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DOE CONTRACTING WITH SMALL BUSINESSES

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

TO

RECEIVE TESTIMONY REGARDING DEPARTMENT OF ENERGY CONTRACTING WITH SMALL BUSINESSES

MAY 18, 2004

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DOE CONTRACTING WITH SMALL BUSINESSES

TUESDAY, MAY 18, 2004

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 10:15 a.m. in room SD–366, Dirksen Senate Office Building, Hon. Pete V. Domenici, chairman, presiding.

OPENING STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

The CHAIRMAN. We're going to try very hard to accommodate the witnesses for the main principal issue that's before us. But I would ask everybody that is a witness to keep their statements brief, and try to make the point that they want to make about this hearing.

This hearing of the Energy Committee on Small Business Contracting at the Department is now in order. Prior to fiscal year 2000 the Department of Energy reported its small business contracting, the performance of that, by including the performance of its labs, and the sites of its statistics.

In 2000 the DOE agreed with the Office of Federal Procurement Policy of OMB to stop counting contracts issued by the labs and sites in these statistics. This seemingly simple change in accounting is having a very serious number of effects. This hearing should help us understand the implications of this change.

On the one hand no Senator has pushed as hard as I have for DOE labs to excel in their small business contracting performance. Frankly, aside from a few major issues with reference to advance activities at Sandia I've spent as much time with them, and with people in my state on small business coming out of the laboratories, as any other issue.

I want small business to be used wherever it makes sense in all the Department's activities. One of the purposes in holding this hearing is to assure the small businesses are seeing real growth in their opportunities throughout the Department activities.

But when one of the consequences of this recent change is to discourage labs from expanding their small business contracting, and actually tell them to decrease their small business contracting then I fear that something is going wrong.

That's not the only concern with the change. It would encourage activities at a site to be run by lots of small businesses all with separate DOE contracts. This would be a major change for the single, overall, site management contract that we have today. I have difficulty believing that it's wise to rely on the Department to co-

ordinate and integrate all these small activities to assure that the Department's mission are complied with maximum attention to safety and security.

I hope witnesses can address this complex issue in as simple a way as possible, and we can better understand how to optimize the use of small business in the Department.

Now I would yield to Senator Bingaman for opening remarks, and then we'll have the Deputy Secretary of Energy as the first witness.

Senator Bingaman.

[The prepared statements of Senators Kerry and Snowe follow:]

PREPARED STATEMENT OF HON. JOHN F. KERRY, U.S. SENATOR FROM MASSACHUSETTS

Mr. Chairman, I would like to thank you for the opportunity to address the issue raised today before the Senate Committee on Energy and Natural Resources, the allocation of Federal prime contracts to small businesses by the U.S. Department of Energy. As the Ranking Member of the Senate Committee on Small Business and Entrepreneurship, I have heard from many small businesses about the importance of reserving prime contracts for small business participation and limiting the practice of contract bundling. Contract bundling and the use of super-sized contracts, such as those utilized in the Department of Energy's maintenance and operation (M&O) contracts, have precluded many small businesses from bidding on Federal contracts. This anti-competitive structure cost this nation's small businesses approximately $4 billion in contracts in FY2003.

Mr. Chairman, these are not "mom and pop shops" or corner stores. These are successful businesses that have anywhere from 10 to 499 employees. These are businesses that create jobs, are more likely to make new hires, more likely to invest in new technologies and capital improvements, exactly what our nation's economy demands in order to recover from our current downturn.

Lack of small business participation not only adversely affects the success of those excluded small businesses, but eliminates the diversity among suppliers of goods and services needed by the Federal government. This increases long-term costs for the government, and limits innovation and limits the development of new technologies. Further, limiting the availability of competitive contracts to small business is contrary to public law and the policies of the Federal government.

The Small Business Act, 15 U.S.C. 631, et seq., states policy of Federal government is to *"aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises . . ."* To ensure that small firms receive their fair share of Federal contracts, the law creates specific goals for small business utilization. Section 15(g) of the Small Business Act, 15 U.S.C. 644, states, *"The Government-wide goal for participation by small business concerns shall be established at not less than 23 percent of the total value of all [prime contract] awards for each fiscal year."*

According to the most recent Small Business Administration annual report on Small Business Utilization, the Department of Energy reported that only 4.08 percent of all of its contracts were allocated to small businesses as prime contractors in FY 2003, the lowest level of all fifteen Executive Departments. This poor performance is greatly due to the contracting structure in which multiple and diverse tasks and duties are essentially bundled into one contract that is too large for small businesses to bid on. According to recent GAO report, more than 80 percent, approximately $18.2 billion of the total $21.6 billion of Department of Energy contract dollars, are spent on 37 large contracts for the Management and Operation of DoE research facilities.

I applaud DoE Secretary Spencer Abraham, my former colleague on the Senate Committee on Small Business and Entrepreneurship, for implementing higher small business goals and for his leadership in urging Offices within the Department to "breakout" portions of their contracts capable of being performed by small firms. However, more work still needs to be done to ensure that the Department of Energy

makes consistent progress towards full compliance with the Small Business Act requirements.

In 1999, during the debate on the DoE's compliance with the 23 percent government-wide goal for small business contracting, then-Chairman Kit Bond and I sent a letter to the Office of Federal Procurement Policy encouraging the prime and subcontracting achievement numbers to remain separate. I have enclosed a copy of this letter for your review. In 1999, the Office of Federal Procurement Policy decided that the Department of Energy's M&O, M&I and ERMC contractors should be counted toward the Agency's small business subcontractor goals, not their prime contracting goal. Mr. Chairman, I continue to believe that that approach is best for small businesses and for the country and urge the Department of Energy to continue and expand their efforts to fully utilize small businesses as prime contractors.

The Department claims that its mission contains four main elements: energy, nuclear weapons stockpile, environmental management and science. In testimony before this Committee Dr. Martha Krebs, former Director of the Office of Science at the Department of Energy stated, *"contractors for these Laboratories must have the capacity to attract and lead the best scientific and engineering talent our nation can muster."* Mr. Chairman, that is why I urge the Department of Energy to redouble its efforts to increase the number and dollar amount of prime contracts made available for competition to small businesses. Mr. Chairman, let us not lose sight of the fact that although the Department does manage a great deal of sensitive research with nuclear and national security implications, it is the second largest Agency in the Federal government and requires the same support services needed by all agencies to maintain day-to-day activities. There is no reason these contracts should not be made available for small businesses to compete.

In addition to the traditional goods and services provided by small firms and utilized by every government body such as office supplies, IT and telephony services, building maintenance, and landscaping, successful programs such as the Small Business Innovation Research (SBIR) and Small Business Technology Transfer programs have demonstrated that small firms are important contributors of innovative science research and technology, as well as environmental remediation.

According to the Science and Engineering Indicators released by the National Science Foundation in 2004, the private, for-profit sector is by far the largest provider of Science and Engineering employment. In 1999, approximately 73 percent of individuals working as scientists and engineers who had bachelor's degrees and 62 percent of persons who had master's degrees worked for private, for-profit companies. Approximately one third of these individuals are employed in sectors other than large firms or academics. The current M&O contracting structure places a great emphasis on the relationship between research institutions housed at prominent Universities and large corporations responsible for the DoE's 37 laboratories, essentially ignoring one third of the scientists and researchers that are housed in the nation's innovative small firms.

The National Science Foundation has also reported that many of the new technologies and industries seen as critical to the Nation's future economical growth are closely identified with small business. The Foundation describes biotechnology and computer software as industries built around new technologies that were largely commercialized by small business. The report on Science and Engineering Indicators specifically states that *"small business retains certain advantages over large businesses in commercial environments characterized by fast-moving technologies and rapidly changing consumer needs."* Among the advantages that small businesses offer to the Federal government, and specifically to the Department of Energy, are the kind of speedy, innovative research, use of new technologies and cost savings that are essential to ensure that this country remains at the forefront of science and technology.

Similarly, in the area of environmental remediation, Mr. Chairman, there are a number of small firms with a long history of successfully performing such work for other Federal agencies, such as the Army Corps of Engineers. These small firms should be afforded the opportunity to compete for environmental management contracts at the DoE's 37 research facilities.

One such example is a company located in California and working in my home state of Massachusetts, Environmental Chemical Corporation (ECC), the lead management contractor for the Massachusetts Military Reservation on Cape Cod, one of the Army's highest profile and most sensitive sites. ECC is a small firm that has been awarded repeat business based on excellent performance. Small businesses also perform challenging and high hazard work in D&D of Army ammunition plants cheaper and faster than large business. The Army's largest environmental contracts (the Total Environmental Restoration Contracts) and the Navy's largest environmental contracts (Comprehensive Long Term Environmental Actions-Navy) have

been performed by small businesses. The Army is not the only Federal agency that has confidence in the abilities of small firms to perform sophisticated environmental remediation projects. The Environmental Protection Agency allocated approximately $155.5 million, over 13 percent of its overall prime contracting dollars, to small businesses in FY 2003 environmental consulting contracts. The DoE itself has sought competent environmental remediation (ER) contractors over the past 18 months and has found that there were highly qualified small business teams for each one: Los Alamos ER, Portsmouth ER, Paducah ER, Portsmouth Site Services, Paducah Site Services, Fast Flux Test Facility, Columbus Closure, and Nationwide ER and Demolition and Decontamination (D&D). The expansion of this effort throughout the Agency will dramatically increase the share of contracts being made available for small firms as prime contractors and help DoE attain their increasing small business goals.

Mr. Chairman, the Department also claims that allowing them to count subcontracts allocated through a M&O contract toward their prime contracting goal would simply return their practice to that permitted by the Office of Federal Procurement Policy prior to its 1999 decision. What gets lost in this argument, however, is the fact that this reporting structure was implemented in 1991 on the grounds that M&O contractors had a close relationship with the Department and were subject to the protections and requirements described in the Federal Acquisition Regulations (FAR). However, as the relationship between the M&O contractors and DoE changed, the 1999 decision changing the policy governing the counting of small business utilization became necessary. M&O contractors are simply not that closely aligned with the policies and procedural guarantees of the Department any more. While the Department allows GAO protests by prime contractors, it does not allow such protests to be made against an M&O contractor by a subcontractor. While there are dispute resolution procedures available for prime contractors, none exist within the DoE for disputes between M&O contractors and their subcontractors. The DoE accepts no liability for actions taken by an M&O contractor. Clearly, DoE and the M&O contractors have not returned to their close, pre-1999 relationship, so why should the small business utilization policy based upon that relationship?

Mr. Chairman, I have been asked by many of my colleagues, "why does it matter if a small business receives a prime contract or a subcontract? If the small firm gets the work, that is all that matters, right?" The answer to this question is no. There are three major differences between prime contracts and subcontracts.

First, prime contractors maintain a greater level of oversight and control over the performance of the contract, and therefore of their own business. The harsh reality of today's subcontracting arena is that the prime contractor makes the rules, and because the subcontractor does not have a direct contract with the Agency, they are beholden to the prime contracts. In the Senate-passed SBA Reauthorization legislation, S. 1375, the Committee on Small Business and Entrepreneurship addressed many of the issues affecting small business subcontractors, including the practice of bait and switch and the failure of prime contractors to promptly pay their subcontractors. Even with these attempts to resolve the inequities faced by subcontractors, it is clear that there is no substitute to being the prime contractor and being in control of the performance of the contract.

Second, more often than not, Federal agencies receive a better value by allowing small businesses to compete for prime contracts. When a large business receives a contract and simply turns around and awards subcontracts to small businesses to perform the tasks, they are essentially charging a premium on top of the actual cost of performance. As Federal contracts get larger and larger, fewer businesses are able to compete for these contracts. This stifling of competition eventually leads to higher prices and inadequate supplies.

Third, prime contractors receive a record of "past performance" with the agency with which it is doing business. This past performance provides a record of the quality and timeliness of work performed under a contract that is used to leverage other similar contracts with the Federal government. When performing a subcontract, small businesses do not receive this past performance record from the Federal government, and regardless of the quality and timeliness of the service, a subcontractor cannot leverage that service into additional contracts.

Mr. Chairman, I thank you for the opportunity to express my support for small businesses and their desire that the Federal government use them as prime contractors to the maximum extent possible. As Senator Bond and I have expressed five years ago, the Department should fully comply with the Small Business Act and therefore, should report its contracting goals and achievements in the same manner and on the same basis as all other agencies of the Government: prime contracts as prime contracts and subcontracts as subcontracts. Enacting a policy contrary to this

would undermine the validity of the Government-wide statistics used to monitor the Federal government's progress in small business utilization. This would jeopardize the government's efforts to expand its supplier base, to promote economic growth and innovation, and to create jobs by fostering competition by small businesses.

Secretary Abraham has made some steps in the right direction on these issues and I urge him to stay the course, and if possible, speed up the projected twenty-year effort to reach the 23 percent goal. As Ranking Member of the Senate Committee on Small Business and Entrepreneurship, I offer the Secretary our Committee's support and assistance in that effort, and I request that the Senate Committee on Energy and Natural Resources do the same. By doing so, we will simultaneously help DOE achieve its mission, encourage cost-effectiveness and innovation, and foster the growth and success of high-performing small businesses, our nation's biggest job creators.

Thank you.

PREPARED STATEMENT OF HON. OLYMPIA J. SNOWE, U.S. SENATOR FROM MAINE

Chairman Domenici, Ranking Member Bingaman, and Members of the Committee, thank you for the opportunity to express my views as Chair of the Senate Committee on Small Business and Entrepreneurship on the vital subject of small business contracting at the Department of Energy.

It is undisputed that government procurement is a *core operational function* of the Department of Energy (DOE). With over 90% of its budget spent on contracts, DOE is a leader among Cabinet departments in terms of agency-wide contracting activity. In monetary terms, DOE prime contract awards in FY03 amounted to over $19 billion. For these reasons, whether small businesses have a fair and meaningful opportunity to compete for the DOE contracting dollars is critical both to the economic growth of this country and to the integrity of small business policies adopted by Congress.

The DOE's small business contracting goals—a crucial indicator of fair and meaningful access—are negotiated by the Department and the Small Business Administration, and set forth in accordance with the statutory requirements of the Small Business Act. Thus, small business contracting goals are a matter under the jurisdiction of the Small Business Committee. The specific application of these Small Business Act goals at the Department of Energy has been a subject of my Committee's continuing interest for a number of years.

It is worth noting that the DOE only recently began working towards compliance with the small business goals. Originally, the Department inherited its prime contracting model from peculiar World War II-era arrangements concluded by President Harry Truman and a small group of American industrialists and academics for the development of the atomic bomb in wartime conditions. Under this model, the prime contractors managed the laboratory research sites as surrogates for the government, the prime contractors' procedures for subcontract awards had to conform to the "federal norm" of acquisition laws, and subcontract awards were protestable to the General Accounting Office (GAO). Citing that unusual closeness between the government and the prime contractors, also known as Management & Operating contractors, the Office of Federal Procurement Policy (OFPP) permitted the DOE to exclude the M&O awards from the Small Business Act goals.

In the mid-1990s, the legal relationship between the DOE and its prime contractors fundamentally changed through a series of regulatory amendments distancing the DOE prime contractors from the government. In September 1999, Chair and the Ranking Member of the Small Business Committee advised the OFPP that such changes no longer justified counting subcontracts towards DOE's small business prime contracting goal. Indeed, during the 1990s the American economy experienced an explosive growth of knowledge- and service-based small business sectors inconceivable during World War II. The OFPP accepted the Committee's advice, and I believe that the Committee's analysis and the capacity of America's small business remain sound today.

It must also be noted that the Department was able to negotiate a 20-year plan to reach the 23% goal in light of its unusual historical contracting structure. Even though the DOE still has a long way to full compliance, some have already questioned the necessity of such compliance in light of various program management issues at the Department. For example, concerns have been raised that the need to compete and manage an increased number of prime contracts would exacerbate the weaknesses of the DOE acquisition system. It has been pointed out by the General Accounting Office (GAO) that the DOE procurements may be vulnerable to waste, fraud, and abuse. Consequently, the DOE's competence to handle additional con-

tracting work has been questioned. Some have also alleged that small businesses cannot be trusted to keep our Nation's energy secrets or to be effective team players with other contractors. Yet another concern has been the weak accountability links between small businesses and the DOE contracting officials in Washington, as well as the blurring of accountability lines at the sites. Finally, it has been argued that small businesses would prefer to deal with "simplified" subcontracting procedures of the large prime contractors rather than immerse themselves into the highly regulated world of direct federal procurement.

I agree that a number of these program management concerns deserve Congressional attention and applaud the Energy and Natural Resources Committee for convening the hearing to address them. However, as Chair of the Small Business Committee, I am firmly convinced that small business prime contractors are not a hindrance to good government and sound management. Abandoning our commitments to open federal procurement to small business is not the answer to the DOE's actual or potential management woes. Instead, we should support the dedicated acquisition professionals at the Department of Energy by providing resources for additional training and hiring. If necessary, Congress should also strengthen the capacity of the DOE's Offices of Small and Disadvantaged Business Utilization and of Inspector General, as well as to direct the GAO to assist the DOE with devising better acquisition processes. It is altogether foreseeable that a sizable portion of budgetary requirements for internal improvements of the Department's procurement system could be realized from redirecting the expenditures for overhead costs currently paid out by the Department to its prime contractors for developing and administering their subcontracting plans.

Any strain on the DOE could be further lessened by acquisition tools and services widely used throughout the Federal government. Some of these tools, such as the small business government-wide acquisition contracts (GWACs) and the various acquisitions vehicles of the General Services Administration, are designed precisely to reduce administrative burdens on the buyers. Other tools, such as small business teaming agreements, could be utilized to increase the ability of small business to compete for contracts with higher dollar values. The Small Business Committee stands ready to work with the Energy Committee on improving the acquisition practices and procedures at the DOE.

Moreover, the apprehensions that small businesses are not suitable to work in operationally complex or security-sensitive environments do not appear to be well-justified. Today's small businesses are successfully competing for projects from the Advance Research Projects Agencies at the Departments of Defense and Homeland Security, for funding from the Technical Support Working Group, for work in support of military operations overseas, and for a variety of services to civilian agencies at home. The security needs of the Departments of Defense and Homeland Security are at least as great as those of the Energy Department. Yet, those agencies are far ahead of the DOE in terms of compliance with the Small Business Act. The collective experience of the DOD and the DHS teaches us that if appropriate prime contracting opportunities appear at the DOE, qualified and responsible contractors from the ranks of small, disadvantaged, women-owned, HUBZone, or veteran-owned businesses would want to participate in the bidding process. There seems to be little reason for allowing small businesses to work on military bases or to develop countermeasures for weapons of mass destruction while refusing small businesses the chance to work at the government-owned DOE facilities.

Other concerns implicating contractor accountability and nationwide contract administration may be addressed through a combination of technology, special contract clauses, and reengineering of DOE operations. Finally, "simplified" subcontracting awards made by prime contractors are exempt from review through the debriefing process established in the Federal Acquisition Regulation for competitive procurements or through the bid protest process of the GAO and the U.S. Court of Federal Claims. Thus, prime contractors are simply not accountable to bidders for small business subcontracts in the way that the DOE is accountable to bidders for prime contracts.

Indeed, the 23% prime contracting goal in the Small Business Act was premised on the recognition that expanding competitive opportunities for small, small disadvantaged, women-owned, HUBZone, or veteran-owned businesses stands to provide multiple benefits to these bidders, to the procurement system, and to the United States as a whole. These benefits include strengthening of the industrial base, increasing innovation, and greater accountability in the awards process. The economics of competitive small business acquisitions would generate better value and lower prices for the government's needs than non-competitive subcontracting awards, and competitive forces reduce the potential for improper favoritism or the appearance of improper favoritism. At the same time, market forces would also en-

sure that the work best performed locally is performed locally despite nationwide advertising for small business prime contracts. As Chair of the Small Business Committee, I look forward to examining the impact of DOE contracting policies on small business and to collaborating with Chairman Domenici and the Committee on Energy and Natural Resources on solutions benefiting both good government and small business. For the sake of American taxpayers and American jobs, Congress should continue its work to provide small businesses with meaningful access to prime contracting dollars at the Department of Energy.

STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Senator BINGAMAN. Thank you very much, Mr. Chairman. I agree with you, I think we're all committed to small business and to Federal efforts to promote small business. As I understand it, the issue that this hearing is mainly focused on is the question of how the Department of Energy small business contracts, and those of its management and operations contractors, count toward the goal that has been set. I think that's the main issue, and how we should calculate the efforts as progress toward that goal.

I know this is very important to small business, it's also very important to the laboratories and affected communities, and to the Department. So I look forward to hearing from the witnesses, and I hope we can come up with a way to resolve the issue.

Thank you.

The CHAIRMAN. Thank you very much.

Now we'll ask the Deputy Secretary. Your remarks, if you have them, that are prepared will be made a part of the record. Would you please proceed.

STATEMENT OF KYLE E. MCSLARROW, DEPUTY SECRETARY, DEPARTMENT OF ENERGY

Mr. MCSLARROW. Thank you, Mr. Chairman, Senator Bingaman, I'm pleased to be here. I will briefly summarize these remarks.

The Department of Energy awards over $19 billion dollars in prime contracts each year. Over 85 percent of that, or over $16 billion, goes to large facility management contractors who then award approximately 50 percent of their subcontracts to small business.

The prime contracts awarded to small business by the Department currently represent about 5 percent, or nearly $800 million dollars of the total procurement dollars at the Department.

In fiscal year 2003 the Department made awards to small business totaling $783 million dollars in prime contracts, and $3.5 billion dollars in subcontracts. This means that about 20 percent of our total contract funds are awarded to small businesses.

Our success is the result of the Department's aggressive efforts to provide opportunities for small business. We've been very successful in getting Federal dollars into the small business community, and promoting their full participation in our contracting efforts.

And I know, Mr. Chairman, you mentioned Sandia. I also want to echo what you said and applaud how well Sandia, which is really a flagship laboratory, has done in promoting small business in New Mexico.

Mr. Chairman, you specifically asked me to comment on the changes made during the Clinton administration under which sub-

contracts are no longer counted by the Small Business Administration toward meeting our small business goals, even though the funds go to small businesses and promote their prosperity.

The CHAIRMAN. When was that change made?

Mr. MCSLARROW. 1999.

The CHAIRMAN. And we've been living under that to this day?

Mr. MCSLARROW. We have.

The CHAIRMAN. Proceed.

Mr. MCSLARROW. First this change makes it appear, for example, that only 4.1 percent of our contract funds go to small businesses, when in reality 23 percent went to small businesses through prime and subcontracts in fiscal year 2003.

Second, to comply with the law we will most likely have to award, as prime contracts, some portion of the funds previously awarded as subcontracts. This will require us to redirect resources to contract administration in order to oversee the increased number of contracts.

I would add that prime contracts are activities other than M&O contracts total less than 20 percent of the Department's total contracting dollars.

The CHAIRMAN. What does M&O mean?

Mr. MCSLARROW. Management and operating contracts.

Thus even if we were to award all contracts for activities, other than facility management, to small business we would not reach the government-wide goal of 23 percent. We would have to set aside parts of the facility management contracts for small business. And the Department is evaluating whether, and to what extent, doing so could entail certain risks and concerns, especially with regard to program coherence and integrity in our nuclear weapons laboratories and our major science research facilities.

Nonetheless, Secretary Abraham and I remain firmly committed to supporting small business. Small businesses are the heart of the American economy, they are often the leaders of innovation. Whatever scoring methodology is used to assess our progress, we will continue to award a significant portion of our funds to small businesses across America.

And Mr. Chairman, I'll stop there, and be happy to answer any questions you might have.

[The prepared statement of Mr. McSlarrow follows:]

PREPARED STATEMENT OF KYLE E. MCSLARROW, DEPUTY SECRETARY, U.S. DEPARTMENT OF ENERGY

Mr. Chairman, Members of the Committee, I am pleased to be here today to discuss the Department of Energy's efforts to support opportunities for small business.

As President Bush said in his Proclamation of Small Business Week last September, "Small businesses create the majority of new jobs in our Nation and account for more than half of the output of our economy. They lead the way in generating new ideas and creating new technologies, goods, and services for our country and for the world." In his Proclamation he reaffirmed the Administration's "commitment to helping more small business owners and their employees realize the American Dream."

Secretary Abraham and I are expanding opportunities for small business and have taken numerous measures to promote and increase the participation of small business in Department of Energy contracts.

Most of the Department's contracts are awarded to operate the multi-billion dollar nuclear weapons laboratories complex and multi-billion dollar environmental cleanup programs to resolve the legacy of the Cold War and to build the Nation's reposi-

tory for nuclear waste at Yucca Mountain. Large contracts also are awarded for our advanced scientific laboratories specializing in genomics, scientific supercomputing, fusion energy and nanoscience.

The Department awards over $19 billion in prime contracts each year. Over 85 percent of that (or over $16 billion) goes to large facility management contractors who then award approximately 50 percent of their subcontracts to small business. The prime contracts awarded to small business by the Department currently represent about 5 percent (or nearly $800 million) of the total procurement dollars at the Department.

To promote the participation of small businesses, Secretary Abraham issued a Policy Statement on "Supporting Small Businesses in Implementing DOE Missions" on September 23, 2002. This DOE policy directs all Departmental elements to examine and seek to expand their grant and contract opportunities with small businesses. It also tasks the Director of the Office of Small and Disadvantaged Business Utilization to prepare a Department-wide comprehensive small business strategy to ensure that small businesses are provided the maximum practicable opportunity to participate in Departmental programs at the prime contract level. Additionally, the Secretary directed the plan to include a strategy to increase the level and expand the type of subcontracts awarded to small businesses by the Department's facility management contractors.

At the Department of Energy, our small business programs are ably led by Theresa Alvillar Speake, Director of the Office of Economic Impact and Diversity. This office, which directs all of the Department's small business efforts, has developed a 20-year Strategic Small Business Plan that includes 14 action items intended to increase small business contracting at the Department. The plan establishes processes by which the Department reviews each upcoming contract to identify opportunities for small business. I would note that since relatively few of our major contracts come up for consideration each year, several years will be required for us to achieve our goal.

In accordance with that plan:

- The Department launched a national marketing campaign to inform small businesses about the contracting opportunities available both at the prime and subcontract level. A highlight of our recruiting effort is the annual small business conference, which was held last year in New Mexico. I attended and spoke there. The small business conference is scheduled this year for July 7-9 in Philadelphia. This provides us an excellent forum to present the various contracting opportunities available at DOE.
- DOE sets an annual corporate goal (including prime and subcontracts). The goal for prime contracts has climbed from 3.7 percent in FY 2003 to 5.0 percent in FY 2004, and 5.5 percent in FY 2005.
- Departmental elements are required to formulate a small business goal for the work they will direct to small business. Each element's progress in meeting its goal is rated on a quarterly basis and reported to senior Department officials. Each element is also responsible for insuring the success of their prime contractors in meeting the subcontracting goals.
- The Department promotes mentor-protégé relationships between large business and small business in order to increase the number of small businesses that can successfully compete for DOE awards.
- We have established a small business advisory team, a group consisting of small business trade associations, chambers of commerce, and other federal agencies to provide advice and guidance to our Small Business Office on small business programs and activities.
- DOE components sponsor meetings of small and large businesses to discuss upcoming requests for proposals to encourage the establishment of teams to combine the advantages of small and large businesses, or combine the strengths of several small businesses.
- DOE components also conduct market research before issuing an RFP to identify small businesses with capabilities in specific areas.
- We have created a database of interested small businesses for reference in future contracts.
- We have reduced the documentation that small businesses are required to submit in response to RFPs.
- Additionally, we review all of our large contracts to identify opportunities to break out portions of the work for small business.

In FY 2003, the Department made awards to small business totaling $783 million in prime contracts and $3.5 billion in subcontracts; this means that about 20 percent of our total contract funds are awarded to small businesses. Our success is the

result of the Department's aggressive efforts to provide opportunities for small business. We have been very successful in getting Federal dollars into the small business community and promoting their full participation in our contracting efforts.

You specifically asked me to comment on the recent changes under which subcontracts are no longer counted by the Small Business Administration toward meeting our small business goals, even though the funds go to small businesses and promote their prosperity. The statutory requirement is that only small business contracts awarded as prime contracts count toward achieving small business goals with a government-wide goal for small businesses set by law at 23 percent of all contract dollars awarded. Between 1992 and 1999, DOE had an excepted status granted by the Office of Federal Procurement Policy which enabled us to count subcontracts toward achievement of the statutory goal for prime contracts. Since 1999, DOE has not had that exception. This has made it appear that only 4.1 percent of our contract funds go to small businesses, when in Fiscal Year 2003, the most recent year for which data is available, 23 percent went to small businesses through prime and subcontracts. Second, to comply with the law, we will most likely have to award as prime contracts some portion of the funds previously awarded as subcontracts. This will require us to redirect resources to contract administration in order to oversee the increased number of contracts.

I would add that prime contracts for activities other than facility management total less than 20 percent of the Department's total contracting dollars. Thus, even if we were to award all contracts for activities other than facility management to small business, we would not reach the government-wide small business goal of 23 percent. We would have to set aside parts of the facility management contracts for small business, and the Department is evaluating whether and to what extent doing so could entail certain risks and concerns, especially with regard to program coherence and integrity in our nuclear weapons laboratories and our major science research facilities.

Nonetheless, our commitment to small business is strong. We have a Strategic Plan to increase small business participation. We are continuing to reach out to both small and large businesses to encourage them to work together. My office reviews contract awards and strongly encourages making awards to small businesses. I personally review quarterly performance reports that rate the success of departmental components in achieving their small business goals. The Department's Associate Deputy Secretary and Director, Office of Small and Disadvantaged Business Utilization meet with any components that are not meeting their goals and work with these components to make improvements. We incentivize our senior executive program managers to award contracts to small businesses by including standards on expanding small business opportunities in their performance agreements. In addition, in the Subcontracting Plans that we establish with our prime contractors, we negotiate aggressive goals to utilize small businesses. As a result of these actions, we anticipate that we will continue to be successful in achieving our small business goals and provide greater opportunities to small business.

On May 12, 2004, Secretary Abraham recognized the outstanding achievements of 13 departmental elements and facility management contractors for their success in expanding small business participation at both the prime and subcontract levels. The Department's Office of Fossil Energy received the "Small Business Breakout Award" for breaking out the largest percentage of requirements from its existing facility management contracts to provide prime contracting opportunities for small business in the area of construction management. Bechtel SAIC Company, LLC was presented with the "Facility Management Contractor Small Business Achievement Award" for attaining the highest percent increase in subcontract awards to small business concerns from the previous year—from 39.5 percent in FY 2002 to 65.9 percent in FY 2003.

In summary, Secretary Abraham and I remain firmly committed to supporting small business. Small businesses are the heart of the American economy. They are often the leaders of innovation and the creators of new technology, new products and improved business processes. Whatever scoring methodology is used to assess our progress, we will continue to award a significant portion of our funds to small businesses across America.

Mr. Chairman, and Members of the Committee, this concludes my prepared statement. I would be happy to answer any questions you may have at this time.

The CHAIRMAN. Senator Bingaman.

Senator BINGAMAN. As I understand it, GAO has said that the Department of Energy would need to increase its small business contracting by about six fold in order to meet this 23 percent goal

if you don't count the contracting that is done by the M&O contractors; is my understanding of that right?

Mr. MCSLARROW. That sounds like the right figure.

Senator BINGAMAN. You've got to go from 4 percent to 23 percent——

Mr. MCSLARROW. Twenty-three percent, and——

Senator BINGAMAN. Right. Is that a practical—I mean is that achievable in your view? Does it make sense to try to have that much of an increase, given the way DOE allocates its funds?

Mr. MCSLARROW. I'm not convinced it is achievable. And let me just step back for a moment. I think it was in 2002, we negotiated a goal, and a plan, with the Small Business Administration. It was important to them that we have a plan that arrived at 23 percent, which is the Government average requirement under the law, at some point.

They wanted it in 10 years, we came back with twenty. I frankly was more focused on the next 3 years, and what those goals were, which are challenging enough.

But we agreed that we would reevaluate this on a year-by-year basis. It was clear to me that we could make changes, and some contracts that were currently part of M&O contracts could be broken out. But it has never been clear to me, and I frankly don't think we know enough today, to say that we could definitely get to a 23 percent figure. That is an awfully large figure given how we run our complex, if you're only counting prime contracts.

Senator BINGAMAN. Is there some particular value—I mean as long as the work goes to the small businesses, is there some reason why having it do that through the M&O contractors is less desirable than having it done directly by DOE?

Mr. MCSLARROW. There's obviously a difference of opinion. The small business community itself is divided on this point, and I've heard from small businesses on either side. There are many people who believe that it is important for small businesses to serve as prime contractors with a direct relationship to the Federal Government because that provides them opportunities down the road in future contracting.

Others believe that it's unnecessarily administrative in terms of the burdens that it puts on the complex. The Small Business Administration, and the White House OMB office that has the responsibility for this, I think also believes, and I think there's some truth in this, that one of the differences between subcontracting and prime for small businesses is that you will tend to see small businesses around a complex in favor of the subcontracting because that site will, in most cases, not all, in most cases contract directly in that community. And so there's obviously a lot of support there.

If you do a prime contract it's a national—unless it's a set aside—it's a nationally advertised bid, and so you're pulling from the Nation as a whole, and my view is that you probably need some mixture. I mean you want to have strong community-based support in small business, but there are opportunities on occasion where it would make sense to have a nationally bid prime contract.

Senator BINGAMAN. So if we wanted to accomplish the goal of getting as much of the work done by DOE at laboratories to small businesses in that community, your view is that that goal is best

served by having much of that contracting done through the M&O contractors?

Mr. MCSLARROW. I think if the M&O contractor is in turn doing the contracting for small business I think in most cases, other things being equal, they will tend to reach out to the community, or the state, in which that site is located.

Senator BINGAMAN. And they'll do that to a greater extent than the Department of Energy itself would be able to, if it had to let a prime contract?

Mr. MCSLARROW. I think that's correct.

Senator BINGAMAN. That's all I have, Mr. Chairman, thanks.

The CHAIRMAN. Thank you, Senator Bingaman. I think you made a very good point.

Let me ask you a couple.

First, why did DOE agree to the changed accounting? In the past DOE argued that the use of prime contracts for management of their major facilities required them to incorporate small business subcontracting for those facility managers in their small business totals.

Now the DOE has agreed with SBA's guidance to change the accounting practice.

Why did DOE change its view on this very key question? Did DOE fully concur with guidance from the Office of Federal Procurement Policy?

Mr. MCSLARROW. Mr. Chairman, I don't know precisely, because it happened when now Governor Richardson was Secretary of Energy. My understanding is that there was a back and forth on this point between DOE and the SBA, and the OFPP, the Office of Federal Procurement Policy.

Ultimately the argument was that unlike in the past when M&O contractors were thought to have stood in the shoes of the Government such that the next contract would itself be a prime contract. Some changes to how the Department did its M&O contracts in the late 1990's allowed both the Small Business Committee chairman, and ranking member, and the White House and the SBA, to conclude that they were more properly categorized as subcontracts, which would bring us in line with the rest of the Government.

It was already a fait accompli by the time we came into office, although we revisited it because we had some concerns about it in 2001 and 2002, and the decision was to treat everybody in government the same.

The CHAIRMAN. Well, look, I've spent about three decades in the Senate encouraging New Mexico labs to increase their small business contracting; you know that, and they know that. Yet the GAO notes that the DOE takes steps—that as DOE takes steps to increase its own small business prime contracting the unintended consequences may be that the facility managers do less small business contracting.

Sandia's testimony even points out that they're receiving DOE guidance to reduce their small business contracting.

What confidence do you have that the net result of the current DOE attempts to increase the DOE prime contracting with small business will result in a net increase in small business work?

Mr. MCSLARROW. I think there are two issues. One in terms of the net increase, I have no doubt there's a net increase. I mean if you just look at the numbers over the last 3 years, the total of the primes and the subcontracts, it's going up. And it's gone up about 400 million over the last couple of years. So we're proud of the total impact on small business. I don't think the policy is hurting small business.

I do think there's a legitimate issue that was the second point you made, Mr. Chairman, about whether or not we're exulting form over substance, whether or not we're taking something that might have been called a subcontract before, and now just simply calling it a prime contact. We may not be, with that move, adding to the small business pot. But all our other policies, and our small business office that's generating recruitment and all of those things, those are adding to the pool of small business, and we very much want to continue doing do that.

The CHAIRMAN. Well, following up on that, I've been critical of the poor management at the Department. From the SSC to the NIF concerns have been raised in the past about DOE's ability to provide adequate management and oversight of its contractors. Your Department has committed to increase small business contracting by over $5 billion dollars. That's more than the total contracts at Los Alamos and Sandia.

As a number of prime contracts with the DOE increase DOE has to manage these contracts, and DOE must assure effective integration of work at each site so that cost, mission, safety and security are negatively impacted.

Does the Department have sufficient staff and skills necessary to manage these contracts and oversee the work? And what steps is the DOE planning to take to mitigate this concern?

Mr. MCSLARROW. I have no doubt that currently we have the staff necessary to do what we have done in the last couple of years, and for the goals in the next few years that are coming, which are aggressive but achievable.

And for example, Mr. Chairman, we're talking about 5 percent of the procurement dollars for fiscal year 2004 would be prime, and 50 percent of those subcontractor dollars would go to small business.

The 23 percent number, just to repeat, that is not written in stone, that is a negotiation that's going to take place year-by-year between the Department and the SBA, and if need be it will be resolved by the White House.

That's an important goal in terms of the Government-wide average of 23 percent. But as I said before, I do have concerns as to whether or not the administrative burden that would be required to have that many small businesses managed by the Federal Government actually makes sense.

The CHAIRMAN. Well I want to close with just a couple of examples. The history of DOE is full of examples where poorly specified contracts led to vast escalation. NIF and the infamous SSC come to mind as examples. NIF is still ongoing, as you know.

In some recent cases contractors are complaining that DOE has not fully specified the work required, or the hazards that will be encountered. PIT9 is a classic example of this sort of problem, and

there are others. GAO has listed "contract management" in quotation marks, and "high risk" areas for DOE for the past 14 years.

So as you break off more work for small business don't you run a risk that unexpected problems may strain the capabilities that a small business company can bear on the problem? And your plans to issue subcontracts to handle the entire environmental program at Paducah strike me as having some potential to start another PIT9 fiasco, and to potentially strain the capabilities of small business.

Do you worry that putting the complex contracts out to small business from DOE may lead to a shortage in the type and depth of talent that small business can bring to bear on complex unforeseen problems that suddenly arise.

Mr. MCSLARROW. Again, if you're talking about the challenges that we have in the next couple of years, and the very aggressive goals that we have set out with SBA, I'm concerned about it, but I don't actually worry that there's not the kind of talent in small businesses.

It is an interesting point to me that almost every one of those fiascos, and I certainly take your point about contract management, were large businesses. It is not obvious to me that small businesses are inherently worse, and in some ways—and particularly in the environmental clean-up arena, we believe that actually allows us to be a little bit more nimble, that we can cut costs and actually boost performance.

That's not going to be true in every instance, that's why we examine case by case to see if it makes sense to go the route of small businesses.

But I'm certainly not prepared to say across the board that small businesses can't not only step up and do the job, but in some ways do the job better than a big bureaucracy at a large corporation.

The CHAIRMAN. Well, retirement and injury benefits have haunted this committee, and what I'm going to ask you about is not directly related to the program, and where it should be, the argument about whether it should go to labor—I think you're working on that Senator Bingaman, and we are too to try to come up with an agreement that it would be shifted; is that not right?

Senator BINGAMAN. That's right.

The CHAIRMAN. But this retirement and benefit system that I'm talking about is where large companies serve as facility managers. They can handle complex and costly retirement systems; I wonder if they can is the question.

Similarly when workers are found eligible for past workman's compensation large companies have the resources to step forward. But just one example, in the Paducah field hearings the DOE manager first testified that current large contractors, Bechtel Jacobs, would handle workers' compensation payments of past problems. They said the Paducah contract was going to be re-competed only for small business.

Then when Senator Bunting asked Bechtel Jacobs if they had been told they were required to cover past workers' compensation payments at the same time that they are losing the Paducah contract he added that no such discussion had occurred.

Discussions like this don't lead me to believe that the Department has thought through the implication of massive shifts to small business operating as facility managers. If you break up portions of the facility management contracts into smaller pieces how do you expect to handle retirement benefits, or workers who continue on the site? How will we pay the workers' compensation, how will it be handled? Will a small business contractor take over these liabilities for large firms?

I think that that won't work, and I'd like your observation.

Mr. MCSLARROW. In general no one who has to step forward, who's a candidate for being awarded a contract like that, can pass muster without having to make the case through the request for proposal process, that they can do what's necessary on pensions—whatever benefits are at issue.

That's true with the large or small businesses, they've got to make that case, and we have to be satisfied. There's usually a 5-year period I think in most of our contracts where the old pension arrangement still stands, and the new person just pays into it. And then after that there might be some changes.

But that's a concern, and a scrutiny, that we have to bring to every awarded contract. I think the case in Paducah is probably a unique one, and that I probably shouldn't get into because there are so many issues related to the USEC Privatization Act that may affect those answers. I'd be happy to address that more specifically for the record if that would be okay.

The CHAIRMAN. That would be all right.

I have about six additional questions which I will submit; would you answer them—I know you're very busy—answer them as soon as you can. They have to do with disagreements among institutions and entities as to whether your policy will work, and still maintain good jobs and safety and the like—good workman-like jobs.

Okay. Anything else, Senator Bingaman?

Senator BINGAMAN. No.

The CHAIRMAN. Let's go to the next panel. You're excused.

Mr. MCSLARROW. Thank you, Mr. Chairman.

The CHAIRMAN. All right, panel two. Just sit wherever you'd like, and put your name plate up in front of you.

Dr. Joan Woodard, Deputy Director of Sandia. Thank you for coming, sorry you have to come from so far away.

Robin Nazzaro, Director of Natural Resources and Environment, the U.S. General Accounting Office.

Ann Sullivan, Federal legislative consultant, Women Impacting Public Policy.

Councilmember Robert Thompson, Energy Communities Alliance chairman, from Richland, Virginia.

Mr. THOMPSON. Richland, Washington actually, Senator.

The CHAIRMAN. Oh, I'm sorry, Richland, Washington. That's where you should be from.

Mr. THOMPSON. As always.

The CHAIRMAN. We're going to start over here with you, Robin, and move this way.

STATEMENT OF ROBIN M. NAZZARO, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF ENERGY

Ms. NAZZARO. Thank you, Mr. Chairman. I am pleased to be here today to discuss the Department of Energy's efforts to increase the direct contracting with small businesses.

Under the Small Business Reauthorization Act of 1997 the Federal Government has a goal overall of awarding at least 23 percent of the prime contract, or direct contract, dollars to small businesses each year.

DOE, like other Federal agencies, share in the responsibility for meeting this goal. Before 1999, as was mentioned earlier, DOE included in its calculations the small business prime contracting achievements, the subcontracts awarded to small businesses, and its facility management contractors.

In 1999, however, the Office of Federal Procurement Policy determined that to ensure consistent reporting across the Federal Government DOE could no longer do so.

You asked us to examine what has happened as a result of this policy change. My testimony will focus first on the effect of the 1999 policy change on the amount of prime contracting dollars that DOE will be required to direct to small businesses.

Second, the steps that DOE has taken, or plans to take, to achieve its small business contracting goals; and third, the likely implications of DOE's program resulting from these changes.

In summary, to achieve DOE's near term goals of approximately 5 percent in fiscal years 2004 and 2005 DOE will have to direct an additional couple hundred million dollars above the $847 million dollars it directed to small businesses in fiscal year 2003.

The long-term goal of 23 percent in small business prime contracting represents a level significantly beyond what DOE has ever achieved, about six times its current rate.

To address its near term small business prime contracting goals DOE has improved its outreach to the small business community, and has redirected to small businesses contract dollars not associated with the facility management contracts.

DOE has also begun to review facility management contracts to identify work that could be redirected to small business prime contracts.

In the longer term it's less clear how DOE, or if DOE, intends to achieve the eventual goal of 23 percent small business prime contracting. In 2002 DOE's Office of Small and Disadvantaged Business Utilization prepared a 20-year plan outlining when and how the Department would achieve this 23 percent goal. However, the plan provides no details as to which offices would provide these dollars.

DOE's three largest offices, the National Nuclear Security Administration, Environmental Management and Science have differing views as to how much of that work can be done by the facility management contractors that can be directed to small businesses without having a negative impact on the Department's mission.

EM is in favor of doing so, if redirecting the work is consistent with its overall strategy for clean up.

In contrast, however, officials at the two offices that oversee DOE's research laboratories, NNSA and Science, said that their programs are less able to redirect significant segments of the work without jeopardizing critical research missions.

DOE has not reconciled these differing views into a consistent strategy for achieving its long-term goals.

DOE's efforts to increase the small business prime contracting involve both potential benefits and risks. The benefits include increasing the pool of possible contractors, which could result in better competition and perhaps better prices for the Government, finding new and innovative approaches to conducting DOE's work, and providing experiences to small businesses that could enhance their capacity to compete for other Federal contracts.

On the other hand the potential risks include difficulties integrating and coordinating the activities of a greater number of prime contractors at a site to ensure safe, secure, and effective operations, and having the adequate Federal resources for effective contract management and oversight, two areas that already pose significant challenges for DOE.

Furthermore DOE's efforts to increase small business prime contracting, as you noted, could inadvertently result in less total contracting dollars for the small business community. Facility management contractors generally negotiate annually the small business subcontracting goals with the Department. In discussions with DOE, contractor officials, and small business advocacy groups the concern was raised that if work is redirected from a facility management contract the contractor may negotiate lower subcontracting goals with the Department, and then subcontract less of the remaining work to the small businesses.

The Deputy Secretary mentioned that DOE is evaluating the implications of this 1999 policy change, specifically the effect on the facility management contracts. We have not seen this work, but it's certainly a good idea for them to do such an activity.

Mr. Chairman, this concludes my statement, and I would be happy to respond to any questions you may have.

The CHAIRMAN. I assume your written statement has more than you have talked about?

Ms. NAZZARO. Yes, and if that can be submitted for the record?

The CHAIRMAN. Right, it will be done.

Ms. NAZZARO. Thank you.

[The prepared statement of Ms. Nazzaro follows:]

PREPARED STATEMENT OF ROBIN M. NAZZARO, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF ENERGY

WHAT GAO FOUND

To meet its share of federal goals, DOE would need to direct significantly,more prime contracting ,dollars to small businesses. If it is to reach its near-term goals of 5.06 percent in fiscal year 2004, and 5.50 percent in fiscal year 2005, DOE must direct to small businesses an additional $226 million and $319 million, respectively, over the $847 million it directed to small businesses in fiscal year 2003. Achieving a long-term goal of directing 23 percent of prime contracting dollars to small businesses would require DOE to contract with small businesses at about 6 times its current rate. Such an increase is about equal to the combined annual budgets for Los Alamos and Sandia—the two largest national laboratories.

To address its near-term small business prime contracting goals, DOE has improved its outreach efforts and has redirected to small businesses some contract dol-

lars not associated with facility management contracts. DOE has also begun to review facility management contracts up for renewal to identify work that could be redirected to small business prime contracts. Achieving a long-terns goal of 23 percent is much more problematic. Notably, DOE's three largest offices—the National Nuclear Security Administration (NNSA), Environmental Management (EM), and Science—have differing views as to what extent facility management contract work can be redirected to small businesses without having a negative impact on accomplishing their missions. EM is in favor of doing so if redirecting the work is consistent with its accelerated cleanup strategy. NNSA and Science officials express concern that redirecting work now done by facility management contractors could jeopardize critical research missions at the laboratories.

DOE's efforts to increase small business prime contracting involve both potential benefits and risks, which depend on the eventual goal DOE attempts to achieve. The potential benefits to DOE of increased small business prime contracting include increasing the pool of potential contractors, which could result in better competition and better prices for the government; finding new and innovative approaches to the work developed by small businesses; and providing experiences to small businesses to allow them to better compete for other federal contracts. The potential risks include integrating and coordinating the work of a greater number of contractors at a site in a safe, secure, and effective manner, and having adequate federal resources for effective contract management and oversight—areas that already pose significant challenges for DOE. In addition, DOE's efforts to increase small business prime contracting may cause its facility management contractors to reduce the amount of subcontracting that they direct to local and regional small businesses.

DOE largely agreed with the information in this testimony. However, it disagreed with GAO's characterization of DOE's long-term small business prime contracting goal and its strategy to achieve it. GAO believes that both the longterm goal and DOE's strategy have been accurately described.

Mr. Chairman and Members of the Committee, I am pleased to be here today to discuss the Department of Energy's (DOE) efforts to increase its direct contracting with small businesses. The Small Business Act, as amended by the Small Business Reauthorization Act of 1997, established a government-wide goal of directing at least 23 percent of prime contracting dollars to small businesses each fiscal year.[1] DOE, like other federal agencies, shares in the responsibility for meeting this goal. Contracting is particularly significant at DOE, which spends more on contracting than any other civilian agency in the federal government. More than 90 percent of DOE's total fiscal year 2003 budget, or $21.6 billion, was spent on prime contracts. The majority of this amount—$18.2 billion, or more than 80 percent of the contracting dollars—was spent on 37 large contracts for the management of DOE's laboratories, production facilities, and environmental restoration sites. As a group, these contracts are referred to as facility management contracts. Under these facility management contracts, a contractor is responsible for performing, managing, and integrating the work at a DOE site, often subcontracting specific portions of the work to other businesses.

DOE's approach to reporting its small business prime contracting dollars has been affected by a change in federal policy concerning whether subcontracts with small businesses can in certain situations be counted toward achieving small business prime contracting goals: For most of the 1990s, DOE included in its calculations of small business prime contracting achievements the subcontracts awarded to small businesses by its facility management contractors. The Office of Federal Procurement Policy had allowed DOE to include these subcontracts because of DOE's unique reliance on facility management contractors to operate its facilities and carry out its missions. In 1999, however, the Office of Federal Procurement Policy[2] determined that to ensure consistent reporting of achievements across the federal government, DOE could no longer include the subcontracts under facility management contracts when calculating the percentage of prime contracting dollars awarded to small businesses.[3]

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[1] Prime contracts are direct contracts between the government and a contractor.

[2] The Office of Federal Procurement Policy within the Office of Management and Budget, in addition to issuing policy letters, has the responsibility for resolving any disagreements between the Small Business Administration and another federal agency on small business prime contracting goals. 15 U.S.C. § 644(g)(2).

[3] The Office of Federal Procurement Policy stated that for fiscal year 2000 and beyond, contracts awarded by DOE's facility management contractors should instead be counted toward DOE's small business subcontracting goals.

You asked us to examine what has happened as a result of this policy change. My testimony will discuss (1) the effect of the 1999 policy change on the amount of prime contracting dollars that DOE will be required to direct to small businesses, (2) the steps that DOE has taken or plans to take to achieve its small business contracting goals, and (3) the likely implications for DOE's programs, if any, resulting from these changes.

My testimony is based on a review of DOE small business contracting goals and achievements from fiscal year 1990 through fiscal year 2003. Our work included a review of DOE's plans to achieve its near-term goals and the projected incremental increases needed to achieve long-term goals. These goals were developed by DOE's Office of Small and Disadvantaged Business Utilization (referred to in this testimony as DOE's Small Business Office) within its Office of Economic Impact and Diversity. We also reviewed documentation provided by DOE and the Small Business Administration (SBA), and completed and current procurements for new small business prime contracts.[4] We interviewed DOE and contractor officials at DOE headquarters and selected sites, as well as national and regional small business associations and advocacy groups. Our scope included DOE's three largest offices-the National Nuclear Security Administration (NNSA),[5] and the Offices of Environmental Management (EM) and Science-that account for about 70 percent of DOE's annual budget. We conducted our review from February 2004 through May 2004 in accordance with generally accepted government auditing standards. Our review included a data reliability assessment on DOE's small business prime contracting and subcontracting results for fiscal years 1990 through 2003. These data are being used primarily for context. Our assessment of DOE's prime contracting data determined that the data are sufficiently reliable for the purposes of this testimony. Although we are not as confident of the reliability of the subcontracting data as reported to DOE by its facility management contractors, we determined that these are the only data available and they are sufficiently reliable for the observations presented in this testimony.

In summary, we found the following:

- To comply with the 1999 federal policy change and to achieve federal small business prime contracting goals, DOE would need to direct significantly more prime contracting dollars to small businesses. To achieve DOE's near-term small business prime contracting goals of 5.06 percent in fiscal year 2004, and 5.50 percent in fiscal year 2005, DOE will have to direct an additional $226 million in fiscal year 2004, and $319 million in fiscal year 2005, above the roughly four percent of prime contracting dollars directed to small businesses in fiscal year 2003. The long-term goal of 23 percent in small business prime contracting represents a level significantly beyond what DOE has ever achieved—about 6 times the $847 million directed to small businesses in fiscal year 2003. Placed in the context of DOE's current contracting base, such an increase would represent an amount approximately equal to the annual budgets of the two largest laboratories-Los Alamos and Sandia National Laboratories.
- DOE has taken steps to increase its near-term small business prime contracting, but has no consistent strategy for reaching the eventual goal of directing 23 percent of its prime contracting dollars to small businesses. To achieve the near-term goals, DOE has focused primarily on improving outreach to the small business community and directing additional contract dollars to small businesses from procurements not associated with facility management contracts. In addition, as certain facility management contracts are due for renewal, DOE, and especially EM, has begun identifying potential work that could be redirected in the form of small business prime contracts. In the longer term, it is less clear how, or if, DOE intends to achieve an eventual goal of 23 percent small business prime contracting. In 2002, DOE's Small Business Office prepared a 20-year plan outlining when and how the department would achieve the 23 percent small business prime contracting goal. Since DOE's facility management contracts represent, about 80 percent of its total contract dollars, the department cannot mathematically achieve the 23 percent goal without redirecting some of those dollars to small business prime contracts. Although the 20-year plan proposed that eventually DOE would redirect. about a fifth of its facility management contract dollars to small business prime contracts, it pro-

[4] DOE awards new small business contracts through a procurement process that generally includes issuing a request for proposals, evaluating those proposals, and selecting a contractor.

[5] NNSA is a separately organized agency within DOE, with its own procurement organization and program offices such as Defense Programs and Defense Nuclear Nonproliferation. Program offices referred to iii this testimony generally include NNSA and its program offices as well as DOE's program offices of Environmental Management and Science.

vides no details as to which offices would provide those dollars. DOE's three largest offices have differing views as to how much of the work that is done by facility management contractors can be redirected to small businesses without jeopardizing the department's missions. While the EM program has begun to move work from its facility management contracts and redirect these dollars to small business prime contracts, EM officials said that doing so must be consistent with the overall strategy of accelerating cleanup at DOE sites and must be at a level that can be effectively managed by EM contract and project management staff. In contrast, officials in the two offices that oversee DOE's research laboratories—NNSA and Science—said that their programs are less able to redirect, significant segments of their work from facility management contracts to small businesses without jeopardizing critical research missions. DOE has not reconciled these differing views into a consistent strategy for achieving its long-term small business contracting goals.

- The implications of increasing small business prime contracts depend on the eventual goals that DOE attempts to achieve. Given the contrasting views of DOE's three largest offices, it is not clear if DOE as a whole will commit to the incremental increases that would eventually lead to a 23 percent rate of prime contracting to small businesses. Regardless of how far DOE moves in the direction of providing more prime contracting dollars for small businesses, efforts to increase small business prime contracting involve both potential benefits and risks. In addition to helping the federal government meet the overall goal of 23 percent prime contracting, potential benefits include increasing the pool of possible contractors, which could result in better competition and perhaps better prices for the government; finding new and innovative approaches developed by small businesses; and providing experiences to small businesses that. could enhance their capacity to compete for other federal contracts. The potential risks associated with increasing the number of small business prime contracts include difficulties integrating and coordinating the activities of a greater number of prime contractors at a site to ensure safe, secure, and effective operations and having adequate federal resources for effective contract management and oversight—two areas that, continue to be a challenge for DOE. Furthermore, DOE's efforts to increase small business prime contracting may cause facility management contractors to reduce the amount of subcontracting dollars that, they direct to local and regional small businesses.

We discussed a draft, of this testimony with DOE officials representing DOE's Small Business Office, procurement organizations, NNSA, EM, and Science. DOE officials generally agreed with the information and observations presented in the testimony, with two exceptions. First, DOE said that it disagreed with our statement that DOE. has no consistent strategy for reaching an eventual goal of directing 23 percent of its prime contracting dollars to small businesses. DOE argued that its 20-year plan, its annual goal-setting process with SBA, and the individual goal setting that occurs within NNSA and the program offices collectively represented a consistent strategy. We disagree. Although DOE has a 20-year plan that projects incremental increases in small business prime contracting up to 23 percent by 2022, no strategy is in place that defines how DOE will achieve this goal, identifies what the contributions of the various DOE organizational components will be, or reconciles the differing views within DOE as to what would be an appropriate level of small business prime contracting. Second, DOE said that we have mischaracterized its 23 percent small business prime contracting goal as an eventual long-term goal, while DOE views it as a goal that it may or may not agree, to, based on its annual negotiations with SBA. We believe we have appropriately described DOE's goal and we stated that it is not clear if DOE will commit to the incremental increases that would lead to achieving the goal. Finally, DOE suggested technical corrections, which we incorporated as appropriate.

BACKGROUND

DOE has about 50 major sites around the country where the department carries out its missions, including developing, maintaining, and securing the nation's nuclear weapons capability; cleaning up the nuclear and hazardous wastes resulting front more than 50 years of weapons production; and conducting basic energy and scientific research, such as mapping the human genome. This mission work is carried out under the direction of NNSA and DOE's program offices.

With a workforce of 16,000 federal employees and more than 100,000 contractor employees, DOE relies primarily on contractors to manage and operate its facilities and to accomplish its missions. In addition to accomplishing DOE's core mission work, managing and operating the sites involves a broad range of support activities,

such as information technology, safety, security, and purchase of products and services.

The Small Business Act, as amended by the Small Business Reauthorization Act of 1997, directed the President to establish the goal that not less than 23 percent of the federal government's prime contracting dollars would be directed to small businesses each fiscal year. SBA is charged with working with federal agencies to establish agency small business contracting goals that, in the aggregate, meet or exceed the 23 percent government-wide goal. SBA negotiates an annual goal with each agency based on the overall amount of contracting in the agency (contracting base) and the agency's past achievements.[6] SBA guidelines for setting individual agency goals specify that certain types of federal spending should not be included in the contracting base. These exclusions include items such as grants, purchases from mandatory sources, or contracts for work done internationally for which U.S. small businesses would not be competing. For fiscal year 2003, excluding such items resulted in a DOE contracting base of about $21 billion subject to the small business prime contracting goal. As figure 1* shows, facility management contracts account for more than 80 percent of this amount.

DOE's Small Business Office negotiates annual small business contracting goals with SBA, coordinates outreach efforts with the small business community, and works with NNSA and DOE's program offices to establish and monitor annual goals for small business contracting. DOE's Office of Procurement and Assistance Management and NNSA's Office of Acquisition and Supply Management establish policies and guidance for conducting procurements according to federal and departmental regulations, and maintain the information systems on the department's prime contracts, including annual dollars provided to each contract. NNSA and DOE's program offices, such as EM and Science, are responsible for identifying opportunities for small business contracting and providing program oversight and direction to the contractors.

UNPRECEDENTED LEVELS OF SMALL BUSINESS PRIME CONTRACTING NECESSARY FOR DOE TO MEET FUTURE GOALS

Since the 1999 federal policy change, DOE can no longer include subcontracts of its facility management contractors when calculating the department's small business prime contracting goals. As a result, to achieve even its near-term small business prime contracting goals, DOE will have to direct more prime contracting dollars to small businesses than it ever has in the past. Further, meeting a long-term goal of 23 percent small business prime contracting would represent an achievement far beyond what DOE has ever reached—about 6 times the $847 million that it directed to small businesses in fiscal year 2003.

Meeting Near-term Goals Requires More Small Business Prime Contracting Dollars Than Previously Achieved

Now that DOE's facility management subcontracts can no longer be counted toward achieving its small business prime contracting goals, achieving its near-term goals for fiscal years 2004 and 2005, will require DOE to expand the amount of prime contracting dollars it provides directly to small businesses. The department has a goal of directing to small business prime contracts 5.06 percent of its contracting base in fiscal year 2004, and 5.50 percent of its contracting base in fiscal year 2005. These goals surpass any of DOE's small business prime contracting achievements prior to fiscal year 2004. As figure 2 shows, the percentage of prime contracting dollars DOE directed to small businesses in any year since 1996 ranges from 2.68 percent to 3.99 percent. During 1991 through 1999, when DOE could include in its achievements those dollars going to small business subcontractors of facility management contractors, as well as dollars going directly to small business prime contractors, DOE's reported percentages of prime contracting dollars awarded to small businesses ranged from 15.7 percent to 19.9 percent.[7] However, most of the reported achievements during those years came from facility management subcontracting dollars going to small businesses. The remainder of the reported achieve-

[6] Small Business Administration officials said that it is important that the three largest federal contracting agencies—the Department of Defense, the National Aeronautics and Space Administration, and DOE—meet the 23 percent goal in order for the government-wide goal to be achieved.

* Figures 1-3 have been retained in the committee files.

[7] See appendix I for information on DOE's prime and subcontract dollars directed to small businesses between 1990 and 2003.

ments came from prime contracts to small businesses for work not associated with facility management contracts.

Meeting the small-business prime contracting goals in fiscal years 2004 and 2005 will require DOE to achieve a substantial increase over the $847 million in prince contracting dollars that DOE provided directly to small businesses in fiscal year 2003. To meet its fiscal year 2004 goal, DOE will need to direct an additional $226 million, or 26.7 percent, over the 2003 amount. Meeting the department's 2005 goal will require directing $319 million more than in 2003, an increase of 37.7 percent over 2003 levels.[8]

Meeting the Long-term Goal of 23 Percent Requires Huge Increases in Small Business Prime Contracting

Although achieving DOE's near-term small business prime contracting goals for fiscal years 2004 and 2005 will not be easy, the, long-term goal of 23 percent would require an achievement far beyond what DOE has accomplished in the past. SBA expects DOE to achieve a small business prime contracting goal at least on par with the federal goal of 23 percent. DOE's response has been to formulate a plan for gradual compliance. In 2002, DOE's Small Business Office submitted a plan to SBA to. achieve the 23 percent goal in 20 years, by the year 2022.

According to this 20-year plan, DOE would increase its level of small business prime contracting by about 1 percentage point per year to achieve the 23 percent goal by 2022. To achieve this, goal, the department would need to increase its small business prime contracting to about $5 billion, or 6 times its 2003 achievement. Put in terms of DOE's current contracting base, the additional amount of contracting dollars necessary to achieve the 23 percent goal approximately equals the combined annual budgets of the facility management contracts for the two largest laboratories-Los Alamos and Sandia National Laboratories.

Meeting the 23 percent goal under DOE's current contracting approach means that a substantial portion of dollars now included in facility management contracts would have to be redirected to small business prime contracts, resulting in more prime contracts for DOE to manage. Redirecting these dollars would be necessary because prime contracts not associated with facility management, generally account for less than 20 percent of DOE's total prime contract dollars. Therefore, even if all the dollars not associated with facility management contracts were directed to small businesses, the total amount would be insufficient to meet the 23 percent small business prime contracting goal.

DOE HAS NEAR-TERM PLANS BUT NO CONSISTENT STRATEGY FOR ACHIEVING LONG-TERM SMALL BUSINESS CONTRACTING GOALS

Although DOE has an agreed upon organizational strategy to achieve its near-term small business prime contracting goals, a consistent view does not prevail within the department on whether or how to reach the eventual goal of directing 23 percent of prime contracting dollars to small businesses. To achieve the near-term goals of 5.06 of prime contracting dollars to small businesses in fiscal year 2004, and 5.50 percent in fiscal year 2005, DOE has focused primarily on improving outreach to the small business community, directing more of the dollars not associated with facility management contracts toward small businesses, and beginning to redirect selected facility management contract activities to small business prime contracts. It is less clear, however, how DOE intends to achieve the eventual long-term goal of 23 percent small business prime contracting. DOE's Small Business Office's 20-year plan calls for redirecting about 20 percent of facility management contract dollars to small business prime contracts but provides no details as to how NNSA and the program offices, such as EM and Science, would implement the plan. Officials in these offices have differing views as to how much of the work done by their facility management contractors can be redirected to small businesses without jeopardizing critical agency missions.

Near-Term Plans Focus Primarily on Increasing Awards of Non-Facility Management Contracts to Small Businesses

DOE's plan for achieving its near-term small business prime contracting goals focuses primarily on directing more of the dollars not associated with facility management contracts to small businesses. To increase the percentage of such dollars going to small businesses, DOE has expanded its outreach to the small business community, notifying small businesses of contracting opportunities and preparing them to

[8] These estimates assume that the contracting base—or the amount of contracting dollars used to calculate achievements—remains the same for fiscal years 2004 and 2005 as it was in fiscal year 2003.

compete for these contracts. DOE's Small Business Office has developed a variety of outreach and capacity-building activities designed to assist small businesses in competing for DOE prime contracts. For example, DOE's Small Business Office fosters mentor-protégé relationships between small businesses and DOE's large prime contractors to help the small businesses expand their expertise. In addition to these department-wide efforts, offices such as NNSA and EM have also developed outreach activities, generally related to specific prime contract opportunities (see table 1 for examples.)

Table 1.—EXAMPLES OF OUTREACH EFFORTS BY DOE'S SMALL BUSINESS OFFICE AND PROGRAM OFFICES

Approach	Description
Small Business Office efforts	
Marketing and outreach.	Educate and inform small businesses about the contracting opportunities at DOE. Provide a listing of potential prime and subcontracting opportunities for the next 3 years. These potential opportunities for small businesses are organized by program office or state and are posted on the Small Business Office's Web site. Sponsor annual conferences, workshops, procurement fairs, and seminars for the small business community.
Mentor-protégé relationship.	Foster long-term business relationships between small business entities and DOE prime contractors in order to increase the overall number of these small business entities that can successfully compete for DOE contract and subcontract awards.
Small business advisory team.	Established an advisory group consisting of small business trade associations, chambers of commerce, and other federal agencies to provide advice and guidance to the Small Business Office on small business programs and activities. Purposes of the group include identifying best practices and exploring business models that promote outreach and interaction with the small business community.
Program Office efforts	
Teaming workshops	Sponsor meetings of small and large businesses to discuss upcoming requests for proposals to encourage formation of teams that combine the advantages of small and large businesses, or combine the different strengths of several small businesses, for proposed new prime contracts (NNSA and EM).
Market research	Conduct market research before issuing a request for proposals for a new contract not associated with facility management to identify whether small businesses exist with capabilities in specific performance areas (NNSA, EM, and Science).
Database of small businesses.	Build a database of interested small businesses to identify highly skilled small businesses that meet program requirements (NNSA).

Source: GAO analysis of DOE information.

In addition to its outreach efforts, DOE has taken steps in two other major areas. First, it has established internal requirements that it believes will help snake progress toward achieving its small business prime contracting goals. These internal requirements were part of a 14-item plan of action included in the 20-year plan. The plan of action includes reviews of upcoming contracts to identify work activities that could potentially be awarded to small businesses, and regular monitoring of DOE program level and agency-wide achievements toward DOE's annual goals. For exam-

ple, each year DOE's Small Business Office requires each program office to develop a small business plan that reflects the program's goals for increasing prime contracts with small businesses. These program plans arc used to develop DOE's overall small business contracting goals, and DOE'S Small Business Office tracks progress toward these goals quarterly. Second, DOE has modified some of its procurement processes to eliminate certain barriers for small businesses, such as bonding requirements, and to help small businesses minimize the cost of developing proposals. For example, DOE has limited the amount, of documentation that small businesses are required to submit in response to a request for proposals to 50 pages instead of volumes of supporting documentation.

To achieve the near-term small business prime contracting goals in fiscal years 2004 and 2005, DOE is concentrating primarily on contracts not associated with facility management, because doing so does not involve significant changes in the way the department does business. For contracts not associated with facility management, as new work is identified or existing contracts come up for renewal, DOE sets them aside for small businesses and awards them as small business prime contracts whenever possible. For example, the information technology support contract for DOE headquarters came up for renewal in, January 2002. DOE determined that this contract, which was held by a large business, could be carried out by a small business. The new contract, for a 5-year term with a total value of $409 million, was awarded in January 2003, to a team that included a consortium of 10 small businesses.

NNSA and the program offices have also focused primarily on procurements not associated with their facility management contracts. NNSA, EM, and Science officials issued policy letters stressing the importance of directing contracts for activities not associated with facility management to small businesses to the maximum extent possible. For example, for any upcoming contract not associated with facility management, program office personnel must first conduct market research to determine if any small businesses are capable of performing all or parts of the work and have the necessary qualifications to do so. If the program office finds two small businesses capable of doing the work, the policy requires the contract or parts of the contract to be "set aside" from unrestricted competition and instead generally be made available for a more restricted competition among small businesses. Any exceptions to this policy must be approved by the head of the program office.

Although in the near term DOE is concentrating primarily on contracts not associated with facility management, it has also begun to look at certain facility management contracts as they come up for renewal to identify potential work that could be made available to small businesses. DOE's Offices of EM and Fossil Energy have identified several specific activities that had been within a facility management contractor's scope of work and have set those activities aside for small business prime contracts. (See table 2 for examples.)

Table 2.—STATUS OF SELECTED PROCUREMENTS REDIRECTING FACILITY MANAGEMENT CONTRACT DOLLARS TO SMALL BUSINESS PRIME CONTRACTS

Program office/ site	Nature of work	Current facility management contractor	Contract amount	Status of procurement
		Fossil Energy		
Strategic Petroleum Reserve, Louisiana.	Construction management services.	DynMcDermott ..	$26.5 million for 2 years, plus three 1-year options.	Contract awarded November 2003
		Environmental Management		
Fast Flux Test Facility.	Decontamination, decommissioning, demolition, disposal of reactor waste.	Fluor Hanford ...	$46.1 million per year, contract length not to exceed 8 years.	Request for proposals closed March 2004

Table 2.—STATUS OF SELECTED PROCUREMENTS REDIRECTING FACILITY MANAGEMENT CONTRACT DOLLARS TO SMALL BUSINESS PRIME CONTRACTS—Continued

Program office/ site	Nature of work	Current facility management contractor	Contract amount	Status of procurement
222-S Laboratory, Hanford, WA.	Laboratory analysis of tank waste samples.	CH2M Hill	$10 million per year for 5 years, plus five additional 1-year options.	Request for proposals closed March 2004
Portsmouth, OH	1 contract for environmental remediation. 1 contract for infrastructure.	Bechtel Jacobs ...	$273 million over 5 years for remediation. $129 million over 5 years for infrastructure.	Request for proposals closed March 2004
Paducah, KY	1 contract for environmental remediation. 1 contract for infrastructure.	Bechtel Jacobs ...	$377 million over 5 years for remediation. $100 million over 5 years for infrastructure.	Request for proposals closed March 2004

Source: GAO analysis of DOE information.

Of the examples shown in table 2, the procurement at the Strategic Petroleum Reserve in Louisiana is the only one that DOE has completed so far. According to DOE officials with the Office of Fossil Energy, when the facility management contract was nearing the end of its term, DOE's Small Business Office asked the program office to look for opportunities for small business prime contracts. DOE officials at the Strategic Petroleum Reserve said they identified a number of construction projects that could be performed by small businesses, and awarded several prime contracts to small businesses for this work. DOE officials then decided to remove all the construction management work from the facility management contract for the site so that a new small business prime contractor for construction management could then award and manage subcontracts for individual construction projects. According to DOE's contracting officer at the Strategic Petroleum Reserve, having the new prime contractor responsible for awarding and managing the contracts will reduce the amount of additional work required by DOE procurement and program personnel. The prime contract was awarded in November 2003.

DOE's Small Business Office and Program Offices Have Different Views on the Extent to Which Facility Management Contract Dollars Can Be Redirected to Small Business

While DOE's Small Business Office and the three largest offices have a consistent approach to their near-term goals—primarily focusing on increasing small business prime contracting by using dollars not associated with facility management contracts—a consistent view does not prevail in the department on whether or how to achieve the eventual goal of directing 23 percent of prime contracting dollars to small businesses. DOE's Small Business Office's plan to achieve the long-term small business prime contracting goals has two main components. The first is to continue increasing the small business share of contract dollars not associated with facility management contracts. For any new contracts not associated with facility management, DOE has a stated preference to set aside those contracts for small businesses where possible. The three largest offices have been consistent in their efforts to do so. However, even this portion of DOE's contracting base (about 20 percent of total contract dollars) is not immediately available for small business prime contracts. For example, many of the contracts not associated with facility management cover multiple years, so only a portion of these contracts are up for award or renewal in a given year.[9] In addition, some contracts for work not associated with facility management may not be available for award to small businesses, for example, if market

[9] Of the $3.4 billion in contracting dollars not associated with facility management contracts in fiscal year 2003, only about $672 million, or 20 percent, was available to award as new contracts. The remaining $2.7 billion was annual funding for existing contracts.

research determines that there are not at least two small businesses capable of performing all or parts of the work in an upcoming procurement.

Because of the limited amount of contracting dollars for work not associated with facility management, the second component of DOE's Small Business Office's long-term plan is to redirect dollars now going to facility management contracts to small business prime contracts. DOE's 20-year plan calls for increasing dollars redirected from facility management contracts to small business prime contracts from less than 1 percent in 2003 to about 20 percent by 2022 (see figure 3).

Nevertheless, DOE does not have a consistent strategy in place to accomplish its plan for redirecting dollars from its facility management contracts to small business prime contracts. Officials in NNSA, EM, and Science have considerably different views about the feasibility of redirecting significant, amounts of funding from their facility management contracts to small businesses. For example:

- Both NNSA and Science officials are very concerned about the implications of setting aside for small businesses significant portions of the dollars now going to facility management contractors that operate the weapons and research laboratories. NNSA and Science officials' concerns stem from the large scale of laboratory operations, the integrated nature of the mission and mission support work, and the complexity and critical importance of the laboratory missions. These officials said that fragmenting mission activities among several contractors at the research laboratories, whether the contractors were large or small businesses, was inadvisable. Therefore, according to NNSA's Director of Acquisition and Supply Management and Science's Director of Grants and Contracts, NNSA and Science may never achieve a 23 percent small business prime contracting level because doing so would be inconsistent with accomplishing their missions safely, securely, and effectively.

  Despite the reluctance to fragment core mission activities, NNSA and Science officials said they would explore opportunities to contract separately with small businesses for mission support functions at the laboratories if those mission support functions were not closely integrated with the laboratories' core missions.[10] For example, NNSA is analyzing its own purchases of goods and services, such as computer hardware, software, and staffing services, as well as similar purchases by its facility management contractors. NNSA is assessing the feasibility of purchasing these items in bulk under a prime contract, rather than multiple separate contracts. An NNSA official said that NNSA is not trying to increase its small business prime contracting numbers by becoming a purchasing agent for its facility management contractors, but rather combining similar requirements as a way to possibly increase NNSA's level of prime contracting to small business. On the basis of this analysis, NNSA is pursuing three potential opportunities, valued at about $80 million, involving technical services and services to provide temporary staff, and is exploring other opportunities.
- By contrast, EM officials were more optimistic about the potential role of small businesses in accomplishing its core missions. The Assistant Secretary for EM said that part of its initiative to accelerate the cleanup of DOE sites involves greater use of alternatives to traditional facility management contracts, including removing work from facility management contracts and setting that work aside for small businesses. The Assistant Secretary said that these small business procurements are part of EM's overall strategy to clean up sites more quickly and at a lower cost to the government, not just to increase the amount of small business prime contracting.

  EM is also developing a complex-wide contracting arrangement, called indefinite delivery/indefinite quantity, which will result in prime contracts with both large and small businesses for smaller-scale cleanup activities. According to EM's Director of Acquisition Management, the multiple contracts awarded under this initiative will allow EM sites nationwide to quickly purchase cleanup services from small and large businesses without having to conduct a separate procure-

[10] Although the facility management contracts for the laboratories distinguish between core mission work and mission support functions, individual laboratories may differ from one another in the extent to which a specific activity is regarded as an integral part of accomplishing the mission. At some of DOE's laboratories, for example, information technology provides a support function that could potentially be separated from the facility management contract and awarded to small business without jeopardizing the mission; such a separation is being proposed at the Office of Science's Oak Ridge National Laboratory in Tennessee. In contrast, NNSA officials have said that information technology at NNSA's weapons laboratories represents an integral part of simulated testing and certification of the nation's nuclear weapons stockpile and cannot. be separated from the mission work without jeopardizing the results.

ment, which can take months to complete. Instead, either EM or the facility management contractor will be able to simply write a task order against these existing contracts.

Finally, it is unclear to what extent EM can expand its use of small business prime contracts to accomplish its core missions. According to the Assistant Secretary, the main constraint is the ability of EM staff to effectively oversee those contracts, not the availability of qualified small businesses to perform the work. The Assistant Secretary said that EM is proceeding carefully to ensure that effective management and oversight will occur; that cost, schedule, and technical standards are met; and that safety and security issues are adequately addressed.

POTENTIAL BENEFITS AND RISKS OF INCREASED SMALL BUSINESS PRIME CONTRACTING DEPEND ON THE GOAL THAT DOE TRIES TO ACHIEVE

Since DOE is in the early stages of implementing a long-term strategy to redirect facility management contracting dollars to small businesses, the implications of increased small business prime contracting are still relatively uncertain. However, the implications depend heavily on the extent to which DOE agrees, in its negotiations with SBA, to meet. the 23 percent small business prime contracting goal. Given the differences we heard in the approaches of the three largest, offices, it is not, clear if DOE will commit to the incremental increases that would eventually lead to a 2 percent rate of prime contracting to small businesses, as detailed in the 20-year schedule prepared by DOE's Small Business Office. Absent more specific direction from Congress or the executive branch, DOE's eventual commitment to a particular small business prime contracting goal appears to rest heavily on whether the department will be willing to change its approach to contracting for activities at the science and weapons laboratories, its environmental cleanup work, or both. Regardless of the extent to which DOE directs more prime contracting dollars to small businesses, efforts to increase small business prime contracting involve potential benefits as well as potential risks.

Potential Benefits of Increasing Small Business Prime Contracting

An overarching benefit of increasing small business prime contracting is that DOE would be helping to carry out the President's small business agenda and would be contributing to the federal government's overall goal of directing 23 percent of prime contracting dollars to small businesses. Beyond contributing to this overall effort, DOE's Small Business Office and procurement officials explained that the benefits included increased competition, greater innovation, and enhanced small business capacity.

One example of increased competition can be seen in EM's program. DOE's efforts to increase small business contracting have resulted in new procurements with narrower scope. In the past, EM has been concerned about the limited pool of potential contractors for large cleanup projects, sometimes receiving only two proposals on multibillion dollar procurements. By structuring the cleanup work into smaller contracts and opening them to individual small businesses or small business teams, EM expects to attract more potential bidders. One of EM's current procurements is for cleanup work at the Fast Flux Test Facility at the Hanford site in Washington state. Currently included in a facility management contract, EM is in the process of redirecting this work as a small business set-aside. EM officials said that in the response to the request for proposals for this project, with an estimated contract amount of $46 million per year for up to 8 years, DOE received proposals from several small business teams. According to EM officials, increased competition from a larger pool of potential contractors could result in better prices for the government. However, since the contracts for the current small business procurements have not yet been awarded, it is too soon to tell whether better prices will be realized.

In addition to increased competition, DOE procurement and program office officials believe that small businesses may bring new ideas and innovative approaches to the work. For example, as part of its accelerated cleanup strategy, EM has been looking for better and faster ways to accomplish cleanup at its sites and facilities. According to EM officials, expanding the pool of potential contractors, for cleanup projects may increase the potential for new technology and ideas.[11]

[11] To assist in the development of new technologies, EM as well as other program offices with research and development programs provide funding for two small business grant programs managed by the Office of Science. The Small Business Innovation Research Program and the Small Business Technology Transfer Program, with combined funding of more than $100 million

Continued

Increasing small business prime contracting can also provide small businesses with the experience necessary to compete for other federal prime contracts. According to small business associations and advocacy groups that we contacted, a direct contracting relationship with DOE provides small businesses with more challenging work and better opportunities to grow and expand their businesses. The use of mentor-protégé arrangements or teaming with other small or large businesses also provides opportunities for growth and economic development. For example, an owner of a small construction company in New Mexico told us that his business had successfully teamed with a large construction company for several projects and that his small company was now the senior member of that team and was competing for DOE prime contracts.

Potential Risks of Increasing Small Business Prime Contracting

DOE's long-term strategy for achieving a 23-percent, small business prime contracting goal includes redirecting a substantial amount of facility management contract dollars to small business prime contracts. DOE procurement and program officials acknowledge that doing so would significantly increase the number of prime contracts DOE would have to manage. Increasing DOE's number of prime contracts, whether these are with small or large businesses, could create problems with integrating and coordinating the efforts of more contractors at a site, as well as create problems with contract management and oversight. In addition, DOE's efforts to increase small business prime contracting could inadvertently reduce the amount of small business subcontracting directed to local and regional small businesses.

Increasing the number of prime contracts at a site raises concerns about integration, coordination, and accountability. If a facility management contractor has primary responsibility for accomplishing work at the site, that contractor is also accountable for integrating the efforts of multiple subcontractors to ensure that the mission work is accomplished. In addition, the facility management contractor has the responsibility for ensuring that all contractor and subcontractor employees at the site comply with DOE safety and security standards. If the work done by the facility management contractor becomes fragmented and spread among multiple prime contracts, DOE may need to carry out these integration functions, which places more oversight responsibilities on federal program and project management personnel. If the number of prime contractors at a site increases significantly, the challenges associated with integrating and coordinating the activities also increase. Both DOE and facility management contractor officials have expressed concerns about successfully integrating and coordinating the efforts of an increased number of prime contractors at a site. Ensuring that all work is performed in accordance with DOE safety and security standards is a significant concern, especially given the continuing challenges that the department faces in these two areas.[12]

To begin to address the constraint of having a limited number of federal employees to perform coordination and integration functions, DOE is considering awarding small business prime contracts but then having the facility management contractors at the sites manage and oversee the work. As some facility management contracts are extended or awarded, DOE includes a provision that specifically allows the department to identify and redirect work within the facility management contract to a small business prime contract. The provision also allows DOE to request the facility management contractor to manage and oversee the work. Since the work that DOE would redirect is generally already being done by a facility management subcontractor, the only actual change is the contractual relationship. In fiscal year 2003, NNSA started using this arrangement for facilities and infrastructure restoration projects at the Sandia National Laboratory in New Mexico. NNSA awarded prime contracts—$100,000 in fiscal year 2003 and an estimated $3 million in fiscal year 2004)—to small businesses for some of these projects. Although it is too soon to fully assess the implications of thus arrangement, facility management contractor officials at the Sandia laboratory, have expressed concern that it could confuse the lines of authority and accountability at the site, because the contractual relationship is not consistent with the daily management and oversight of the activities being

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in fiscal year 2003, encourage the development of new technologies, including those dealing with environmental cleanup.

[12] For information on safety and security challenges, see U.S. General Accounting Office, *Major Management Challenges and Program Risks: Department of Energy*, GAO-03-100 (Washington, D.C.: Jan. 2003); Department of Energy, *Management Challenges at the Department of Energy*, DOE/IG-0626 (Washington, D.C.: Nov. 12, 2003); U.S. General Accounting Office, *Department of Energy: Mission Support Challenges Remain at Los Alamos and Lawrence Livermore National Laboratories*, GAO-04-370 (Washington, D.C.: Feb. 27, 2004); and U.S. General Accounting Office, *Nuclear Security: DOE Must Address Significant Issues to Meet the Requirements of the New Design Basis Threat*, GAO-04-701T (Washington, D.C.: Apr. 27, 2004).

performed. In prior work, we have also expressed concerns about confusing the lines of authority, which can make it difficult to hold contractors accountable for performance.[13]

Regarding contract management, and oversight, increasing the number of prime contracts with DOE could place further strain on DOE's procurement and program oversight personnel. DOE's reliance on contractors to operate its facilities and early out its missions, coupled with the department's history of inadequate contractor management and oversight, led us in 1990 to designate DOE contract management, as a high-risk area vulnerable to fraud, waste, abuse, and mismanagement. This high-risk designation is still in effect. GAO and others have stated that one of the contributing factors to DOE's inadequate oversight of its contractors has been a shortage of personnel with the right skills to perform these functions.

Although DOE has over the past several years made progress in training and certifying its procurement and project management personnel, DOE procurement and program officials said that the overall number of available personnel has not grown, and has significantly decreased in NNSA. More prime contracts would create additional work for federal employees in two phases: managing the procurement process by requesting and evaluating proposals to award a contract, and overseeing the work of the contractor to ensure that performance is acceptable. DOE officials at headquarters and at the sites we visited expressed concerns that significantly increasing the number of prime contracts could reduce the ability to adequately oversee and evaluate contractor performance.

While headquarters and site office officials in the EM program acknowledge the potential risks that additional prime contracts can create in both integrating work activities at a site and contract management and oversight, they are pursuing ways to mitigate those risks. To address concerns about site-wide integration of safety and security, DOE officials at Hanford plan to use contract language and incentives to encourage the site's new small business prime contractors and the facility management contractors to work together. To earn potential incentive fees under this proposed arrangement, for example, all prime contractors will have to cooperate in such areas as safety and security. But, since these are new approaches and the small business prime contracts have yet to be awarded, the extent to which these steps will mitigate the potential risks is unknown. To lessen the impact of additional prime contracts on procurement and program personnel, EM officials said they intend to use a contract for small business procurements that has a well-defined statement of work and that ties incentive fees to accomplishing the contract's stated final' goal rather than to interim steps. According to EM's Director of Acquisition Management, administering such contracts generally may require less federal involvement, although EM will also have to train its staff on the most effective way to manage these contracts.

In addition to the potential risks discussed above, DOE and contractor officials, as well as representatives of small business advocacy groups, raised concerns about DOE's efforts to increase small business prime contracting. One concern expressed was that such efforts could inadvertently result in less total contracting dollars directed to the small business community. Procurement regulations require that all facility management contractors have a small business subcontracting plan and facility management contractors must generally negotiate annual small business subcontracting goals with the department. However, if work is removed from a facility management contract, the facility management contractor may negotiate lower subcontracting goals with the department and then subcontract less of the remaining work to small businesses. Since the efforts to redirect facility management contract dollars to small businesses is in its early stages, no data are yet available to validate this concern.

A related concern is that if DOE removes work from a facility management contract and sets that work aside for a small business procurement, there may be fewer contracting dollars available to local and regional small businesses. This could occur because DOE's facility management contractors generally are not required to follow federal regulations in their procurements, but instead comply with "best business practices." In doing so, a facility management contractor can restrict a competition for its subcontracts to the local small business community. In contrast, DOE must generally open up its procurements to nationwide competition, which may result in fewer contracts going to local and regional small businesses. Again, no data are yet available to validate this concern.

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[13] U.S. General Accounting Office, *Department of Energy: Fundamental Reassessment Needed to Address Major Mission, Structure, and Accountability Problems*, GAO-02-51 (Washington, D.C.: Dec. 21, 2001).

Finally, representatives of some small business advocacy groups told us that some small businesses would rather have a subcontract with a facility management contractor than a prime contract with DOE. This is because facility management contractors generally have fewer administrative requirements and a less burdensome and faster procurement process.

It is not clear to what extent these potential risks will affect DOE's ability to carry out its missions in a safe, secure, and effective manner. The impact on DOE's missions of increasing small business prime contracts will depend both on the total number of new prime contracts awarded and on how well the department manages the contractors and the work. The stakes are high as DOE attempts to contribute to the federal. government's goal of increasing the prime contracting dollars directed to the small business community, while striving to accomplish its missions efficiently and effectively.

This concludes my testimony. I would be pleased to respond to any questions that you may have.

CONTACTS AND ACKNOWLEDGMENTS

For further information on this testimony, please contact Ms. Robin Nazzaro at (202) 512-3841. Individuals making key contributions to this testimony included Carole Blackwell, Ellen W. Chu, Matt Coco, Doreen Feldman, Jeff Rueckhaus, Stan Stenersen, and Bill Swick.

Appendix I.—Department of Energy (DOE) Contract Dollars Directed to Small Businesses, Fiscal Years 1990-2003

[Millions of dollars]

Contract type	1990	1991	1992	1993	1994
Contracting base[1]	$17,095.8	$18,628.6	$18,852.2	$18,392.5	$18,826.3
Facility management	13,790.2	15,592.5	15,798.2	14,970.0	15,788.0
All other prime contracts	3,305.5	3,036.1	3,054.0	3,422.5	3,038.3
Contracts to small businesses	3,047.2	3,211.8	3,162.3	3,578.8	3,616.2
Small business prime contracts	500.9	529.8	578.8	512.7	508.1
Small business subcontracts awarded by prime contractors	2,546.3	2,682.0	2,583.5	3,066.1	3,108.2
Small business subcontracts awarded by facility management contractors	2,402.4	2,464.0	2,374.8	2,772.3	2,795.6
Small business subcontracts awarded by all other prime contractors	144.0	217.9	208.7	293.9	312.5
Small and large business subcontracts awarded by prime contracts	5,617.8	6,300.1	5,653.5	6,458.5	6,347.3
Small business prime contracts[2 3]	2.93	2.84	3.07	2.79	2.70
Small business prime contracts and facility management subcontracts[2 4]	N/A	16.07	15.67	17.86	17.55
Small business prime and subcontracts[2 5]	17.82	17.24	16.77	19.46	19.21
Small business subcontracts[2 6]	45.33	42.57	45.70	47.47	48.97

[Millions of dollars]

Contract type	1995	1996	1997	1998	1999
Contracting base[1]	$17,177.4	$16,213.2	$15,844.0	$15,117.5	$15,483.8
Facility management	14,240.1	13,127.7	13,844.4	13,266.6	13,487.8
All other prime contracts	2,937.3	3,085.5	1,999.6	1,890.9	1,995.9
Contracts to small businesses	3,441.8	3,001.1	3,173.4	3,033.5	3,225.3
Small business prime contracts	484.5	434.9	460.9	442.6	472.9
Small business subcontracts awarded by prime contractors	2,957.3	2,566.2	2,712.5	2,591.0	2,752.4
Small business subcontracts awarded by facility management contractors	2,699.3	2,328.1	2,156.7	2,037.3	2,608.7
Small business subcontracts awarded by all other prime contractors	258.0	238.1	555.8	553.6	143.7
Small and large business subcontracts awarded by prime contracts	5,870.3	5,055.1	5,223.4	5,684.5	5,547.1
Small business prime contracts[2 3]	2.82	2.68	2.91	2.93	3.05
Small business prime contracts and facility management subcontracts[2 4]	18.53	17.04	16.52	16.40	19.90
Small business prime and subcontracts[2 5]	20.04	18.51	20.03	20.07	20.83
Small business subcontracts[2 6]	50.38	50.76	51.93	45.58	49.62

[Millions of dollars]

Contract type	2000	2001	2002	2003
Contracting base[1]	$17,067.9	$18,551.2	$19,170.9	$21,210.0
Facility management	14,079.1	14,756.4	15,671.7	18,189.1
All other prime contracts	2,988.8	3,794.7	3,499.2	3,020.9
Contracts to small businesses	2,805.1	3,539.9	4,241.9	4,382.2
Small business prime contracts	486.8	509.5	555.7	847.2
Small business subcontracts awarded by prime contractors	2,318.3	3,030.4	3,686.2	3,535.0
Small business subcontracts awarded by facility management contractors	[7] N/A	[7] N/A	[7] N/A	[7] N/A
Small business subcontracts awarded by all other prime contractors	[7] N/A	[7] N/A	[7] N/A	[7] N/A
Small and large business subcontracts awarded by prime contracts	4,826.4	6,409.3	7,548.6	7,349.0
Small business prime contracts[2 3]	2.85	2.75	2.90	3.99
Small business prime contracts and facility management subcontracts[2 4]	N/A	N/A	N/A	N/A
Small business prime and subcontracts[2 5]	16.44	19.08	22.13	20.66
Small business subcontracts[2 6]	48.03	47.28	48.83	48.10

Source: GAO analysis of DOE data.

Note: Dollars in the table are expressed in current-year (unadjusted) dollars and include DOE prime contracts valued at $25,000 or more that are tracked in DOE data systems. Prime contracts awarded by another federal agency but funded by DOE are excluded from the table. Subcontract dollars are included only for contractors who are required to report on their small business subcontracting activities.

[1] DOE's contracting base includes dollars that can potentially be directed to U.S. small businesses, excluding, under Small Business Administration (SBA) guidelines, dollars that cannot go to small business prime contracts, such as grants and purchases from mandatory or foreign sources.

[2] As a percentage of all subcontracts.

[3] We calculated the percentage of DOE's contract dollars going to small business prime contracts by dividing small business prime contract dollars (row 5) by the contracting base (row 1).

[4] For fiscal years 1991 through 1999, DOE's annual small business prime contracting achievements, as reported to SBA; included DOE subcontracts awarded to small businesses by its facility management contractors, as well as prime contracts awarded directly to small businesses. To calculate small business prime contracting achievements for these 9 years, we therefore added rows 5 and 7 and divided the sum by row 1. We did not do this calculation for fiscal years 1990 and 2000 through 2003 because small business subcontracts from facility management contractors did not "count" in those years toward small business achievement percentages.

[5] We calculated the overall percentage of DOE's contract dollars going to small businesses-via both prime contracts and subcontracts-by dividing DOE's contract dollars to small businesses (row 4) by the contracting base (row 1).

[6] We calculated the percentage of total subcontracting dollars going to small business by dividing small business subcontract dollars from prime contractors (row 6) by total subcontract dollars going to small and large businesses (row 9).

[7] For fiscal years 2000 through 2003, DOE did not account separately for subcontract dollars going to small businesses from facility management prime contractors versus those from all of its other prime contractors.

The CHAIRMAN. Dr. Woodard, from Sandia, good to have you here. Will you make your testimony as brief as possible and we'll put it in the record.

STATEMENT OF DR. JOAN B. WOODARD, EXECUTIVE VICE PRESIDENT AND DEPUTY DIRECTOR, SANDIA NATIONAL LABORATORIES

Dr. WOODARD. Thank you, Mr. Chairman.

Sandia, as you know, is a multi-program national laboratory operated by Sandia Corporation, a wholly owned subsidiary of Lockheed-Martin for the Department of Energy.

We at Sandia care very strongly about our small business relationships and small business suppliers. They are vital to our ability to achieve, and to deliver on our daily mission.

Sandia has an excellent track record in the small business contracting area. We are pro-active with our small business suppliers, and our small business development programs offer mentoring, business training, and technical as well as business assistance to the small businesses.

We usually meet, or exceed, the annual small business goals that the Department has set for us. In fact in fiscal year 2003 we awarded $459 million dollars to small businesses, which was 53 percent of our total procurement commitment.

Every year Sandia places well over 50 percent of the procurement dollars with small business——

The CHAIRMAN. What percent? Well over?

Dr. WOODARD. Well over 50 percent. The new policy guidance that prevents the Department from including subcontracts placed by management and operating contractors in the Department's small business performance totals presents many difficulties. The national leadership—I'm sorry, the National Laboratory Improvement Council, which represents all 16 DOE laboratories, communicated these difficulties and concerns in a letter to the Department in the year 2002, which is attached to my written statement.

The CHAIRMAN. Dr. Woodard, excuse me for interrupting. The whole issue we're arguing about is brought right in focus when you testify about how much you're doing, because you are the contractor doing it rather than the DOE doing it. You can do a lot more because you're doing it.

But I want to ask you when you get as high as you are, and I have no reason to know what the answer to this is except it seems prudent that you wouldn't do it if it hurt, but are you sure that—can you assure us that by offering such a large percentage of subcontracts that your major goals, objectives, and work load is in no way diminished or put upon by this large percentage of small business? Do you do your job as well in your opinion?

Dr. WOODARD. Absolutely.

The CHAIRMAN. So this is not a detriment to go as high as you are?

Dr. WOODARD. No, it is not.

The CHAIRMAN. The second point seems to me that what's wrong with the DOE's approach is not present in New Mexico or other laboratories like Sandia, and that is how can the subcontractor get in touch with entity its contracting with.

I think one of the shortcomings of DOE's approach is that those subcontractors have to work with DOE when they have problems. I would guess that that's a lot more difficult, a lot less responsive, than if they work for you right in the same city, they're right there for the most part in the same state.

Do you have an opinion on that?

Dr. WOODARD. Yes, Mr. Chairman, we have found that for small businesses that one tool that we offer, which is one-on-one orientation to procurement process is very beneficial. And so, again imagining that if you're doing that as the Department of Energy nationwide it's very difficult to reach out and touch day to day, everyday, the small business suppliers with these one-on-one orientations and other assistance that we provide.

The CHAIRMAN. Now in New Mexico, and I assume in other States, it's just that I'm not as familiar with it, it would seem to me that there are certain subcontractors that qualify that get very big. So, you know, we have subcontractors that are little, and we have subcontractors that are very big. I would assume that the subcontractors that are very big—I won't mention them, but you know one in Albuquerque, they have a building with their name on it, pretty successful—I would assume they would like the DOE policy instead of yours; is that correct? Big versus little?

Dr. WOODARD. Let's see, I can't predict how they would do that.

The CHAIRMAN. I don't blame you for not doing it if you knew, I would think you shouldn't know.

[Laughter.]

The CHAIRMAN. But I think I know. If I were they I would—the big ones—I would like to work with Washington; if I were the little small ones or minorities or women's I would like very much to work with you.

Would you proceed? I think I've made my point, so if you would kind of hurry, it would be good.

Dr. WOODARD. I will do that.

In my view there are three principle concerns. The new policy creates a misleading measure of the total DOE true small business performance.

Second, it is not clear that the new policy truly serves the best interests of small business.

And three, DOE's plan to place directly contracts and then to rotate or transfer those contracts back to the M&O is problematic and creates concerns with regards to accountability.

In general we believe that the DOE cannot dramatically increase its small business contracts in its current established business model, that in fact in order to meet the total goal of 23 percent it will require breaking apart the M&O contracts into smaller contractual units.

This is similar to if you were to build a house and assume subcontractors would be directly contracting to you rather than to a general contractor, and then asking that general contractor to manage and integrate it all. It is not something that many general contractors would step up to.

What is the solution? A course that we would prefer is to in fact reinstate the earlier policy guidance that allows the Department to include M&O contractors, small business subcontract totals, in the

Department's total. And if that is not possible an exception should be made to the federally funded research and development centers because the FFRDCs have a special relationship to the government that is recognized——

The CHAIRMAN. What is FFRDCs?

Dr. WOODARD. Federally funded research and development centers.

The CHAIRMAN. I just came from a breakfast with the military talking about Iraq, and we were trying to get the Judge Advocate and the Generals to talk so we could understand. And about every 5 minutes the Secretary of Defense would remind somebody what they just said and ask them if they could just please try very hard. And it's amazing, for about 5 minutes they could do it, and then during the 6th minute they'd go back to acronyms that we didn't understand.

So I'm sorry I had to ask you, but frankly——

Dr. WOODARD. I apologize for my use of an acronym, an abbreviation.

Because the FFRDC, the federally funded research and development centers, have a special relationship with government perhaps an exception could be made to include their contracting, their subcontracts in the totals for all agencies.

Thank you, that concludes my remarks.

The CHAIRMAN. Thank you, your suggestions and analysis are very good.

[The prepared statement of Dr. Woodard follows:]

PREPARED STATEMENT OF DR. JOAN B. WOODARD, EXECUTIVE VICE PRESIDENT AND DEPUTY DIRECTOR, SANDIA NATIONAL LABORATORIES

INTRODUCTION

Mr. Chairman and distinguished members of the committee, thank you for the opportunity to testify. I am Joan Woodard, Executive Vice President and Deputy Director of Sandia National Laboratories. Sandia is a multiprogram national security laboratory managed and operated for the National Nuclear Security Administration (NNSA) of the U.S. Department of Energy (DOE) by Sandia Corporation, a subsidiary of the Lockheed Martin Corporation.

The purpose of this hearing is to evaluate the implications of the policy prohibiting DOE from including in the Department's small business performance totals subcontracts placed by its Management and Operating (M&O) contractors. This new policy reverses previous policy articulated by the Office of Federal Procurement Policy (OFPP) in 1991. In my view, the new policy results in a misleading representation of DOE's true small business performance. I am also concerned that it has the potential to negatively impact institutional management and mission performance at DOE's Federally Funded Research and Development Centers (FFRDCs).

We at Sandia National Laboratories care very strongly about the small business community. They are vital partners in achieving our DOE missions. Many of our small business suppliers are locally based and contribute significantly to the economic well-being of our region. We have been very innovative with programs to optimize their contracting opportunities. And we do not believe the new policy truly serves the interests of small businesses.

SMALL BUSINESS CONTRACTING AT SANDIA

Sandia National Laboratories has an excellent track record in small business contracting. We are proactive in cultivating small suppliers. We don't passively wait for small businesses to come to us. Our supplier development programs offer mentoring, business training, and technical as well as business assistance. Many of our executives and procurement professionals are active in the small business community. We seek out small, small disadvantaged, women-owned, HUB zone, veteran-owned, and service-disabled veteran-owned suppliers to compete for our contracts. Consequently,

our small business programs yield good results. (Sandia's small business programs and initiatives are described in detail in Appendix A.)*

As required by law, Sandia National Laboratories' management and operating contract includes a small business subcontracting plan. Socioeconomic subcontracting goals are negotiated annually with NNSA/DOE and become part of our M&O contract. DOE evaluates our actual performance against those goals in its annual assessments of Sandia's performance.

We usually meet or exceed the annual small business goals that DOE sets for us. In fiscal year 2003 we awarded $459 million to small businesses in 94,000 procurement actions—53 percent of our total commitments of $866 million. We awarded $89 million to small disadvantaged businesses, topping the goal at 10.2 percent of our procurement budget. Women-owned commitments were $69 million or 7.9 percent, and in fiscal year 2004 we are on track to hit 10 percent. Bottom line: every year, Sandia National Laboratories places well over 50 percent of its procurement dollars with small businesses.

IMPACT OF THE POLICY CHANGE

By excluding Sandia's excellent small business results (and those of other M&O contractors), DOE's true small business performance is grossly understated. In 1999, prior to the policy change, DOE met its Small Business Administration (SBA) goal of 16.7 percent with 18 percent small-business participation. In 2000, when the change was implemented, the figure dropped to around 3 percent. Although SBA adjusted DOE's goal downward to 5 percent, DOE is now well short of its target. And it is now in the unfair position of having to meet a goal that is based on a percentage of the total value of its prime contracts without being able to include the small business portion of all its prime contracts.

Is this what the law intended? The language of 15 U.S.C. 644(g) states that the "goal for participation by small business concerns shall be established at not less than 23 percent of the total value of all prime contract awards for each fiscal year." Subcontracts do indeed constitute "participation by small business" in the prime contracts with which they are associated. You don't have to be the prime contractor to participate in a prime contract. However, SBA's interpretation of the statute is that only contracts awarded directly by the agency may be counted toward the agency's assigned goal.

In order to comply with this policy, DOE is compelled to take small business contracts that in the past would normally be placed by the M&O contractors and award them directly from the agency. The plan is that DOE will novate or assign the contracts back to the M&O contractors to administer after they are signed.

The National Laboratories Improvement Council (NLIC)—a forum of the sixteen DOE FFRDCs created to promote "laboratory management excellence for the U.S. Department of Energy"—raised objections to this plan in 2002 in a letter to DOE's chief financial officer [Appendix B]. NLIC identified several "serious contract management and operational problems" with the novation concept, which I will paraphrase:

- Will the vendor's performance (good or bad) be imputed to the M&O contractor in DOE's assessment process?
- Will the M&O contractor be forced to bear the costs for vendor claims and liabilities?
- Can the M&O contractor (a private entity) administer contracts that use federal teens and conditions in novated contracts as opposed to industrial standard terms and conditions?
- Will the M&O contractor have the authority to execute contract modifications and extensions, and if so, will the socioeconomic credit accrue to DOE or to the M&O?
- Will the M&O contractor be exposed to liability, fines, penalties, etc. for work done under permits, regulatory notices, and orders (including Price-Anderson) by the vendor?

In addition to these contract management issues identified by NLIC, we are also concerned that the new policy may negatively impact mission performance. One concern is timeliness: Federal agency procurements take much longer to place. Mission performance may be delayed by the longer procurement cycle. The M&Os' industrial/commercial terms and conditions (as augmented by required flow-down clauses) permit faster placement. Disputes and protests that can delay or stop a program are handled more expeditiously as well.

*Appendixes A and B have been retained in the committee files.

Another concern is control over requirements: The M&O will have less say in the formulation of the contract's scope of work and less flexibility to adjust the scope of work to changing needs. Consequently, the negotiated contract may not be, fully responsive to mission requirements.

My biggest concern with the new policy is that it destroys the chain of accountability for facility management performance. You can't fairly hold the prime contractor accountable for the overall management and operation of a facility—including security, safety, health, and environmental compliance—when it does not have the hire-and-fire authority over the subcontractors at the site. If we can't choose our vendors, we can't be confident that we can control them.

Here's an analogy that illustrates the problem this situation presents: If you were having a house built, you would almost certainly work through a general contractor who would hire the subs, integrate the work, resolve any difficulties along the way, and achieve the result you envision. You would not presume to hire the subcontractors yourself and then turn them over to him to supervise: Most general contractors would not accept such an arrangement because it would saddle them with accountability without control.

At Sandia, we have already seen problems emerge with implementation of the new policy. Two of our procurements were transferred to DOE so that they could get the benefit of the small business credit. This created confusion with the contractors over whom they were really working for and who was defining the deliverables.

Another contract posing difficulties involves the design of a water system at Sandia National Laboratories' Tonopah Test Range in Nevada under DOE's initiative to place Facilities and Infrastructure Revitalization Project (FIRP) contracts. We provided the technical requirements to DOE, and DOE negotiated the procurement. It took longer to place than we would expect for a contract of that size and type. DOE has not novated the contract to us, and we are not sure that they intend to do so. Decisions are being made by DOE administrators rather than our own facility engineers, who would normally work closely with the Sandia procurement officer. DOE management of a construction contract on assets under the management of the M&O creates authority and accountability confusion with regard to environment, safety, health, and security issues as well as performance and acceptance.

MEASURING TRUE SMALL BUSINESS PARTICIPATION

There is a major flaw in the contract-and-novate plan that falls into the "emperor's new clothes" category: It is likely to be a zero-sum game. When DOE awards a small-business contract that previously would have been awarded to a small business anyway (by the M&O contractor), there is no net gain for small businesses. Unless DOE is able to convert a good portion of the M&O's large-business subcontracts into small-business prime contracts, there will be little net gain for the small business community. I doubt that there is much potential for this, because the M&O contractors are already trying to maximize their small business awards. Indeed, local and regional small businesses may actually lose contracts because federal agencies are required to conduct competitions on a nationwide scale. An existing supplier based in New Mexico or a neighboring state could lose out to a small business based thousands of miles away.

If the real goal is to increase small business's share of contracting in DOE programs, then approaches other than the contract-and-novate stratagem must be developed. We strongly support the federal government's policy to optimize small business participation in federal contracts. Elements of Sandia's outreach programs described in Appendix A of this statement could be applied at other DOE locations, and even by the agency itself, to increase small business participation across the board. There is no reason the M&O contractors and the Department can't work together to make true net gains for the small business community, and in fact we are doing so.

But how will DOE know that it is making progress? A fundamental management principle is that you must have valid metrics to know how well you are doing. Unfortunately, we know that the new metric is a misleading representation of small business participation. The small business rate reported to SBA can rise without a real increase in net small business contracting.

One alternative measure would be the total value of contracts awarded to small businesses by DOE, the prime contractors, and subcontractors. This would be a much more meaningful indicator. It would show the volume of business actually received by small business elements, not just the prime contract component. The difficulty with this alternative is that the data get harder to collect the further down the chain you go. Consequently, DOE would have to develop a better data collection system and a reliable small business contract information system.

Another alternative measure would be the use of econometric models that quantify the economic impact of prime contract dollars in a given geographical region. These models generally determine a multiplier that can be applied to the prime contract value to yield the total economic impact to the region. These models are somewhat complicated, due to the multiplier differences in payroll dollars and dollars spent on materials and other subcontracts, but they do provide a very direct measure of the economic value to the communities in which DOE operations reside. Several M&O contractors utilize these models currently and periodically publish official reports.

An alternative measurement system for small business contracting performance could be offered in parallel with the SBA-reported figure as a means to offer a more accurate representation of small business contracting performance for those who may be interested in that information.

GOCO CONTRACT MODEL IN JEOPARDY

The new policy has the potential to weaken or even destroy the Government-Owned, Contractor-Operated (GOCO) contracting model that has been used by DOE and its predecessors for more than 50 years. There is no mathematically possible way for DOE to meet the 23 percent target of 15 U.S.C. 644(g) without breaking the facility M&O contracts into smaller pieces. Although the fiscal year 2004 goal for DOE is only 5.06 percent, we believe the intent is to make progress toward the 23 percent government-wide goal every year. DOE cannot approach the 23 percent target with its established business model.

If DOE ultimately breaks apart some or all of its facility M&O contracts, it will have to assume the integrating role now performed by the M&O contractors. It is hard to imagine that a reputable industrial corporation or academic institution would accept the risk and responsibility for managing and operating a facility as a whole when it does not have general procurement authority for the goods and services required for that mission. Returning to my analogy of building a house, it would be as if you had to act as your own general contractor. Most homeowners don't have the requisite knowledge of the building trades or the management skills to do this successfully. Similarly, DOE does not have the in-house technical and managerial expertise to run high-technology multiprogram laboratories on its own. Realizing this, DOE's predecessors wisely chose to contract for those responsibilities from among the nation's leading industrial firms and research universities.

I suppose it would be possible for DOE to take the existing M&O contracts for its FFRDCs and evolve them over time into suites of smaller contracts awarded to unrelated entities, many of which would be small businesses. But by doing so, it would destroy the existing accountability structure. What will happen if there is a security incident, or a safety problem, or misuse of government property, or an environmental violation? Will DOE be able to hold anyone accountable, or will the contractors trade accusations of blame? And more importantly, who is going to develop the corporate policies and apply the corporate discipline across the facility to prevent such incidents from happening in the first place? DOE nuclear facilities are being held to a much more rigorous Design Basis Threat (DBT) than they were in the past. You need a single responsible and accountable contractor with general authority if you want to address the DBT and other security, safety, and environmental issues effectively.

The scenario I have outlined here is not so far-fetched as it might sound. In fact, DOE is actively encouraging its program offices to break out requirements from existing facility management contracts to provide small-business prime contracting opportunities for the Department. DOE has even created an annual "Small Business Breakout Award" which it presents to the program office that pursues this most aggressively.

RECOMMENDATIONS

My statement has described several troubling implications and concerns regarding the new policy and its potential impact, many of which I share with the managements of other DOE facilities as represented through the National Laboratories Improvement Council (NLIC). How to resolve these concerns is primarily a question for Congress to decide; I offer the following recommendations for consideration.

- The National Laboratories Improvement Council (NLIC) urged reinstatement of the earlier OFPP policy that allowed M&O contractors' small business subcontracts to count toward the Department's goal. We regard this recommendation as the preferred solution.
- If reinstatement of the earlier policy is denied, the Department of Energy should develop an alternative measure of small business contracting participa-

tion, based on a full accounting of small business contracts and subcontracts, or on an economic analysis of regional economic impact, or some other legitimate method, to be published as supplementary information.

- DOE and its M&O contractors should continue to work together to increase small business participation at all levels of contracting through small business development and outreach programs deployed throughout all Department elements.
- the Federal Acquisition Regulations (Part 35.017) recognize that Federally Funded Research and Development Centers (FFRDCs) have a "special relationship to the Government" and enjoy "access, beyond that which is common to the normal contractual relationship, to Government and supplier data" and to other resources of the sponsoring agency. Consequently, "the FFRDC is required to conduct its business in a manner befitting its special relationship with the Government." Because FFRDCs have a unique, close, and long-term relationship with a federal agency, it would seem appropriate to include their small business contracting results with those of the sponsoring agency. FFRDCs are a unique and very limited class; thus, any exception to the new policy for them would not apply to M&O contractors generally.
- Alternatively, excluding FFRDCs from federal agencies' procurement baselines, as the Small Business Administration allowed NASA to do with its Jet Propulsion Laboratory prior to 1998, would also solve the problem. This would have the effect of removing FFRDC management contracts from the denominator when calculating an agency's small business prime contracting rate.

Mr. Chairman, this concludes my statement.

The CHAIRMAN. Ann Sullivan. Let me ask you, I note what your title is, but does that mean that you are and advocate for women's businesses and contracting?

Ms. SULLIVAN. Yes, I represent Women Impacting Public Policy in Washington. I'm actually a small business owner, I have a little lobbying firm and I represent Women Impacting Public Policy.

The CHAIRMAN. Yes, but you're here, but you represent the women——

Ms. SULLIVAN. I represent them, yes.

The CHAIRMAN. Represent the women in my State?

Ms. SULLIVAN. Yes, I represent 500,000 nationwide.

The CHAIRMAN. I see.

STATEMENT OF ANN SULLIVAN, ON BEHALF OF WOMEN IMPACTING PUBLIC POLICY

Ms. SULLIVAN. Mr. Chairman and members of the committee, thank you for giving me the opportunity to speak on this important issue.

I'm testifying today on behalf of Women Impacting Public Policy, a bipartisan organization which represents 500,000 women in business nationwide.

In addition to its individual members it represents 30 small business organizations under its umbrella.

I represent WIPP on the Department of Energy Small Business Advisory Council. While on the face of this, this is a dry subject with interest only from a few bean counters, in reality it has enormous implications for small business.

Government procurement policy and its commitment to meeting those goals directly affects the ability of small businesses to contract with the Federal Government.

We commend you for holding this hearing and letting us speak.

Women-owned businesses number 10.6 million, accounting for nearly half of all privately held firms. We generate $2.5 trillion in sales and employ 19.1 million people nationwide. And yet govern-

ment-wide we are awarded only 2.9 percent of all prime contracts. At the DOE women-owned businesses possess .5 of the prime contracts.

We know that DOE has done its business the same way for 60 years with large primes holding the contracts and subcontracting much of it to smaller businesses. But we would argue that the Department will gain a better price and more efficient service by contracting directly with small businesses.

We believe the Government would realize savings by eliminating the overhead built in to a large bundled contract.

With the duration of five plus years, and 85 percent of the $19 billion in contracts awarded by DOE to is primes DOE's M&O contracts are the embodiment of bundled contracts.

The Senate in its reauthorization last year of the Small Business Administration spoke very clearly on its views on bundled contracts. It requires the DOD to justify consolidation of contracts in excess of $5 million, and requires all other Federal agencies to justify bundled contracts that exceed $2 million. President Bush, as you know, also spoke about mitigating the effects of contract bundling. And in October 2002 the Office of Federal Procurement Policy issued a directive to Federal agencies to strengthen agency reviews on bundled contracts. It found that for every $100 awarded under a bundled contract there's a loss of $33 dollars to a small business.

So why all the fuss? As you know, small business participation is not a mandate, it's a goal. Thanks to many members, like yourself and members of the Senate, the agencies feel the pressure to meet those goals.

If Federal agencies are permitted to count subcontracts as prime contracts as far as WIPP is concerned any incentive to reach the goal of 23 percent for small business is removed. Every other agency will be knocking at your door to get the same exception, and in the end small businesses will lose.

I deal with small businesses nationwide every day, Mr. Chairman. Small businesses prefer prime contracts over subcontracts for the following reasons:

One, the profit margin on a prime versus a sub is higher. That stands to reason because the overhead and the mark-up of the prime is removed from the profit margin.

Two, government agencies, and even the commercial market views the prime contract differently than a subcontract in terms of past performance and the stature of the small business itself.

Three, with regard to R&D many prime contractors require the small business to give up its intellectual property in order to be a subcontractor, and for that reason many small businesses simply will not work as subs, only primes.

Four, payment directly from the government is generally much more reliable and faster.

And five, if the Government enters into a prime agreement the small business can be assured it will perform the work, and when it is expected to perform it.

We would be remiss if we did not point out the efforts of the Office of Small Disadvantaged Business Utilization at the Department of Energy. Under the leadership of Theresa Speak DOE is ag-

gressively reaching out to small businesses and encouraging them to consider doing business with DOE.

We applaud their efforts to increase the small business contracting dollars, but outreach can only go so far, the Department must have contracts to award.

In closing, our recommendation is really very simple: if a contract is a prime contract call it a prime, if it is a subcontract call it a subcontract.

Thank you for the opportunity to address this issue.

The CHAIRMAN. Well, I just want to say, Ma'am, and I'll go right to Mr. Thompson, your last comment, if it's a prime call it a prime, if it's a sub call it a sub, you know that's a wonderful answer, but we're talking about what should be a prime and what should be a sub, that's the issue. So we can call it that, but before we call it that we've got to decide which is which.

Sandia, by definition, is not the DOE, they're a contractor of DOE. And so when they issue contracts they are, by definition, small business subcontracts, not prime.

So I think your notion is right, but what we're arguing about is how do we get there, and how do we achieve the percentages.

Ms. SULLIVAN. I guess what we're saying is we think the way they're currently counted is the proper way to count it, which is if it's a prime it's a prime and if it's a sub it's a sub.

The CHAIRMAN. Okay, got you.

[The prepared statement of Ms. Sullivan follows:]

PREPARED STATEMENT OF ANN SULLIVAN, ON BEHALF OF WOMEN IMPACTING PUBLIC POLICY

Mr. Chairman and Members of the Committee, thank you for giving me the opportunity to speak on the issue of reporting of small business contracts by the Department of Energy (DOE). I am testifying today on behalf of Women Impacting Public Policy (WIPP), a bipartisan organization which represents 500,000 women in business nationwide. In addition to its individual members, it represents 30 small business organizations under its umbrella. I represent WIPP on the Department of Energy's small business advisory council.

While on the face of it, this is a dry subject with interest only from a few bean counters, in reality, it has enormous implications for small businesses. Government procurement policy and its commitment to meeting small business goals, directly affects the ability of small businesses to contract with the federal government. This is not just a philosophical discussion-this has direct consequences for every small business interested or already doing business with the federal government. We commend the Committee for holding this hearing and for considering its effect on small business.

The 25 million small businesses in this country are credited with keeping this economy afloat in the recent economic downturn. Of those small businesses, women-owned businesses number 10.6 million, accounting for nearly half (48%) of all privately-held firms. These firms generate $2.5 trillion in sales and employ 19.1 million people nationwide. And yet, government-wide, we are awarded only 2.9% of prime contracts. At the DOE, women owned businesses possess 0.5% of the prime contracts. The government wide goal for women owned businesses is 5% of the total 23% goal for small business.

We know that the Department of Energy (DOE) has done its contracting the same way for 60 years with large primes holding the contracts and subcontracting much of its work to smaller businesses. But we would argue that the Department will gain a better price and more efficient service by contracting directly with small businesses. By allowing small businesses to perform services such as maintenance of the facility, environmental remediation, event planning, administrative support, construction, food services, and a host of other services needed to run a large facility efficiently, we believe the government would realize savings by eliminating the overhead built into a large, bundled contract. With a duration of 5+ years and 85% of

the $19 billion in contracts awarded by DOE to its primes, DOE's Maintenance and Operation (M&O) contracts are the embodiment of "bundled contracts."

The Senate, in its reauthorization of the Small Business Administration (SBA), S. 1375 last year, spoke very clearly on its views on bundled contracts. S. 1375 requires the Department of Defense to justify consolidation of contracts in excess of $5 million and requires all other federal agencies to justify bundled contracts that exceed $2 million. Additional justifications by the agencies are required for contracts that exceed $5 million or in the case of DOD, $7 million. Under S. 1375, agencies are required to assess the impediments to small businesses as a result of the consolidation and provide action plans designed to help small businesses with regard to the consolidation.

President Bush and his Administration have also taken actions to mitigate the effects of contract bundling on small businesses. On October 29, 2002, the Office of Federal Procurement Policy (OFPP) issued a directive to federal agencies to strengthen agency reviews on bundled contracts. It found that for every $100 dollars awarded under a bundled contract, there is a loss of $33 dollars to small business. The Small Business Administration (SBA) issued proposed regulations to implement these directives and proposed a review of a bundled contract at $5 million for the DOE.

The issue before you today is not new. The DOE, in 1991, argued that subcontracts in its M&O contracts should be counted toward its small business goals and won. In 1999, the OFPPS reversed that decision and ruled that DOE could not count its subcontracts as contracts for goaling purposes. Both Senators Bond and Kerry worked diligently to bring about that change.

So why all the fuss? As you know, small business participation is not a mandate, it is a goal. Thanks to Members of the Senate and the House who support the success of small businesses in the federal contracting arena, the agencies feel the pressure to meet their goals. If federal agencies are permitted to count subcontracts as prime contracts, as far as WIPP is concerned, any incentive to reach the goal of 23% for small business is removed. If DOE is permitted to count subcontracts as prime contracts, every other agency will be knocking at your door to get the same exemption and in the end, small business will lose.

Mr. Chairman, I deal with small businesses nationwide everyday. Small businesses prefer prime contracts over subcontracts' for the following reasons: (1) the profit margin on a prime contract vs. subcontract is higher. That stands to reason because the overhead and markup of the prime is removed from the profit margin; (2) government agencies and even the commercial market views a prime contract differently than a subcontract in terms of past performance and stature of the small business; (3) with regard to R&D, many prime contractors require the small business to give up its intellectual property in order to be a subcontractor. For that reason, many small businesses will not work as subs, but only as primes; (4) payment directly from the government is generally much more reliable and faster; and (5) if the government enters into a prime agreement, the small business can be assured it will perform the work and when it is expected to perform it. Under a subcontracting plan, even though the subcontractor is listed, it does not necessarily mean the prime will ever use them and utilization of the subcontractor can be very unpredictable over the life of a contract.

We would be remiss if we did not point out the efforts of the Office of Small Disadvantaged Business Utilization (OSDBU) at the DOE. Under the leadership of Theresa Speake, DOE is aggressively reaching out to small businesses and encouraging them to consider doing business with DOE. We applaud the OSDBU's efforts to increase the small business contracting dollars. But outreach can only go so far-the Department must have contracts to award.

In closing, our recommendation is really very simple. If a contract is a prime contract, call it a prime. If it is a subcontract, call it a subcontract.

Thank you for the opportunity to address this issue. I would be happy to answer any questions.

STATEMENT OF ROBERT THOMPSON, CHAIRMAN, ENERGY COMMUNITIES ALLIANCE

The CHAIRMAN. Would you like to proceed, councilman? It's nice to have you. I guess I would ask why is a councilman here?

Mr. THOMPSON. Well, because I'm the chairman for the Energy Communities Alliance, and I was the mayor of the city of Richland up until the last term. So I was a 4-year mayor in the city.

The CHAIRMAN. And you have a lot of DOE activities in and around Richland?

Mr. THOMPSON. We think the Hanford site generates a lot of revenue for our community, and a lot of work for the Department of Energy for both the primes and the subcontractors.

And for the record, Senator, we do represent Edie County, Espanola, Carlsbad, and Los Alamos in—I suppose it would be your district. So we actually have some——

The CHAIRMAN. In my State?

Mr. THOMPSON. Definitely in your State, Senator.

The CHAIRMAN. I don't have a district.

Mr. THOMPSON. I appreciate the correction.

Senator, it's a—first off it's a pleasure to have an opportunity for local government to come here and have an opportunity to discuss what we look at policy that tremendously impacts our community.

Traditionally when you're a small business man, and when you're a small government like Richland, you have a tendency to be on the receiving end, and we very seldom get the opportunity to give some input.

And so I want to base my comments from a local community perspective. And a lot of the concerns and questions that have come forward are those—basically I would echo them.

It seems to me that nobody here is going to say anything bad against small business. Certainly the Energy Community Alliance, because it is our local businesses and the life load of ourselves, support local businesses, small businesses.

The concern, and we have concerns, is that what has really happened is there's kind of an counting shift, is what it seems to me that's going on. And there are some potential unintended consequences that have been echoed by some of the members, and by Mr. McSlarrow himself, in regards to what the impact can be.

But one that has not been touched on that impacts us is the idea of safety and security. What happens that hasn't been addressed by anybody on the panel so far is the idea that we're in the business of protecting our citizens, our constituents, and anybody who's gone through a fire such as Los Alamos, or what we had at Hanford, understands that there are concerns being able to integrate that safety.

And the concern that we have if you break these contracts up, take a prime and break it into several entities, the ability to communicate, if past examples of working with the Department of Energy with local government is of grave concerns to us. We have concerns whether or not the new contractors if they are broken apart would have the ability to communicate.

What we don't need is five separate law enforcement agencies, five separate privately held fire departments trying to integrate them. At least I can speak from personal experience having the fire at Hanford, it is of tremendous difficulty when you don't even have the same communication wave length to communicate. And there is no guarantee, unless it's provided within the contracts, to ensure that that occurs.

Some of the other concerns that we have is the idea of integration. Now we've heard that touched on briefly here, but the idea is that if you break a prime into several different contracts the con-

cern the local government has is what happens if one of these subs is able to complete its duties, where the other one has to wait because these are so integrated? I mean it's like a circulatory system, if there's a part that goes wrong here it has impacts somewhere else in the system.

The concern that we have is what is truly the mechanism to integrate these, and candidly the Department of Energy perhaps has not managed contracts in a way that we think was as successful as we might have liked. We can only imagine the opportunity for the Department of Energy to increase the number of its employees to try to manage several other contracts, let alone our integration with them from a local government perspective.

It can be a struggle communicating with the Department of Energy on certain levels. It can be a struggle communicating with the prime contractor. If you break it apart integrating the whole and making it a unified force might be very, very difficult.

Part of what we have concerns about, Senator, is the regionalism, and Mr. McSlarrow touched on that.

The CHAIRMAN. Well, we'll see here. We're going to have 10 minutes left for all of you, so let's assume it is, so talk fast.

Mr. THOMPSON. I'll do that.

The regional question. Mr. McSlarrow touched on that, and the issue from our perspective is simply this: we want local businesses to exceed because local businesses have a tendency to stay in your community and expand. If we open it up to a nationwide or an international playing field we have concerns whether some of the local businesses would be able to stay in operation. And that is a grave concern.

Senator, you've already touched on the pension questions. We really would have serious concerns from an employee standpoint, which again I understand, that's the life blood of our communities are these individuals, and suddenly that their pension plan has become in jeopardy because you have a sub. Although I fear the language the ability of subs of a certain size to be able to take care of the pension, and the union concerns that are—can be as big as they can be at the Hanford site, give us grave, grave concerns, Senator. And I think that any potential change really needs to be evaluated.

You know, ultimately we're in this together. At the Hanford site we're in it to clean up, and we don't want to take advantage of the taxpayers in doing so. That hasn't always been the framework that my community might have suggested to you. But I will tell the Senator, and the committee, that it is important to give every dollar, and that the taxpayers get a bang for that buck.

And the concern that we have is that if you start overlaying all sorts of overhead on top of each other, and Ms. Sullivan talked about the idea of the profit margin ends, as you start to break these things up you start to end up getting layering on profit margins as well. And we have a very difficult time thinking that somehow is going to benefit the taxpayers of the United States. And that is a concern of us all.

We want to have things have cleaned up. We think that the traditional method of bundling—I've heard that word for the first time, but the original M and I contracts make sense.

If you want to make changes make it specific language to support small business in the contracts. Breaking it up and having additional DOE oversight has not worked in the past, we doubt whether it will happen in the future.

[The prepared statement of Mr. Thompson follows:]

PREPARED STATEMENT OF ROBERT THOMPSON, CHAIRMAN, ENERGY COMMUNITIES ALLIANCE

Mr. Chairman and Members of the Committee, I thank you for inviting me to testify on the subject of Small Business Contracting by the United States Department of Energy ("DOE" or "Department").

ENERGY COMMUNITIES ALLIANCE SUPPORTS SMALL BUSINESS CONTRACTING

As a small business owner and a leader in my community, I fully support the general idea of increasing small business opportunities in DOE contracts. However, in practice, the change in the Department's reporting of small business contracting with the idea of breaking up the Department's Management and Operating contracts and Management and Integration contracts ("Prime Contracts") into several small business contracts creates several unintended consequences that may adversely impact local communities and workers at DOE sites and impede the ability to complete the DOE mission in a safe and effective manner.

DOE's system of awarding large Prime Contracts to contractors ("Prime Contractors") at sites and including small business contracting goals within such contracts is the best method of ensuring small business involvement in DOE contracts. As the organization of local governments that are most affected by the Department's weapons complex activities, Energy Communities Alliance ("ECA") has an interest in ensuring the effective and efficient implementation of DOE contracts. ECA is committed to making sure that the DOE contracting system works.

ECA is the organization of local governments that are adjacent to or impacted by DOE activities. Our mission is to bring together local government officials in DOE impacted communities to share information, establish policy positions, and advocate community interests in order to effectively address an increasingly complex set of constituent, environmental, regulatory, and economic development needs.

CHANGING THE METHOD OF COUNTING SMALL BUSINESS INVOLVEMENT DOES NOT MAKE SENSE

ECA has seen an evolution in the way the Department contracts for services. Many of the changes have made sense because they have as their goal focusing on the missions at the sites and ensuring that the U.S. taxpayer benefits. The Department has for the past several years evaluated small business contracts by measuring the amount of small business contracts the Department's Prime Contractors utilize to meet its statutory small business contracting goals.[1] A recent change by which the number of small business contracts issued directly by the Department increases while the number of Prime Contracts issued decreases is being met with skepticism among the local governments around the DOE facilities. The best explanation the Department has provided to local governments is that the change is required by the Office of Management and Budget ("OMB") to ensure that more contracts go directly to small businesses—a change that alters the method by which small business involvement is counted.

In the past, the Department has informed local governments that changes in contracting have been made in order to make contractors more accountable, assist DOE in obtaining better pricing, improve contract effectiveness, and provide better incentives to ensure that contractors focus on DOE's mission. This latest explanation as to why the system should change—to meet OMB contracting goals—will have unintended negative consequences on a complex system and does not further DOE's mission.

Is the Department gaining a more efficient contract? A more effective contractor? The reality is that the Department is meeting an OMB goal of small business contracting—a goal ECA believes the Department achieved by setting small business contracting goals and small business contract reporting requirements in its Prime Contracts. If the Department wants to ensure more small business contracting, add the incentive to new contracts. The Department should not change a system based

[1] The Small Business Act, as amended by.the Small Business Reauthorization Act of 1997, set a federal government goal of 23 percent of prime contracting with small businesses.

upon an internal administrative technicality—DOE contracts impact jobs, safety and the ability to complete a difficult job at the DOE facilities.

DOE's contracts that it is looking to directly offer to small businesses are not simple. In fact, they are complicated and require highly specialized work that is not necessarily within the area of expertise of most large or small contractors. Some of the Department's missions are as follows.

- Take environmentally contaminated sites that are not clearly characterized and remove and remediate hazardous and radioactive waste within a specific budget that relies upon regulatory review and approval to accomplish the cleanup.
- Provide security for Nuclear Weapons Facilities.
- Disassemble nuclear reactors.
- Demolish and remove buildings that contain radioactive and hazardous substance contamination.

UNINTENDED CONSEQUENCES

Prior to my testifying before this Committee, I contacted several local government officials around the country to discuss the impact of small business contracting changes at DOE facilities. The following are some of the unintended consequences that local governments have highlighted:

1. *DOE Oversight*. The Department plans to divide the functions of some of the Prime Contracts into several different contracts at specific sites. DOE would become the contract integrator for the site. DOE's record on overseeing one contractor at a site has rarely been identified as exemplary, as is clear from reading GAO reports and reviewing Congressional hearings. The Department must address how it expects to manage multiple contracts at a site utilizing a decreasing number of DOE employees to oversee the contracts.

2. *Putting Regional Small Businesses Out of Work*. Another consequence of dividing up the Prime Contracts is to put regional small businesses that currently work for the Prime Contractors out of business. The current system allows the Prime Contractors to solicit small businesses from a regional area. DOE's new contracting scheme advertises small business contracting nationally. Hence, DOE's change in policy removes the focus on regional small business hiring. Further, several small businesses in my community are concerned that the new small businesses that are hired under these contracts will no longer have an incentive in the contract to hire regional small businesses that currently work for Prime Contractors in the communities. These small businesses have created numerous jobs and new opportunities in my community and similar communities like mine around the country. I have been told by ECA members in Paducah, Kentucky that several small businesses with good performance records are being forced to leave the area or shut down entirely because they cannot take on the risk of bidding on the new Prime Contracts that are being set aside for small businesses. These small businesses have worked hard to create new jobs and new opportunities that the new contracting scheme may not take into account.

3. *Integration*. DOE believes that it will gain certain efficiencies by becoming the integrator of all of the contractors at a site. Currently, the Prime Contractor at the site undertakes this difficult job. Integrating building demolition and environmental cleanup sounds simple but it is a technically difficult process. The process involves radioactive contamination and hazardous waste storage, removal, transportation, and disposal of the contamination within a site and preparation of some of the material for shipment to receiver sites. DOE, once again with the same number of employees, is responsible for dealing with additional contractors, workers, unions, additional paperwork and oversight, and additional resolution of issues. In addition, DOE will create duplication of functions; for example, each contractor will need safety officers, emergency response personnel, and security officers. At the Paducah, Kentucky site the local DOE office has been abolished except for a few employees, and DOE is preparing to award at least two small business set-aside contracts that were managed under a Primary Contract. This small business contractor will now need to figure out how to coordinate among at least four different contractors at the site, and no DOE office will be on site to referee the daily interface between the contractors. DOE will now need to schedule each contractor's activities since each contractor is dependent upon the other to complete its job. If one contractor does not complete its job on schedule, the other may not be able to undertake its job. With one Primary Contract, DOE can hold one contractor accountable and responsible for all of the work at the site.

4. *Safety and Security*. Safety and security are among the most important issues on which the Department and local governments. around the sites have focused. Currently, the Department uses overhead expenses from the large contractors to

pay for certain activities, including emergency response capabilities. The Department also considered subcontracting site security force activities directly to small businesses, which we now understand has been revoked. However, the idea that a small contractor with little experience needs to hire a large Prime Contractor in order to implement a small business set-aside contract does not make sense. If the Department hires multiple small businesses at a site, and the Department integrates the activities, who will pay for and conduct the emergency response actions? In addition, which one of the contractors will be responsible for implementing the emergency response activities, and if there are multiple contractors that are responsible for the same activity such as emergency response, how will they coordinate with responders that are outside the fence in the case of an emergency? All of these issues greatly impact not only the safety and security of the DOE site, but also the communities directly adjacent to the DOE site. At Hanford and Oak Ridge, DOE manages several Prime Contracts on the sites, and at both sites there have been challenges to DOE integration. In emergency response exercises there are multiple emergency response personnel with different ways of performing their jobs—how they communicate, react and work together impacts lives and the safety of my community. The same issues cut across environmental remediation, security, and performance of other jobs on-site.

5. *Support for Local Communities*. DOE's good Prime Contractors work closely with the local governments around the DOE facilities. These contractors provide an important interface between the Department and the local governments. In addition, many of these contractors support economic development activities and local organizations, such as schools and charities. In a May 6, 2004 letter the Department's Environmental Management program clearly stated to local governments that it will not assist the local governments with any of these activities in its contracting process and DOE does not believe that it should be assisting our communities through the contracting process, even though in most cases the local government has been instrumental in mediating disagreements between state regulators and DOE that would otherwise have prevented DOE from progressing with its cleanup. The good local Prime Contractors have filled this void and work with local governments by using their corporate resources to assist local communities and have ensured that close partnerships exist that support the local economy and fabric of our communities. Because of DOE's recent deletion of the requirement for contractors to work with local communities on economic issues, only one small business has indicated support for local government programs during its bid process. By switching to multiple small business contractors, we are concerned that this assistance will be lost which will impact the quality of life for DOE workers and other citizens living in our communities and may lead to a decrease in support for DOE's missions.

6. *Additional Costs*. The minimal number of small business contracts that the Department has put out for bid clearly indicates that although the Department believes it is hiring a small business contractor, the reality is that in order to perform this complicated work, small business contractors must retain large contractors in order to implement these activities. As a result, we are creating a small business contract face that subcontracts to the larger contractors who may have worked on the site and possess the experience and expertise to conduct the work which can increase administrative and other costs. Additionally, control and ultimate responsibility rest with the small contractor that may not have the experience, financial wherewithal or the ability to access corporate resources needed to address complicated issues that arise. Contracting with DOE is not simple, especially when a contractor needs to purchase surety bonds or environmental and other insurance products.

7. *Pension Plans*. The Prime Contractors provide pension plans, which are critical in ensuring that current workers are incentivized to remain working at the sites and that retired employees retain health and other benefits. Maintaining a pension plan is difficult and complicated and not likely something that a small business can take on at a site—either the small business contractor would need to hire a larger Primary Contractor to run the pension plan or DOE would need to hire a new outside contractor to run the pension plan.

8. *Change for the Sake of Change*. A significant concern for local governments is that at several sites, a contractor may be performing well but, since the Department has decided that it intends to break up several of the large contracts into smaller contracts, it does not consider past performance when deciding how to re-bid a contract. For example, at one site you may have a contractor who has performed well, hired an exemplary amount of small business contractors, and earned all of its incentives but then not be eligible to bid on a contract for an additional period. The message that it sends to contractors is to only look at the short-term and that regardless of performance the contractor may not be eligible to continue its work.

CONCLUSION

DOE's past small business contracting system worked. The system included incentives for Prime Contractors to hire small businesses and to work with local governments. DOE has told ECA that OMB wanted direct contracting with small businesses, so it is changing the way it does business. The concept of contracting highly technical, complicated large projects to small businesses that may not have the workforce or expertise unless they partner with large contractors is not sensible or efficient.

DOE should focus on using the best contracting methods to implement its mission. Use incentives at the sites for Prime Contractors to hire small qualified businesses where it makes sense. Breaking up large Prime Contracts has unintended consequences that negatively impact local communities (especially where the Department deletes any requirements to work with a local community), decreases management accountability, increases costs and potentially impacts safety and security at DOE sites. If DOE wants to promote small business contracting, additional incentives and requirements for the Prime Contractors in the contracts must be created.

That concludes my prepared remarks. I applaud your efforts to ensure that the Department of Energy utilizes the best tools available to implement its mission. It is an issue that is vital to the success of the DOE activities in my community and communities throughout the country. I will be happy to provide you with any additional information that you desire and I would be pleased to answer any questions that you may have.

The CHAIRMAN. Well, we don't start our vote until 11:15 so we have a little bit of time.

Let me say, sir, your discussion here about your community and the area surrounding it, and how devoted and dedicated you are to using the taxpayers' dollars prudently, let me suggest that through no fault of yours the taxpayers' dollars have been thrown at your problems like we had all the money in the world, and then some more.

We've had years and contracts where we have paid out our money and the achievement at the end of the time is nothing. Whatever millions we paid out you go in and say what happened? And the answer is: nothing, because we have had no agreement from the local communities as to goals that are going to be achieved, and when. And you know that.

In fact we are a money machine to about three areas in the country. And it is not to be fathomed by some of them that this is a job that's supposed to run out. You know that. That's not it, it is a job where we're going to be here forever, and the checks are going to paint these walls forever.

So anything that legitimately says we're going to spend less money I take very, very seriously. But I think the most serious one to save money is the current requirement by the Department of Energy that all clean-up sites sign an agreement as to the time table and achievable goals before they get the new allocation of substantial clean-up money.

Now I assume you know that you all have done that; isn't that right?

Mr. THOMPSON. The State of Washington certainly has in the tri-party agreement.

The CHAIRMAN. Is that current?

Mr. THOMPSON. It is. We are—you know, there may be a few lawsuits that are involved over that.

The CHAIRMAN. I mean, is that a very recent agreement?

Mr. THOMPSON. Oh, I think we've had that agreement in place for about the last 3 or 4 years, Senator. There is a question of interpretation in all contracts, and I think that you'll find that the

State of Washington is advocating rather strongly through its Attorney General, Ms. Gregour (phonetic), their position in regards to clean up and milestones.

The CHAIRMAN. Well I can tell you in the State of New Mexico, and Dr. Woodard knows about it, it didn't happen to her lab but it happened to Los Alamos, they had a very large $42 million dollar addition that was going to be paid to them for environmental clean up, and the State of New Mexico decided that they wouldn't sign an agreement as to goals and achievable time table. And as a matter of fact they didn't get the money until they did.

Now of course they claimed victory, but we got an agreement, where they wanted the money without it.

So I accept your concerns and your recommendations, but I just want you to know that we're fully aware that we've got to get on with the business of cleaning up, not with the business of having good agreements with subcontractors or general contractors, or whatever it is.

Let me move now to both Robin Nazzaro and Dr. Woodard, and any other of you that have an idea.

The DOE is asking a facility manager to manage small business doing the work they used to do. Testimony from both GAO and Sandia states that one action DOE is considering is to expand its small business prime contracting to identify an activity already subcontracted by a facility manager to a small business.

Two, to remove that activity from the facilities manager's contract.

Three, to enter into a prime contract with small business for the same service, and Four, then require that the facility management contractor to administer the activity that they just lost control of.

This strikes me as encouraging the same lack of accountability that led me and my colleagues to create a separate National Security Administration because we were disgusted with the lack of accountability that was rampant in the Department of Energy.

I don't know if you have a view, if my question was intelligible, or too long, but let's ask you first, Ms. Nazzaro.

Ms. NAZZARO. Mr. Chairman, this appears to us to be an example of where a good policy leads to a bad practice. The intent was to reduce the effects of more prime contracts, you know, as far as the limited resources that DOE has for oversight and management. We certainly share your concern about the potential lack of accountability, it will blur those lines of accountability and authority, definitely a step in the wrong direction for NNSA.

Both NNSA and the contractor at Sandia have used this on a limited basis and have raised concerns.

The CHAIRMAN. Dr. Woodard.

Dr. WOODARD. I share your concern too, Mr. Chairman.

In this particular case by transferring the contracts back to the facility manager you create significant problems with the accountability chain, and you separate the accountability and authority, or at least create confusion about accountability and authority in order to achieve the work in the contract successfully.

The CHAIRMAN. Councilman, have you got a comment?

Mr. THOMPSON. No, I agree.

The CHAIRMAN. Thank you very much, you're helping me along nicely.

How about Small Business Advocate, do you have something?

Ms. SULLIVAN. I guess I would just say that if I, you know, if I had 85 percent of the business I wouldn't want any changes either, and I would talk about how mine was the best way to achieve the way it's run.

I'm interested to hear that the reason given for not wanting to do things a little bit differently is the incompetence of the Department. I don't now that the small business law allows for that to be a criteria not to award contracts to small businesses.

The CHAIRMAN. That the DOE is incompetent?

Ms. SULLIVAN. Well, I mean that's what I'm hearing is don't give it to small businesses because DOE can't manage itself, it can't even manage the big guys so how can it manage small guys. And I'm just saying well, that's kind of an interesting—to me I don't believe the law allows that that's a reason not to subcontract or to contract.

The CHAIRMAN. Well it may be interesting for you, but it may also be true. Some of us believe it. I would have told that to the Deputy Secretary but he escaped already.

Let me talk to you, Dr. Woodard. I'm concerned about your point that the DOE could not possibly approach the 23 percent government-wide goal with its current business model, a government owned, government operated GOGO model. You and GAO noted that the DOE will have to break some of their facility M&O contracts into collections of smaller contracts.

Let me ask you, if DOE were to progressively break off pieces at Sandia under their M&O contract, and award them to different companies, presumably identified as small business, would there come a point when Lockheed Martin could reasonably say we can't manage this way, this isn't worth it? The risk is too high, we're no longer interested in being an M&O contractor?

Dr. WOODARD. Mr. Chairman, I think the likelihood of them walking away is small, but real. More likely in future competitions for the M&O contracts at these facilities the caliber of corporations like Lockheed Martin, and our top research universities, would think again about the risks and the liabilities they make be taking on.

The CHAIRMAN. I think that's a good observation. And we're coming up with one soon.

You suggest in your statement that federally funded research and development centers, as you remember you called those FFRDCs, like Sandia National Laboratories, have unique relationship with the Government, and an exception to the small business policy should be made for them because of this close relationship.

In my own experience I know that labs like Sandia are performing functions that are sometimes described as inherently governmental. In your view what makes an FFRDC closer or more special to a Federal agency than Federal contractors?

Dr. WOODARD. In the Federal acquisition regulation that describes these federally funded research and development centers it talks about the special relationship and the establishment of these centers to address a special research and development need of that

agency. The FFRDC, if I might use that acronym, acts as if it owns in fact the mission of that agency, the agency entrusts to the FFRDC special access to data and information to government facilities, and to employees. So there is very much of a special relationship and a sense of ownership of the mission by the FFRDC.

The CHAIRMAN. This is my last question and I'll submit some for you in writing. This can be either—I guess it would be Ms. Nazzaro; can DOE reach the 23 percent? Your testimony makes it clear that having a long term goal directing 23 percent of DOE's contracting base the small business prime contracts would be a very challenging thing for DOE to do.

That might be putting it mildly.

Why is it so difficult for DOE to expand its prime contracting with small business?

Ms. NAZZARO. To reach this goal would require a significant redirection of the dollars to the small businesses. DOE is limited to a degree to the extent to which it can tap into these dollars as they come up for award, or renewal.

DOE's programs also, as we mentioned, disagree on whether they can ever really reach a goal, particularly of 23 percent, and how much of those dollars can be redirected.

Neither NNSA nor the program offices that we talk to could provide us an estimate of what was reasonable, or what they could attain. While we said EM is a little more optimistic they do plan to proceed cautiously toward this goal. And NNSA and Science said they will never be able to reach the 23 percent goal, and while performing their mission safely and securely this would not be an option.

The CHAIRMAN. Do you agree with that? Do either of you have an opinion on that?

Ms. SULLIVAN. Well the DOE negotiated that 20-year plan with the SBA, so clearly there are people on both sides who think they can reach it.

The CHAIRMAN. Okay. I want to thank all of you, I will submit some questions to each of you, and we had a very full day, but we didn't know we were going to. So we set you up when I'm in the middle of five other things, and most Senators are. But I think we made our point, and I think the DOE understands that we are concerned, and they certainly should know that we're not trying to force upon them a policy that we dream up, but we think some of the things they're recommending are not very practical and will probably have a negative impact on small business and the laboratories, which I don't think any of us here want to see, and certainly most Senators don't want.

We stand in recess.

[Whereupon, at 11:15 a.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

DEPARTMENT OF ENERGY,
CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, August 23, 2004.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.On May 18, 2004, Kyle McSlarrow, Deputy Secretary, testified regarding the implications of a recent change in reporting of small business contracts by the Department of Energy.

Enclosed are the answers to 14 questions that were submitted by Senators Bingaman, Thomas, and Bunning for the hearing record. The one remaining answer is being prepared and will be forwarded to you as soon as possible.

If we can be of further assistance, please have your staff contact our Congressional Hearing Coordinator, Lillian Owen, at (202) 586-2031.

Sincerely,

RICK A. DEARBORN,
Assistant Secretary.

[Enclosures.]

QUESTIONS FROM SENATOR BINGAMAN

Question 1. In order to meet the 23 percent small business prime contracting goal, DOE would need to separate out some of the small business subcontracts awarded by M&O contractors and award them as prime contracts. However, your testimony states that the "Department is evaluating whether and to what extent doing so would entail certain risks and concerns, especially with regard to program coherence and integrity . . ." It seems to me that the outcome of this evaluation is essential to determining what DOE can actually achieve. Can you tell us when this evaluation will be complete?

Answer. The evaluations are being completed on a case-by-case basis as the M&O contracts come up for bid. The Department has commissioned studies that will assist in identifying the work that would potentially be broken out given the nature of the work. These studies are to identify "critical services" that are integrated and cannot be broken out from those "supportive services" that can be broken out. The individual program office responsible for the M&O contract is the office that will determine which portion of the work could be redirected without jeopardizing "program coherence and integrity." There is not a department-wide determination for what could/will be broken out of the individual M&O contracts.

Question 2. GAO's report states that DOE has "no strategy in place that defines how DOE will achieve (the 23 percent) goal, identifies what the contributions of the various DOE organizational components will be, or reconciles the differing views within DOE as to what would be an appropriate level . . ." Would you agree that more work needs to be done at DOE to determine whether the 23 percent goal is achievable-the evaluation of M&O contracts needs to be completed, the determination of an achievable goal, and further detailing of a Plan of Action that would have proper support within the Department?

Answer. DOE agrees that, should there be a requirement that DOE achieve a 23 percent goal, more work will need to be done to determine whether the 23 percent goal is achievable. In FY 2003, based on a request from SBA (during the negotia-

tions for the FY 2003 goal) as to when DOE might possibly achieve a 23 percent goal, DOE submitted a 20-year plan to SBA.

Currently DOE has a 5.06 percent goal for FY 2004 and FY 2005. That goal was negotiated with SBA pursuant to Section 15(g) of the Small Business Act that allows each Agency to "establish realistic goals for the award of the contracts to small business." DOE does not currently have a 23 percent goal and may never have a 23 percent goal. DOE establishes its annual small business goals based on the identification of new contracting opportunities, extensive small business outreach, development of a customized small business database, and past performance by each of the offices within DOE. Under this approach, we have been taking realistic steps in increasing our small business prime contract goals from 3.7 percent in FY 2002 and 4.6 percent in FY 2003, to 5.06 percent for FY 2004 and FY 2005 and will continue to do so.

One of the ways in which we are identifying new contracting opportunities is through the conduct of studies of all the M&O contracts for the ability to break out work for small business. Such studies are conducted prior to the award of any new contract and are provided to the office in charge of that M&O contract for their determination as to what portion of the work (if any) they will pull out for direct contracting with small business.

Question 3. If it becomes clear that DOE cannot achieve the 23 percent goal without unacceptable risks and unintended consequences, do you think the applicability of this goal to DOE should be changed, or should it just be accepted that it is a performance "goal" and not a mandate?

Answer. The 23 percent goal is a government-wide goal. Agency goals and government-wide goals are not necessarily identical. The Small Business Act states "Notwithstanding the government-wide goal, each agency shall have an annual goal that presents, for that agency, the maximum practical opportunity for small business concerns . . ." *(15 U.S.C. 644 Section 15(g)(1))*. The DOE goal for FY 2004 and FY 2005 is 5.06%. DOE should never find itself in the position of having a mandate that has "unacceptable risks and unintended consequences"—but, rather a goal established in consultation with SBA given the Department's procurement needs.

Question 4. GAO has said that DOE would need to increase its small business contracting by about six fold (4 percent to 23 percent) in order to meet the goal. Do you have an estimate of how much DOE's staff and budget would need to be increased in order to handle the additional contract processing and management, and whether the savings from the avoided M&O contractor profit and overhead costs would yield a net savings to DOE?

Answer. The Department has not performed the analysis needed to estimate potential savings.

QUESTIONS FROM SENATOR THOMAS

Question 1. How does DOE ensure that Maintenance & Operations (M&O) contractors comply with their subcontract plans?

Answer. Every M&O contract contains a clause based on the Federal Acquisition Regulation (FAR) 52.219.9, for "Small, Small Disadvantaged and Women Owned Small Business Subcontracting Plans". All subcontract plans are made a material part of each contract.

Additionally, Contracting Officers, in consultation with Small Business Program Managers, are required to meet periodically with directors of contractor purchasing to review the status of the contractor's performance against its small business subcontracting plan. (DOE Acquisition Letter 2004-03)

This year the U.S. Small Business Administration (SBA) advised DOE that it would Conduct "surveillance reviews" on two of its facilities: the Los Alamos National Laboratory and the Richland Operations Office. DOE is cooperating with SBA in these reviews which are scheduled to determine if the buying activity made every reasonable effort to maximize contract opportunities for small business concerns. Since these facilities are operated by prime contractors, the review will basically address their subcontracting efforts.

Finally, the DOE Office of Small and Disadvantaged Business Utilization (OSDBU) this year initiated a pilot subcontract review process of several M&O contractors. Notice of the study and the application of the SBA negotiated small business subcontract goals was provided to all departmental elements and contracting activities (Exhibit A—2 memos dated 12/17/03 and 1 memo dated 12/19/03).

The subcontracting review process itself will consist of (1) determining whether the subcontracting plan meets the requirements of the FAR, (2) whether the subcontracting reports submitted by the M&O contractors are in compliance with their subcontracting plans and (3) whether the M&O contractors have the required files

to back up reported small business awards. (Exhibit B—Evaluation Review Form and Exhibit C—Subcontracting Plan Checklist). Compliance with subcontracting plans/goals will be used as an evaluation factor in future RFPs for work at DOE.

Question 2. Have liquidated damages ever been imposed on non-compliant M&O contractors? If not, why not?

A2. The Department has never found any of its M&O contractors to have willfully or intentionally failed to carry out the provisions of their subcontract plans, nor has the Department found any such contractor to be taking any action to willfully or intentionally frustrate its subcontracting plan. Therefore, no liquidated damages have been imposed on an M&O contractor under FAR 52.219.16—Liquidated Damages—Subcontractor Plan.

Question 3. Does DOE participate in the Small Business Competitiveness Demonstration Program?

Answer. Yes. The Department has participated in this small business set aside program since its inception in 1999. Every year the Department reviews the list of Designated Industry Groups (DIGS) identified by the Small Business Administration for participation in the program and if/when 40% of the obligations in a specific DIG is awarded to Small Business, we remove the set aside requirement.

Question 4. If DOE is allowed to count prime and subcontracts toward a single overall goal, how would DOE ensure that small businesses obtain prime contracts where appropriate?

Answer. The DOE has an aggressive outreach program to ensure that small business become aware of contracting opportunities available at DOE. This process includes one-on-one counseling sessions, meetings between small business and program/procurement representatives, establishment of a small business database available to all program/procurement staff to help identify small business in whatever field of work they are seeking goods and/or services, establishment of a Forecast of Contracting Opportunities updated semi-annually, participation in workshops and conferences targeted to small business such as the SBA Matchmaker Missions and conduct of an Annual DOE Small Business conference that attracts between one and two thousand attendees every year. DOE will continue with this outreach effort.

Question 5. Why is DOE different than DOD with its large sophisticated contracts, yet it is able to meet (or come close) to its 23% prime contract goal?

Answer. DOE has a unique structure whereby its facilities and laboratories have been, for over fifty years, operated through management and operations (M&O) contracts with the private sector, rather than federal employees. These contracts have traditionally been executed with large corporate entities or universities. This process has resulted in very large, complex and long term contracts that have not been accessible by small business. These M&O contractors currently receive between 85 percent and 90 percent of DOE's procurement dollars leaving approximately 10 percent potentially available to all other firms (large and small). DOE would need to change or modify its approach to contracting in order to meet (or come close to meeting) the 23 percent goal established by Congress as a small business goal for all procurement dollars awarded government-wide.

The 23 percent goal does not (necessarily) apply to each department but is required in statute as a government-wide goal. The SBA has been given authority to establish individual goals with each agency/department of the Government based on Section 15(g) of the Small Business Act that requires that each agency "establish realistic goals for the award of contracts to small business" and that the head of each Federal agency make consistent efforts to annually expand participation by small business concerns.

The Department of Energy has negotiated a 5.06 percent goal with the SBA for FY 2004 and FY 2005.

QUESTIONS FROM SENATOR BUNNING

Question 1. The Department of Energy introduced the "Rocky Flats" model as the way to achieve successful accelerated site cleanup. This model seems to be working. However, after concurrence by many states, including Kentucky, to support this approach, DOE has now decided to use small business contracts at DOE sites to achieve this accelerated cleanup.

Why has the DOE chosen to do this and move away from large business contacts? Will this affect any of the accelerated cleanup plans at Paducah? What effects will adding a small business prime contract to Paducah have on the pace of the cleanup work already underway?

Answer. The "Rocky Flats" model is a cost-plus-incentive-fee (CPIF) contract with a clearly defined scope of work and end states for the project. The contractor can

earn fee by safely completing the full scope of work, with additional cost and schedule incentives, and penalties, based on performance. At more and more of our Environmental Management sites, where we can clearly define the scope of work and articulate the end state condition of the site, or a project, we believe the CPIF model can be applied. However, this model is not limited strictly to large businesses or large contracts. Recent responses to competitive small business set-aside solicitations indicate that small businesses, as well as large businesses, can provide more cost-effective and efficient cleanup by using the CPIF model. It is not our intention to slow the pace of cleanup underway at Paducah, or any other EM site. We believe the CPIF contract model, when applied correctly, can impart significant cost and schedule benefits for the EM cleanup program.

Question 2. Why does the DOE believe that Paducah is a good site to test using a small business contract for a large cleanup project?

Answer. We successfully awarded small business contracts for the Columbus Cleanup Project and for the construction of a Glass Waste Storage Building at Savannah River. Additionally, we are completing evaluations of a small business contract for the Fast Flux Test Facility cleanup work at Hanford, the environmental remediation of the Portsmouth site, and laboratory services at Hanford. We believe Paducah has similar attributes to these work sites for a small business contract.

As you probably are aware, the Paducah site has two small business set-side competitive procurements under evaluation by the Department. The Site Services and Infrastructure contract is a cost-plus-award fee contract that provides the necessary infrastructure to support the ongoing cleanup mission. The Environmental Remediation contract will be a cost-plus-incentive-fee contract with cost and schedule incentives to complete the cleanup work at Paducah safely.

Question 3. In order to meet SBA requirements, DOE is allowing for small businesses to bid on large contracts. In many cases, these small businesses in turn need to partner with a large business in order to do the necessary work. Do you think this translates into meaningful small business participation compared to the same number of small businesses working as a subcontractor of the larger project?

Answer. We believe this approach does translate to meaningful small business participation. The small business is accountable as the prime contractor and is provided the stimulus to expand its capabilities and experience in DOE cleanup activities. Under previous DOE contracts, goals had been set for small business participation, which may or may not be accomplished through the execution period of the contract. We believe having the set-asides will ensure meaningful small business participation.

Question 4. It is my understanding that Bechtel Jacobs has been asked to continue to handle the pensions for the Paducah plant because there is concern that a small business would not be able to handle them. Do you foresee the small business that wins the Paducah cleanup to eventually takeover the pensions at the plant?

Answer. At this point, we do not anticipate that the successful small business contractor would take over the pension plan. The successful small business contractor will become a co-sponsor and participant in the plan administered by Bechtel Jacobs. Bechtel Jacobs will remain the prime sponsor of the plan.

Question 5. What mechanisms will DOE put in place in either the Lexington office or assign to particular contractors to assure there is an "integrator" to manage workforce transition between the various prime contractors and subcontractors at Paducah and Portsmouth in order to minimize employment disruptions and assure seamless benefits arrangement?

Answer. The Lexington Office will be responsible for contract administration and oversight of all four infrastructure and environmental remediation contracts at Portsmouth and Paducah. The Lexington office will closely coordinate the transition of the current Bechtel Jacobs Company (BJC) contract to the new contractors as well as the Oak Ridge Operations Office with DOE Headquarters providing whatever assistance is needed to facilitate the transition. The Department understands the unique nature of this transition and is already working with the incumbent contractor (BJC) to plan the transition. Although many issues will be dealt with as part of the transition, our goal is to make it as seamless as possible for the workforce and project performance.

DEPARTMENT OF ENERGY,
CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, September 16, 2004.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On May 18, 2004, Kyle McSlarrow, Deputy Secretary, testified regarding the implications of a recent change in reporting of small business contracts by the Department of Energy. On August 23, 2004, we sent you the answers to 14 questions for this hearing.

Enclosed is the answer to the one remaining question that was submitted by Senator Bingaman for the hearing record.

If we can be of further assistance, please have your staff contact our Congressional Hearing Coordinator, Lillian Owen, at (202) 586-2031.

Sincerely,

RICK A. DEARBORN,
Assistant Secretary.

[Enclosure.]

QUESTION FROM SENATOR JEFF BINGAMAN

Question 5. Dr. Woodward has suggested that the pre-2000 policy of counting subcontracts as prime contracts should be allowed in the case of Federally Funded Research and Development Centers (FFRDCs). What is your reaction to this suggestion? How much of DOE's funding currently goes to FFRDCs, and what total value of subcontracts would be allowed to be counted as prime contracts if this policy were adopted?

Answer. The Department is currently counting its subcontracts based on the direction given it by SBA and the Office of the Federal Procurement Policy in FY 99. That directive requires that all subcontracting achievements be reported as subcontracts, not as prime contracts. On several occasions, the Department has taken the position that it will continue its compliance with such directives. On two separate occasions, Secretary Abraham has informed Senator Christopher Bond that he remains committed to "directed changes in the methodology used for reporting our small business goals and achievements" and that he has directed that, as the M&O contracts came up for renewal or recompete, "they receive a focused review for any potential small business prime contracting opportunities." Unless the OFPP and SBA make changes in the methodology for goaling and counting small business achievements, DOE will continue to count its subcontracts as subcontracts and its prime contracts as prime contracts "like all other federal agencies".

In FY 2003, DOE obligated $10.1 billion to the 15 FFRDCs sponsored by DOE. In that same fiscal year, these FFRDC's subcontracted $2.9 billion, of which $1.4 billion was awarded to small business.

WOMEN IMPACTING PUBLIC POLICY,
Washington, DC, July 15, 2004.

Hon. PETE DOMENICI,
Chairman, Senate Energy and Natural resources Committee, U.S. Senate, Washington, DC.

DEAR SENATOR DOMENICI: Thank you for giving us the opportunity to testify before your Committee on reporting of small business contracts.

Attached are responses to questions submitted for the record.

Sincerely,

ANN SULLIVAN,
Federal Legislative Consultant.

[Enclosures.]

QUESTIONS FROM SENATOR BINGAMAN

Question 1. Do you believe that DOE can achieve the 23 percent goal as set forth in their Plan of Action?

Answer. WIPP has to believe that the DOE will do what it says it can do. They laid out a 20 year plan to achieve their small business goals and small businesses and the Congress should hold them to their commitment to reach small business goals.

Question 2. If it becomes clear that DOE can't meet this goal, do you think it's applicability to DOE should be changed, or should it just be accepted that this is a goal, not a mandate?

Answer. As this Committee knows, Congress sets the small business goals. We do not believe that agencies should receive different goals based on their past performance. For example, HUD will far exceed its goal of 23% this year. If DOE or any other agency is exempted from its goal of 23% due to failure to meet it, HUD would have no incentive to continue its good work in exceeding its small business goals. The contracting system DOE has used for many years is heavily weighted against working directly with small businesses. We believe what needs to be changed is the way DOE does business with small businesses, rather than a change in how it counts its small business numbers.

Question 3. Do you agree with the statement by GAO that shifting M&O small business subcontracts to DOE prime small business contracts will have the effect of shifting contracts away from local and regional small businesses?

Answer. Based on the feedback from our membership, shifting to prime contracts rather than as subs, will have the opposite effect. Larger contracts mean more local presence, since a rule of doing business with the government is having a presence close to its facility. Certainly that is the case with large businesses-if they have a sizable contract, key personnel servicing the contract will be located close to the facility. Small businesses of any size follow the same principle of business. Although we do not claim to be familiar with the terms of the subcontracting plans by the labs, we are not aware of any current subcontracting plan that requires all small businesses who subcontract to the labs are limited to local and regional businesses.

RESPONSES OF DR. JOAN B. WOODARD TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. You state that DOE's practice of breaking out elements of existing M&O contracts in order to provide prime small business contracts "may ultimately destroy the existing accountability structure that holds a single integrating M&O contractor responsible." Do you think that DOE, with a 5 percent target for prime small business contracting next year, is already near the point of destroying the accountability structure, or do you believe that significant opportunities still exist to expand prime small business contracting?

Answer. My statement cautioned that the practice of breaking out requirements from existing facility management contracts in order to provide small-business prime contracting opportunities for DOE could ultimately destroy the existing accountability structure that holds a single integrating M&O contractor responsible. We are not at that point yet. However, it is my opinion that an erosion of accountability has already begun and will accelerate if DOE progressively breaks out more requirements from M&O contracts and awards pieces of operational responsibility to multiple small-business contractors.

DOE's target for small business prime contracts of 5 percent next year may seem insignificant. However, the GAO testimony points out that DOE has a plan for ramping up to 23 percent over 20 years. Even today, DOE is scrambling to achieve its 5 percent goal by removing procurements from the M&O contractors and letting the contracts themselves in order to get credit for the 5 percent goal. The result is that the Department is merely awarding small business contracts that the M&O contractor was already planning to award to small business. Small businesses are not benefiting from this approach.

The M&O contractors are already doing their best to maximize small business opportunities, so it is doubtful that DOE would be successful in increasing small business contract awards above what the M&O managers are already achieving (in excess of 50 percent). I do not believe that significant opportunities exist for breaking out requirements from the M&O contracts without eroding, damaging, and ultimately destroying the accountability structure.

Question 2. Do you agree with the statement by GAO that shifting M&O small business subcontracts to DOE prime small business contracts will have the effect of shifting contracts away from local and regional small businesses and, if so, can you estimate this impact for Sandia?

Answer. We agree with GAO's statement that "DOE's efforts to increase small business prime contracting may cause its facility management contractors to reduce the amount of subcontracting that they direct to local and regional small businesses." Whereas M&O contractors can restrict competition to the local small business community, DOE is required to competitively bid requirements on a nationwide basis.

There is evidence that the rate of participation in government contracts by local small businesses would decline. For example, in fiscal year 2003, 32 percent of Sandia's total contract payments were paid to New Mexico businesses. However, contract payments made by procurement card purchases (which allow an employee to buy small items directly) resulted in only 22 percent New Mexico participation. Based on our experience with procurement card purchases, approximately one-half of the purchases that would normally be placed in the local or regional area have been placed nationally. If this factor were to hold true for small business contracts placed directly by DOE, then the loss experienced by the local small business community would be approximately one-half of the value of DOE-awarded contracts. In fiscal year 2003, Sandia's contract commitments with local small businesses totaled almost $300 million. If DOE took over contracting responsibility for half of that, the local small business community could perhaps lose about $75 million per year, assuming the small-business loss rate experienced with procurement cards holds true for DOE contract awards.

APPENDIX II

Additional Material Submitted for the Record

SMALL ENVIRONMENTAL BUSINESS ACTION COALITION,
Washington, DC, June 1, 2004.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Re: SEBAC Response to Verbal Testimony at the Senate Energy and Natural Resources Committee Hearing on DOE Small Business Contracting, May 18, 2004

DEAR SENATOR DOMENICI: The Small Environmental Business Action Coalition (SEBAC) is the premier industry representative for small businesses performing environmental remediation and waste management services for the DOE and other federal agencies. SEBAC membership includes Small, Small Disadvantaged, 8(a), Women-Owned, Veteran-Owned, HubZone and Native American-Owned businesses that perform environmental investigations, design, engineering, remediation, operations and maintenance, and ordnance and explosives work with federal agencies. We truly represent the interests of all types and sizes of small businesses in the environmental industry. SEBAC is concerned with the potential ramifications of the testimony given at the Senate Energy and Natural Resources Committee May 18, 2004 hearing concerning the Department of Energy's (DOE) small business contracting practices.

SEBAC believes that the Committee seeks to support small business while ensuring safe and successful execution of the DOE mission. However, SEBAC is very concerned that small business views were inadequately represented during the hearing. The testimony had a bias in favor of large business, and the Committee appeared to conclude that DOE contracts with small business endangered national safety and security and that only large business could perform virtually all of DOE contracts. The Committee appeared to plan on recommending that subcontracts to small business from DOE's large business contractors be counted toward DOE's small business subcontracting goal.

This apparent recommendation has the potential to be extremely detrimental to small business. DOE has only started a meaningful small business program in the past year after years of contracting only two or three percent to small business as opposed to the government's 23 percent goal. The Committee and any other parties having influence over the Committee's recommendation must hear balanced views on the issues affecting DOE subcontracting to small business.

SEBAC has attempted to provide such a balanced view. SEBAC prepared written testimony (attached) which was requested by the Committee, but was denied the opportunity to testify verbally. SEBAC requests an opportunity to discuss its views and provide the Committee with a clearer understanding of the situation.

Both the DOE and DOE's large business contractors are major customers for our members. SEBAC's membership is comprised of many companies that participated in DOE's small business set-aside contracts, including the awardee on the most recent small business environmental management contract award, the Columbus Closure Project. Therefore, SEBAC members have an in depth of knowledge of both the DOE and its large business contractors' small business contracting practices. There are very substantial differences in small business contracting directly to DOE rather than to DOE's large business prime contractors.

SEBAC believes that the testimony of all parties missed the point of what DOE is doing with small business contracting and subcontracting. DOE, SBA and the small business community have never recommended any actions that would compromise the safety, security or mission of DOE facilities. DOE has taken a common sense approach to small business contracting with input-and support of both small and large businesses. DOE is implementing a plan to achieve a modest goal of five

percent of all prime contract dollars awarded to small businesses, combined with a more robust small business subcontracting requirement for its large prime contractors. The 2004 and 2205 goal of 5 percent is eminently achievable, and increasing that goal in future years is not only possible, but beneficial to DOE and taxpayers. For virtually all small business prime contracts, DOE has identified appropriate opportunities and has conducted sources sought evaluations. Technical and management experts in DOE reviewed small businesses' responses to the sources sought to insure that small businesses could perform. The evaluation was conducted prior to any determination that small business set-asides were appropriate. Some of DOE's largest contractors supported small businesses in these sources sought and resulting proposal efforts. The Paducah Environmental Restoration Project is among the contracts for which sources sought were completed and large businesses aggressively sought to team with small businesses. DOE reportedly is very pleased with the proposals and performance results to date.

DOE has correctly judged that small business has strong capabilities in environmental management as a result of small business having had substantial prime contracting experience with DOD agencies. If DOD had limited small business to a subcontractor role, this capability never would have developed. DOE Office of Environmental Management (DOE EM) sees that small business can be a valuable tool in continuing its push for performance improvement and positive cultural change within DOE. Congress should support DOE EM's efforts as a part of a common sense approach to small business prime contracting that maximizes appropriately selected small business prime contracts complimented by a larger role for small business subcontracts.

We address below, some of the specific misconceptions discussed at the hearing:

1. *DOE cannot reach the federal government's 23 percent goal*—DOE's goal for 2004 and 2005 is approximately five percent. The goal is reviewed and negotiated annually between DOE and the SBA. The goal is not 23 percent. The 23 percent goal is government wide and is not the issue. The issue is five percent and whatever increases can be achieved in the future. DOE is doing what makes sense: identifying areas in which small businesses are strong and can perform as prime contractors without compromising DOE's mission. DOE may not be able to reach 23 percent, but it must continue to appropriately increase small business prime contracting for the reasons outlined in SEBAC's original testimony. These include the increase in competition with resulting benefit to DOE and the taxpayer, and the government's mandate to support the development of small business. It is evident that five percent is an extremely modest goal, and it is hard to believe that there is opposition to a five percent goal.

2. *Small business prime contracts threaten safety, security, mission performance and cost control*—DOE has appropriately identified small business opportunities which do not compromise these areas. DOE has not broken up any M&O contracts in a way that degrades the ability of the M&Os to perform critical functions. DOE has sought contracts that can be separated from the M&O contracts in accordance with government policy on—bundling and has identified environmental restoration at closing facilities (or at closing parts of operating facilities) as a primary target for small business contracting.

3. *Small businesses prefer to work for the DOE large business prime contractors as opposed to working for DOE*—Nothing could be further from the truth. Perhaps Sandia does a fine job, but many others operate in a way that appears oriented to causing small businesses to go out of business. DOE's large business contractors take advantage of small business to mitigate risk and enhance their own profits. Large businesses use many forms of coercion to injure small business subcontractors as outlined in SEBAC's original testimony. DOE follows the Federal Acquisition Regulations and could not and would not behave in the manner of many of its large business contractors.

4. *Small business subcontracts will be reduced as a result of the increase in prime contracts*—This is not DOE's plan. SEBAC's understanding is that DOE intends to increase the small business subcontracting requirements for its large business contractors. SEBAC has recommended further improvements such as giving preference to teams comprised of all small businesses and setting dollar rather than percentage subcontract goals.

5. *DOE's small business contracting plans will dilute the market for local companies at DOE sites*—The DOE market is inherently a local market for both large and small businesses. DOE's sites are remote and require local offices, local hires and local expenditure of salaries to support the local economy. Large business has the same issues as small business in this regard, except for the fact that small businesses are more likely to use their local offices supporting DOE to grow their com-

panies. For large businesses, these DOE site offices are stand-alone offices performing only the DOE contract. For small business, the DOE site offices represent a substantial percentage of their business and capability. Small businesses have to work to grow and diversify these offices on other projects to support the company's growth.

6. *DOE cannot manage the increased number of small business contracts*—SEBAC recognizes that this is a concern; however, DOE EM has taken very impressive steps to solve this by creating an EM-focused acquisition management group. This can be funded by the money DOE will save by eliminating the exorbitant G&A markup that its M&Os charge on top of their subcontracts. Also, the example of Pit 9 was raised by Senator Domenici as an example of a DOE management problem. When the approach to Pit 9 was proposed, a small business which reviewed the plans for DOE-ID found significant flaws in the approach, design, and cost estimate. DOE chose to push the project forward with its large business contractor against the advice of the small business. Perhaps if DOE had listened to the small business, the Pit 9 fiasco could have been avoided.

7. *Small business may increase competitiveness*—This issue was glossed over in the hearing, but it is very significant. DOE typically gets three or fewer proposals in response to its unrestricted contracts. Tens of billions of dollars are awarded on limited competition. The market is controlled to a large extent by three companies. (And the management focus of these companies has shifted from DOE to Iraq.) On small business procurements, DOE has seen increased competition. All small business RFPs have had at least five responses, with the Nationwide EM contract reportedly receiving approximately 90 proposals.

8. *DOE plans to novate contracts to M&O contractors*—This had been discussed as a possibility, but SEBAC is unaware that it has become DOE policy. If it is DOE policy, SEBAC agrees with testimony that it could impair accountability for M&O contractors. However, if DOE continues to choose non-mission critical work for small business primes, this will not be an issue.

9. *Small business cannot handle the retirement and benefits issues*—Again, the important issue is for DOE to select appropriate small business contracts. Even with large business on closure contracts such as the Mound Closure Contract, DOE has taken the responsibility for workers not retained by the winning bidder.

10. *DOE's plan benefits only the larger small businesses*—Since DOE plans to award prime contracts and increase subcontracts, the opportunities will grow for all small businesses. The smaller businesses can also find competitive teaming arrangements with other small business. SEBAC members frequently team for proposals and contracts. Again, SEBAC recommends that preference be given to teams comprised of all small business, thereby increasing opportunities for all types of small business.

11. *DOE prime contracts with small businesses will increase costs to the taxpayer*—DOE has already seen substantial savings by small business contracting. The Columbus Closure Project was awarded for approximately 60 percent of the government estimate after nine proposals were received from small business. Other EM small business contracts have allowed DOE to avoid as much as 40 percent in G&A charges that would have been added to the work by an M&O. Also, the small business subcontractors do not recreate and duplicate the federal bureaucracy on a cost-plus basis on their contracts.

In summary, SEBAC believes that DOE has embarked on a very productive and sensible approach to small business contracting. DOE has done a fine job of increasing small business contracting while saving money and improving performance. SEBAC believes that we can help explain this situation to the Committee and to Congress in a balanced way that has not been previously presented. We request the opportunity to meet with you to discuss this matter.

Very truly yours,

PAMELA J. MAZZA,
General Counsel.

[Enclosure.]

STATEMENT OF THE SMALL ENVIRONMENTAL BUSINESS ACTION COALITION

This statement is being submitted for the Committee hearing record on behalf of the members of the Small Environmental Business Action Coalition ("SEBAC").

SEBAC is the premier industry representative for small businesses performing environmental remediation and waste management services for the Department of Energy (DOE or "the Department") and other federal agencies.

SEBAC membership includes Small, Small Disadvantaged, 8(a), Women-Owned, Veteran-Owned, HubZone and Native American-Owned businesses that perform environmental investigations, design, engineering, remediation, operations and maintenance, and ordnance and explosives work with federal agencies. We truly represent the interests of all types and sizes of small businesses in the environmental industry. Both the DOE and the Department's large business contractors are major customers for our members. SEBAC members have an intimate knowledge of both the DOE and its large business contractors' small business contracting practices. We also understand that there are very substantial differences in small business contracting for the Department as opposed to its contractors. SEBAC's membership is comprised of many companies that participated in the Department's small business set-aside contracts, including the awardee on the most recent small business environmental management contract award, the Columbus Closure Project.

I. INTRODUCTION

SEBAC's position on DOE small business subcontracting is that the DOE market currently has an appropriate mix of direct small business contracts with DOE and small business subcontracts with DOE's large business contractors. SEBAC supports DOE's plans to increase small business opportunities under both direct contracts and subcontracts. DOE's expansion of small business contracting has had, and will continue to have, a beneficial effect on DOE and taxpayers. Any recommendations to limit DOE direct contracting will have a detrimental effect on DOE, taxpayers and small business, while potentially limiting competition for billions of dollars in DOE contracts to only a few very large companies. For these reasons and the reasons set forth below, SEBAC strongly disagrees with proposals to limit DOE direct contracting to small businesses.

The federal government's goal is to issue small business prime contract awards equal to 23% of federal contracting dollars. However, the DOE has continuously fallen well below that goal with direct contracts only reaching approximately:

- 3% in FY 2001
- 3.7% in FY 2002
- 3.7% in FY 2003
- 5% in FY 2004 (goal)
- 5% in FY 2005 (goal)

Despite this disappointing track record, DOE has shown some improvement in its direct contracting to small businesses. In FY 2003 and FY 2004 DOE has made significant strides in small business contracting, as discussed more fully below.

The federal government's mission is to encourage, promote, and foster the U.S. marketplace and remove barriers that impede capitalism. This is the reason for the government's emphasis on small business contracting. Our country's history demonstrates that, in many instances, in order to ensure our marketplace does not convert into a monopoly or oligopoly, regulations and rules are required to keep capitalism and competition alive. Consequently, the bundling of federal contracts and the past preference for large business contractors by DOE has had a consolidation effect. Therefore, it is the obligation of the government to maximize capitalism, stimulate competition, and allow small businesses to flourish in order to ensure pricing of services, quality, and execution are provided to the federal government by all contractors, regardless of size. DOE should continue to make progress in its small business contracting practices.

Some large businesses and small businesses contend that DOE's approach to small business subcontracting benefits a few small business contractors while excluding others and limiting the market for most small businesses. They believe that DOE's direct small business contracting plans will detract from the small business subcontracting available from large businesses. In fact, SEBAC understands that the opposite is the case. We understand that DOE seeks not only to increase direct small business contracting, but also to require more and higher quality subcontract opportunities. SEBAC, as a representative of all sizes of small business, believes that the DOE market has been moving in a healthy direction in which significant prime contracting opportunities exist along with the potential to increase subcontracting opportunities to DOE's large business contractors.

SEBAC provides below a more detailed discussion of its position and makes recommendations to improve the system for DOE, the taxpayers, and small businesses working as prime or subcontractors. The large businesses that work productively with small business will be unaffected by the adoption of SEBAC's recommendations.

II. DISCUSSION

DOE Improvement in Small Business Contracting

In FY 2003 and 2004 DOE has made great strides in increasing its small business participation, specifically through 2003-2004 small business set asides competed within the past year under NAICS 562910, Environmental Remediation. Congratulations are in order for those who have sought to break with old habits.

Specifically, DOE Environmental Management ("EM") has improved the numbers of competitive small business contracts in the past year with several very large small business contracts. The first step was to request a Sources Sought from interested small businesses to ascertain if they have the technical capability to perform the work. Under the Rule of Two, after reviewing the results of the Sources Sought, if DOE determines there are at least two credible small businesses, then the procurement is set-aside for small business. On each of the following, DOE should be proud of its accomplishment in following the Small Business Administration ("SBA") guidelines and the Rule of Two:

- Columbus Closure Project, Reactor D&D;
- Fast Flux Test Facility (FFTF);
- Portsmouth Environmental Remediation;
- Paducah Environmental Remediation;
- National Environmental Remediation and D&D Contracts.

DOE has correctly identified EM as an area in which there is substantial small business capability that can improve EM performance as well as help to expand DOE small business subcontracting. DOE has performed sources sought announcements on several large procurements and potential procurements that have demonstrated to DOE that small businesses have the capability to perform the contracts to be set-aside. SEBAC and the media have learned that DOE is extremely satisfied with the level of competition and the quality of proposals received from small businesses.

In addition, EM and Office of Small and Disadvantaged Business Utilization ("OSDBU") have worked to understand the issues that small businesses face and have offered substantial outreach and education to small businesses seeking to contract with DOE. EM and OSDBU have conducted seminars and established websites to help small businesses pursue work with DOE. By seeking input from small businesses on the issues confronting them when working with DOE, DOE has been able to better address these issues in its RFPs and business practices. The OSDBU has also established a small business advisory board that serves as a sounding board and reviewer of DOE plans. The board is comprised of representatives of industry associations representing all types of small business from virtually every industry supporting DOE. The advisory board also provides DOE with an excellent tool for outreach and communication to the members of the associations that comprise the board.

Despite these commendable efforts, DOE has maintained a culture of comfort with large businesses, and a number of issues remain on which performance could improve. While the small business contracting percentages have improved in recent years, there is still an obligation to reach a goal closer to the government goal of 23%. Other large federal agencies have similar missions and have had a commendable track record in incorporating meaningful and substantial small business opportunities into their yearly acquisitions. Clearly, DOE can continue to identify appropriate small business opportunities as their other sister agencies have done, while continuing to build on the progress DOE has made.

For example, EM can increase the amount of subcontracting opportunities well beyond the 5% targets that have been established. EM can continue to break small business contracts out of large procurements currently under consideration. There are significant DOE requirements that have been rolled (bundled) into M&O's and M&I contracts as a matter of convenience that do not affect the primary mission of DOE. These areas include those already identified by DOE, such as EM and information technology. This approach can also have the advantage of breaking out discrete scopes of work for performance based contracts, instead of having this work bundled into larger contracts where projects do not get appropriate management attention and suffer delays in implementation and associated cost increases.

Additional Benefits of Direct Small Business Contracts to DOE

A decision to allow DOE to count dollars subcontracted to small business by large businesses under contract to DOE as contributing to DOE's small business subcontracting goal would be extremely detrimental to small business. A subcontract to a DOE large business contractor does not provide the same growth and development

opportunity to small businesses as a prime contract with DOE. For example, the prime contractors determine what scope of work is provided, which may be a "rent a person." In contrast, when a small business serves as the prime contractor, the small business is in a position to make that choice, thus truly developing skills and experience. Part of the government's mission is to foster the growth and development of small business. This can only be realized through prime contracts for small business with government agencies such as DOE.

Further, the marketplace for large contractors within DOE has very limited competition. Major unrestricted procurements attract three or fewer bidders. Small business prime contracts provide DOE with greater competition, as evidenced by the small business set-aside Columbus Closure Project, which attracted 9 bidders. In addition, the largest DOE contractors tend to team together to further restrict competition. Finally, when small businesses subcontract to DOE large business contractors, the small business invoices are marked up by as much as 40% to cover large business overhead cost, thereby significantly increasing costs to taxpayers. In sum, the expansion of small business contracting by DOE reduces costs and enhances competition.

The federal government's mission is to encourage, promote and foster the US market place and remove barriers that impede capitalism. This is the reason for the government's emphasis on small business contracting. Our history shows that in many instances, to ensure that our market place does not convert into a monopoly or oligopoly, regulations and rules are required to keep capitalism and competition alive. The bundling of Federal contracts and the past preference for large business contractors by DOE has had a consolidation effect. It is the obligation of the government to maximize capitalism, stimulate competition, and allow small businesses to flourish to ensure best value, quality and execution are provided to the Federal government by all contractors, regardless of whether it is small business or large business. Indeed, DOE has already seen the competitive benefits of small business contracting on the small business set-asides competed within the past year, specifically the 2003-2004 small business set asides discussed above.

For the Columbus Closure Project, DOE received 9 proposals. For the Portsmouth and Paducah Environmental Remediation contracts, we understand that DOE received more than 5 proposals for each. For the FFTF project, DOE received 5 proposals. For a recent unrestricted procurement of similar scope at the Mound, OH facility, DOE received only three proposals. The award was made to a team comprised of three of DOE's largest contractors who chose to team with each other as opposed to competing with each other. For an upcoming $4 billion procurement at River Corridor, SEBAC understands that DOE may see only one or two proposals, based on the contacts made by large business with SEBAC members relative to potential subcontracting. That is a huge amount of taxpayer dollars to award on such limited competition.

DOE is well aware of the economic advantage of direct subcontracting with small business, simply by eliminating the G&A markup applied by large business. By using the nationwide 8(a) Indefinite Delivery/Indefinite Quantity Environmental Restoration contracts recently awarded, DOE believes it has realized significant savings. At one site, two 8(a) contractors have performed projects, which would have been otherwise subject to a 40% G&A markup. DOE (and NNSA) have said that the companies have performed well and are clearly dedicated and focused on the work.

DOE reaps additional benefits when contracting with small business:

- Company management is focused on project performance; each project is of significant importance to the company;
- Decision-making is rapid and focused on the needs of the project as opposed to satisfying internal and public shareholder demands;
- Small business embodies the entrepreneurial mindset to support EM's drive to improve performance and make cultural changes to a performance-based organization;

The contract planning, teaming, staffing and execution approaches are not significantly different for a small business than a large business. However, the client focus and decision-making of a small business can be advantageous to DOE.

Detriments to Small Business From Proposal to Allow DOE to Obtain Credit Toward Its Small Business Goals From Large Business' Subcontracting to Small Business

A subcontract to a large business does not provide the same benefits to small businesses that are provided by a direct contract with DOE. Much of this has to do with the subcontracting procedures of the DOE large business contractors.

A. *FAR Disputes Clause does not apply to subcontracts*—The small business must often go to civil court to seek relief. The large business prime contractors are therefore not motivated to be as fair and reasonable in their treatment of small business contractors as is the federal government. The small business contractors also have a fear of reprisal by the large business if they seek to resolve a dispute. For example, a small business may have a significant portion of its revenue under one contract with a large business at a DOE facility. If the small business disputes unfair treatment, then the large business can withhold work, thus threatening the existence of the company.

B. *Large Businesses Use Small Business to Mitigate Risk*—Large businesses require contract terms from small businesses that are not required of large businesses by the government. For example, firm fixed price subcontracts are used (under a large business cost plus contract) for work that should be performed on a cost plus basis. Work subcontracted to small business often constitutes the riskier portions of the prime contractor's scope of work.

C. *Subcontracts Often Provide Little Opportunity for Development of Management and Technical Capability*—The scope of subcontracts is often focused on lower-level tasks and does not allow for small businesses to play a role in contract management. Large businesses often meet their subcontracting goals with non-technical support services. Large businesses also achieve small business goals by "leasing" employees from small business in a way that provides no experiential benefit to the small business. In contrast, when the small business is the prime contractor, the small business has the opportunity to develop meaningful experience and skills that can be translated to other contracts, consistent with the government's goal of promoting the growth and development of small businesses.

D. *Large Businesses Prefer to Self-Perform Work Under DOE Contracts*—Existing DOE contracts to large businesses do not provide incentives for the use of small business, but often do provide incentives for large businesses to retain work in-house. This is a stated policy of many large DOE contractors. RFPs may require percentage goals for small business subcontracts, but they do not define the type of work or total dollars to be subcontracted.

E. *DOE's Large Business Subcontractors Use Small Businesses for Labor Load Leveling*—Large businesses hire small businesses to address surges in workload and eliminate or reduce subcontracts when budgets decrease (or when the large business overuses its budget). Small businesses cannot absorb these changes in workload as easily as large businesses.

F. *Large businesses establish staffing and performance requirements from small businesses, and then fail to provide adequate workflow to support demands*—For example, one DOE large business contractor required the establishment and staffing of a site office based on a forecast of approximately $1.2 million/year in funding for the small business contract. After the office was established, the large business contractor elected to keep work in-house and contracted only $365,000, causing significant losses for the small business.

G. *Large Business Contractors Hire Key Staff from Small Business*—Large businesses have a common) practice of hiring key personnel away from subcontractors; along with the reduction of the small business scope of work that person was performing. As a result, the small business suffers twice—first by losing a valued employee, second by seeing a reduction in work. As an example, a small woman-owned business performing health physics and nuclear safety work lost four of its seven employees to its large business client within a period of one month. How would a large business react if its client took 57% of its workload away?

H. *Reporting of Subcontract Dollars is Often Inaccurate*—DOD audits have shown that large business contractors often report subcontract percentages in excess of actuals. Reporting also involves tiered subcontractors, causing double or triple counting of the same dollar.

No Negative Impact on National Security

Providing prime contracting opportunities to small businesses does not constitute a threat to national security. DOE has done an excellent job of identifying the areas in which small businesses have strength and which are considered to be outside of the critical mission areas of the DOE sites. For example, the environmental closure of an excess facility cannot, by definition, endanger national security: it is a facility that the government decided is no longer needed.

As evidence that this concern is baseless, the Department of Defense ("DOD"), which has the nation's primary role for national security, has contracted an average of 21% of its direct contracts to small business for FYs 2000, 2001, and 2002. This performance was achieved during wartime, both in Afghanistan and Iraq. Much of this work was accomplished at active military installations in the U.S. and overseas,

which were participating in the war effort. One SEBAC contractor was performing construction work on an active flight line and had to manage its work in coordination with the war effort. Other small businesses support the high tech end of critical mission items for DOD, including, among other things, information systems, combat planning and management software. SEBAC's view is that the work of small business contributed positively to national security for DOD.

Within the DOE market, the Department has accurately identified areas in which DOD experience strengthened small businesses so that they could take on the challenges of DOE work. These companies are not learning on the job. They have done the job for DOD and now seek the opportunity to do so for DOE. Indeed, many employees of small businesses have come from large businesses, and were relied on for critical mission support while they were employees of a large business. These employees did not lose their capabilities or competence when they joined a small business.

SEBAC further notes that procedural mechanisms exist to ensure that businesses with access to sensitive information obtain the appropriate security clearances. For example, small businesses have DOE "L" and "Q" clearances. Small businesses also have secret and top secret clearances for DOD, as well as secure facilities for handling classified documents.

At the same time, we understand that not all of DOE's large business contractors have performed as well as they might in relation to security issues. For these reasons, the argument that small businesses somehow pose a threat to national security is without merit.

Recommendations for DOE Small Business Contracting

DOE has been working hard to improve its small business performance and should be congratulated on the notable improvements it has made. DOE should continue the trend of increasing non-mission critical small business contracting and should continue to evaluate all large contracts to determine whether there are components that can be set aside for small business. If it does so, DOE will increasingly recognize the competitive and performance benefits discussed above.

In addition, DOE small business prime contract solicitations should be structured to significantly favor teams comprised entirely of small businesses. This will, in effect, increase the amount of small business participation and experience in DOE procurements. It also raises the level of competition on future procurements and lowers the barriers for small businesses to enter into the DOE market.

Recommendations for DOE-Driven Changes in Small Business Subcontracting by DOE's Large Business Contractors

Whether or not the Committee makes recommendations to change DOE's small business contracting program, SEBAC believes it is necessary to make changes in the subcontracting approaches by DOE concerning large business contractors. As such, SEBAC submits the following additional recommendations for DOE-directed changes in small business subcontracting by DOE's large business contractors.

A. *Large businesses should increase small business contracting*—In order to compensate for the lack of small business prime and subcontracting utilization, DOE should modify its subcontracting program until such time as its small business prime contracting statistics meet the President's goal of 23%. Large contracts, such as M&O's, should be required to subcontract at least 30% of the total contract to small businesses, when it is determined to be in the government's best interest.

B. *Large business goals should be dollar goals*—Large business goals should be translated from the percentage goal to a committed dollar goal. DOE should establish disincentives for large businesses that retain an excessive amount of work in-house.

C. *DOE should allow small businesses to receive their fee separate from the large business fee pool*—One significant disincentive to large businesses subcontracting to small businesses is when DOE's contract terms allow only one fee pool for all companies working under the contract. Large businesses believe that small business should be able to receive a fee for their work that does not detract from the large business' potential earnings if the large business prime contractor performs well. SEBAC understands that this is appropriately addressed in the upcoming River Corridor procurement and applauds DOE for listening to both large and small businesses on this issue. SEBAC encourages DOE to continue this practice for all future procurements.

D. *Only SBA rules on small business programs should be allowed for subcontracting*—This will, effectively eliminate the loopholes and place the SBA in an honest broker position.

E. *Contracts should prohibit hiring of subcontractor personnel*—This is common in many circumstances, but DOE's large business primes will not currently accept this language in a contract.

F. *The FAR disputes clause should be included in subcontracts.*

G. *DOE should audit large business subcontracting and establish fee incentives*—DOE should more carefully monitor large business subcontracting to ensure that small businesses have meaningful roles on the contract, have an opportunity to participate in management, and subcontract according to a committed plan.

CONCLUSION

We thank the Committee for its consideration of this statement.

STATEMENT OF HENRY T. WILFONG, JR., PRESIDENT, NATIONAL ASSOCIATION OF SMALL DISADVANTAGED BUSINESSES

Mr. Chairman and Members of the Committee, we were not invited to appear in person, so we take this vehicle to address this issue which is most crucial to the small and disadvantaged business community. It is even more crucial due to evidence that portends the virtual dropping of "disadvantaged businesses" from the prominent position of Congressional assistance intent that it once held.

The National Association of Small Disadvantaged Businesses was formed back in 1987 as a result of P.L. 99-661. We started with a group of 10 SDBs, intending to facilitate the implementation of the law and to monitor that implementation. NASDB has grown from that 10 to nearly 300 firms, now. Our constituency is made up of all segments of the SDB Community. However, the overwhelming bulk of our firms are Aerospace/Defense/Energy related firms.

We hear that there's a move floating around to combine Prime Contract numbers and Subcontracting numbers. Bad idea, bad idea. Oh, the combining of numbers is not, in and of itself, bad. It's neutral. But what is the purpose for doing it? Now, that's where the problem comes in.

We don't really know the reason folk want to combine the numbers. So, why, you ask, do we conclude, without knowing, that it's a bad idea? Human nature, that's why. We've gotten used to seeing them separate. We trust that separateness. It makes it easier for us to assess responsibility. So, any change in that is gonna cause us some reason to "notice", if not to be "concerned". Knowing the nature of other human beings, we then become concerned about a number of things. We wonder about a number of things. And, we suspect . . .

We suspect that some are desirous of making these "numbers" look good. The mere combining of the figures will, of course, make the "numbers" look better. But, will the mere combining of the numbers cause an additional benefit to the SDBs involved? Not one bit.

Measuring the betterment of the SDBs involved is the purpose of keeping these numbers. Tracking contracting with firms owned by socially and economically disadvantaged persons, enables a better assessing of accountability of Government agencies in complying with the Laws, as regards to maximum practicable inclusion of small and disadvantaged businesses in the business of America? Of course that's the purpose.

So, why the desire to change the way the agencies keep these "numbers"? We suspect the answer is, rather than increase the numbers, and thus better the involvement, they want to simply change the way of accounting and thus camouflage the failure to improve the involvement.

We suspect that many are now discovering the futility of trying to increase prime contracts, without "goring somebody's ox". Facing the fact that the United States Government has dramatically changed the way it procures goods and services, there's simply no other reasonable alternative. The "Bigs" are gonna have to give up some of the pie they consider their proprietary realm.

Why not face the fact that there simply are not as many prime contracts going out in the first place? Why not face the fact, then, that these contracts are going more and more to a smaller group of Behemoth firms? There simply is not that much left to be primed out to the little folk.

We, in the small and disadvantaged business community, don't like that situation. We sincerely wish you'd change the way things are being done. Don't try to deceive us by some sleight of hand, or innovative, creative accounting. Tell us what's doable, and what's not. If subcontracting is what we're gonna be stuck with, tell us that. Teach us how to make a fair and equitable profit, and how to make our disadvantaged firms economically viable.

And, while we're talking about teaching, someone needs to do some heavy teaching on what "maximum practicable utilization" really means . . .

Combining prime contracts and subcontracting numbers—that dog won't hunt.

STATEMENT OF JACQUELINE W. SALES, PRESIDENT AND OWNER, HAZMED, INC.

Thank you for inviting me and giving me the opportunity to share my views and present my written testimony today before the Senate Energy Full Committee hearing on the Department of Energy's Small Business Contracting. I want to commend the Committee for pushing forward on this very critical issue for small businesses. I believe we are at a point where it is imperative for the U.S. Congress to set the tone and the framework for moving forward on this issue.

On May 7, 2003, Ms. Angela B. Styles, the Office of Management & Budget, (OMB), the Administrator for Federal Procurement Policy, presented testimony before the U.S. House of Representatives Committee on Small Business, to discuss the critical issue of "whether larger businesses are improperly receiving contracting opportunities intended for small businesses."

The OMB Administrator stressed the Administration's efforts and hard work "to create an environment where small businesses can flourish and apply their talents to the many pressing needs facing our governments."

Moreover, the OMB's study to the President revealed that "not only is substantially fewer small businesses receiving federal contracts . . . but that the pool of small business contractors receiving new contract awards declined considerably."

Mr. Chairman and Committee Members, my company, HAZMED, Inc. has a 16-year record of excellent service provided to the Federal government, and has been awarded contracts from the U.S. Department of Energy. We have also been consistently ranked as an excellent contractor and provider of services from DOE and the U.S. Small Business Administration. Our experience has been that there are a finite number of contracts that DOE rotates to small businesses, this is evidenced by the fact that most of our contract awards from the DOE were in the early stages of our small business development. Our experience has shown that after we have per formed excellently and received recognition, the opportunity is rotated to the next emerging small business. What we are asking DOE is to provide larger opportunities for small businesses, like ours, who have demonstrated a capability to perform.

DOE's past practices rely on large contractors to disseminate work to small businesses after award. The fact is that large businesses often report their small business participation against their entire company, not against the specific DOE contract. Therefore, there is no measure of small business participation attributable to the specific DOE award. Often large businesses will offer small business less desirable work. We want credible work that adds to our capabilities and fosters continued growth.

We believe that large businesses view increased small business capabilities as yet another competitive threat. It is our experience that some do not see it their advantage to support DOE Small Business Initiatives.

Mr. Chairman, I appreciate having the opportunity to share my views with the Committee members this morning, and we hope that DOE and the large contractors will understand that as small businesses get larger contracts, more and more jobs can be created for the American people; and that many large businesses started out themselves as small businesses.

Thank you Mr. Chairman.

STATEMENT OF THE AMERICAN COUNCIL OF ENGINEERING COMPANIES

ACEC represents over 6,000 engineering firms across the country, most of which have fewer than 35 employees. ACEC promotes the business interests of the engineering industry to Congress, federal agencies, and international organizations. Our members provide engineering expertise to the Federal Government, state, local, and municipal entities, and the private sector for engineering projects of all types. Many of our firms are engaged in work for the Department of Energy (DOE), particularly in the area of Environmental Management.

ACEC supports DOE's initiatives to increase the amount of small business participation in DOE work. We recommend, in carrying out this initiative, that DOE:

- Create small business prime contracting opportunities that are designed more appropriately for the size of the company that is expected to perform the work, taking into account the potential risks to the small business, to the project schedule and budget, and to the general health and safety.

- Require that prime contractors include in their small business reports the actual amount of work given to small business subcontractors, as opposed to the value of subcontracts, which may or may not be fulfilled.

DOE legacy site cleanup projects are unique in their size, scope, degree of complexity, and risk. These sites include unprecedented amounts of contaminated waste, water, and soil, and a vast number of contaminated structures that will remain radioactive for thousands of years. The environmental remediation of the nuclear weapons complex encompasses radiological and non-radiological hazards, vast volumes of contaminated water and soil, and over 7,000 contaminated structures. DOE must characterize, treat, and dispose of hazardous and radioactive wastes that have been accumulating for more than 60 years at 120 sites in 36 states and territories.

Management of DOE legacy sites also differs from management of Department of Defense (DoD) environmental clean up projects, in another very important aspect: overall management of DoD projects is performed by DoD, while DOE sites are managed by contractors, who are responsible for the contract management and coordination of hundreds of complex interrelated tasks.

Due to the unprecedented complexity and risk associated with DOE's Environmental Management projects, it is very difficult to effectively divide large contracts into smaller contracts for small businesses without undermining the interests of the project. Separating such contracts could increase the potential of not meeting critical regulatory and milestone drivers, and thus incurring fines and penalties and risking public and worker health and safety.

However, using large contracts for small business set-asides can also be problematic. The Small Business Administration small business size standard for environmental remediation services is 500 employees, which generally translates to roughly $50 million in annual revenue (which includes all of the firms projects). A DOE small business opportunity could be equal to this amount or more (a small business setaside of $500 million over several years was recently awarded), potentially putting undue stress on the company and its resources, and potentially increasing the risk of inefficient and/or ineffective performance. These firms typically do not have the depth of staff or the breadth of staff to accomplish the vast managerial effort required to carry out this work effectively.

Compounding this are the affiliation rules, which require the small business prime to not only perform at least 51% of the contract work, but also be responsible for at least 51% of the proposal preparation and costs. Large businesses could offer this support, eliminating some of the burden, while providing learning, mentoring and growth opportunities.

Opportunities for prime set-asides for small businesses should be sized appropriately for the scope of work and the size of the company or companies that are expected to perform the work. However, in so doing, DOE should avoid dividing up large, complex managerial functions best suited for larger businesses given their internal infrastructure, project management, monetary strength and manpower. Additionally, procurements targeted for small business set asides should have clearly defined scopes of work and contract values that fit within the parameters of the NAICS codes for those opportunities.

Prime contractors are contractually required by DOE to make a good faith effort to provide opportunities for small businesses to compete for subcontracts and purchases. The reason that the requirement is for a good faith effort towards meeting the goals, as opposed to the actual realization of the goals, is that the prime contractor does not control many of the circumstances that enter into how much small business contracting can be accomplished. These factors include: (1) the prime contractor may not receive enough work under an ID/IQ contract to create a need for subcontracts; (2) there may not be enough firms qualified under the particular goal (e.g., veteran disabled owned small businesses) available to bid on the type of work or services needed; or (3) there may not be enough qualified firms located in a close geographical proximity to the site location to compete from a price standpoint (applies most often when mobilization of equipment and field crews are required).

The prime contractor's good faith efforts are best judged by examining how the subcontracting is managed, including: (1) the number of companies meeting the small business qualifications that are included on the source list; (2) the time given to bidders to submit their bids (small businesses often need more time); (3) whether small business set-asides were used, limiting the competition to small businesses; (4) whether small businesses are included on teams; and (5) whether real work is given to those small business team members.

Of these factors, we believe the last has the greatest potential for increasing the amount of work that small businesses perform on DOE Environmental Management

projects. Currently, prime contractors report the total value of contracts that they enter into with subcontractors, which may or may not be realized. Small business subcontractors have little control over the amount of work that they actually perform under these contracts, and in some cases, may actually not perform any work. ACEC believes that if the prime contractor were required, as part of its demonstration of a good faith effort towards meeting small business goals, to report actual real work performed by its small business subcontractors, more actual work would go to the small business firms.

It should be noted that the number of different small businesses that perform work on DOE Environmental Management projects is greater when a large business prime contractor subcontracts work to small businesses, as compared to when small business prime contract set asides are utilized. An example is the Portsmouth/Paducah environmental procurements, for which 2 to 3 small businesses joined to perform the work as prime, and these are the only small businesses involved. Contrast Portsmouth/Paducah to a typical large business prime, who would typically subcontract with several times as many small businesses.

Finally, we believe that DOE could obtain a more accurate accounting of actual small business participation, and at the same time benefit small firms, by accounting for small business subcontracts and joint ventures towards an overall small business goal. We would recommend, however, that if such an approach were taken, that it be limited to DOE contracts because of the unparalleled size and complexity of DOE's program as discussed above. A corresponding increase to DOE's small business contracting goal, which reflects the total amount of DOE work to small business, including subcontractors and joint ventures, and includes an aggressive small business objective, would be appropriate.

ACEC thanks the Committee for the opportunity to submit comments.

STATEMENT OF JENNY FREEMAN, EXECUTIVE DIRECTOR, EAST TENNESSEE ENVIRONMENTAL BUSINESS ASSOCIATION

On behalf of the 125 companies that are members of the East Tennessee Environmental Business Association (ETEBA), I thank you for the opportunity to submit comments to the Senate Committee on Energy and Natural Resources regarding the U.S. Department of Energy (DOE) and direct contracting to small businesses. ETEBA's member companies include large and small businesses based in East Tennessee that provide technical services to DOE and its prime contractors. ETEBA companies employ approximately 6,000 people and provide an annual income to the region of about $500 million.

ETEBA applauds the hard work DOE has done over the last year to develop procurements directly bid to small businesses. In four months, beginning last October, DOE has held at least six major small business procurements, each worth hundreds of millions of dollars. ETEBA is in the process of evaluating the impacts of this intense bidding on the subcontracting community and will share our results with DOE soon in an ongoing effort to improve the opportunities for our companies, and in light of DOE's interest in doing the same for small businesses. DOE, we are sure, will be interested in the impacts on the subcontracting community of the release of so many large procurements in a very short timeframe.

The direct small business bidding has created new opportunities for small businesses after years of mainly large business participation at the first tier of DOE's work. It has created new mentoring relationships between large and small businesses; it has given small businesses the opportunity to obtain contracts at values far beyond what is available to them in the second-tier market; and it has given them the chance to perform "meaningful" work that will allow them to grow. We believe this was the hope of DOE Secretary Abraham when he stated in June 2003, "Making contract opportunities available to the small business community is one of the department's top priorities."

So, the issue is not the small business direct contracting goal, today set at 23 percent of DOE's budget; rather, the issue is implementation of that goal. There are four major impediments to realistic participation by small businesses in DOE work at the scale reflected in these recent procurements. They are:

1. Small Business Administration (SBA) rules governing size standards are flawed. The way the North American Industry Classification System (NAICS) codes are set up now, particularly the. size standard for NAICS Code 562910 (Environmental Remediation), true small businesses cannot compete successfully on DOE remediation projects. A small company goes from competing against $6 million and under companies to competing against the large companies with a 500-employee size standard that are still "small" under SBA rules. This gives an unfair advantage to

those large small businesses and effectively keeps the smaller small businesses from winning work and growing.

Recommendation: Create a size standard for small businesses for the Environmental Remediation category that allows the true small businesses to enter into the market on a competitive standing.

2. Scopes of work in procurements targeted for small businesses are not clearly defined and contract values do not fit within the parameters of the NAICS codes for those opportunities. Larger small businesses often must either forego small business opportunities or transition to a large business classification where they find themselves competing against companies with 10,000 or more employees. This essentially means that the government will be selecting a different small business each time they have a procurement of this magnitude, negating the opportunity for companies to apply lessons learned from one project to the next. Current SBA rules are pushing competent and qualified small businesses into the large business arena with one win when they are forced to inherit an incumbent workforce. Forming a Limited Liability Corporation (LLC) does not alleviate the allocation of employees because each member of the LLC is required to count all employees, regardless of their level of participation in the LLC. Additionally, SBA rules force the small business prime to not only perform at least 51 percent of the contract work, but also be responsible for at least 51 percent of the proposal preparation and costs. This puts tremendous cost burdens on small business primes and prevents their large business subcontractors from providing essential support.

Recommendation: Congress and DOE must encourage the SBA to review the small business size standards, which have been in effect since the early 1980s. The SBA is currently reviewing the standards, but they are only replacing revenue standards with employee standards, not modifying the size of classifications. The current standards no longer apply to today's marketplace when procurements are being conducted as small business set asides even with annual funding levels significantly greater than the standard itself. The current standards are actually working against the SBA's small business constituency. Size standards should be developed for phased growth, and then DOE should carefully and systematically review its small business procurements to ensure the correct size standard is applied.

3. DOE large business procurements have no teeth for enforcing small business subcontracting, leading to "business as usual." Although Requests for Proposals (RFPs) require certain percentages of small business participation, consistent, across-the-board enforcement of small business subcontracting does not exist. Requiring 50 percent small business participation has little value if the prime chooses to self-perform the majority of the work. Existing requirements also do little to ensure that small business goals are met by making "meaningful" work available, meaning that small businesses are often given opportunities only to perform work which the large businesses do not want to perform themselves. Additionally, the shared fee pool concept leads large businesses to self-performance. Large businesses are able to claim that since DOE is requiring that the small business subcontractors are part of the fee pool, they will not be included as real teaming partners in the bid. Many large businesses legitimately would like to include small business teaming partners, but do not, believing that it is unfair that they share in the fee pool when they are unlikely to share proportionately in the risk of performance. In other words, it is basically the prime's name that is "on the line" for performance.

Recommendation: DOE should require small business plans in its large business procurements and then hold the large business prime accountable for implementing the plans. DOE needs to include hefty subcontracting requirements for small business subcontracting in these procurements, with required definition of meaningful subcontract roles for the small business, and with incentives and penalties for meeting or not meeting those goals built into the procurements. The plans should be included in the evaluation criteria.

4. It is not the goal that matters. The issue lies in how DOE achieves the set goal. The inflexibility in the current interpretation of how DOE can only count direct contracting toward accomplishment of its 23 percent goal instead of being able to count its prime contractors' actual small business subcontracts as part of its own is unrealistic. The goal of 23 percent direct contracting for DOE, particularly in Environmental Management, is unlikely given that DOE's annual budget is around $20 billion, translating into what would be around $4.5 billion in small business awards per year. In addition, most DOE work is not amenable to unbundling. One reason is because its high-risk cleanup projects have critical regulatory drivers and milestones, and unbundling such projects could increase the potential of missing these drivers and incurring fines and penalties. Additionally, without significant DOE oversight, the unbundling of complex cleanup activities creates a substantial health and safety risk. However, DOE should never be allowed to go back to achieving its

small business goals primarily through its prime contractors. Most importantly, DOE has spent years reducing its cost to the taxpayers by changing the way it does procurements, by creating larger contracts and by contracting management of DOE installations. To successfully meet the 23 percent goal, DOE will have to significantly increase its staff in order to generate enough procurement activity to directly spend the $4.5 billion.

Recommendation: Allow DOE and large businesses to be able take dual credit for a large business prime contractor's small business subcontracting. Without this ability, DOE and its large business primes are essentially competing for the same limited pool of small business resources. If a single award has the risk of putting a small business out of the small business size category, they will choose their opportunities very carefully.

While DOE direct work potentially offers good opportunities for small businesses, DOE's traditional delays in procurements and the complexity of RFPs result in bid costs that are an order of magnitude higher than for comparable opportunities with first-tier prime contractors. Many small businesses simply cannot afford to play in that game and will forego DOE opportunities for lower cost procurements in the private sector. Those that do respond to these large procurements take on excessive financial risk that may be difficult to recover from, particularly if they do not win the contract. This is counterproductive to DOE's goal of making small businesses successful.

To ensure that the first tier large businesses make meaningful opportunities available to small business, require DOE to impose an especially high small business subcontracting threshold, similar to the conditions of the Hanford River Corridor Draft RFP that incentivizes large businesses to meet their goals.

ETEBA represents those companies, large and small, that actually perform DOE's work on the ground and in the field. These companies are innovative, creative, and have great ideas about ways to perform work that safely result in savings to the government and ultimately the taxpayers. We have many more recommendations that come out of our experience with DOE projects, and we look forward to sharing them with DOE and this Committee in the future. Until then, we appreciate the opportunity to enter these comments into the public record.

STATEMENT OF THE COALITION OF MINORITY BUSINESS TRADE ASSOCIATIONS

This statement is being submitted for the Committee hearing record on behalf the *Coalition of Minority Business Trade Associations* (Coalition) which includes the *New Mexico 8(a) and Minority Business Association* (NM 8(a)), the *U.S. Hispanic Chamber of Commerce* (USHCC), *The National 8(a) Council* (National 8(a)), and the *Latin American Management Association* (LAMA).

The Coalition represents thousands of small, minority businesses throughout the United States. Our membership includes minority 8(a), SDB, HUBZone, and Veteran Owned companies that are contractors with the Federal Government, the Department of Energy (DOE), DOE's large prime contractors, M&O Contractors (National Laboratories) and other large institutional buyers. Our members have an intimate knowledge of doing business with DOE and its large prime contractors. Our membership also participates in DOE's small and minority business set-aside contracts, both as prime contractors as well as subcontractors. Many of the individual business owners, the officers of our constituent trade organizations, and the business advocates that constitute our Coalition have been recognized nationally in the fields of government contracting, small business advocacy, and federal small business legislation. Our constituents have also previously served on various task forces and committees that have undertaken rigorous examination of the procurement practices of Federal Agencies, M&O contractors, and other large other Prime Contractors to the federal government.

I. INTRODUCTION

Our portfolio of 8(a) and Socially Disadvantaged Businesses (SDBs) have been the benefactors of DOE's aggressive initiative to increase direct contracting and subcontracting opportunities for fiscal year 2003 and 2004. Our membership congratulates DOE for the improvements in its direct contracting to small and 8(a) businesses. We support DOE increasing non-mission critical small business contracting by determining the viability of breaking the contract out for small and 8(a) set asides.

The Coalition is making recommendations that meet both the needs of DOE as well as the needs of the small and 8(a) minority contracting community. These recommendations will be based on re-emphasizing the "development" portion of the

business development process for 8(a) firms. We strongly suggest to this committee and to the Department of Energy that the success of the business development process needs to be measured not only in the total dollars contracted to small business, but also in the number of 8(a) businesses that survive, and are strong enough to graduate from small business to large business.

II. RECOMMENDATIONS

The recommendations respectfully presented to this committee include the following—

1. DOE must not count the dollars spent by large prime contractors towards DOE's small business contracting goals.
2. DOE must increase the number of prime contracts awarded to small and 8(a) businesses.
3. DOE must continue to define its mission-critical and supplemental activities in order to develop more prime contracting opportunities available to small and 8(a) businesses.
4. DOE must encourage the development of 8(a) business by using the SBA's Mentor-Protégé Program.
5. DOE must increase small business opportunities by strengthening the subcontracting process between large prime contractors and small minority subcontractors.

III. DISCUSSION

DOE must not count the dollars spent by large prime contractors towards DOE's small business contracting goals.

If DOE is allowed to re-define what gets included in its small business numbers then in effect nothing has changed except the way small business contracts are counted. This is a nonproductive accounting exercise that does not increase the pool of capable small and minority businesses. The Coalition is focused on initiatives devoted to capacity building of small and minority businesses.

Our Coalition has discussed this issue with members of the Small Environmental Business Action Coalition (SEBAC) and other small and minority trade associations and we concur that small business will be negatively impacted if DOE is allowed to count its large prime contractors' small business subcontracts as part of DOE's small business goals.

A subcontract to a large business does not provide the same benefits to small businesses that are provided by a direct contract with DOE. Much of this has to do with the subcontracting procedures of the DOE large business contractors.

1. FAR Disputes Clause does not apply to subcontracts.
2. Large Businesses Use Small Business to Mitigate Risk.
3. Subcontracts Often Provide Little Opportunity for Development of Management and Technical Capability.
4. Large Businesses Prefer to Self-Perform Work Under DOE Contracts.
5. DOE's Large Business Subcontractors Use Small Businesses for Labor Load Leveling.
6. Large businesses establish staffing and performance requirements from small businesses, and then fail to provide adequate workflow to support demands.
7. Large Business Contractors Hire Key Staff from Small Business.
8. Reporting of Subcontract Dollars is Often Inaccurate.

For a thorough examination of the issues above, please refer to SEBAC's written testimony also submitted to this committee.

DOE must increase the number of prime contracts awarded to small and 8(a) businesses.

Because subcontracts do not provide the same growth and development opportunities to small and minority businesses as do prime contracts with DOE, it is imperative that DOE make every effort to increase the total amount of its contracts with small businesses. In addition to increasing the total amount of contracts, DOE must raise the individual contract amount for each project awarded to small and minority owned companies. DOE must also increase the complexity of scope for these small business projects. By increasing the dollar amount and the scope of contracts to small and minority businesses, DOE will increase small and minority business' technical, administrative, and financial capacity. This in turn will increase a small firm's prospects of survival after graduating from the SBA's 8(a) program as well as its ability to become a large prime contractor to DOE.

Some critics of this approach may mistakenly argue that small businesses do not in general have the capacity or ability to perform on larger and more complex

projects and to provide the same value to the Federal Government. However, this common misconception is proved erroneous by the fact the (1) Large prime contractors typically subcontract to small and minority businesses and add significant overhead mark-ups to their charge to DOE and (2) the success of DOE's recent efforts to award projects of significant size and scope to teams of small environmental firms (refer to SEBAC testimony).

DOE must continue to define its mission-critical and supplemental activities in order to develop more prime contracting opportunities available to small and minority owned businesses.

In order to award more contracts with higher dollar value and more complex scopes of work to small and 8(a) businesses and teams of small and 8(a) businesses, DOE must continue to redefine its procurement process into critical and non-critical (supplemental) activities to determine breakout opportunities for small and 8(a) companies.

Another related issue concerns the recent trend towards bundling of small contracts at site offices into large national contracts. These bundled national contracts keep business out of the hands of small contractors and limit competition to a handful of large national firms. The large firms typically subcontract to small firms and then markup their costs to the government. Furthermore, many large firms who choose to self-perform on these contracts will hire employees away from the small incumbent firms that initially performed the work, and therefore further tend to erode the strength of this country's small business community.

DOE must encourage the development of small business by using the SBA's Mentor—Protégé process between large companies and small companies.

The SBA developed the Mentor-Protégé Program to accelerate capacity building of 8(a) firms by allowing a large prime contractor to mentor a small 8(a) protégé company.

The mentor-protégé process allows the DOE to award large and complex projects to an 8(a) joint venture. Furthermore, the risk of technical or financial failure of the small company is mitigated by the experience and resources of the large mentoring firm. The problems that a small firm faces when subcontracting with a large prime contractor are eliminated because the small firm is no longer relegated to a subcontractor status, but is instead given the role of "managing partner" in the joint venture. Because the Mentor-Protégé program requires that the larger firm share technical know-how, quality systems, safety processes, accounting systems, and financial resources with the smaller company, the mentor-protégé process is truly an 8(a) small business development process. A mutually beneficial relationship is established between the protége and the mentor, the former receives the transfer of technical, financial and managerial expertise, and the latter shares in a market that would otherwise be unavailable.

DOE must increase small business opportunities by strengthening the subcontracting process between large prime contractors and small minority subcontractors.

For the sake of brevity we respectfully refer this Committee to the testimony of our colleagues from SEBAC concerning the recommendations for expanding and strengthening the subcontracting process at DOE.

Previously, in our first recommendation that DOE not be allowed to count the small business dollars of their prime contractors in DOE's small business goals, we showed that small businesses are at a great disadvantage when in the role of subcontractor. We listed eight negative consequences of being a subcontractor as opposed to a prime contractor to DOE. Below we list several the actions that we recommend the DOE take to strengthen their subcontracting plan.

1. Large businesses should increase small business contracting
2. DOE must revise prime contracts small business subcontracting plans.
3. Only SBA rules on small business programs should be allowed for subcontracting—This will, effectively eliminate the loopholes and place the SBA in an honest broker position.
4. Contracts should prohibit hiring of subcontractor personnel
5. The FAR disputes clause should be included in subcontracts.
6. DOE should audit large business subcontracting and establish fee incentives for success and liquidated damages for failure to meet stated goals.

IV. CONCLUSION

We thank the Committee for its consideration of this statement.

STATEMENT OF ROBERT KINGSBURY, PRESIDENT AND CHIEF OPERATING OFFICER, LOS ALAMOS TECHNICAL ASSOCIATES, INC.

Mr. Chairman and distinguished Members, I am Bob Kingsbury, President of Los Alamos Technical Associates, Inc. (LATA), a Service Disabled Veteran Owned Small Business, headquartered in Los Alamos, New Mexico. LATA has provided engineering, environmental, and information technology services to the Department of Energy (DOE) complex for the past 28 years.

The recent change in DOE's reporting of small business contract volume, and the actions that DOE has taken to "unbundle" significant work scopes and to set aside large scopes of work for small business in response to this change, will benefit both DOE and the business community. The benefits to DOE include an increased industrial base, higher quality competition, direct access to small business' top executive talent, and direct access to companies that have demonstrated a high degree of technical innovation coupled with a highly developed safety culture. The benefits to a broader business community that-includes small business comprise opportunities to demonstrate management skills, develop track records as prime contractors, grow, and compete successfully as large businesses as well as the opportunity to retain and attract key technical and management talent.

I have been associated with the DOE and its predecessor agencies since 1967. During this period, I have seen a number of premier companies, such as General Electric, DuPont, and AT&T, leave the DOE market. DOE must be able to call upon the broadest possible industrial base of qualified companies available to perform its operations. By setting aside large scopes of work for small business, as DOE has been doing for the past year, DOE is increasing this industrial base. The small businesses that perform the setaside contracts will be a part of the next generation of large businesses in DOE's industrial base, and DOE will realize broader and higher quality competition for its future procurements.

Our experience on DOE's significant small business set-aside procurements to date has shown that small business is proposing company elders to lead these projects. Company founders, CEOs, members of Boards of Directors, and senior executives with both large and small business backgrounds are being proposed as key personnel for these projects. DOE is clearly getting the "captains of industry," as characterized by one DOE official, on these small business set-aside procurements. As contracts for these set-aside projects are awarded, DOE will find that top management in the successful companies will be focussed on performance and customer objectives as never before, because the success of these contracts is vital to the future of these small businesses.

By setting aside large scopes of work for small businesses, DOE is gaining direct access to a greatly increased number of companies that have significant experience in DOE operations and commercial nuclear power operations. These companies have gained experience as subcontractors to DOE's Management and Operations contractors and DOE's Closure contractors. They are responsible for many of the successes achieved by large business prime contractors at DOE sites, and they have demonstrated technical innovation while maintaining outstanding safety records.

DOE's recent practice of setting aside large scopes of work for performance by small business benefits small business in ways that are totally aligned with the benefits of this practice to DOE. It is a win-win situation. LATA's experience with DOE's small business contracting, which I believe is typical of the small business community's experience, illustrates these benefits.

Prior to OMB's decision that DOE could credit only contracts that it awards directly to small business, nearly all of LATA's DOE program business was performed as a subcontractor to large business prime contractors. Over the past year LATA has participated as prime contractor or as a member of a small business joint venture prime contractor in procurements for the Columbus Closure Project, the FFTF Closure Project, the Nationwide ER/WM and DD&R (FOCUS) contract, and the Portsmouth Remediation contract. Experience in performing projects such as these as a prime contractor is significantly more valuable to a small business than experience gained in a subcontract role to a large business.

As a prime contractor, we will have the total responsibility for all aspects of project performance, including technical, budget, and schedule performance. This responsibility allows us to demonstrate the value of our business systems and our management personnel. Successful performance as a prime contractor builds our corporate track record and puts us in the position to successfully compete for future projects. In contrast, performance as a subcontractor to a large business leaves us in a supporting role, often limited to supplying technical resources that are directed by the prime contractor, or performing work that is not central to the scope of the contract. The track record that we can establish as subcontractors to large busi-

nesses supports only our credentials to operate in the same subordinate role in future procurements. Small businesses thus tend to remain small and cannot easily emerge to contribute to the diversity, robustness, and growth of the economy as a whole.

The opportunity to compete for projects that are set,aside for small business helps us to retain our most talented key personnel and to attract new personnel who aspire to manage significant projects. LATA has served as a subcontractor on many large business-led contractor teams that were awarded Management and Operations and Closure contracts by DOE. Many of these teams' proposals included LATA employees as key personnel. Typically LATA's key personnel have served as functional unit managers reporting to the General Manager's office on these contracts, while employees of the large business prime contractor served in the General Manager and Deputy General Manager positions. A number of our employees, while serving in functional unit manager positions on these teams, have been offered employment as Deputy General Manager or General Manager by the large business prime contractors. In some cases they have accepted these offers because they believed that they could only achieve their professional objectives by joining a large business. Since DOE began setting aside significant projects for small business, we have seen a reversal of this trend. A number of key personnel with site management experience and credentials have left large companies to join small businesses.

In summary, DOE's recent practice of contracting directly with small business for large scopes of work, driven by the change in reporting of small business contract volume, yields significant benefits to DOE, to the small business community, and to the healthy diversification of the economy overall. These benefits are not realized through small business subcontracting by DOE's large prime contractors. The recent change in reporting of small business contracts by DOE should be sustained in order to encourage DOE's continued contracting of large scopes of work directly to small business.

Thank you for allowing me to present this testimony.

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