contract bundling by government agencies is having a devastating impact on a number

of industries dominated by small business. In the Household goods moving industry, contract bundling by the Department of Defense threatens to eliminate a substantial portion of the industry's infrastructure. The moving industry is over 85% small business and, with DoD being the largest procurer of moving services, it has enormous buying power. If DoD is allowed to continue its practice of contract bundling and is permitted to consolidate its buying power into one or several large contracts, many of the industry's small business firms, both commercial and military, will be eliminated."

The American Council of Engineering Companies speaks out against contract bundling stating, "...agencies are increasingly relying on ID/IQs as their primary contract vehicle, and pricing them in such a way that they are out of the range of small firms. Small business firms are effectively shut out from a lot of this work when the announcement is for a multiple year, multi-million dollar award with no specific project/facility type in mind."

George Herrera, President and Chief Executive Officer of the Hispanic Chamber of commerce is quoted on the WSHCC website as stating, "There are 1.2 million Hispanic-owned businesses in the United States, but because of the unfair and unequal practice of contract bundling, many are left out when it comes to contracting opportunities with the Federal government."

On the Small Business Committee Democratic Site, there is a statement made by the Honorable Nydia M. Velazquez before the House Committee on Small Business on 7 May, 2003 titled, *Are Big Businesses Being Awarded Small Business Contracts?* Miss. Velazquez states, "What we have here is a federal procurement system that is fatally flawed. It is riddled with practices of contract bundling, weak oversight, no real appeals process, and little commitment to small business from top agency heads and other officials. Small businesses lose out - but so do the American taxpayers because, in effect, what the government buys may not be the best quality at the best price."

The San Francisco Business Times website posted an article titled *Small Business Loses Battle with Air Force over Contract Bundling* by Kent Hoover. The article reports, "The General Accounting Office sided with the U.S. Air Force in a dispute over a $7 billion bundled contract for weapons system support services at three logistics centers. Phoenix Scientific Corp. of Macon, Ga., and the Small Business Administration had asked the Air Force to split the contract into smaller pieces so that small businesses could compete for it. GAO denied the request and ruled the Air Force had complied with federal contracting laws, even though it concluded the cost savings 'do not adequately justify the bundling here.'" It is the last statement quoted from the GAO decision that is so significant; they realized the bundling was not cost effective but their hands were tied do to current regulation.

Ms. Angela Styles, Administrator for Federal Procurement Policy of the Office of Management and Budget in a letter addressed to the President dated October 29, 2002 wrote, "As you know, the number and size of bundled contracts within the executive branch have reached record levels. Although contract bundling can serve a useful purpose, the effect of this increase in contract bundling over the past ten years cannot be underestimated. Not only are substantially fewer small businesses receiving federal contracts, but the federal government is suffering from a reduced supplier base. American small businesses bring innovation, creativity, competition and lower costs to the federal table. When these businesses are excluded from federal opportunities through contract bundling, our agencies, small businesses and taxpayers lose."

What can I add to all the research and testimony already on record? In short, I can provide no long-term statistical analysis, no revelation that will rise you to your feet, nor do I have impressive charts and graphs for your review. What I do have, the only expert testimony I can provide, is a few specific examples of how VIRTEXCO Corporation and like contractors in the Tidewater Virginia region have been impacted by the practice of contract bundling.

A Newport News, Virginia newspaper, the *Daily Press*, reported January 24, 2003, in an article by R. W. Rogers, "The Army announced Thursday that J. A. Jones Community Development Company had won the contract to resurrect 1,193 housing units at Fort Eustis, Fort Monroe, and Fort Story in a 50-year deal expected to be worth 782 million dollars." VIRTEXCO Corporation has performed millions of dollars in government housing projects and has received outstanding evaluations. Rather than bundle this work, it should have been left in smaller increments allowing VIRTEXCO and other general contractors of less size than J. E. Jones to compete for award. VIRTEXCO Corporation may be selected by J E Jones to perform some work as a subcontractor. Isn't this contract bundling then in effect adding additional layers of overhead and profit to the cost of the contract? The apparent reasoning or justification for this award is that it is a private-public housing partnership resolving funding issues. However, as the article reports, "the developer is paid with soldier's basic allowance for housing". The Army is just playing a shell game with the funds to the detriment of small business. The article continues to report "..by 2005, private companies will run and maintain 69,000 housing units- or nearly 80% of Army housing on 28 bases. Charlotte, N.C. based J. A. Jones has $3 billion in annual revenue." This is a staggering volume of work to be handed to any one contractor. I use the term "handed" because when the solicitations are structured through bundling in such a fashion that competition is restricted to a select few, it is just like handing them the contract.

Monday, July 14, 2003, 11 a.m. - Atlantic Division Department of the Navy, Norfolk, VA, under solicitation # N6247003R3029, advertised an indefinite quantity job order contact. The contract is for a base year plus four one year option periods. The maximum annual value of the contract is 50 million dollars. The only general contractor listed so far in the builders and contractors exchange bulletin is Kellogg, Brown, and Root of Arlington, VA, another example of how multiple contracts are being bundled into one large contract making it impossible for small businesses to compete.

These are recent examples of what has been going on at an increasingly greater frequency in our region. The bundling is having a cascading effect. Obviously it adds

layers of overhead and profit costs to contract value. Obviously, it limits participation and competition. However, it has deeper, less obvious effects as well. As the amount of work available to contractors diminishes due to contract bundling, the remaining work is bid at increasingly desperate margins, resulting in failure on the part of the contractor and potentially his ultimate demise. There is an immediate impact to the government in that when a contractor fails on a project, the owner is always faced with delayed usage of the project and associated costs.

Another hidden impact of contract bundling will be the erosion of quality due to the dwindling government presence in the form of quality assurance. One of the main selling points for contract bundling is the reduction of government overhead associated with contract administration. We've already seen in our region a reduction in the number of construction representatives from the Navy, and we have been told there will be an even greater reduction in the near future. The reasoning apparently being that if you have only one project you only need one inspector; so if you have a fifty million dollar project instead of ten five million dollar projects, you'd have four less inspectors. There also seems to be a belief that the government can put a greater amount of emphasis on quality assurance responsibility on the part of the Contractor. Both concepts are flawed. As an example, one Construction Representative cannot watch the repairs or construction of ten houses. As to the idea of increased contractor quality control versus government quality assurance, certainly an increased role in, and awareness of, quality control by contractors is warranted and an excellent idea. However, this should not and cannot replace quality assurance by the government. Despite the best intentions, there has always been and will always be a need for checks and balances. Equally important, the shift of added Quality Control staffing on the part of the Contractor has occurred too rapidly to allow the contracting community to properly train a cadre of Quality Control representatives. If the current trend continues, we can expect a decline in the quality of the product and an increase in latent defects.

Contractors understand the Government is under increasing pressure to downsize. We understand there is less paperwork in administering one contract as

opposed to ten. We understand it is difficult and costly for the Government to train and maintain a large contract administration force, and that it is costly also to train Contractors to perform to Government quality and administrative standards. We further understand Government clients feel they deserve the best and it makes sense to them to use the proven huge contracting firms with great resources. However, this is but one side of the coin. Giving in to the pressures with the easy answer of bundling is short-sighted and will result in the long-term detriment to all.

The difficulty is in weighing the short-term needs against the long-term needs. I am not an economist. I am not familiar enough with the complexities of government financing, and have only a limited picture of the problem. So unfortunately I am unable to suggest a global cure for the problem. From an experienced contractor's standpoint, I recommend, as a minimum, that the government put an immediate halt to such a fast acceptance and utilization of contract bundling. From a contractor's perspective, we are only robbing Peter to pay Paul. It looks like we are saving money in the current budgets, but in reality we will be paying for it in the long-term, and may, as in the GAO decision earlier referenced herein, actually costing tax payers even in the short-term. Projects should be broken down in complete packages to smaller contract size such that the owner is provided the same product as he would be achieving through contract bundling, yet in small enough units that a broader base of contractors is able to compete.

We have a long history in this country of recognizing the importance of small businesses. The importance of increased competition dates back to the Sherman Antitrust Act of 1890, through the Small Work Plans Corporation created by Congress in 1942 to help small businesses participate in defense contracts, the Small Defense Plants Administration, and finally, the Development of the Small Business Administration in 1953. Contract bundling seems attractive because it reduces paperwork and makes administration more efficient however, we are paying for it now in layered overhead costs. We will certainly pay for it in the future in costs because we all

know that where there is reduced competition there is increased cost, and we will certainly pay for it through the erosion of the small business base.

In closing, I offer a quote from Senator Olympia Snowe, Chairman of the Senate Committee on Small Business and Entrepreneurship, speaking in March during a hearing examining contract bundling. "The bottom line is America's small businesses continue to lose contracting jobs by the bundle, up to an estimated 13 billion, rather than benefiting from the growth in buying by federal agencies. In addition, when small firms lose contracts the economy loses a vital source for job growth."

Hearing on Contract Bundling and Small Business Procurement
Subcommittee on Regulatory Reform and Oversight
July 15, 2003

Jorge G. Lozano
CEO/President of Condortech Services, Inc.

Good afternoon, Mr. Chairman and members of the Subcommittee on Regulatory Reform and Oversight. Thank you for the opportunity to speak with you today regarding the negative effects of contract bundling on my small business and countless others nationwide. I am testifying before you today on behalf of the National Federation of Independent Business (NFIB), which represents 600,000 small businesses across the country.

My name is Jorge G. Lozano. I came to this country as an immigrant from Bolivia, and I started building my dreams to become a successful businessman. I come from a family that created jobs and wealth for others in Bolivia, and I have used the gifts and wisdom that they gave me as the seed of success in my continuous journey through life. I want to thank America for giving me this opportunity; it has been a long journey, filled with many challenges. I have been strengthened by those experiences in life, which have made me stronger and wiser. I dedicate myself with passion to achieve my goals so that I may be able to contribute back to our society. As a leader in my community, I want to plant the seed of success among others, so that they may also one day become entrepreneurs.

I am a proud small business owner who started Condortech Services, Inc. in 1988 in the basement of my home, just like many other entrepreneurs. It was very hard work starting my business, and I have found myself many times struggling to make payroll and pay the bills. As my enterprise started growing and gaining more experience, we hired more people and delivered more creativity, innovation, technology, education and training to our customers in security and law enforcement. Condortech provides electronic tools such as access control, CCTV, intrusion detection, and Biometrics, to protect government and private facilities in America. We are looking to expand the business into new markets, and after the 9/11 attacks, we believe that others can benefit from our expertise and services. My staff also gets involved in community related initiatives, by providing logistic and financial support to those projects.

Small businesses are the most important component of success in America; they create opportunities and bring balance to democracy. Small business provides more than 50% of the national wealth, and 75% of all the jobs in America. Small business brings innovation, new overseas markets, and prepares its employees to be multitaskers. These tools are important in the new millennium, since we are facing new challenges in the global economy.

The electronic security industry is only about 25 years old. Ninety five percent of the businesses in this industry are small businesses. This is where the cutting-edge technology and innovation can be found in America, and these are the businesses the

government needs to contract with in order to get the most up-to-date technology for its security and IT needs.

Small businesses want to compete for federal contracts and strongly support efforts to unbundle the federal contracting quagmire. Significantly fewer small businesses are receiving federal government contracts than in past years. The number of small businesses receiving new contract awards has declined from 26,506 in 1991 to 11,651 in 2000. Bundling provides an unfair competitive advantage for big businesses over small. The use of multiple award contracts has only served to intensify the decline in small business participation in the federal contracting arena. Multiple award contracts are not subject to uniform review for contract bundling and small business participation. According to a report by the SBA Office of Advocacy for every $100 awarded on a bundled contract, there is a $33 decrease in contract awards to small business.

The President's announcement of the Small Business Agenda in March 2002, the nine-point action plan unveiled by OMB in October 2002 and the proposed rule on contract bundling published in January 2003 are key to ensuring that small businesses have access to federal contracting opportunities. The OMB report shows that out of a total of $180.88 billion assigned to large business, only 19% were subcontracted to small businesses.

Although intended to serve a useful cost-saving purpose, contract bundling reduces the quality of work on federal projects because it edges out small contractors who could do more work at a higher quality for less money. In the past, pieces of federal projects

provided steady work for small firms, but the recent increase in bundling means now only small companies that have a standing subcontractor relationship with government contract giants enjoy steady federal contract work. A level playing field where small businesses can compete will allow for innovation, creativity and lower costs to the federal government contracting process. When contract bundling occurs, small businesses are no longer able to compete because of the sheer size, diversity, aggregate dollar value or specialized nature of the procurement requirements. Contract bundling is an impediment to free, fair and open competition. The ultimate winners of reforming the federal contracting process will be the American taxpayers.

Condortech Services, Inc. is now more than ever at risk of losing some of our existing contracts. Here are some examples of recent bundled contracts: The FDIC recently sent out an Request For Proposal (RFP) suited for a large business to provide Security Services nationwide; the Transportation Security Agency recently awarded a major security contract to one defense contractor; and the U.S. Department of Justice Executive Office of U.S. Attorneys has just done the same thing. Other government initiatives are also creating more bundled contracts, and as a result, not allowing us to compete fairly, or simply not even allowing us the opportunity to bid on the projects. I even see new players coming from other industries like defense and automobile, which never offered security services prior to 9/11, now attracted by the new "security" economy.

Condortech's marketing efforts to federal agencies go through a

challenging road full of obstacles, and we wait for weeks, months, or sometimes indefinitely to meet with the Contracting Officer and/or the Program Manager to make a presentation of our services.

Contract bundling was supposed to improve the quality of government contracts and reduce costs. It has done neither. Unfortunately, contract bundling has also led to job cuts in the small business labor force. The negative impact to small business has been far more damaging than the savings that was thought could have been achieved by implementing Contract Bundling. Large contractors are often brokers for the government procurement process, which has cost the taxpayers more money. While I do realize that there is a need to bundle contracts in certain instances, a better system must be implemented to monitor and audit these types of contracts, and the audits must be expanded to the contractors.

Mr. Chairman, thank you again for the opportunity to express my views on the current problems with contract bundling. The administration has stepped forward with important reform proposals, but the Congress must also stand up against anti-competitive bundling of contracts.

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