

**CONTRACT BUNDLING AND FEDERAL PROCUREMENT PROBLEMS FACING SMALL BUSINESSES**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON SMALL BUSINESS**  
**HOUSE OF REPRESENTATIVES**

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

WASHINGTON, DC

\_\_\_\_\_  
AUGUST 4, 1999

**Serial No. 106-27**

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Printed for the use of the Committee on Small Business



U.S. GOVERNMENT PRINTING OFFICE

60-797

WASHINGTON : 2000

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**WEDNESDAY, AUGUST 4, 1999**

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

The Committee met, pursuant to call, at 10:00 a.m., in room 2360, Rayburn House Office Building, Hon. Jim Talent [Chairman of the Committee] presiding.

Chairman TALENT. Good morning, ladies and gentlemen. Welcome. Thank you for joining me this morning to examine the impact of contract bundling on small businesses. I am hopeful that through today's hearing we can begin working together towards a solution to the contract bundling issue that best utilizes limited Federal dollars but also safeguards the ability of small businesses to compete for those dollars.

Let me just say that I certainly will concede that there are instances where bundling can be done responsibly. I don't believe in most instances that there is a conflict between small business participation and the wise use of limited Federal dollars. The assumption that there is basically the assumption that competition does not reduce costs. That is not an idea that is accepted in any other context, yet it is one of the premises behind contract bundling.

But at any rate, whatever you think of the concept, unless it is undertaken responsibly, the cost cutting elements are penny wise and pound foolish. Simple economics dictate that if small businesses are locked out of competition, the remaining competitors will face escalating demand and raise their prices accordingly. This is a blueprint for a kind of monopolization that lowers quality and raises cost to the government. That is why Congress took legislative action on this issue in 1997.

On December 2, 1997, the Small Business Reauthorization Act of 1997 was enacted. In this act, Congress specifically addressed the problem of unrestricted contract consolidation. Troubled by the fact that many contracting agencies favored consolidated requirements based solely on administrative settings, Congress sought to design a system of review aimed at identifying these requirements through market research and providing a mechanism for appeal on behalf of small business. Yet as of today the provisions of PL 105-135 that I just referred to, remain enforceable.

The SBA has not completed promulgating regulations even though the law specifically required a final rule within 270 days

within enactment. This past January SBA finally printed a proposed regulation in the Federal Register to solicit comments. In the introduction to the proposed rules it states "It is also clear from the statutory language requiring contracting officers to demonstrate measurable substantial benefits of bundling. And from the joint explanatory statement, that Congress intends that meaningful controls should be in place that are capable of enforcement to preclude unnecessary and unjustified bundling."

If SBA understands that, why don't the proposed regulations include actual measures, those concrete numbers indicating what a measurable substantial benefit is? As it stands now, these regulations define as measurably substantial benefit: cost savings and or price reduction; quality improvements that will save time or improve or enhance performance efficiency, reduction in acquisition cycle times; better terms and conditions; or any other quantifiably substantial benefits.

In my judgment, this test is far too loose. How are these measurable? One contracting officer could very easily say that some marginal savings or changes in acquisition times were a measurable substantial benefit, whereas another contracting officer might challenge the same contract in a different part of the country. What contracting officer is going to want to buck the force of the Federal procurement system to say that the benefits aren't substantial enough when he only has such vague criteria to go on?

I am glad that Dee Lee from OFPP and Richard Hayes from SBA are here today. I would like them to explain why these measurably substantial benefits aren't more measurable. I want to know when we can expect to see a strong final rule. Let me just add on this ad hoc here that it has become very clear to me that within the Congress, if this Committee and the measures that we pass don't stand up for the rights of small business people to participate in procurement, both on their behalf and on behalf of the taxpayers, it is not going to happen.

You three at this table are counterparts in that sense in the executive branch. I hope that you take this very seriously. Really, this concept that contract bundling generally saves money and produces higher quality for the government I just believe is a chimera. So we are not getting anything for small business and I think that we are hurting the taxpayers as well. I also would like our witnesses to address what they see as the current problems with small business participation in Federal procurement programs and how they would suggest remedying those problems.

I am particularly interested in hearing about problems small businesses face as subcontractors. I am hoping Mr. Neal from DOD's office of Small and Disadvantaged Business Utilization will be able to give us some insights into ways those problems could be addressed. I also hope our first panel will comment on the problems small businesses encounter with alternative contracting mechanisms, particularly ID/IQs.

I have a statement paragraph in here indicating that I was going to welcome my friend, Congressman Abercrombie, who was going to sit in on the Committee today, but he is not here. When he comes in I will welcome him here. I want to welcome our other wit-

nesses who I will introduce later in the hearing. Now, I will yield to Ms. Velazquez for any opening remarks she would care to make.

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

Ms. VELAZQUEZ. Thank you, Mr. Chairman, and good morning to everyone, all of the witnesses. Thank you for being here. Mr. Chairman, I want to thank you for today's hearing on contract bundling practice used by the Federal Government and its effect on small businesses. Our Nation is currently experiencing one of the largest economic booms of the century. Just in the first two quarters of 1999 the GDP increased over \$125 billion over last year. I am convinced that this incredible growth has small business at its base.

According to the Small Business Administration Office of Advocacy, over 50 percent of all private sector output is attributed to small businesses. Small businesses are creating the majority of the jobs in our Nation with new and dynamic technologies coming from every corner of this country. When a difficult problem arises in corporate America, it is often a small business that they turn to. Entrepreneurs are the innovators and the risk takers that keep this country in the lead. They are in demand everywhere but in the Federal Government.

Just as with corporate America, our Federal Government should be utilizing the skills and expertise of our nation's small businesses. But instead the agencies are looking for ways to cut costs. While this is a very important goal, it seems the only thing they are cutting is quality and service and access to government for our nation's small businesses. In 1997, we recognized the challenges small businesses were facing and made changes in the SBA reauthorization act. These changes strengthened the tools that the SBA had to monitor and review Federal agency bundling.

Today, we need to discuss if those changes are working. But even if they are effective, those changes are not enough. For example, the recent language in the Senate DOD authorization further attacks small businesses. This legislation actually makes it easier to bundle contracts and grants DOD the ability to award contracts without competition. These will likely lead to more awards to large businesses and less awards to small businesses. This is a backward step on the path to fairness for small businesses.

The story is even worse for minority small businesses, even though they represent some of the fastest growing sectors of the business community. The SBA Office of Advocacy estimates there were 3.25 million minority-owned businesses in 1997 generating \$495 billion in revenues and employing 4 million workers. Their numbers have been growing, 168 percent over the last decade; and their growth in revenues have been even more impressive, 343 percent over the past decade.

With this kind of growth, it should seem logical that united businesses would be an integral part of the failure of contracting, but that is just not the case. With a lot more responsibility now given to the contracting officers to determine who wins the contract, minority businesses who do not have the relationship with those officers are routinely shut out of the process. For example, DOD's goal for women-owned businesses was to award them 5 percent of contract dollars. A reasonable goal based on past performance.

However, so far this year only 1.7 percent of the work has been contracted to these businesses. This is well under our expectations. DOD is about 15 percent below its goal for small business procurement. If this trend continues, it will result in \$4 billion less to small businesses this year. With these types of numbers it is hard to tell if we are looking at a genuine effort.

To address some of the problems with DOD, I introduced legislation to help close that gap. The ACE bill will restore vital minority contracting rules which were stripped away last year. This bill will make changes to recognize the reality of discrimination and its direct impact on minority businesses. Since then my concern over minority business contracting has grown because this is not just happening within DOD. This is a problem throughout the agencies.

I have initiated a review of contracting practices within the Federal Government. We are going to hold agencies accountable by scoring their contract awards. When we are through, we will have a complete picture of how agencies are contracting and in what ways they need to be improved. Ensuring that small businesses are a part of the solution for our Federal Government's problems is a priority for all of us here today. With that equation, everybody wins. And taxpayers get more value for their money with vastly superior services. Small business are able to sell their services while creating jobs for communities throughout our country. I look forward to hearing from our witnesses today, Mr. Chairman. Thank you again for holding this hearing.

Chairman T4Talent. I thank the gentlelady as always for her strong and incisive comments. We will go to the witnesses now. I do want to recognize the presence of Mr. Abercrombie. He is not a member of the Committee but is a very powerful advocate for this issue. And I thank the gentleman for coming.

Mr. ABERCROMBIE. Mr. Chairman, will I be allowed to put in a statement?

Chairman TALENT. Without objection. It is the practice in the Committee just because we want to get to the witnesses and ask questions that normally only I and the ranking member actually make opening statements. We are happy to put anything in the record. The gentleman will have the opportunity to ask questions, too, when the Committee members have a chance. Without objection, your written statement will be entered into the record.

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

Chairman TALENT. We will go right to the first panel of witnesses. As these government witnesses can see, we are all very interested in every aspect of this issue. We welcome them here and their partnership in trying to achieve these goals.

The first witness is the Honorable Deidre Lee, who is the Administrator of the Office of Federal Procurement Policy.

**STATEMENT OF HONORABLE DEIDRE A. LEE, ADMINISTRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY, EXECUTIVE OFFICE OF THE PRESIDENT**

Ms. LEE. Good morning. Chairman Talent, Congresswoman Velazquez, and members of the Committee. I appreciate appearing at this hearing today to focus on the impact of Federal procurement policy on small business competitiveness including contract bun-



dling. First and foremost, I would like to emphasize the administration's ongoing commitment to and support of small business. Over the past several years, much has changed in the government with the critical focus of delivering results for the taxpayer and achieving discipline with a balanced budget. A strategic underpinning of this results-based performance has been acquisition reform; or quite simply, how can we best buy the goods and services the taxpayer needs to deliver great results.

Chairman TALENT. Could you move your mike a little closer? That is much better.

Ms. LEE. Broad inclusion of the small business community in government business is a measure of great results. So what has been done to deliver for the taxpayer including more opportunity for small business? Let me cite just a few examples. The vast array of potential for simplified acquisition, which means that acquisitions under \$100,000 versus the old threshold of \$25,000 are set aside for small business. We are buying more commercial products and services versus Government-unique specifications. This opens opportunities for small businesses that may not have had the expertise and Government uniqueness but now can participate.

We are focusing on best-value procurement, looking at the whole picture and selecting the best results. Small businesses are particularly adept at offering unique solutions. We have shortened the time frame for acquisitions, tried to lessen the bureaucratic proposal process, and opened up communications. Small businesses are responding. They want to participate in procurements that do not take years and endless resources just to propose, where through an hour long presentation, the government can really evaluate their capability and solutions.

Multiple award, task, and delivery order contracts have become vehicles of choice for interagency acquisitions of information technology. They make current technology available in a timely way. And small businesses are there. In the Transportation Department's Information Technology Omnibus Procurement, ITOP—we need an acronym for everything—40 percent of the more than 750 million in total prime contract dollars were awarded to small business firms.

The Department of Commerce recently awarded the Commerce Information Technology Solution, another acronym, COMMITS, contract, a \$1.5 billion five-year multiple award contract for IT services set aside exclusively for small businesses. The 29 contract holders include SDBs, 8(a) businesses, and women-owned small businesses. With the SBA we put in place last fall the Small Business Service Contractor Streamlining pilot project. Under this pilot project, agencies waive the CBD and use PRO-Net to competitively solicit only small businesses.

In conjunction with these more global changes, we have emphasized several specific small business initiatives including the Very Small Business pilot programs, Mentor Protege, Hub Zone, Small Businesses Demonstration program, Small Business Disadvantaged Reform program, and Goals. Goaling is critical to delivering on these expectations the Congress has established. Together with the SBA and the agencies, small business goals are working.

With acquisition reform, the goal for small business was raised from 20 to 23 percent. The SBD goal is 5 percent. The women-owned goal is 5 percent and we monitor 8(a) awards. Although much has been improved, we are not finished and much is left to be done. You specifically identified contract bundling as a topic of discussion. The administration's challenge in implementing the bundling provisions of the Small Business Reauthorization Act of 1997 is to provide guidance that ensures agencies provide opportunities to small business and also maintains discretion to effectively and efficiently meet their mission needs, including consolidations where appropriate.

Since the enactment of the legislation, we have been working closely with the SBA and the procuring agencies to develop an effective rule. A proposed rule was published in January 1999. SBA received and analyzed public comments and OMB received—SBA's draft final rule at the beginning of this week. As the statute recognizes, there can be a variety of reasons that singularly or jointly form the basis for necessary and justified bundling, such as cost savings, quality improvement, reduction of cycle times, better terms and conditions, et cetera.

The statute further speaks to agencies demonstrating that the benefits of bundling be measurably substantial as a foundation for necessary and justified bundling. We are working with SBA and the procuring agencies to determine how best to implement these requirements. Through deliberations we want to develop a rule that achieves strong business participation consistent with the most efficient implementation of agency missions. We hope to complete this rule shortly. In the meantime, agencies are working cooperatively with SBA in discussing potential contract bundlings and considering alternative strategies that promote small business participation.

Mr. Chairman and members of the committee, let me reiterate that the great results delivered to the taxpayer include small business and we will continue to focus on these goals. I would be pleased to answer any questions.

Chairman TALENT. Thank you, Ms. Lee.

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

Chairman TALENT. The next witness is Mr. Robert Neal, the director of the Office of Small and Disadvantaged—wait a minute. I didn't go in order here. We will go in the order you are sitting there.

Dr. Richard Hayes, associate deputy administrator, the Office of Government Contracting, Minority Business Development of the Small Business Administration.

**STATEMENT OF DR. RICHARD HAYES, ASSOCIATE DEPUTY ADMINISTRATOR, OFFICE OF GOVERNMENT CONTRACTING AND MINORITY BUSINESS DEVELOPMENT, SMALL BUSINESS ADMINISTRATION**

Dr. HAYES. Good morning, Mr. Chairman, and members of the Committee. It is a pleasure to testify before the Committee this morning. We are pleased by your willingness to give consideration to an issue of great importance to this administration, namely contract bundling and its impact on America's small business contrac-

tors. At the outset, I believe that we can successfully achieve significant and meaningful opportunities for small businesses in procurement as we continue to streamline and reform the government's acquisition processes.

In fiscal year 1998, Federal agencies reported total purchases of \$181.8 billion. \$42.5 billion or 23.39 percent were awarded to small business firms above the Government award goal of 23 percent. We find this achievement very encouraging. The key is balance between obtaining quality goods and services at fair and reasonable prices while assuring the small businesses who are excluded from participating in the Federal acquisition process because contracts are unnecessarily large, complex, or geographically dispersed. In today's procurement environment, agencies use streamlined procedures such as the schedules and Government-wide Acquisition Contracts to purchase goods and services in an efficient and cost efficient manner.

Agencies are also using commercial purchase cards to streamline the procurement and payment functions. We applaud the use of the card, but want to assure that small businesses are not adversely impacted. In many cases, agencies are consolidating their supply requirements to take advantage of volume discounts and better terms and conditions. We understand their need for doing so, but our concern is when they combine different or geographically dispersed service requirements into one contract, often too large for effective small business participation.

To offset such actions, SBA works with Federal agencies to develop alternative strategies that will maximize small business participation at both the prime and subcontracting levels. As an example, the DOT proposal, or GWACs, furnished technology services structured so that small businesses and 8(a) firms were among the winners. Recently the Department of Commerce awarded its multiple award GWACs as a total small business set-aside to enable agencies to reach small, small disadvantaged, 8(a) and women-owned small businesses. We actively support these innovative strategies and encourage other agencies to use them as models. In addition to these efforts, we require our procurement center representatives to keep detailed records of instances of contract bundling. The public advises the SBA of contract bundling cases by using our bundling hot line on the Internet at [www.sba.gov/gc](http://www.sba.gov/gc).

In fiscal year 1998, our PCRs investigated 60 cases of contract bundling valued at more than \$5 billion and were successful at changing the procurement strategy to be more inclusive of small businesses in almost 90 percent of the cases. Two sets of success stories involve the Air Force in which through our actions we were able to ensure that \$86.9 million requirement for Patrick Air Force Base in Florida and that a \$90 million acquisition for an aeronautical system center in Wright Patterson Air Force Base in Ohio, were retained as small business set-asides.

The SBA Reauthorization Act of 1997 established guidelines to assist agencies in evaluating planned bundle acquisitions. This act provides the consolidation of contracts is permissible only when the agency proves there are measurably substantial benefits associated with bundling the contract. The major provisions of the statute include a definition of contract bundling, a requirement that agencies

show that bundling procurement is necessary and justified, a provision for small business teaming arrangements, and an evaluation credit to large business bidders with the strongest subcontracting requirements.

SBA published its proposed rule on January 13, 1999, in which we asked for suggestions on defining two key terms found in statutory language, "substantial bundling" and "measurably substantial benefits." these terms are important in determining when a bundling of contracts may be necessary and justified and in citing the levels of documentation required by an agency. Unfortunately, none of the commenters provided a clear direction on how to develop the methodology for measuring the benefits of contract bundling.

Some at Commerce suggested that we measure potential benefits in terms of cost of savings. Other comments wanted SBA not to attempt to define an overall benefit one-size standard. We have forwarded a draft rule to OMB for clearance. We will strive to resolve any of the remaining issues or conflicts as quickly as possible so that we may publish the final rule in the near future. Once published, the regulatory guidance will be added to the Federal Acquisition Regulation. In addition, SBA will work vigorously with OFPP to educate the Federal acquisition workforce about the procedures required in the new rule and ensure that these procedures are in enforced.

In conclusion, SBA pledges to ensure that each of the contract bundling activities is fully justified and reported to the Federal Procurement Data System. Through these efforts we will be able to both further procurement reform and also ensure the small businesses are a significant player in Federal acquisitions. Thank you for inviting me to discuss contract bundling this morning. I would be glad to answer any questions that you might have.

Chairman TALENT. Thank you.

[Dr. Hayes' statement may be found in the appendix.]

Chairman TALENT. Then our final witness on this panel, Mr. Robert Neal, the director of the Office of Small and Disadvantaged Business Utilization, the office of the Deputy Undersecretary of Defense.

**STATEMENT OF MR. ROBERT NEAL, DIRECTOR, OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION, OFFICE OF THE UNDER SECRETARY OF DEFENSE, ACQUISITION AND TECHNOLOGY**

Mr. NEAL. Good morning, Mr. Chairman, and distinguished members of the Small Business Committee. It is a pleasure to appear before the committee and discuss the importance of small business to the Department of Defense and to outline some small business initiatives. It is timely that you, the Congress, and we, the executive departments of the Federal Government, turn our collective attention to the important issue of contract bundling. We have a shared concern that the practice of contract bundling may have to some extent limited the ability of small businesses to participate as prime contractors in the defense marketplace.

In order for us to address this issue, we need to understand the magnitude of contract bundling, collect and analyze data, and develop policies that balance the needs of the small business commu-

nity with the objectives of acquisition reform. Congress under the Small Business Reauthorization Act of 1997 modified the Small Business Act to reflect your concern in this area. According to S. 412 of the Small Business Reauthorization Act, the term “bundled contract” means a contract that is entered into to meet the requirements that are consolidated in a bundling of contract requirements.

It is important to recognize that contract bundling has been occurring in procurement for some time. This reality is driven in part by the substantial downsizing that has occurred in the Federal acquisition workforce and the need to improve efficiencies within our procurement system. These conditions do not appear to be diminishing. Therefore, we must recognize the need to develop balanced policies that foster acquisition reform objectives and opportunities for small business.

The question before us is this: What is the impact of bundling on prime and subcontracting opportunities for small business? With respect to prime contracts, two major initiatives have been undertaken by the Department: one, a strong bundling policy; and, two, testing of the concept through the Air Force on teaming of small businesses. The Department of Defense recognized early on that the practice of contract bundling may negatively impact the ability of small businesses to participate in the DOD marketplace.

Accordingly, we issued a policy memorandum, entitled “Consolidation of Contract Requirements,” which predates the Small Business Reauthorization Act of 1997. That policy memorandum signed by the Deputy Secretary of Defense is still in effect. It is noted that a significant amount of the language, tone, and intent present on sections 411 through 417 of the Public Law 105–135, is also present in the DOD policy memorandum. I have included a copy of this memorandum for the record.

In addition, the Air Force is currently testing a concept that is authorized by section 413 of the Small Business Reauthorization Act which encourages the joint venturing and teaming of interested small business concerns for the performance of a bundled or otherwise large contract requirement. While the forgoing policies address prime contracting opportunities, the current environment has resulted in increased subcontracting opportunities for small business concerns. In response, the Department has implemented several initiatives to address subcontracting opportunities.

First, the Department developed an outreach initiative through its contact with the top 120 DOD prime contractors. We solicited top-level management support for the small business subcontracting program, and we asked each chief executive officer to re-emphasize their responsibility to carry out the intent of Congress to provide maximum practical opportunities for small business participation in subcontracting.

These letters were signed by the Under Secretary of Defense for Acquisition and Technology and addressed each of the corporate CEOs soliciting their personal commitment to reenergize the small business subcontracting program. The letter also asked the CEOs to assess their small business program and to identify initiatives, best practices, and performance-based metrics that have improved their subcontracting performance. As a follow-up to the Under Secretary’s letter, I have received many response letters and conducted

personal visits to many corporate headquarters. I plan to continue my extensive personal visitations with the prime contractors to convey the Department's message and to get their commitment for increased involvement in this meaningful activity.

Second, DOD is reviewing our oversight and compliance of major prime contractor's participation in our comprehensive subcontracting test program. Based on this review, the Department may revise the oversight and compliance guidelines to improve program efficiencies. The third item that I would like to bring to your attention is that the Department has made subcontracting with small, small disadvantaged, and women-owned small business an important element of past performance.

As you know, past performance is a critical element of acquisition reform and is one that we think affirmatively fosters the inclusion of small businesses as active participants in contracts. Past performance is now a key criterion in proposal evaluation. The Department will continue to explore creative approaches to increase both prime and subcontracting opportunities for small business concerns within the current environment. In this vein, we continue to meet regularly with representatives from large business concerns, various trade associations, and small business concerns in order to gather input and gauge response to these initiatives.

In conclusion, Mr. Chairman, the Department of Defense is committed to providing to the maximum extent practical small business prime and subcontracting opportunities. The Department shares your belief that the small business community is the cornerstone of this Nation's economic success and technological innovation.

Thank you for this opportunity to discuss the Department of Defense's views on the importance of small business programs and our efforts that are underway to mitigate the impact of contract bundling on small businesses, small disadvantaged businesses, and women-owned small businesses. I would be happy to answer any question that you would ask.

Chairman TALENT. Thank you, Mr. Neal.

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

Chairman TALENT. Also the committee also wants to welcome Mr. Albert Wynn of Maryland, who is sitting in with us this morning and is very welcome and has a longstanding interest and record of advocacy on these issues.

Well, let's get right to the questions. I want to lay out for the members where my concerns are here. I am not going to take too much time because this is a well-attended meeting and many of you have questions that you want to ask these witnesses. In the Small Business Reauthorization Act of 1997, we were able to get inserted into the law some measures which really don't prevent unjustified contract bundling but at least got us on the road to being able to track it and to protest a little more effectively where it was occurring.

I want to emphasize these are not what I would consider very powerful measures, unfortunately. We were able to get them into the law. But such as they are, they do permit the SBA to be more involved and to protest more effectively any contract bundling which they think violates the regulations that they are supposed

to enact pursuant to that law. In addition, it allows to at least keep track of how much contract bundling is going on by having a uniform definition of it. Of course, it assumes that we get the regulations to implement that law.

So let me just ask, first, and I guess this would be—let me ask you, Dr. Hayes, my understanding is that the agency was supposed to have these regulations completed within 270 days, which would have been August of last year. We still don't have them done. Could you tell me what you would attribute the delay to and why we can't get these regulations into law?

Dr. HAYES. I also want to say even though the regulations are not in place, SBA is very diligently pursuing contract bundling instances and is, in fact, being aggressive about investigating those cases. At the same time, we have been working very hard to get the regulations out. These are very complicated issues. The statute did not precisely define two very key issues, substantial bundling and substantial measurable results. We have been trying to figure out a way to do this in a way that would produce an effective regulation. A proposed rule asked the public for comments on how it would, in fact, define those in a way that you could make it quantifiable. Unfortunately, we did not get any answers that were very clear from the public as to how best to do that. So we have been working very hard and we apologize for not having the regulation in place. We are still in discussions about how best to, in fact, implement those aspects of the statute so that it would, in effect, be effective.

Chairman TALENT. I understand that. No, these are not easy to define. The statute does not define it precisely. That is what we wanted you to do. We felt that you had the expertise to do it. I do think that the SBA has been an advocate and at times, I believe, the sole advocate for small business. That is why it is all the more crucial that you get this done. In particular because, yes, I know you are advocating now, but we don't know how much is going on. Until we get these regulations in place, we can't even track this.

Then what happens is, as we try within the Congress to pass or to exert some additional pressure on this, we can't get a handle on how much is out there. We are told things by these agencies, and we are not in a position to know whether or not that is true. I want to emphasize to you that I see this slipping in the wrong direction statutorily. We need to organize our resources and get in this game. We really need these regulations to do it.

Now, I want to bring up another thing to the members. The law allows bundling under certain circumstances, one of which is when by bundling the agency would enjoy measurably substantial benefits for the government. Now, measurably substantial benefits, we are all legislators here and we know that is the kind of word you put in when you want it to be—you want to have a bar and you want it to be fairly high but you can't agree on exactly what. So I would agree with you that this is vague.

For precisely that reason, it seems that your regulations have to quantify what constitutes measurably substantial benefits. I understand in an earlier draft you did that. Let me read for the members. This is what the agency was proposing in an earlier draft, that measurably substantial benefits would be one of the following:

cost savings of more than 20 percent; quality improvements that would save time, improve or enhance performance efficiency by more than 10 percent; reduction of acquisition cycle times of at least 30 percent; better terms and conditions by at least 10 percent; or any other benefits of at least 50 percent.

Now, whatever you think of those particular levels, maybe it shouldn't be 30 percent off acquisition cycle times, maybe it should be 25—but if you have some concrete quantity in there, then you have a bar that you can use to judge whether or not the bundle actually meets that. But the proposed final draft you have published doesn't have that. It is extremely vague.

It is the same criteria but without the numbers. So cost savings, quality improvements, reduction of acquisitions, and cycle times. So I guess what I would like you to explain to me is how the contract officers are supposed to know whether the bundle satisfies that or whether the proposed bundling satisfies that. There isn't any quantities in there. Aren't we going to get inconsistency from the process if we don't have some kind of actual quantified numbers?

Dr. HAYES. Yes, Mr. Chairman. I think you are referring to the July 1998 internal proposed regulation that was never actually put forth. We did propose some initial sort of quantifiable measures. But they were just really the first step out of the gate. The bundling issues are justified in some cases. Again, a very complicated issue. We are trying in the context of the entire administration to put together a rule that would be quantifiable, that would, in effect, be effective. These are the discussions that we are engaged in now with OMB. We feel strongly that we will be able to come to agreement in the very near future with a very good rule, with a rule that would be effective, that would be implemented in the very near future.

Chairman TALENT. Well, let me ask you a question. So it is your agency's opinion now that you don't need these specific numbers in it?

Dr. HAYES. No. Again, we feel very strongly that in order for us to effectively do this, there needs to be some quantifiable measures. The question may be what is the proper level. We are, as I said, engaged in discussions with OMB and others as to how best to go about doing it. We think that it is important for the agencies to meet their procurement objectives, but as you know we are concerned and want to make sure that small businesses are integral players in that process.

But do you take one-size-fits-all? Some of the commenters said don't give us the precise standard, let the agencies look at it in the context of a particular procurement because it may be circumstances that justify one thing versus the other. Other commenters said be very precise in your estimates. And the other comments that we received, there was no clear sort of recommendations in one area or the other.

Chairman TALENT. I want to urge to you have the standards in there because at least it gets you in the door. It doesn't mean they can't do it. It just means that you have to explain it. And you have some increased role in a possible protest or comments. So at least they get you in the door. I am concerned that otherwise they will use vague standards as an excuse for saying that nothing is ever



being bundled. All of the impetus of the system would be against that. If they say that it is not a bundle that qualifies or a contract that qualifies under the law, then they don't have to explain all of this to you, Congress doesn't know they are doing it, they don't have to report it as a contract bundling. So I would hope—did I just hear you tell me that you would anticipate that when this whole regulatory process is done you are going to have quantifiable standards in there?

Dr. HAYES. There should be quantifiable standards, but it is a negotiated process that this rule is going to be effective, that it is going to work.

Chairman TALENT. Who are you primarily negotiating this with? Is this Ms. Lee that we have here? I am going to ask her next. I want to help you in the negotiations. Seriously, let me go to you, Ms. Lee. What do you feel about this? Would you be agreeable to quantify the numbers in here as a measurement of measurably substantial benefits?

Ms. LEE. I am going to echo what Dr. Hayes has just said. What we are trying to do is make sure that we have full inclusion of small business, but that we do not get a one-size-fits-all solution because in some agencies a 25 percent differential is not significant. In other small agencies, that could have a significant impact for them from a more programmatic standpoint. What we are trying to do is to include small businesses but tailor it so that we don't end up with a cookie cutter that doesn't meet the overall needs.

Chairman TALENT. I would say the same things with regard to measuring the cost savings. The draft regulations said in determining whether a cost savings of at least 20 percent would be achieved through bundling, the procuring activity in the SBA must compare the price that has been charged by small businesses for the work that they performed and where available the price that could be charged by small businesses for work not previously performed. They had a 20 percent level in there.

I think, again, some numbers in here to put some teeth in this, which is not that strong a measure anyway, are absolutely essential. We are going to hear on the second panel what is going on out there in the real world when they are bundling contracts which they claim save money and improve quality. Let me just read you one here that the staff gave me. We are going to have testimony about this. Perhaps, Mr. Neal, you might want to comment on this. It says that the Marine Corps is proposing bundling food services into two regions, the East and West Coast and to reengineer food service by converting to a cook-and-chill method of food preparation.

So the members understand, cook-and-chill is what you get on the airplane. That, in my judgment, is not an increase in quality. Right there we have quality going down.

There are currently five Marine Corps food service regions and many of the contracts are held by small businesses, naturally. If the proposed consolidation takes effect, only three very large corporations have been identified as having the ability to handle the work. The Marines propose to save \$20 million annually with cook-and-chill regionalization. However, past cook-and-chill attempts

have failed. West Point currently has an inoperational cook-and-chill facility and a cook-and-chill facility in Japan is only producing salads after being operational for two months. Even if a cook-and-chill facility can function, the quality of the food will suffer.

These are the stories that we are hearing over and over again. I am having people come up to me because I am the Chairman of this Committee and telling me this is happening. These are credible people. So we have to have these regulations in place so that we can watch this and do something about this. If you are not doing this, it is not being done.

Do you want to comment, Mr. Neal, on what I just said? I don't want to throw that out there without giving you a chance to comment on it if you want to.

Mr. NEAL. In terms of the details of that particular activity, we would be more than willing to provide you with the Department's take on what is going on with respect to the cook-and-chill initiative in the Marine Corps. But with respect to the quantitative measures—we have made these comments to both SBA and OFPP—we need flexibility. When you look at a bundled contract in the Department of Defense, a 25 percent yardstick is fairly significant. For some of our larger contracts where bundling has occurred, when you look at the dollars involved, it may be more appropriate to look at a yardstick on the magnitude of 10 percent, which would be fairly significant. We would like the flexibility of being able to look at the application of a yardstick on a case-by-case basis. While some guidelines would be very useful, we recognize that depending upon the size of the bundled contract, the savings could be very significant when you look at how much we contract out as a Department.

Chairman TALENT. Again, I am going to recognize the ranking member, and I appreciate the Committee's indulgence. If something fails on these regulations, that doesn't mean that you can't do it. It just means that there is the kind of increased scrutiny that Congress intended to make sure that the taxpayer is protected and small businesses still have the opportunity to compete. It has a lot of implications, not just the small business community in general, but of course minority contractors and ones that are particularly on the bundle and a lot of interest that we are very interested in.

Let me say also, Mr. Neal, I know that this—that you operate above this level. But whoever on your staff was responsible for getting your statement in got it to us after 9:00 a.m. This morning, which is less than an hour before the hearing started. The Committee rules require 48 hours. People on the Committee know—I am not a stickler for rules, but we have to have it in enough time so people can read and ask questions. We may have further hearings on this. If you do testify before the Committee, I want you to get the statement in at least a day in advance.

I would be happy to recognize the gentlelady from New York.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. Mr. Hayes, Dr. Hayes, when do you think that you would have the final rule? You said in your testimony that it would be ready in the not-too-distant future. Next year? Two years from now?

Dr. HAYES. I strongly believe that we will have it done shortly. My staff is ready to start working on it. Like I said, the rule is over

at OMB. We are ready to begin discussions on crafting the final rule today. We were hoping to get this out very quickly. It is an added tool that we can use. It is very important to us, and we want to get it done.

Ms. VELAZQUEZ. So now you are expecting a reaction from OMB? Ms. Lee, you are telling us today that you are going to be working in collaboration with SBA and make sure that we reach a final proposal rule?

Ms. LEE. Absolutely. We take the proposed rule that came in and through our review process we do give the agencies an opportunity to comment on it. And we get the agencies' comments, and then we work them through and finalize the rule.

Ms. VELAZQUEZ. I hope if you look at the members' attendance here today—this is an important issue, and an important issue for this side of the aisle. We will do everything within our power to make sure that this rule is finalized and that we deal with this issue. This issue is not going away. I promise you, it will not go away.

Dr. Hayes, you mentioned in your testimony that you met this small business goal for 1998. How are we doing in 1999?

Dr. HAYES. We recently issued a 6-month report card, which I think is a first, to all of the agencies with respect to their 1999 goal achievements. Overall with respect to the various goals, agencies are meeting those goals. Overall procurement is down with respect to previous years, but the agencies are meeting or at least addressing the various goals for small businesses and SDBs. Women-owned businesses, as you know, tends to be a problem, but we are working very hard to close that gap.

Ms. VELAZQUEZ. Dr. Hayes, we saw the report card. It is dismal.

Dr. HAYES. I guess I would take a different take on it. The Government, the administration is committed to meeting both the small business goals, the SDB goals, and the women-owned small business goals.

Ms. VELAZQUEZ. We need to see numbers here. One thing is to be committed and the other thing is to have the numbers.

Dr. HAYES. Yes. But I think if you go back to the tables and if you look at and compare the same data points, the 6-month data point of last year with this year, the agencies are in effect on target to meet their goals. There seems to be a lot of things that have occurred in the last quarter of the fiscal year. So we are not there yet. But in terms of the expenditure of dollars of the various agencies, we are very close to where we have been historically.

Ms. VELAZQUEZ. Isn't it true that for 1998 you counted all contracts, as the law says. If you counted contracts to be performed overseas and military sales, you would be well below your 25 percent in 1998?

Dr. HAYES. I think that you are addressing the issue about how SBA and OFPP and others carry out the goaling process. There are certain contracts which are not currently in the base of how we count goal accomplishments because in our view those contracts aren't available to small businesses. There are a couple of other exceptions about how we count what is in the base versus in the overall numbers. But again—

Ms. VELAZQUEZ. Aren't you supposed to count all contracts, Mr. Hayes?

Dr. HAYES. The statute says to count all contracts. We can discuss how the Committee wants us to go about doing it, but in looking at the dollars that are available to small businesses, there are certain procurements. Those businesses in the formula, they are not really available to small business to bid on. So we believe that it is erroneous and gives no one a full picture to, in fact, include those in the overall base.

Ms. VELAZQUEZ. Mr. Chairman, I will continue. We should go and vote; and when we come back, I will continue my questions.

Chairman TALENT. We have a vote on the patent bill on suspension. I am going to go ahead and recess the committee and we will come back promptly and reconvene with questions.

[Recess.]

Chairman TALENT. Let me reconvene the hearing. If we could have the regular order.

I am going to go ahead and ask a couple of questions I had. Ms. Velazquez was in the middle of her questioning, but I am informed by her staff that she is at a press conference and wants to pick up her questioning when she returns. So what I will do is ask some questions I had and then if she is not back at the time I am finished, then we will go ahead and recognize one of the other members. She was right in the middle of some good questions, and I want to give her a chance to continue as soon as she gets back.

So let me turn to a couple of issues that are not directly involved in the issue of the new regulations but nevertheless are problems that small businesses face with regard to procurement, and I want the panel to comment on them.

Let me go first to these ID/IQ contracts, or indefinite delivery indefinite quantity contracts, which permit a contracting officer to award contracts without specifying the project or the actual size of the contract.

Now as originally conceived, this is not an objectionable mechanism, particularly with regard to supply contracts or contracts for goods; smaller type contracts where they were not sure how much they wanted to procure but they wanted to make sure they had a regular supply and it makes sense in that context. But what is happening, what we are hearing is happening, is that it is being used with regard to service contracts and what is happening is they are bidding out rather large service or consulting contracts and the problem for small businesspeople is that they have to obligate themselves and hold the resources to be able to perform large service contracts, and then they may or may not get any business.

This is very difficult for small businesses. For larger businesses, they can say, okay, we can hold the ability to do up to a couple of million dollars and if we get the business, great, and if we don't get the business it isn't that big a deal for us. But for a small business to put in the time and the effort to have that capacity and then not get the business really puts them at a disadvantage.

So as a practical matter when they get these ID/IQ contracts, particularly for services or consulting type businesses, IT or other types of consulting businesses, they just don't bid because they are damned if they don't get the contract, but they may be worse off

if they do because they are committing a lot of their resources to something that may not be profitable for them.

Let me just ask the panel whether you are sensitive to that, whether you think that is a problem, and what you are trying to do either within the system as a whole—this would be for Dr. Hayes and Ms. Lee, or Mr. Neal, within the DOD—and give us your comments on that, and then we will see if the ranking member has returned and if not, I will recognize somebody else.

Ms. LEE. Mr. Talent, the panel says I may begin on this one. On the multiple award contracts, GWACS MACs—like I said we have to have an acronym for everything, that is what we call them—we are focussing on more effective implementation. And we have some additional rules coming out shortly to guide the contracting officer. The concept is that these are large contracts at the award, but then every task underneath them is fair competition among the holders of the vehicle.

So we tried to at that point clearly describe what the task is for that and then give everyone an opportunity to bid on that task.

So the small business can bid on the task or perhaps if they have got their resources employed somewhere else, may pass from time to time on a specific task bid. But we want to continue to give them that opportunity as the work evolves.

Chairman TALENT. Well, see, they have the opportunity in theory. The problem is in practice, without—first of all, they get very big, these contracts. Second of all, if they have no assurance that they are going to get a regular line of the business, you can see why it is much tougher for them.

I will give an example, and I don't expect you to comment on this specifically because I am just confronting you with this, but what I am trying to get across to you all is that we are hearing these things. We are representatives. We go home and have town hall meetings, and we meet with our constituents; and they come and tell us, and I am personally hearing too many of these things to believe that this is isolated instances. I think we have a problem, and we count you all to be able to quantify this and tell us whether, in your judgment, there is a systematic problem and what we can do.

Now, browsing the GSA web site—and staff did this; I am not up to browsing a lot of web sites—for region 7, which happens to be our region, my district, ID/IQ contracts, and some of them were working as intended. But we came across five contracts for modular buildings which had been awarded to small businesses. In one case the company was in the second year of a \$2.5 million contract but had only received \$239 worth of business. The other four contracts were for the same size and were also in the second year but had received no business at all.

Now, I mean, you tell me, Ms. Lee, if this is becoming systematic in the government, don't you think that it puts small businesses at a disadvantage for the reasons I indicated?

Ms. LEE. We are working to try and focus that ordering. I don't want to say it is totally at a disadvantage to small business, because I certainly do not see it to the extent you do, but we all three try to get out and meet with the small businesses and see what is happening, what is going on, and how is this working. And from

some segments of the community you also hear favorable things, that they like to have the opportunity to fairly compete, and what we are trying to get the procurement community to do—and we are not there yet—is to put these in more results-oriented packages so we don't try to buy a long-term solution but rather have a task that is doable in one bite: We think that gives small businesses more opportunity to participate. There is still work to be done on these.

Chairman TALENT. Dr. Hayes, would you care to comment?

Dr. HAYES. As you indicated, the ID/IQ and other such vehicles are very popular these days. Our approach has been when agencies want to use these procurements that we figure out ways that small businesses and others can be part of the process. I think the ITOP contract, the COMMITS contract are successful examples of how that might, in fact, work.

There also was a very large contract recently awarded by the IRS over a number of years, and the goals for small businesses are very aggressive and we fully expect them to, in fact, meet those overall goals. So while there are problems, I think we can still do better; and we are going to keep doing better to make sure that small businesses actually get awards when they, in fact, win these various procurements.

Chairman TALENT. Mr. Neal, you want to comment on behalf of the DOD?

Mr. NEAL. Mr. Chairman, one of the things that, with respect to GWACS, we find them to be very, very beneficial to the Department. We—in my travels around and talking to small businesses, the thing they have asked us to do is to be sensitive to the types of industries that they operate in. For example, in information technology, GWACS seem to be working very well because there is not a substantial commitment of resources; but in some of the other industries, we are still learning, and as Ms. Lee has said earlier, we are trying to work out a lot of bugs; but we do see that there are substantial benefits to using GWACS, and it is just a matter for time of us working through some of the bugs and getting the information like that you have been receiving, so that we may find that there may be industry-specific problems that we need to deal with in terms of the guidance we give our contracting officers for setting up GWACS.

Chairman TALENT. All right. Ms. Velazquez has not returned, and I know Mrs. McCarthy you are next but I know that you wanted to yield to Mr. Abercrombie, so let me go ahead and go with Mrs. Kelly for any questions she may have and then Mrs. McCarthy.

Mrs. KELLY. Thank you very much, Mr. Chairman. I do have some questions. I want to go back to the testimony of Ms. Lee. In reading your testimony, you spoke of the cost savings that could be realized as being one of the factors, the decrease in supply times and improved quality as being one of the factors that you would like to look at in making determinations for small business participation. And I am interested in whether or not you are doing any outreach to other agencies to enhance their ability to reach small businesses through their procurement contracts.

My reason for asking this is that I have asked agency procurement officers about, for instance, the women-owned business part,

and they did not know. They do not know that they should at least try to achieve the 5 percent number for women-owned businesses. It is something that they are a procurement officer for an agency but they have not been told. It seems to me that either you told them and they did not know that, or they are new in the job. There must be some rationale.

I want to know what your outreach efforts are in that regard, and I want to know how you are going about it. And I want to know, since obviously it is not getting through, what you have in mind to enhance your education efforts.

Ms. LEE. That concerns me greatly. I have a procurement executive council meeting tomorrow. This has just moved up to item number one on the agenda. It concerns me that the procurement executives are not aware of that. Just last month, Dr. Hayes and I in our collective effort pulled the midterm data. We sent a letter to every major procurement exec on where they were midterm. We then took those letters to the President's Management Council, which is attended by the second in command or chief operating officer for the agencies, and gave a presentation at that committee meeting. This assured that the agency heads or their number two person were aware of where their agency was midterm performing against their goals.

So I am very concerned if procurement execs are telling you that we have not been there and are not out there advocating these issues. From the women's business issues——

Mrs. KELLY. Excuse me, they didn't tell me that you were not there. They told me that they simply were unaware of it, nobody told them that. It seems that the education job is not getting done. If we are going to get the women to have some procurement at 5 percent, somebody is going to have to tell them.

Ms. LEE. I would be happy to work with those individuals. I will make the visits and the calls myself, but they should be aware.

Mrs. KELLY. I look at where you are for your indications for the first 6 months of fiscal year 1999, and the agency awards 1.8 percent to women. If you double that for the next 6 months they still are not at the 5 percent.

Ms. LEE. That is correct. There are some unique challenges with women-owned businesses and, although we have a goal, we do not have a set-aside or special provision, and therefore we cannot make a women-owned business set-aside. Women win competitively. We are working with many of the women's councils——

Mrs. KELLY. Women do win and can win, and there are good businesswomen out there. The same with minorities. It is important that we address this issue.

And that takes me to you, Mr. Hayes. I know that you say that you are working hard to close the gap for women-owned businesses, so why is this 5 percent number so difficult?

Dr. HAYES. It is a complicated issue. I want to make a point that while we are at actually 2.1 percent for last year for women's procurement, the rate at which we are reaching the 5 percent is actually quite precipitous. We have done a lot of things to address the women's issue. This is extremely high priority of my boss, Ms. Alvarez, and others in this administration.

Mrs. KELLY. That sounds nice, but I don't see any concrete evidence.

Dr. HAYES. If I may, I will submit to you some examples of things that we have done. We signed MOUs with the major procurement agencies. Those MOUs between my boss and, for example, Secretary Albright and others state they are basically committed to addressing the women's issue. We also have advocates, women's advocates in the major buying agencies as well. Again their sole job is to make sure that the women businesses are bought before the procurement executives, but we can do more and we will do more.

Mrs. KELLY. I am going to go back to that issue in one minute. Actually, maybe I will just stay there.

I understand that Ms. Lee wanted some of the procurement executives—correct me if I am wrong—to use past performance as a part of this, and that they were asked to sign—people were asked to sign pledge cards on some of these things; is that correct? It seems to me that women deserve at least the same support there.

Ms. LEE. The pledging is probably a different initiative. But when we evaluate a contractor's performance, we say what did you say your involvement of small business was going to be? What did you actually do? And we take that into consideration for future—if they are competing for a future award, so we measure their record of performance in small business inclusion.

Mrs. KELLY. That sounds pretty logical. So Mr. Hayes, how come you cannot figure that standard out and sort of write it in?

Dr. HAYES. I think that is in the policy letter that OFPP is putting out and we address past performance. Past performance is included in other provisions of the FAR. This is a tool that the agencies can use to reward those contractors who, in fact, have good records with respect to contracting with minorities and women and others.

Mrs. KELLY. I want to move to another issue and that is the use of commercial purchase cards. You indicated in your statement that you do not think that—you think it might be good for the small businesses of the Nation if there is an increase in the use of commercial purchase cards. I am not sure. I think I have tagged it. Here it is on page 2: "agencies are also using commercial purchase cards to streamline their procurement and payment functions. We want to ensure small businesses are not adversely impacted since the card is used for micro purchases, and so forth."

I think that the commercial purchase cards are a good idea. They certainly will streamline purchasing, and that is a good idea. However, what is to prevent somebody from walking over to Wal-Mart? How can you assume that this is going to be good for small business if you are buying something? I don't think this is a fair assumption to make, and I want to know if you have any proof that it will.

Dr. HAYES. Again, we actually can't say definitively that small businesses are being affected. Last year the government spent \$8.5 billion using the purchase cards. We do not currently have the data that can really address this issue. We are currently now working with MasterCard and Visa to get those numbers. One of the problems is that small businesses, a lot of them don't take the govern-



ment card purchase. We are working very aggressively with the credit card purchasers to have small business to, in fact, accept credit cards. Otherwise these are opportunities that basically are not available to them.

Mrs. KELLY. As a small business owner, I can tell you, I know very few people who did not take credit cards and certainly my family's small business, my children who are in small businesses and my husband, we all take credit cards. I find that a peculiar remark that you would say they don't take credit cards in small businesses.

Dr. HAYES. If I may, we have our PRO-Net system, which is a database of 188,000 small businesses; and we asked the small businesses which purchase cards do you, in fact, accept. A large number of them do not indicate a positive reaction that they, in fact, take the credit cards. Credit card purchases are an integral part of this Government, and we want to get them registered on the exchanges so they can be beneficiaries of these micro-purchases.

Mrs. KELLY. Will there be an indication in your regulations that if they are using these purchase cards that you will be monitoring? Are you going to be able to enforce and monitor whether or not they are going to small businesses or how these cards are going to be used, whether they are going to be used for large—going to the large discount houses? I just cannot figure out what this small business—how small businesses are going to benefit by these purchase cards.

Chairman TALENT. The timer system has screwed up. Can we let him answer this and then move on? I appreciate your questions. We will try to get that fixed. The witness can answer.

Dr. HAYES. The regulation doesn't specifically address the use or nonuse of purchase cards. So we, in fact, are concerned about it. We are monitoring it. But that particular aspect of it will not be in the specific contract bundling regulation.

Chairman TALENT. Do you have a quick one to end with?

Mrs. KELLY. I just wanted to ask about the enforcement. I wanted to ask Dr. Hayes about how—about what is he going to do once the regulations are final? What are you going to do when the agencies continue to bundle contracts? Will there be enforcement written in?

Dr. HAYES. Yes, there will be very vigorous enforcement. There are a variety of steps that the agencies have to take prior to bundling a contract. They have to notify the Small Business Administration of their intent. We have appeal rights where we, in fact, can insert ourselves into the process to see if we can negotiate a satisfactory strategy for small businesses and for the agencies.

We do not hesitate to use those appeals. We don't like to do so, but we will do so if it is necessary to get a fair shake for small businesses. We have PCRs who are stationed at buying sites around the United States. They look for the procurements. They look at those that can be structured for small businesses, and we also work aggressively with the agencies to make it necessary that they are part of the process.

So we will aggressively, within our resources, do what we can to enforce these regulations. We will also work with the agencies to, in fact, help carry them out.

Mrs. KELLY. Thank you.

Chairman TALENT. Well, the gentlewoman from New York, Ms. Velazquez, needs a little time so I am going to go ahead, and I thank the gentlewoman from New York; and I recognize another gentlewoman from New York, Mrs. McCarthy.

Mrs. MCCARTHY. Thank you, Mr. Chairman. It is funny, I was thinking when I first came down, this is one of the first subjects that we talked about when I came in 1997, and we had a lot of concerns back then, and we still have a lot of concerns.

Anyway, I would like to give my time to my colleague, Mr. Abercrombie, because he needs the time; and I think he will be a little more forceful than I am.

Mr. ABERCROMBIE. I don't know about that, but thank you very much.

This is very discouraging. I don't understand at all why you are going from 1997 and 1999 and not have this all finished. And then to change the definitions or to leave definitions out, it does not seem to me to accomplish anything at all.

Now, I don't know if you have had an opportunity to go over the testimony that has been submitted to the committee, but my good friend, Ms. Bernadette Paik-Apau out in Honolulu, is a small businesswoman. She is a licensed architect. She is an owner of a construction business. We had hoped to have her up here to testify today, but she could not swing it in terms of her business being able to afford coming up here and taking time from her business.

She is a winner—I think Ms. Lee you brought up the question of the Department of Transportation—she has won for her work the Coast Guard's Women-owned Small Business Enterprise of the Year award, so she is in a good position to testify. So I am going to quote a couple of things from her testimony to you, and ask you whether these rules, whether these proposals that you have put forward, are going to address it.

Now, one of the things that she points out is when you do this bundling, that these bundled contracts, the people that get it, in effect, become brokers. Have you gone over this that they are just becoming brokers? That is all they are. I can cite in the movers, for example, in freight forwarding in the Department of Defense, have you looked into the fact that these people become just brokers and then they subcontract out? Is that what is happening or isn't it? Are they doing the work? Mr. Neal can do it. Mr. Hayes, you are supposed to be——

Dr. HAYES. Directing the question to myself?

Mr. ABERCROMBIE. They are not supposed to do it. They are supposed to be doing the majority of the work.

Dr. HAYES. In a case where there are bundled contracts, we work very hard to make sure that there are very strong provisions for subcontracting to small businesses. This is actually one key component of the regulation. We offer a preference for bidders who propose to use small businesses in performance of the contract.

Mr. ABERCROMBIE. How are you enforcing it?

Dr. HAYES. Again, these are part of the new regulations that are going to be coming into effect.

Mr. ABERCROMBIE. So you are not enforcing it?

Dr. HAYES. If I may——

Mr. ABERCROMBIE. Excuse me, I have heard the "if I may" all the way through this. Are you enforcing it or are you not at this time?

Dr. HAYES. Yes, sir.

Mr. ABERCROMBIE. How?

Dr. HAYES. We aggressively enforce contract bundling where we can.

Mr. ABERCROMBIE. How?

Dr. HAYES. By negotiating with the agencies to set up alternative procurement strategies, to negotiate for very strong provisions for contracting with small business subcontractors if that may, in fact, be the case.

Mr. ABERCROMBIE. How is it enforced? How? How are you doing it?

Dr. HAYES. I have a series of procurement center representatives who are stationed at buying sites where we have them.

Mr. ABERCROMBIE. How many do you have?

Dr. HAYES. I have 52 procurement center representatives (PCRs) who cover some 240 sites out of 2,000 sites in the country.

Mr. ABERCROMBIE. So in other words your enforcement is sporadic at best?

Dr. HAYES. The enforcement is—in terms of the PCRs that we have. We have other entities; we have other individuals who also are involved besides the PCRs who help us identify these kinds of issues. We have a bundling hotline.

Mr. ABERCROMBIE. There is an office in the State of Hawaii for a procurement center representative that is not filled.

Dr. HAYES. That is correct.

Mr. ABERCROMBIE. Why?

Dr. HAYES. We do not have the resources to assign a full-time PCR there. We have other SBA staff in Hawaii that help us in this process.

Mr. ABERCROMBIE. How many cases have they handled?

Dr. HAYES. I can get that information for you. I don't have it before me.

Mr. ABERCROMBIE. What is the average workload for a PCR?

Dr. HAYES. Again, if I can, I will submit that for the record.

Mr. ABERCROMBIE. How do they coordinate these PCRs with the work you do in the Department of Defense, Mr. Neal?

Mr. NEAL. Within the Department, we have a network of small business specialists that are assigned to most of the base, camps, and stations. Those individuals report up through the secretaries of the respective services and they are charged with looking at the small business activities at their installations and facilitating the work that is being done by the PCRs and coordinating their activities there.

So we have a little over 500 folks spread throughout the country that assist the SBA and provide us with the intelligence that we have in terms of the small business activities at each of these base, camps, and stations.

Mr. ABERCROMBIE. Do you have any instances then in the Department of Defense where subcontractors are not paid in a time period, say, within 120 days?

Mr. NEAL. We do receive individual complaints where subcontractors may not have been paid; and when we have those situ-

ations, we turn them back over to the prime contractors and we ask them to address it.

Mr. ABERCROMBIE. In other words, you do not protect small businesses in the Department of Defense. You protect the prime contractor, and if the prime contractor doesn't pay the subcontractor, the subcontractor is left to fend for him or herself; is that right?

Mr. NEAL. No, sir. What we have is our contractual relationship directly with the prime contractor. If we receive a complaint that materially affects performance, we go to the prime contractor and ask that it be addressed so we are not protecting the prime contractor.

Mr. ABERCROMBIE. How does it get addressed?

Mr. NEAL. It is addressed if the subcontractor is pulled off the job or stops work, then we sit down with the prime contractor and ask them to take corrective actions.

Mr. ABERCROMBIE. The corrective action is to pay the subcontractor.

Mr. NEAL. If that is one of the actions that is necessary—

Mr. ABERCROMBIE. If the prime contractor doesn't pay the subcontractor, do you take that contract away from the prime contractor and not allow them to do business with the Department of Defense again?

Mr. NEAL. There may have been situations where that has occurred. I do not have that information in front of me.

Mr. ABERCROMBIE. Has it ever happened that a prime contractor—

Mr. NEAL. Not to my knowledge, but I can have us take a look at information to see whether that has occurred.

Mr. ABERCROMBIE. It is very difficult because we are at the hearing today, and I find it strange that you would not have the information with you right now.

What rules exist in the Department of Defense now to protect subcontractors from prime contractors who do not pay them on a timely basis?

Mr. NEAL. To my knowledge, there are no specific rules.

Mr. ABERCROMBIE. Can you put that in the rules that you are going to put forward? Can I get a commitment?

Dr. HAYES. We will be glad to look at it, sir.

Mr. ABERCROMBIE. No, no, no, no. I don't want, you will be looking at everything. I don't want you to look at it, because—look, one of the things we do is we write legislation and you are supposed to write the rules based on what the intention of the legislation is. I am here to tell you that the intention of this legislation—you have a 14-day quick pay for the prime contractors. Right?

Dr. HAYES. Yes.

Mr. ABERCROMBIE. Right. If the prime contractor can be paid in 14 days, why can't the subcontractor be paid in 14 days? Why can't you institute where you get partial payment for work done? How is the small business supposed to exist if they do not get paid, 30, 60, 90, 120 days?

Dr. HAYES. Sir, we will be glad to look at it.

Mr. ABERCROMBIE. I want a commitment as to whether or not in the rules there is going to be a section that is going to directly address the question of payment to subcontractors upon painful ret-

tribution to the prime contractor that does not pay on a timely basis that these rules should put forward.

Dr. HAYES. Sir, with all due respect, going back to the original statute, that issue was not specifically addressed in the statute. We will be more than glad to look at it.

Mr. ABERCROMBIE. I will not argue with you about whether it is. I think that it is.

Chairman TALENT. Will the gentleman yield, because my understanding is that there is another problem with the subcontracting and saying that subcontracting makes up for the other problems with small business; that the prime can list people as subcontractors and then say, well, because we are listing these small business as subcontractors, that covers it. But they don't actually have to give any of the business to the subcontractors.

Mr. ABERCROMBIE. I was going to get to that too.

Chairman TALENT. Then I will yield back to the gentleman, and we are all enjoying it. If you are going to get to that, I want you to get to that.

Mr. ABERCROMBIE. I beg your pardon. But, Mr. Chairman, I do believe that these rules—you know, these rules are out there now. The proposal is out there, and it hasn't been finalized; and one of the things that you have to finalize is your rules and regulations. They are dependent on you. You folks are the ones that have to do this. I mean, Bernie Paik-Apau can't do it. She has got to depend on you folks and depend on a nonexistent procurement center representative, somebody on the West Coast that is 2 and 3 hours away by time so that if you call at the wrong time, you cannot get anybody.

I am just, parenthetically Mr. Chairman, I will be interested to see what the West Coast "chill and feed" or whatever it is that they have is going to work out in Hawaii 3 hours' time difference.

But it seems if you do not have that, depending on what kind of business—what rules will you have, then, to make sure that the subcontracting actually takes place? I didn't see that in the material that I received.

Dr. HAYES. There is a provision for those contractors, prime contractors that, in fact, have strong provisions for subcontracting to, in fact, receive a benefit in their particular awards. There are other procurements where we encourage the agencies to make a strong commitment to their subcontractors, but we have no role or right to basically dictate who they use or the conditions of those contracts.

But in other regulations that are put out by the FAR, we do, in fact, encourage agencies to reward those contractors to make strong contracts with the subcontractors and to notify the Federal Government when they, in fact, do make changes.

Mr. ABERCROMBIE. The State of Hawaii has a very strong—within the State, they limit how much the prime contractor can make over the subcontractors. Are you going to have similar rules? What kind of profit they can take away from the subcontractor?

Dr. HAYES. Sir, the regulations in no way address those kinds of issues. I believe that was far beyond what was intended in the original statute.

Mr. ABERCROMBIE. If there is a dispute—okay. I don't think that it does go beyond what is required by the 1997 Act.

Now, the Miller act ostensibly protects, does it not, the capacity of the small businessperson to be able to engage a prime contractor in any dispute over payment? Is that right?

Ms. LEE. In fact, Congresswoman Maloney is supporting H.R. 1219, which increases some of those bonding limits as a protection for small business. We had a hearing on that last fall, and that bill is moving along.

Chairman TALENT. Neal, finish one more line, and then we will go on.

Mr. ABERCROMBIE. Well, I don't see anything in here where someone is going to act as an ombudsperson for the small businessperson because the prime contractors, the way you are bundling the contracts right now, you are going to have these megacorporations be able to beat the living daylight out of the subcontractors and if you don't like it, you can take them on, provided you have got a lawyer that is willing to do it. And I don't see many John Travoltas walking around to go out and handle it against these big corporations.

So I think that you have got to put in rules that will have the SBA or someone in the Department of Defense or whoever it is be responsible for carrying the load for the small businessperson against the lawyers that will come out for the big corporations. Thank you, Mr. Chairman.

Chairman TALENT. I thank the gentleman and the gentlewoman from New York, and now I will recognize the ranking member so she can continue her questions.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. Dr. Hayes, I am glad that you are making it your business to monitor agencies' performance and inform them of their deficiencies. I just want to know what do you do to agencies who miss their goals, if there is a penalty? What do you do other than rely on goodwill?

Dr. HAYES. There is no penalty in a formal sense. But I do believe, in fact I know firsthand, that the various administrators of the agencies take these goals very, very seriously. As Ms. Lee said, we made a presentation in front of the PMC (President's Management Council), the second-level managers in the agencies. There was very spirited discussion about how we can meet those goals and what can happen. We are now engaged in goals for the coming year. And so agencies take this very seriously.

And while we have no sanctions, I am sure there is discussion between the various agencies when they do not meet the various goals.

Ms. VELAZQUEZ. For those who are deficient, have you considered sanctions? Denying bonding on the grounds of their poor performance?

Dr. HAYES. No, ma'am.

Ms. VELAZQUEZ. Why not?

Dr. HAYES. That has never come to mind. That is something, if you want us to look at, we will. But I don't think the statute authorizes us with that level of authority.

Ms. VELAZQUEZ. Is that based on the law?

Dr. HAYES. The SBA's power and authority is to appeal, to persuade, to be an advocate on behalf of small businesses. We do this very vigorously; but it has to be a partner, I believe, with the agencies and to produce a win-win both for the small businesses and for the agencies. We take our job very, very seriously. We are, I think, successful when we are engaged in the exercise of the process, and we will continue to be so.

Ms. VELAZQUEZ. Dr. Hayes, do you see the contract after the decision has been made, after the agency has decided they are going to bundle? Would it be helpful to have a requirement that you must sign off first so that small business and disadvantaged is represented before the decision is made?

Dr. HAYES. I would like to look at this, but I think that would be a problem. It would sort of delay the process. Again, keep in mind there are many, many thousands of procurement actions that go on throughout the year. We have a fairly limited staff with respect to engaging in this process. When we negotiate a deal with an agency, the agencies stick by the deal. We have been very successful in those situations where there were bundled procurements and where we objected, we filed appeals and negotiated. The agencies have kept their words.

So I think that is actually a better way than having SBA sort of being the traffic cop.

Ms. VELAZQUEZ. But the numbers are showing us otherwise.

Dr. HAYES. Again, with respect to the overall numbers, we are meeting our goals. Things are happening. We are concerned about the future. But I think the numbers indicate that the agencies are taking this very, very seriously with respect to meeting their goals, small businesses, disadvantaged businesses, and otherwise. We are concerned about women-owned small businesses and we are trying to figure out ways that we can address those issues.

Ms. VELAZQUEZ. Mr. Neal, I just want to echo the comment made by the Chairman and request that, if we do have another hearing, that your staff make sure, make it your business that your testimony comes to our offices on a timely basis so that we could be able to read your testimony before you come before us.

You head the office of the Small and Disadvantaged Business Utilization. Does your office help the PCRs?

Mr. NEAL. Yes.

Ms. VELAZQUEZ. What do they do when the Defense Department recommends a bundle? Do your people weigh in or analyze or get a chance to comment on it before it goes out?

Mr. NEAL. We work very closely with the SBA. Our small business specialists in many instances are in direct contact with the PCRs prior to any disputes that are raised about a particular procurement proposal. Then after the procurement proposal if there is a dispute, the small business specialists provide background information for the senior management in any of the service or defense agencies where the dispute is raised. Because when the SBA folks, for example, appeal a procurement proposal, then it goes to the head of the buying activity, and that activity relies on the small business specialist who has been working with the SBA on advice on how to dispose of that—appeal.

Ms. VELAZQUEZ. Do you weigh in before a decision is made by the agency?

Mr. NEAL. Yes, we work directly with our contracting officers and our program heads.

Ms. VELAZQUEZ. I have DOD's report card in front of me. Almost 50 percent of the contracts have been let and your percentage, particularly for small business and women-owned business, is way below the goal. What does the DOD do when they are behind?

Mr. NEAL. As a result of the report card, we have been in contact with our—senior procurement officials and made them aware that we need stepped up activity if the Department is going to make the goals.

We take the goals very seriously.

Ms. VELAZQUEZ. I just want to hear, what is it that your office does to turn this around?

Mr. NEAL. Well, since we report directly to the Under Secretary for Acquisition and Technology, we bring it to his attention that we are below the goals and in working with the Under Secretary and the Director of Defense Procurement, we send out guidance to our folks to ask them to step up their activity to ensure that the Department makes the goal.

Ms. VELAZQUEZ. And when you see that the Department hasn't reached the goal, what is the next step? What do you do?

Mr. NEAL. Well, we are in the process now of looking at our performance, and we are devising recommendations that we will give the Under Secretary to help ensure that we will do a better job should we not reach the goals and to maintain the level of performance that we currently have. A number of initiatives that I have cited in the testimony attest to that.

But we also have things, for example, in the area of women-owned business. We know that we are substantially below the goal. We just recently had a major procurement conference in the southeast directed at women-owned businesses that are in the manufacturing area where we brought in a substantial number of our prime contractors and women-owned businesses to try and facilitate matchmaking so that they could get contractual opportunities. We have another one scheduled for, I think, the southwest for later this year. But we are very actively pursuing women-owned businesses and encouraging them to participate in our contracts.

Ms. VELAZQUEZ. I can see that by the numbers.

Ms. Lee, I listened to your testimony with great interest, particularly the part where you say that the Federal Government is pretty close to their midyear averages. Your records show for the first half year overall small business prime contract procurement is at 15.8 percent of all prime contracts. What is the goal for overall procurement?

Ms. LEE. The goal is 23 percent.

Ms. VELAZQUEZ. Do you expect them to come close to that goal?

Ms. LEE. Yes.

Ms. VELAZQUEZ. You state that you are at 17 percent and the goal is 23 percent. That means the Federal Government will have to do, say, over 30 percent small business for the last half of the year. Given that that is almost double for the second half of the year, is that realistic?



Ms. LEE. That follows the trends that we have followed for 5 years. In fact, last year having met the goal, we were at 17.6 percent at midyear. So at 17.8, we are on track. We would like to do better.

Ms. VELAZQUEZ. Do you think you will do better?

Ms. LEE. We will do better.

Ms. VELAZQUEZ. Sure. I noted that in your testimony you combined the goals of 8(a) and SDB. I would like to focus just on 8(a) for a second which I see as a critical business development program. Are you seeing a decline in their activity or percentage over the past few years?

Ms. LEE. The midterm, I am using just the midterm numbers, but for this year that is 3 percent. That is better than last year of 2.8 percent, but it is not as good as we did in 1995. So we have seen kind of a peak and then a drop-off and it looks like we are picking back up and we are trying to emphasize that program.

Ms. VELAZQUEZ. What we are hearing from 8(a) companies is that they are experiencing a dramatic drop in opportunity, say comparing opportunities now to 3 or 4 years ago. You are not noticing that drop?

Ms. LEE. Not from the midyear numbers. We have noticed a drop-off from 1995, but in 1998 we were at 2.8 and in 1999 we are at 3.0.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Ms. LEE. We are close.

Chairman Talent. You have a quick question? I will allow it.

Ms. MILLENDER-MCDONALD. Ms. Lee, you were saying that this midyear you had a percentage of a 2.8 and now you have a 3.0?

Ms. LEE. Last year, 1998, midyear was 2.8. This year, 1999, midyear is 3.0.

Ms. MILLENDER-MCDONALD. Just what the gentlewoman has spoken of is what we are troubled with and that is the decline of 8(a) contracts, specially to minority businesses and even more specifically to African-American businesses. And we need to look at some data that tells us differently that there is not a decline, but we are of the opinion that it is.

Ms. LEE. These are our midterm numbers. We will again get the end-year numbers, and I would be happy to come and meet with you and discuss those.

Ms. MILLENDER-MCDONALD. I would need to have you come and meet with me, because at 3.0, I would like to know where we are in that mix.

Chairman Talent. Ms. Napolitano, she is next.

Ms. NAPOLITANO. Thank you, Mr. Chairman. One of the things that I keep hearing over and over again—and I agree with Mr. Abercrombie—is that we will get to it, we will do it. In the past, that has not brought the results. I need to know specifically, are you dealing with the procurement officers being able to train the agency bureaucrats that will talk—you will give direction to, but they will go on business as usual and still not get the work done that we are proposing that is the intent of Congress to be able to put through?

That bothers me because I keep hearing it over and over again, not just from your agency but from many agencies, and I think we

need to address how are you getting to those career bureaucrats that will turn and continue doing whatever it is they please, even though they are being given direction from this Congress and this Committee?

Dr. HAYES. Bob can respond. DOD has, for example, many, many, thousands of procurement officials. It is a constant effort to keep people informed about the programs, the requirements, the goals, and so forth. We do the best we can with the resources we have. We work very hard with our sister agencies and use every possible forum that we can take advantage of to get the word out.

Ms. NAPOLITANO. How do you get the word out, may I ask, sir?

Dr. HAYES. We have joint conferences.

Ms. VELAZQUEZ. Will the gentlelady yield? Sir, you come here and I just—every time that we ask a question and you say the lack of resources. We held a hearing here about the SBA budget. When did you or the administrator talk to us about the lack of resources in these particular areas?

Chairman Talent. I will say to the gentlewoman in my time as the Chairman and yours as ranking member that has never come out in any of the testimony. There has never been a request for more money in this area. Now, Dr. Hayes, we don't know what he said internally, but never before this committee.

Dr. HAYES. Our budget, as you know, is negotiated in the context of the overall administration's budget. We try to do the best we can with the resources we have. We do not, as you know, have PCRs at all the buying sites. We have never and we probably never will in the current budget climate. So our goal is to figure out how we can make use of—best use of the resources that we have to do the job. And I think we do a very good job of that.

Also, we have got to figure out other ways that we can work aggressively with the other agencies and with the Department of Defense who has, as Bob says, 500 small business specialists who are advocates for small businesses and are there when these decisions are, in effect, made.

All I can say is that we are working the best we can with our existing resources to carry this important job out.

Ms. NAPOLITANO. Reclaiming my time, but, again, we keep hearing that it is being done, that you are talking to them, but the results are not being shown in the percentages. So how does that mean to you, what steps can you assure this Committee that you will take to be able to start turning around the mentality that women-owned business and minority businesses are not important to the economy and are not important to the agencies that you deal with?

Dr. HAYES. I travel a great deal around this country. I meet with small businesses. I meet with the other agencies. The Federal Government is meeting the goals for small businesses and for SDBs. The women's goal, which is a fairly recent concern, is not being met. We are at 2.1 percent. If you look at the rate at which we have reached the 2.1 percent, while good, not good enough. Reaching the 5 percent goal is an extremely high priority of my boss, Aida Alvarez and this administration, and we will do the best we can. We will do better than better to address this issue.

It is important that we find women-owned businesses. They are good people. They are good businesses. They can do the work, and we want to get them in front of the procurement officials to have them take advantage of these opportunities.

Ms. NAPOLITANO. I have no question about the ability of your employees to do the work. It is the type of work that is necessary that is being directed by this Congress to do to assist small and minority-owned businesses. And somehow the mentality is it doesn't matter. Let's bundle because it is simpler; it is cost cutting. It is time saving. And that is just not going to be happening anymore.

We are tired of it. We get consistently complaints in my district office about the small business being eased out, aced out. And they have been there before. So I don't know how many complaints your agency gets and how you deal with them, but I certainly am very displeased with what is happening in my area, my small businesses and women-owned businesses.

Dr. HAYES. I share your concern. Every complaint we get we vigorously explore it. We try to reach a satisfactory resolution with every complaint that we get on our bundling hotline or situations that are identified by our PCRs. We try to reach a satisfactory solution with the buying site. And if we cannot, we will appeal it. We will go to the head of the agency to look at the matter.

Ms. NAPOLITANO. I think some of us would be glad to have you in our districts to have you listen to the small businesses and have them tell you their horror stories about what is really happening, because the bureaucracy sometimes it just doesn't filter down. And I would certainly like to invite you and any of you who would like to come and listen to them.

Dr. HAYES. I would more than welcome the opportunity.

Ms. NAPOLITANO. Thank you.

Chairman TALENT. I thank the gentlelady for her questions. I have Mr. Gonzalez next on the list.

Mr. GONZALEZ. Thank you, Mr. Chairman. Mr. Chairman, this will be two short questions. The first one is directed to Dr. Hayes and that is regarding the Marine's proposal on the cafeteria regionization plan. And there has been correspondence—and I appreciate your response and think your last letter to me was July 13th. You are going to follow up with a second meeting with, I think, the Department of the Navy or the Marines to see about the concerns that were being expressed.

But what information did you have by way of analysis, any kind of costs or efficiency studies by the Navy to justify the regionization proposal?

Dr. HAYES. As you know in our correspondence, we did meet with the Marine Corps. We expressed our concern about that particular strategy. We are aware of small businesses that can, in fact, do the job. And our most recent discussions with them reveal they are still considering our appeal to figure out an alternative way to carry out the strategy. But as of today, we have not heard back from the Marine Corps as to how they are going to address this issue. But we remain convinced that there are small businesses that can, in fact, do the work and we would like them to figure out a way to restructure the procurement so that small businesses can be very major players in that overall effort.

Mr. GONZALEZ. And up to the present time, have they provided you with any kind of study, research, or analysis?

Dr. HAYES. I am not personally aware of anything that I have received, but we have had discussions as to why they wanted to go to basically bundle those particular procurements and that particular approach. But I am not certainly aware of any overall analysis justifying that activity.

Mr. GONZALEZ. But it is a requirement that you would impose on them to document.

Dr. HAYES. The documentation requirements are part of the new contract bundling rule. Currently, it is really a negotiated effort where, if an agency wants to bundle a procurement, we sort of discuss what their plans are and see if we can, in fact, provide an alternative under the new contract bundling rules. If there is substantial bundling, then they would be required to submit to us an analysis which justified their activities but also would indicate the steps that they are taking to make sure that there is going to be a very strong provision for subcontracting with small businesses.

Mr. GONZALEZ. Because we made that request, we asked what are they predicating the proposal on. The second question to all members of the panel is the Chairman has already alluded to what we hear when we go to our town hall meetings and we have our breakfast meetings with our small businesspeople, and I will tell you right now, and it is consistent. It is consistent probably with everybody that is sitting here today, and the complaint is simply that the contracting officers have a certain attitude or bias against the 8(a) business individuals to the extent—and I will paraphrase it—that someone in San Antonio actually said this to a woman, a small businesswoman to her face and said: You 8(a) people are a pain in the rear.

And so it is something that Congresswoman Napolitano was referring to. When you have something like that happening, it is not a matter of sensitivity or anything like that. It is really a mindset. And you will never accomplish your goals as long as you have the people that are down there that are supposed to be effectuating this policy with an attitude, and I really believe that it does exist. In San Antonio we are going to be looking into it.

But I am sharing the concerns expressed by every member here, and I am hoping that you do have something in place that will go down there and when these complaints are being made, that you will interview these individuals. That is the first thing.

The second thing, of course, is to have something already in place that will indicate to these individuals that the responsibility—that this is what they are supposed to be doing that these are their goals, this is their mission. This is not an alternative. This is not an option. This is their mission. And so to the extent that you address that concern over and above what you all have stated to the Congresswoman, I would appreciate a response.

Dr. HAYES. I assure you that that attitude is not shared by the head of that agency or anyone else in this administration. The 8(a) program is an extremely high priority program, and we will do whatever we can do to see that it survives and grows. In addition to the PCRs, we do have people in our district offices who directly run the 8(a) program; and those individuals they negotiate con-

tracts, they help the 8(a) companies in their business development activities. And if there is a complaint or a problem, I would encourage that individual to contact the local district office, and we clearly will pursue that kind of problem. We are just not going to stand for it.

Mr. GONZALEZ. Anyone else?

Ms. LEE. Just the same comment, it is unacceptable.

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

Mr. PHELPS. Thank you, Mr. Chairman. I will be brief. I am going to try to see if I can look at the advantage from the managerial standpoint. Do you have any numbers or can you verify the fact what advantage bundling has in the way of saving the taxpayers costs? I am trying to think from the standpoint of the positive side of bundling to try to understand the rationale. Because I am one to know that we can, you know, engage in the conversations and you can say this is priority to us, but all these things reflect whatever is priority. But it will reflect in your actions, and obviously we have pointed out enough here what the lack of action is.

So the priority must not be there, even though you say it is. So there must be some rationale to base what you are not willing to admit to us about the actions that are reflected as priority. Is it a big cost savings in bundling? What is the taxpayers' gain from how things are being carried out?

Dr. HAYES. I am not aware of any overall numbers on individual procurements. There may be savings to the Federal Government. The statute talks about different areas where there might be benefits from bundling, improved service, reduction in cycle time and so forth. These can be translated into dollar savings on a particular procurement. In other cases, the savings may not be there; and in those cases we vigorously oppose those bundling activities. But I am not aware of any overall government-wide number that would give you the total savings to the Federal Government.

Mr. PHELPS. So there is nothing from the top that is being communicated, look, we need have so much bundling because this is a tax savings to the people and to our agency to justify to Congress or whatever else? You cannot really say there is anything like that that is being communicated through the ranks?

Dr. HAYES. I am not aware of any overall analysis in that regard. Agencies make individual decisions about proposals to bundle certain procurements because it is in the interests of carrying out their mission. We may or may not agree on a particular individual procurement.

Mr. PHELPS. Have you seen an increase at all, an effort for small businesses to consolidate to compete with the bundling and see what the advantages would be in that respect?

Dr. HAYES. This is one of the provisions that is in the statute that we will have in the final regulation which will allow small businesses to affiliate, to come together and be treated as a small business for the purposes of that procurement. And they still retain their small business status. We think this is one way that small business can team together and, in fact, can handle the larger procurements if there, in fact, is going to be a bundled procurement.

This is a provision that we have put forth in other regulations again so that small business can benefit in this regard.

I think it will be a win-win for those small business teams that come together and bid on these procurements.

Mr. PHELPS. Thank you.

Ms. VELAZQUEZ. Mr. Davis from Illinois.

Mr. DAVIS. Thank you very much. You know as I have listened to the hearing and the proceedings, it reminds me of the 1960s when we used to go through a piece called "Mau-Mauing the flak catchers." those of us who worked in the civil rights movement—most people are too young. But I do not believe that you can get blood out of a turnip. I do not believe that you can make brick without straw. I do not believe that you can put a square peg in a round hole. And I do not believe that you can serve two masters at the same time.

I am just a simple kind of person. It seems to me that, and especially from what I just heard, that there is no real reason to have bundling. I mean, can you cut costs? Increase efficiency and effectiveness at the same time? Expand small business participation and create opportunities for new people to get into business all at the same time? Can you do that through a process of bundling? Or is bundling simply a way of giving big businesses the opportunity to get bigger? Giving the rich greater opportunities to get richer?

I am trying to figure out why are we doing this. And so maybe if someone could answer, I thought maybe it had to do with saving money, until my colleague Mr. Phelps asked that question. And I understand that that is not the purpose, you know, that we are not really saving any money.

We are not increasing efficiency and effectiveness. Then my question is, what are we doing? Why are we doing it? So maybe if someone could answer that for me, then I could understand.

Dr. HAYES. I am not going to defend bundling. We are concerned about bundling. But it does occur in some situations because the agency views that it is the best way to carry out their mission. My concern being with SBA working for SBA is to make sure that small businesses get a fair shake in those situations where an agency deems it in their interest to bundle a contract. I want to make sure that the small businesses are participants; that they are players, players in quality work; that they have the opportunity to grow and benefit from the activity. That is what we are about. That is what our job is.

Mr. DAVIS. Then I guess what you are saying to us is that all of the questions that are being raised, they really need to be taken someplace else, and we really need to take them to the Floor of the House, or we need to take them to Management and Budget or to the President or somebody—

Ms. MILLENDER-MCDONALD. The President. Thank you, Mr. Chairman.

Mr. DAVIS [continuing]. Because there is a flawed policy. I empathize with you all. I mean, trying to respond to a policy that is already flawed, you can't get blood out of no turnip. I mean, I already know that and all of the rest of us know that, also, that you really can't. I mean, and so the policy is flawed in the begin-

ning from the outset if we are talking about being of any value to small businesses. And so I appreciate——

Ms. MILLENDER-MCDONALD. If the gentleman would yield. Mr. Davis, you have certainly put your finger on the core problem. It suggested to me as I was listening to the other members of this Committee, we really should not be sitting here. We should be going to the administration and administrators to tell them that this is a flawed piece of legislation. And we are not going to move from square, blocks, curves or anything else until we can get something that is sufficient and will sufficiently address the issue here. We will sit here and raise these questions, but answers do not flow from the three persons who are here or anyone who succeeds them because this is a flawed piece of legislation or flawed in its implementation, Mr. Chairman. And, therefore, you are not going to get blood from the turnip, as Mr. Davis has said. Thank you so very much.

Mr. DAVIS. Reclaiming my time, let me just appreciate your testimony in terms of the good-faith effort that I think you might certainly be putting forth to try and do the best job that you can do to understand a most difficult set of purposes and circumstances and rules and regulations. I grew up in rural America, and we had a great work ethic. My father used to tell us to do things that were virtually impossible, but he would tell us to do it anyway. I think that you are in an impossible situation. So keep on trying to do it anyway. But it ain't going to happen under these kinds of rules and regulations. You just can't serve two masters all at the same time. I thank you very much, Mr. Chairman.

Chairman TALENT. I thank the gentleman, and also I thank the gentlelady from California. We are going to pursue this matter. I am telling the committee I am not going to ask the President to testify. We will have to go a little lower than that.

Ms. MILLENDER-MCDONALD. I was trying to help you, Mr. Chairman.

Chairman TALENT. Mr. Moore was next.

Mr. Dennis MOORE. Mr. Chairman, I have to leave. I would like to yield my time to my colleague here who has some questions. Thank you.

Chairman TALENT. Mr. Wynn is recognized.

Mr. WYNN. Thank you, Mr. Chairman. I would like to thank Mr. Moore for yielding time and thank the Committee for its indulgence, as I am somewhat of an interloper. I am very concerned about this issue, and it is a sad fact that this began with the so-called streamlining of Government. The Office of Federal Procurement Policy actually encouraged bundling as part of that effort. I think that you are right, Ms. Millender-McDonald, that we are going to have to go to the administration to challenge this policy because we are not really making a lot of progress. Specifically, if I am understanding correctly, Mr. Hayes, you are negotiating with OMB and the Office of Federal Procurement over the implementation of these regs; is that correct?

Dr. HAYES. And other Federal agencies who will comment on the regulations in the review process.

Mr. WYNN. I want to find out the status of certain provisions. There is a provision that would require that the PCR be notified

by the agency that has bundled a contract by the procurement officer who is proposing to bundle a contract. Is there agreement on that notice requirement?

Dr. HAYES. There is always—without speaking specifically to the final version of the rule, there is a notification of requirement.

Mr. WYNN. I know that there is a notification of requirement. My question is within the administration, is there agreement that your PCRs will be notified when bundling is proposed, or is that part of the fight? I am trying to figure out when we are going to get these regs, and I need to know what is agreed upon and what is still in the active debate.

Dr. HAYES. Our PCRs already have that authority independent of this regulation. We are there—

Mr. WYNN. Do they have the right to be notified or the right to inquire?

Dr. HAYES. We inquire, again, because—

Mr. WYNN. So my question is will the regs provide for an automatic notice of any bundling? In other words, when the contract terms are changed to consolidate a contract or change its original character, will your PCRs be notified? Has that been agreed upon within the administration?

Dr. HAYES. Again, the draft final reg just was submitted to OMB.

Mr. WYNN. Ms. Lee, what is your view of that?

Ms. LEE. The draft final rule was in this week. We sent it out to the agencies and they made comments. We will get all of the comments together. I don't know right now what agencies are going to comment and how they are going to react, but we will certainly work through all of those.

Mr. WYNN. Next question. The small business combinations, the ability of the small businesses to consolidate to bid on a bundled contract. Has that been agreed to?

Dr. HAYES. That is a provision in the statute and is also in the regulation.

Mr. WYNN. Ms. Lee, in other words, does OMB agree with SBA that that ought to happen?

Ms. LEE. We agree that is part of the statute.

Mr. WYNN. I know it is part of the statute. I don't want to hassle you, but please don't insult me. Yes, it is in the proposal, but does OMB agree with it? Does OFP agree with it?

Ms. LEE. Yes.

Mr. WYNN. Mr. Hayes, you keep saying that you have appealed these. How many have you appealed?

Dr. HAYES. I don't have the overall number. In 1998, I think there were—I don't know the exact number of the appeals. There were 60 situations of bundled procurements that we intervened in and we were successful about 90 percent of the time. An appeal is a particular action where we file a form—

Mr. WYNN. When you say that you were successful, does that mean that the contract was unbundled?

Dr. HAYES. Either the agency unbundled or changed the procurement strategy to provide for a larger role for the small businesses.

Mr. WYNN. I am hearing two things here: one, that on the subject of measurably substantial benefits, some people want specific measurements, 10 percent savings, or what have you. Others are



saying that we don't need a cookie-cutter approach, we need flexibility. We could argue that all day. The statute said measurable. Are we going to have quantifiable figures? I am not asking what those figures are going to be, but are we going to have the quantifiable figures, or is it going to go left open-ended?

Dr. HAYES. It is SBA's position that in order for us to effectively measure what is going on there needs to be a quantifiable aspect of this.

Mr. WYNN. Ms. Lee, you are shaking your head. Do you disagree?

Ms. LEE. I was trying to make sure that I heard.

Mr. WYNN. He said he wants to quantify it. Does OMB agree?

Ms. LEE. We agree there needs to be a—you need to be able to delineate what the benefits are. What I am concerned about, as I said, a cookie cutter that says 10 percent is the answer. Because 10 percent of a million dollars versus 10 percent of a hundred million dollars—

Mr. WYNN. Are you advocating a sliding scale?

Ms. LEE. We might look at that, but we need to keep it in harmony and balance and make sure we are wisely expending the dollars but also broadly including small business.

Mr. WYNN. I would just make one more comment. I thank the Committee for its indulgence. I am in addition to being concerned about individual small businessmen as you have heard from all of the people here, there is another concern, that the taxpayer is ultimately going to be cheated when the big businesses run the small businesses out, there is no further competition for these large contracts, and then the price goes up to the taxpayer and no vehicle with which to contain prices. It seems to me that the Office of Federal Procurement ought to be weighing this in its policy because not only is small business going to lose, the taxpayer is going to lose. We are going to pay more for a lower-quality product if we don't get a handle on this issue. Thank you, Mr. Chairman.

Chairman TALENT. I thank the gentleman. Ms. Millender-McDonald.

Ms. MILLENDER-McDONALD. Thank you, Mr. Chairman, and for bringing this hearing before us. This is something that has been very troubling to us and that is the whole process of procurement and bundling. I have several questions. If you do not have the answers to this, I would like you to submit them to me at a later date in writing so that I can share this with my colleagues.

In looking at the—small businesses receive over \$40 billion in Federal prime contracts. My question is, considering the prime contractors and subcontractors of Federal projects, how many firms that are minority-owned participate in the procurement process as prime or subcontractors in the Federal procurement process? Can any of you answer that question at this juncture?

Ms. LEE. Not at this moment.

Ms. MILLENDER-McDONALD. That is why my questions might be of such where you have to go back and research. Then I would like you to submit that in writing to me so that we could have a better handle on it.

Number two, what percentage of the \$200 billion procurement budget goes to the larger corporations? Do you have that answer?

Ms. LEE. We will get the exact number, but again our goal is 23 percent. The budget itself is substantially less than \$200 billion now. It is around 10 because of—

Ms. MILLENDER-McDONALD. But I also see there is a decline of 13 percent of small business procurements. Within the Federal Government it has fallen to 13 percent. I would like to know of that shift, how many have gone from small businesses to large businesses, of this shift that has taken place in terms of a decline of Federal small business procurement? I need to know that.

And how are minority and women-owned firms impacted by the bundling process of the Federal Government? I need to know that as well.

Those are some of the major concerns that I have and would like to at least get something written so that we can share this. We will have perhaps the handle on going to the administration or to whom we will go to. I am going to follow the Chairman's lead and the ranking member, but I am certainly behind them on addressing this issue because we cannot tackle the giant if we don't have the type of tools to do so.

And certainly it seems that it is flawed, that we do not have the types of regulations and/or laws that would help us to really crack the nut on small businesses. We go back to our districts; and we are constantly being asked, where and how can we get a hold of these procurement contracts. We cannot afford the bundling because of the myriad of things that go into that before they even go into this bundling process.

So we must then come to you and ask how can we best help the small businesses in our community. Those are the questions that have been raised. I would certainly like to have those answers reported back to me, please. Thank you.

Chairman TALENT. We have a vote coming up and, Ms. Millender-McDonald, I thank for your questions. She is the last person to ask questions for this panel. What I will do is recess the hearing and then take the second panel.

Without objection also we will hold the record open for ten days so that any member who wishes to do so can submit written questions, and we will include those answers into the record of this hearing. I want to thank the panel for being here. I know that it has been at times a delicate exercise, but you can tell how concerned the Committee is about it. And we do appreciate what you are doing and look forward to working with you on these issues.

We will recess the hearing and then come back after the vote for the second panel.

[Recess.]

Chairman TALENT. If we could have the second panel take their seats, please. I am sure the other members of the Committee will come trickling in. We are behind time and you have been very patient, and I think that we will go ahead and go forward. What we will do is go ahead with the witnesses that we have here, and then I am sure that the others will be coming back. I am going to tell the Committee and witnesses I am going to have to be leaving in a few minutes so I will miss some of this testimony. But I do appreciate you being here and I did ask the staff to make certain that we had examples of people who really have been affected by this

because we could talk about deadlines and numbers and all of the rest of it.

It is important to remember this is having a real impact on real people. I am also going to talk to the ranking member that I think that the next time it might be good to have the real people go first so that the—that is terrible. They are all real people, but have the people who have been affected by this go first so that those in charge of this can hear that testimony and give us their comments on that.

Our first witness on the second panel is Mr. Terry Head, who is the president of the Household Goods Forwarders Association of America. We appreciate you very much being here, Terry.

**STATEMENT OF MR. TERRY HEAD, PRESIDENT, HOUSEHOLD GOODS FORWARDERS ASSOCIATION**

Mr. HEAD. Thank you, Mr. Chairman. Knowing that time is short, I did a shortened version of my written testimony that I presented, but I would like to cut right to the chase because it was obvious to me that in the first panel and particularly the question and answers that pursued, you people are aware of the problem. I would like to at this point take my time and state what we think could be one of the solutions or some of the solutions to the problems.

Again, I am Terry Head—

Chairman TALENT. Terry, if you would, just suspend for a minute. Take a minute and tell us the specific nature of the problem you are dealing with bundling. You don't have to take a long time to do it, but the Committee is interested, and we will have this for the record. Take 60 seconds or 2 minutes and tell us what you are dealing with.

Mr. HEAD. All right, sir. I am president of the Household Goods Forwarders Association. That associate is made up of people who are involved in, let's call it the moving and storage arena. Our members are made up of forwarders, moving and storage companies who act as agents at the local level, trucking companies, people who supply to the industry. Even the airlines and the ocean freight companies are members of our association. Where we have been experiencing the problem that relates to this hearing is particularly in the DOD arena.

Our members who are actively involved predominantly provide the service for the movement of military families, all services. In recent years we have been experiencing the impact of contract bundling, but more in the form of reengineering, which ties back to the streamlining of government. Specifically, the command that is responsible for our military traffic management, command as well as DOD specifically, office of the Secretary of Defense, have launched a number of reengineering pilots.

These are truly, in my opinion and I believe the opinion of my members, the best example of contract bundling where we have gone from having 200 or 300 people supporting a base or installation, providing moving services, domestic or international, these pilots are focussed on putting the business in the hands of one or maybe two or three large contractors. Then those large contractors are focussed on, again as Congressman Abercrombie said, in a

sense brokering the business down through a subcontract scheme to the service providers. So the service providers haven't changed.

What has changed is the method by which the Government acquires the services and then the method that that business is distributed down to the people who have always been doing it and are continuing to do it. The problem is we are trying to maintain our position as prime contractors. The bundling, because it puts us at a disadvantage to the large companies, doesn't allow us to do that.

Chairman TALENT. Here is the impact on the average service member. These people are ordered to move from one base to another. Now, you have injected another layer. So you have the prime contractor which is a big moving company. And they, by the way, have been supportive of your efforts to try and get this changed. They are saying bundled contract, they must subcontract to another labor. The point of this is to save money. Initial contracts, they bid at a discounted cost. So now, you have got a squeezed profit margin and another layer of business that has to live off of that squeezed profit margin and another layer of between the person being served and the provider, the servicer, because you have this subbed. So the inevitable effect it is to exert a downward pressure on quality as everybody is living off of this squeezed profit margin. I am testifying for you here.

Mr. HEAD. You are doing an excellent job, too.

Chairman TALENT. You have a downward pressure on quality and on accountability. Then after the first contract is up and a lot of the movers who previously have been able to service that base, they have gone out of that business. Because they had to, they turn their efforts elsewhere or they just went out of business. Then you rebid the thing. Now, there is a lot fewer competitors. So then you don't even get the discounted value anymore. Nobody from the DOD has ever explained to me why that logic isn't going to work no matter what you try and do.

Mr. HEAD. To be correct, in the examples that we have seen so far, the pilots that have been run, specifically the pilot that was run at the Hunter Army airfield, we already saw an increase in cost per move. That was recently reported in the June this year report from GAO who was tasked, of course, by Congress to look at these pilots. We went from what was \$2,641 average cost for a domestic move within the continental U.S. to over \$7,000. That is almost a 60 percent increase in cost. So that we saw right from the beginning. Then you add the added element of the reduction or driving away of the small business, i.e., the other competitor, and Lord knows where costs would go in the future.

Someone was commenting earlier, there is an obligation to the Government and the procuring agency, but there is also an obligation to the taxpayer to protect us as well, sir. If I could, you have hit right to the essence of our problem. I would like to say what we would like to see in your efforts, the Congress' efforts in the future. Granted as came out earlier, there is legislation that has already been passed focussed on this. There is a policy that the Government has come forward that allows bundling. As Mr. Davis said, it is a flawed policy. Something has to be put in place that provides us, the small business entities, some protection from that policy until it is changed. This is what we would like to see, sir.

We firmly believe that any legislation or subsequent regulations must include mandatory provisions requiring contracting officers to quantify any expected cost savings from the practice of contract bundling. We believe that an analysis beyond the warm and fuzzy assertion that contract bundling is in the interests of the government is necessary. There should be a minimum threshold to be reached before a contracting officer could justify a decision to proceed with a bundled contract.

We believe that a contracting officer who intends to bundle a contract should be expected to prove that it exceeds a dollar threshold. Once that threshold is determined, it then be published in the Federal Register of the Commerce Business Daily and the Small Business Administration Web site so the business is aware of what the intent and the impact is therefore. We believe that notification should be provided to all small businesses who currently hold contracts that are being considered for bundling. That is a very key point.

These people don't have the ability to have huge contracting offices following a lot of procurement. So they need the Government to help them know what is going on. In the event that a requirement has been previously bundled and is to be recompeted in a bundled format, the contracting officer should provide an analysis demonstrating that the bundled contracts save the Government money over and above any administrative savings.

Furthermore, we recommend that on an annual basis each agency be required to report to Congress to the Small Business Administration on all bundled contracts and the effects of bundling on small business, particularly with emphasis on the ability to maintain small business participation as prime contractors.

Sir, I yield my time to the other—I know that you are aware of our issues.

Chairman TALENT. I thank you for being here and making the Committee aware.

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

Chairman TALENT. What we are going to do—because Mr. Filner is here to introduce Mr. Smith. And so we are going to go a little bit out of order. Phyllis, we are very eager to hear your testimony. We will hear it in just a few minutes, but in order to protect Mr. Filner's time because he needs to go, I am going to ask him to introduce the person who is third on our witness list now.

Mr. FILNER. I thank the Chair. I thank the members of this committee for holding this hearing. It is extremely important to my constituents. I would just add, by the way, to your last speaker, it is hard to quantify the cost of small businesses going out of business. That is one—that is the real cost of this bundling issue that we have to get at. The story you will hear from Mr. James Smith from San Diego, California, will tell you that.

In America we tell our children that if they get a good education, work hard, and give back to your country, play by the rules, they will be successful. Mr. Chairman, James Smith has listened to that advice as a child and after giving back to his country by serving in the U.S. Marines, he went into business. He started the United Janitorial Services by himself, and 15 years later he employs 50 people in our community and is still giving back by participating

in all kinds of community activities. He is a model of hard work and resulting success.

But now, Mr. Smith has run into a problem that he hasn't been able to overcome with hard work and fair play. The Department of the Navy's attempt to bundle several small 8(a) contracts for janitorial services into one large contract will cost him the majority of his business. His life's work will be shattered. He is not alone. As he speaks to you today and these other people from various parts of the country speak to you, they represent not only many other 8(a) business contractors in their own districts, but obviously small business appeals across the Nation.

This concept of contract bundling I think is completely contrary to the intent of the SBA. It takes the small out of small business and takes the fair out of fair play. I am glad that you are hearing these folks, Mr. Chairman, and I hope that you listen carefully. I think that you will see that, as I say, you and the others this morning know the issue very clearly, but you will send this idea back somehow to the drawing board. Thank you for holding this hearing. I am proud to introduce my constituent, Mr. James Smith.

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

Chairman TALENT. Please go ahead, Mr. Smith. Thank you, Mr. Filner.

**STATEMENT OF MR. JAMES SMITH, UNITED JANITORIAL SERVICES, INC.**

Mr. SMITH. Mr. Chairman, and members of the Committee, my name is James Smith. I would like to begin by telling you a little bit about myself. After serving in Vietnam as a combat Marine, I entered the world of small business. I did this by starting my own company, United Janitorial Services. Although it remains a small company, it has grown from one employee to over 50; and it is the largest employer in my community. My family and I are very active in our community. I currently serve on the board of directors of the San Diego Boys and Girls Club, the CDC board of directors, and serve as chairman of the Encanto Community Fund.

It was not until I entered the 8(a) program that I was offered the opportunity to really succeed and expand my company. Because of 8(a), I currently contract with the Department of the Navy. If the bundling of custodial contracts actually goes into effect, the change will have a devastating impact on my business and others like me. My business along with many others will not be able to compete, ultimately forcing many of us into a struggling subcontracting role with minimal or no chance of development and growth. This hardly seems fair, considering the sacrifices and struggles that all of us have had to endure to assure success for our businesses.

I know for a fact that bundling custodial contracts will eliminate current opportunities for my company. It would, in effect, be a cancellation of current contracts ultimately causing my small business to lose 80 percent of its business. The bundling of contracts in other cities and States has proved that the local businesses are, in fact, the losers. Recently, two large contracts in San Diego were bundled and the entire situation was a huge failure. These contracts were then set aside for 8(a) contractors who are performing successfully.

Mr. Chairman, on behalf of myself and my fellow 8(a) contractors of San Diego, I would like to close by sharing with you the following information about the impact of contract bundling. Contract bundling will eliminate various opportunities for 8(a) contractors. It will force 8(a) contractors into a subcontractor's role with little or no chance of development and growth or in many cases out of business entirely. Contract bundling will be put into effect with no studies on how the change will impact local businesses and in the community they helped to support. It would eliminate the sole source contract for many businesses.

Currently, 8(a) contracts are distributed to various contractors which encourage and support the development of local businesses. These contracts are essential to the development and survival of the existing businesses and those new to the program. Bundling of these contracts will cripple and possibly eliminate the 8(a) program. In theory, contract bundling sounds great, maybe even practical. But in reality hope of further success of small disadvantaged businesses and the vitality of many communities will be shattered.

The existence of small businesses all over the Nation are being threatened as huge companies force the small ones out of business, killing the entrepreneurial spirit in America. It is time for more support to be given to the small businesses of America instead of less which is exactly what the bundling of contracts will do. Mr. Chairman, and members of the Committee, I graciously ask for your assistance in preventing contract bundling which will without a doubt have a devastating effect on my business and other small disadvantaged businesses in my community. This concludes my statement. Thank you.

Chairman TALENT. And thank you, Mr. Smith, for that very informative and moving testimony.

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

Chairman TALENT. I am going to have to go, but before I do, I want to introduce our next witness, a lady who has testified on several occasions before this Committee. We are always grateful to have her. She has a real story to tell about how subcontracting is working out. I refer, of course, to Ms. Phyllis Hill Slater, who is the president and owner of Hill Slater, Inc., and in addition to also being here in that capacity is also representing the National Association of Women Business Owners, of whom she is the past president. Phyllis, thank you. I want to thank all of you for taking time away from your small businesses to come here and inform us. We know that time is money for you and we are grateful. I want you to know on behalf of the whole Committee it makes a difference when you come down here and testify. Phyllis, please.

**STATEMENT OF MS. PHYLLIS HILL SLATER, NATIONAL  
ASSOCIATION OF WOMEN BUSINESS OWNERS**

Ms. SLATER. Thank you. I am also going to stay away from my written testimony. You have it. I think you had a very good thing going with a lot of dialogue. I am glad that you are on our side. I am going to tell—just make clear for the record, NAWBO, is against bundling. That is it. Bundling does not help us at all. And it hurts women business owners, it hurts them very badly. We talked about I heard some people talk about women's issues. It is

not a women's issue, but economic issue. Women business owners are employing 27 million people. When you start putting things in the way to keep us from being able to employ more people, you are talking about economics, less taxpayers out there. So this is not just a small business issue or women's business issue or minority business issue. It is an economic issue that impacts this whole country.

The more of us that are working, the more of us that are contributing to the society. I have been in business now with my dad—well, my dad passed away in 1984. So it is a third-generation business. I always tell people that I am the daughter of an engineer and the mother of an engineer. So we have had all different kinds of experiences and most of our business has been in the Federal Government, local, state, and municipalities as prime subcontractors of any work that we can get.

This one particular project that I was on, the Federal courthouse on Long Island, I was on from the very beginning. And I was on as part of a team. We went on this project as part of a team, had to put in qualifications, had to put in the people that were going to man the job, their resumes, et cetera. My past experience, which added to the job since I had courthouse experience, plus I had a Long Island presence and I do have a very large Long Island presence. And I sit on all of the boards that are there and had all of the contacts necessary with all five of our Congress people to help push this courthouse project through. We won the contract. And we won as a team. We were awarded the contract.

That is another thing that I want to say. Awarding numbers—I heard the people talk here about what was awarded. Awarded and what is collected are two different things. Watch those numbers, because they keep telling you what has been awarded. What has been collected? What has small business people actually received? That is another number altogether.

We were awarded this contract, and it went on hold because of budget approval, et cetera. When it came back, they thought, okay, it is up for renegotiation. We were asked to jump through all kinds of hoops to keep on this project. We have been carrying on our projections all along. We have been keeping the people busy saying, well, when the courthouse starts, you will work from there. We were running a business as we had been for 32 years. This is real.

Well, we were even asked to get a \$100,000 bond. We are not brick and mortar, but we got \$100,000. Do you know what it costs? We got it. Guess what? Seven years we have not collected one penny off of that project. They have done everything to keep us off of that project, yet we were listed as the elite women business owner, minority business owner on that project. So that every time you asked them who do they have, they would say us. They have never used us. This is not new to us. This is new to us on this level, but it seems like it has been more of a practice.

In New York City, we were asked to put in a workload disclosure form. We were told that our workload disclosure form was not correct because they had us down as receiving other contracts that we had no knowledge of. We were put on without our knowledge to win the contract. But we were never told of it nor were we ever utilized.



These are some of the problems, and you touched on them today. Bundling is just adding to the problems because we have no voice. We talked with another problem, collecting funds. As a subcontractor, it is very, very difficult to collect funds. I worked on LaGuardia airport for 4½ years. I was paid on an average of 72 days. To make that average for 4½, there was some 160 days and 180 days in there that we went without pay while we paid seven employees. Not only did we pay seven employees, but we paid seven professional salaries. We are talking about \$25 to \$55 per hour.

So I have everything else here. If you have any questions of me, I would appreciate it. But bundling is not a good thing. It is just going to add to the problems that we—they haven't addressed already. If we are going to have goals, we need to put some teeth in the goals. Thank you.

Chairman TALENT. Well, I couldn't leave. It was so compelling. [Ms. Slater's statement may be found in the appendix.]

Chairman TALENT. But I am going to go after I introduce Ms. Cathy Ritter, who is the president of Constellation Design Group, Inc., of the American Consulting Engineers Council. She has another very interesting story to tell. Again, thank you, Ms. Ritter, for being here.

**STATEMENT OF MS. CATHY RITTER, PRESIDENT, CONSTELLATION DESIGN GROUP, INC., AMERICAN CONSULTING ENGINEERS COUNCIL**

Ms. RITTER. You are most welcome. My name is Cathy Ritter, and I am president of the Constellation Design Group. We are a 21 percent woman-owned engineering firm in Timonium, Maryland. In our business, bundling often results in contracts of a size of a geographic nature for which small businesses cannot logically compete. I can give you a couple of examples. Several years ago a number of the Federal agencies started using indefinite quantity contracts for the procurement of architect and engineering services. These contracts at that time were typically for a base period of 1 year with an option of an additional year. Their total annual fees were from 250 to \$500,000 per year. Then, individual tasks ran from 25 to \$75,000. This type of arrangement worked very well for smaller projects and smaller firms.

In recent years, however, the trend for some agencies has been toward very large IQCs with annual limits of a million to \$5 million. It is unreasonable to expect that a small firm could compete for those projects. They are not prevented from competing for these, but it is unreasonable that a small firm would go after it. I, too, am going to be in the process of cutting mine short. Small firms cannot afford time and the money to pursue work that they reasonably would not even be short listed for. These jobs that have a million and \$5 million in a year are unreasonable for small firms, particularly firms like mine that are 21 to 25 people.

An addition concern is the increasing request for the multiple and often disassociated services, in essence, the capacity for asking for a firm to be able to do everything. We have an example. One advertisement from the Bureau of Land Management in Oregon requested and I quote, "multi-disciplinary architect/engineering serv-

ices including architectural, structural, civil, mechanical, electrical, landscape, environmental, asbestos abatement, interior, interpretive, geotechnical, estimating, specification writing, drafting, materials testing, and construction inspection.” Not likely in a small firm.

The mind-set of multi-year, multi-discipline, multi-location, multi-et cetera, et cetera, et cetera, favoring large firms located in metropolitan areas is unreasonable. Such requirements limit the Federal agency’s opportunity to utilize the services of qualified firms that may be smaller and may be in smaller disciplines. Delivery orders of this type often have large geographical areas and broad experience requirements, and they eliminate many qualified firms from consideration.

Skipping down here. Many small firms’ only choice is to market themselves to the large firms as subconsultants. Unfortunately, the very large firms can provide all of these services in-house so that cuts us out again. One other aspect that has been alluded to originally, Government agencies place great emphasis on past performance during AE selection, and hence identification as a prime is being more and more important. Unfortunately, the agencies’ databases on AE performance keep records under the name of the prime only.

So if a small firm is employed as a subconsultant, you do not have the opportunity to develop a data base. So even if you went as a prime later, there is no information in your file because they don’t keep information on anyone but the prime. Again, same story: some of the IQCs have been awarded, but many have had few or no deliver orders executed. Agency offices tend to keep one or two around just in case they need it. It is expensive for AE firms, no matter the size, to be truthful, to market and obtain what we call in our profession “hollow contracts.” The award of any size IQC without strong indications of upcoming work is clearly detrimental to any firm that is participating.

One other quick example: recent modifications of the Alaska district’s policies with respect to subcontracting will have a negative impact on both engineers and on the prime contractors who are performing environmental sort of work. The following definition provided by the court itself is intended to define the approach to obtaining best value and subcontracting: “because the type and value of remedial action or construction services cannot be quantified at this time, agreements with team members subcontractors shall not commit to an actual percentage to contract revenues. The team subcontracts are nonbinding. No preferences will be given to teaming relationships or to team subcontractors. A best value analysis would be required with all quotes submitted for each individual task.”

Now, some of the problems with that are obvious. Let me just jump to a couple of them. Prime contractors are the experts at performing construction, but they rely on their subs to help them get the project and to put the proposals together. If teaming is not encouraged and these subcontractors do not participate in the initial proposal effort, many of these primes frankly don’t have the expertise to qualify and compete for the contracts themselves. The subs have no incentives to assist a prime contractor with his initial pro-

posal because, one, even after they have incurred all of this cost, they have no assurance of any future work; and, two, they still have to incur the cost on each individual task to be considered as a sub.

Finally, relationships play a key role and help primes and subs best provide service to the customer. By requesting that prime contractors openly complete subcontract work on each task order, the advantage of any relationship is lost. ACEC has provided in our written testimony certain things that we would suggest that indefinite quantity contracts be implemented, among them trying to use a significant amount of each contract; ensuring that all of the pertinent information is provided in the announcement so that those firms who are actually right for the job will know to go after it; track and evaluate the subcontracting opportunities; and do not require the teams that are qualified to recompile for each and every individual task.

We certainly appreciate your time, and we appreciate this opportunity. We will be happy to answer questions later.

Mrs. KELLY [presiding]. Thank you, Ms. Ritter.

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

Mrs. KELLY. Mr. Moore. I am sorry, Mr. Gonzalez. You would like to introduce Mr. Moore?

Mr. GONZALEZ. I sure would. Thank you very much for the privilege, and I will keep it very short. It is my privilege and pleasure to introduce Dan Moore, who is president of Moore's cafeteria services that is headquartered in my district. It was founded in 1981 by his mom and dad, Genevieve and Mike Moore. This is a small woman-owned business, as I said, that provides cafeteria services, food services, to the private sector as well as to the military.

I think that we are going to find Mr. Moore's testimony enlightening because it stands for the proposition that no matter how well you perform, no matter how efficient or the quality of your product and service, you may still be in a very precarious position if, as, and when they decide to bundle. He will be addressing the Marine's proposal and the regionalization of the food service's contracts. I think that we have covered much of it. But again this is going to be one of those examples that will bring it all home to us today. So it is with great pleasure that I welcome my constituent, Mr. Moore.

#### **STATEMENT OF MR. DAN MOORE, PRESIDENT, MOORE'S CAFETERIA SERVICES INC.**

Mr. MOORE. Thank you, Congressman Gonzalez, for your kind introduction. My name is Dan Moore, and I am the president of Moore's Cafeteria Services. Moore's Cafeteria Service is a small women-owned business, that means that my mom is the boss. We are headquartered in San Antonio, Texas. We believe that it is the entrepreneurial spirit of the small businessman that is the very essence of our capitalistic system here in the United States. And it is that spirit that you protect and promote here in this committee. I want to thank you for your hard work and for your attention to these issues.

Moore's Cafeteria Services will be celebrating its 18th year in business in just a few days. For the last 13 years we have had the

privilege of providing both mess-attendant and full-food services to the Marine Corps at Camp Lejeune, North Carolina. In reviewing our contract performance this past year, which is also a best-value contract as you heard touted earlier today, the Marine Corps rated us as exceptional in the areas of cost control and the quality of product or service rendered.

I highlight these ratings by way of indicating to you the expertise that small business has and has obtained in the last 13 years of working with the Marine Corps. Small business has expertly and economically supported the Marine Corps food service needs in the past. We would like to continue to do so in the future. Small business has proven that, when the Marine Corps will compete their work among small businesses, they will consistently receive great value and excellent quality. This is why I am here today, to tell you that this bundling of food services is not going to save the Government any money, that the Marine Corps' description of their re-invention of food service is not smart reform.

The Marine Corps has proposed consolidating 15 of its existing contracts into two regional contracts. That is bundling in spite of their current claims. Both the Marine Corps and the SBA have told us that the bundling of services is now required by law and that small businesses must be content with a lesser role of subcontractor. We note, however, that the Congress and this Committee has stated that each Federal agency to the maximum extent practical shall comply with congressional intent to foster participation of small business concerns as prime contractors, subcontractors and suppliers.

Secondly, that they have been instructed to structure their contract requirements to facilitate competition by and among small business concerns, taking all reasonable steps to eliminate obstacles to their participation. And, thirdly, to avoid the unnecessary and unjustified bundling of contract requirements that preclude small business from participating in the procurement as prime contractors.

Please consider the Marine Corps' action in relationship to the intent of the congressional law. In 1997, the Marine Corps established five regional contracting centers. With this structure already in place, the Marine Corps now plans to establish just two regions, but only for the purposes of soliciting food service contracts and then will send those contracts once awarded back to the previously established regions to be administered.

It becomes apparent that the Marine Corps has established these two artificial regions in an effort to exclude small businesses from competing. In an effort to justify its need to bundle food services, the Marine Corps has cited their need to incorporate advanced food protection methods. That is better known as "cook and chill." The obvious question about cook and chill is what it is. Well, if you listen to the proponents of cook and chill you would think that it was the food service equivalent of rocket science.

In fact, my first contact with cook and chill came in the 1960s when my mom brought home some plastic bags and a heated seal element which would allow her to cook a giant batch of her Irish stew, seal it while it was still hot, and put it in the freezer. Proponents of cook and chill, and those are usually the people that sell

it, will tell you how much more sophisticated the technology has gotten today and not to mention how much more extensive it has gotten. But it is still the same basic concept.

Cook and chill proponents will still claim today what they did in the 1960s, it tastes just like it did when it was first cooked. I have to tell you my sisters and I never agreed that was the case. The second question that occurs to me is how did the Marine Corps determine that the cook and chill was going to save them any money. The Marine Corps in its industry forms continually cited studies that they had done. When they were questioned about these studies, they declared that the primary study they were relying on was done in 1987, which they had conducted in-house and recently indexed for inflation. However, when the Marine Corps received freedom of information requests to produce this study, the Marine Corps admitted there was no 1987 study.

So how did the Marine Corps decide that there was any savings in cook and chill? We took a look for ourselves and we checked into cook-and-chill plants. We found a lot of failures. The Alameda County School District had to close their cook-and-chill plant just to slow down the flow of red ink. The Reno, Nevada, school district had to do the same. Cook-and-chill plant-supporting state agencies in Tennessee located in Nashville is still open, but it is hemorrhaging. And the cook-and-chill plant in Albany, New York, is still way below its projected return.

West Point has had a cook-and-chill plant for nearly 2 years and has yet to produce a single meal. The Marine Corps has a cook-and-chill plant in Okinawa which you heard about earlier which they claimed would save the Government \$200,000 a month. To date they have only been able to produce some salad products out of it, which are not part of the cook-and-chill process.

Besides all of these failures that I mentioned, it is important to note that the Marine Corps' concept of cook and chill would only impact a small fraction of the work that we do in the mess halls, less than 10 percent on those days. Where are all of the savings going to come from? This is not smart reform. We asked the Small Business Administration how the Marine Corps justified their need to bundle food services. They indicated to us that the Marine Corps was relying on a study that was done by a giant multinational food service company. If the SBA is correct and the only study that the Marine Corps has is from a large business who would be excluded from bidding small business set-asides, it might be in the large businesses' self-interest to suggest to the Marine Corps their best option would be to use a contracting process that would allow big business to compete for that work and would also exclude as many small businesses as possible.

If the SBA is correct, there are a lot of concerns that come to mind, the obvious conflicts of interest, the study is relying totally on vendor claims. By law, the Marine Corps is required to independently arrive at their cost estimates before they attempt a procurement. Because the Marine Corps has not independently developed their cost estimates, they have no real way of knowing what they are going to save.

They also need to remember that a study is not a binding offer developed to meet the Marine Corps' actual food service needs.

They generally rely on industry standards and don't apply to military operations. If cook and chill is the answer to the Marine Corps, however, in saving them money, why spend any money at all when cook-and-chill technology is already available and it is free to them? The DSCP branch of the Defense Logistics Agency currently handles all of DOD's subsistence needs including the prime vendor program which the Marine Corps currently uses. They claim they can provide cook and chill right now at no cost to the Marine Corps. In discussions with Thomas Langdon, the chief of that branch, he has indicated to me that he can't get the Marine Corps interested in getting cook and chill for free. Why is that?

On the surface, it seems like a much more logical way to source food through your food suppliers rather than through service contractors. In addition to violating the intent of the bundling legislation, the Marine Corps is blatantly in violation of the Federal acquisition regulations which requires contracting officers to set aside exclusively for small business participations any procurements exceeding \$100,000 where there is a reasonable expectation of receiving fair market value prices from at least two small businesses capable of performing the contract requirements. The contracting officer additionally is required to make a reasonable effort to ascertain whether or not such offers will be received.

We would like to recommend to Congress that they encourage the Marine Corps and the Department of Defense to halt this regionalization of bundling of food services to ensure that the SBA and the Marine Corps follow the 1997 anti-bundling legislation. Thirdly, to obtain a copy of any and all studies the Marine Corps and the SBA utilize in regarding this initiative. Fourthly, we request that you would request from the SBA and the Marine Corps that they provide independent studies of this issue incorporating real and actual savings and analysis utilizing occupational manpower levels and not tables of organization. Five, we request that you require DSCP to be consulted in determining if they can meet the Marine Corps's need for cook and chill. Six, if DSCP is unable to meet the Marine Corps' needs, require the Marine Corps to identify successful advanced food production operations that would meet—that have met their preinvestment targets and determine the cost effectiveness for the Marine Corps application. We would also like to recommend that the Marine Corps be required to solicit small business for their ideas on how the Marine Corps could economize their food service program. I would also like to recommend that they ensure that public moneys are not used to build private state-of-the-art production facilities.

Mrs. KELLY. Mr. Moore, you have gone way beyond your time. If you want to just wrap it up quickly, that would be good.

Mr. MOORE. I would just like to say thank you for your leadership on this issue and your taking it to the forefront. Thank you for your advocacy for small business. What you do here is going to affect my industry for the next decade. Thank you.

Mrs. KELLY. We thank you, sir.

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

Mrs. KELLY. I thank all of the panelists. I would like to just ask a couple of questions of my own. Mr. Head, how has the SBA and the Department of Defense responded to your concerns?

Mr. HEAD. Well, I think the SBA has been very helpful but only to the point that they are allowed to be—they are only taking it to the extent where the procuring agency—in our case, DOD—is willing to come on board and help us further. I found SBA——

Mrs. KELLY. What have you found with the DOD?

Mr. HEAD. DOD it would appear—there are various aspects within DOD so I am lumping all of that together—in the early stages they had their mind set this is the way that we were going to do it, and they have rolled down that road. With some effort on our part, the industry, and some involvement from Congress, there is a willingness to listen and they are talking to us now. Unfortunately, they still have their mind set, we have ours, and there is a lot of space in between the two. So there has been some progress, but not to the point where we can go forward and feel that we are in a real partnership with them.

Mrs. KELLY. What are the results of previous demonstration programs?

Mr. HEAD. We have basically four programs that are out there now, some of which are coming to an end, some are just beginning. The first pilot program which I referred to earlier was the Hunter Army airfield program. That was, in a nutshell, the contract was awarded to one large entity, a subsidiary of a multi-billion dollar corporation. At the highest price, it was one of the first FAR-based contracts that our industry has been involved in and the winner in this case and the mobility was by far priced much higher than anybody else. That is point number one.

Point two is that the small business participation has literally just dropped through the floor. Number one, you have eliminated small business as prime contractors by giving the contract to one entity so we are relegated to doing the business as subcontractors. But even at that level, we are well below what we were experiencing prior to this pilot. Then I mentioned earlier the pricing that has come out of that. Again, you all should be concerned as people who spend our American tax dollar, has sky rocketed. There is no cost savings in this whatsoever that has been identified. That is just not my industry's opinion, that is the opinion of GAO who has done a study as best as they could because GAO in its June study said they are unable to validate the information that has been provided to them by the Army and the Army audit agency.

There are other pilots in place, the military traffic management has a pilot in place, but it has been running less than a year. It is hard to say, but again in that one, even though my industry does not support set-asides as the means to our problem, there are set-asides in that. But again we have not been able to really look at it, do any kind of analysis of cost or anything else. I will tell you, based on my own personal knowledge, costs have been increased in that program rather than being reduced. Everything else is either in a developmental stage or so small it is not really worth—the Navy has a small pilot program which is a total small business set-aside, but less than 150 have moved through that, so it is not really good to do an analysis on that yet.

Mrs. KELLY. So we will need to follow up on that a little bit?

Mr. HEAD. Yes, ma'am. I think what is on record already shows us there is not cost saving coming as a result of contract bundling in our industry.

Mrs. KELLY. Thank you very much. Ms. Hill Slater, I really have to say that I relate to what you said in terms of some of the problems that you had experienced with regard to working very hard to try to help get a contract and then suddenly discover yourself out of that contract when the contract was executed. I find that that has been a problem for small businesses across the Nation. One thing you said, though, that I wanted to ask about, you said that the Federal Government does not enforce use of or even track to any significant degree those subcontractors who are key in obtaining a successful bid.

How would you think that we could ask the Federal Government to do this without overloading you with paperwork?

Ms. SLATER. One more piece of paper won't make a difference for me. We do so much anyway. That is not the problem. I think that they just keep track of—when you put in a proposal, you say that you are going to use somebody, I think there should be someone when you put in your requisition for money, you could put a—is this your subcontractor, the same subcontractor? Have you paid them? Are you using them? Where are they? It seems to be a simple form of whether or not you are used or not or even paid on time.

Mrs. KELLY. That is actually my next question.

Ms. SLATER. The whole thing of being paid on time is ludicrous. What they will tell you is as a subcontractor, they will say we will pay you when we get paid. I think usually in their contract they can pay you within 15 days after they get paid. That is not always the case. One of the things that happened is they hold the subcontractor to a different level of having to be financially secure in order to even be on the team.

Then there is no one holding the prime to that same scrutiny as far as do they have the money to pay the subcontractors if they haven't put their bill in for 120 days, so that is why they haven't gotten paid because they haven't bothered billing, where they still have to pay the subcontractor. The other thing is it is a little different with brick and mortar. Brick and mortar subcontractors can stop the work. When you are in the A&E business, you don't stop work. You just keep designing. You keep putting in your bills and hope that you are going to get paid one day. It is a very difficult situation. I tell people that I am not only in the engineering business, but also in the banking business, that I finance state and Federal Government projects.

Mrs. KELLY. That is very interesting. But you know, what you have just said it seems fairly obvious to me and others in the room that if the Federal Government were to—once these prime contractors were given a contract, when the Federal Government pays them, then if they got a feedback from the prime about documenting when they paid you, that is a fairly simple train to follow to make sure that these things are happening.

Ms. Ritter, I will go to you because I saw your hand go up.

Ms. RITTER. I just wanted to say something. We have been conversing on women as in women-owned engineering businesses. We



do the exact same thing. The State of Maryland had a very simple solution to this. It is just human nature, sort of. They began requiring the prime consultant to certify on their next invoice that they had, yes, invoiced their sub, and, two, paid their sub. Whether or not anybody truly goes back and looks at every one of those, the act of having to put your signature down on a certification that you have done that makes it all easier to do. It is a very, very simple thing. It was a very simple request. Nobody—it takes another 2 seconds to do, and it has very much helped our situation in Maryland.

Mrs. KELLY. It kind of makes me wonder what Dr. Hayes was talking about when he said it was so complicated because it doesn't seem to me from listening to you all that it could be that complicated. I thank you because I think this is a major problem for small businesses, this lack of payment on time.

Mr. SMITH. I wanted to ask you a couple of questions. First of all, I was curious about why you all didn't form a team. As I understand it, you didn't have enough time to form a team to go for that contract that you are talking about?

Mr. SMITH. I am not sure what you are saying about forming a team to go for a particular contract.

Mrs. KELLY. You said if the Navy consolidated its janitorial service contracts.

Mr. SMITH. If they were to bundle, yes. We would be in a subcontracting role. I presume that to get on partners. I have had experience with partners. It simply doesn't work. We started off as entrepreneurs, entered the 8(a) program, which was designed to develop our business to the point that we could become our own prime contractor and move onto larger contracts.

Mrs. KELLY. I understand that, Mr. Smith, but my question really goes to the fact did you do any outreach to other people that could provide the services that were in the bundled contract forming a team to try to get that contract for a group of you?

Mr. SMITH. I haven't actually lost the contract through the bundling process. I have been notified that both of my contracts will be coming to an early end. One of the contracts, my very first contract, was a sole source which is used to help develop the 8(a) contractor. I used that experience to go for a competitive bid. I came in as a low bidder, \$100,000 less than the next lowest bidder. I have been performing that contract for hundreds of thousands of dollars less than any previous contractor. This was verified through the Freedom of Information Act.

I did so by innovative management, purchase of equipment, and training. Some of the things I did, were the replacing dispensers in the facilities, I did so at my own expense which is something that the military contract should have taken care of, but the projected savings would have been great enough in labor costs that I did it anyway. And the reward that I received for this is that they are telling me that the contract is going to be cut short several years. Now, I was able to get this equipment through lease arrangement, not based on the strength of my company, but the strength of a contract with the Federal Government. They said if you have a 5-year contract, yes, we will go along with you if you sign a 5-year lease, which I did; but the contract will be short and

I will still have this 5-year lease; and the military will still have this equipment that I installed in their facilities that will go to another contractor. Now, how exactly they are going to save money there, I am totally lost.

Mrs. KELLY. Has the SBA offered you any help along this line?

Mr. SMITH. The local SBA has been very supportive.

Mrs. KELLY. Thank you very much. I have got to find your testimony.

Ms. SLATER. I would like to ask a question because I have heard this kind of story. What happens here is I don't know whether he has an SBA loan also. Because usually sometimes when people get a good sized contract, they get an SBA loan as well as being able to get leased, and then when the Government pulls the contract, such as this one being pulled earlier, they default on their loan as well as on their lease payments; and it puts them into a very bad situation. I have seen businesses—I have been down here for 32 years—go under because of this. It seems that it happens to more 8(a) firms than anybody else.

Mrs. KELLY. Ms. Slater, I really appreciate you bringing that point forward. That is good information for us to have here. And I thank you and Mr. Smith for pointing that out. I wanted to go back here to Ms. Ritter here for just one minute talking about the teams again. I am just going to try to very quickly here hit a couple of things. When you are talking about teams on page 5, you were talking about making sure that they get—the prime contract is entered into based on negotiation, provides adequate competition, and assures that the USACE is getting best value without the need of openly competing subcontract work on an individual task-order basis. You have found that by teaming, I assume, that this is a way of functioning and it does work for you; is that correct?

Ms. RITTER. Absolutely. In the AE industry, we most often get our contracts by qualifications-based selection, which means that you put the best team together that you can. As I said, part of that team is the relationships that you have with each other. There may be two firms that are equally technically qualified but perhaps for some reason they operate better with other prime consultants than not. So establishing a team and then working together as a team is all part of securing the project and then being able to provide the best quality engineering and design services that are possible.

Often—I can't speak for Ms. Slater—but often in Maryland we find the same teams over and over because we work well together. I have been in business 18 years, and you kind of find the folks that you deal the best with and that provides the best quality engineering design to the customer.

Mrs. KELLY. Can you just discuss quickly the financial, geographical, and liability charges that the current use of the ID/IQs pose to small firms in the architectural and engineering area.

Ms. RITTER. Sure. Financial is often—she gave great testimony. Financial is often you say that you are going after a particular project and you submit the resumes of seven, nine, 10 professional engineers, and then if you don't know forever whether or not you have that job or whether or not there are actual tasks assigned to it, you have carried those people for seven, nine, 10, however long it takes.

Geographical, there was an example which I don't have here of a Bureau of Land Management project out in the western States that they wanted you to be able to perform, load these many different tasks in seven different States. When the States are Alaska, Washington, Oregon, New Mexico, Colorado? How many did I name? Anyway, the point is that if you are a small firm, being able to provide the engineers for all of the States is a little difficult because we have to be registered in all of those States.

Then the last one was liability. If you have a project where an IDQ where the upset limit is one to \$5 million, often the professional liability that they would like to see is more than a small firm can afford to carry. My professional liability is the second highest cost to my company in the year's time other than health insurance. So if I had to increase any liability insurance just in order to be able to go after the project, that in itself is a financial cost.

Mrs. KELLY. Thank you. Anybody else want to—

Mr. HEAD. Just a point on teaming and I think that you touched on it. There are a couple of forms that bundling can take, the bundling of associated services or products and then there is the geographic aspect of it. I think that is one that needs to be emphasized. When you take someone who is operating in a market, and that market could be small, medium or large, but you expand it by way of expanding the scope of the contract, you really put a small company at a disadvantage. In some cases you are forcing them to work with someone who is their competitor which is very hard to do. But as she just mentioned trying to go out beyond your normal scope and identify who the potential players are, let alone spend the time and money to go interview and talk to them and put a team together, it really is a disadvantage to a small business. Thank you.

Mrs. KELLY. Thank you. Mr. Moore, I just want to ask you one question. That is have you any idea why the Marine Corps would have gone to this—moved to these large regions since it is obvious that the cook-and-chill is not going to address the full food needs in any one meal. It is only going to be a portion of any one meal and some meals are going to have to be totally done on site. Are you willing to hazard a guess on that one?

Mr. MOORE. Let me attack it this way by saying there is no practical reason to do it. I mean, to go any further would be to speculate to their motivation and none of that is good. Let me elaborate on that for just a second, though. What we would actually end up doing is breakfast, for example, for the Marines wouldn't change a bit. All of that is done cook to order. Lunch, 60 percent of what I serve is fast food. So lunch for the most part is not touched and dinner is in the same condition.

What cook-and-chill actually touches are those things which are pumpable. The whole idea is to take all of the food that they are going to eat that is a pumpable item, such as spaghetti sauce. And instead of 12 different mess halls cooking spaghetti sauce, you would take a giant steam kettle that has a pumping system in it, and you would cook off 200 gallons of spaghetti sauce all at one time. Then you would bag it and freeze it and tumble chill it, depending on which method they choose, and send it to the mess

halls to be refirmed and served. There is no economic reason to do it as far as Government savings is concerned. If there are any economic advantages, they are not in the public sector.

Mrs. KELLY. Thank you. Ms. Hill Slater, I didn't mean to ask these questions, but your testimony again keeps bringing up things in my mind. You spoke of in your testimony the fact that you had been kind of—a subcontract was shifted to a male-owned woman-fronted firm. Do you find this happening in your constituency with the women-owned businesses? Are the women actually owning those businesses or are these women fronting?

Ms. SLATER. On a whole, most women that say they own businesses will certify they really do own their businesses. This particular woman is a qualified women-business owner. She is a PE. She does not, however, put one foot in our office and she is a housewife and her husband runs the firm day to day. That is the difference there. So she has all of the certifications, but she does not run the business.

Mrs. KELLY. Thank you very much. I turn now to my colleague from New York, Ms. Velazquez.

Ms. VELAZQUEZ. Thank you. I just want to thank you all for your great testimony. It really brought a lot of insight to what is going on up there for small businesses. You have got my commitment that we will do everything that we can to correct the inequities.

We heard in the previous panel that we had this morning a lot on the cost saving or imagined cost savings the agencies say they can get. Can you give me an idea of the cost to you when it comes to bundling? Any of you?

Mr. SMITH. Dollar cost, I can't give you a dollar cost; but it is going to cost me 80 percent of my business if they bundle 80 percent. This was not achieved by someone handing me something. Like I said earlier, I went out and competitively bid and used my innovation and training to achieve a small profit. I took on the job with such a small profit to use it as a stepping stone to go on to something bigger and use that on my resume. Actually, the cost would be my whole business. The jobs of at least another 60 percent of my personnel or more would be a cost that I would incur, I don't know. A lot of people would be unemployed. To put a dollar value on it, I would have difficulty.

Ms. VELAZQUEZ. If any of you would care——

Mr. MOORE. It would cost Moore's Cafeteria Services \$7 million a year.

Ms. VELAZQUEZ. In terms of your business?

Mr. MOORE. Yes, ma'am.

Ms. SLATER. It costs to be a subcontractor because you don't have control of your money when you don't get paid in that sense. It costs time to put in for proposals. It costs time and money to hold onto people that you don't know whether will be used or not. And you cannot run a business on bogus contracts.

Ms. VELAZQUEZ. We have heard testimony that if bundling occurs there is always subcontracting. I would like to ask any of you the following question: Do you want to be subcontractors or prime contractors? And if you care to share with us, if any of you have been a subcontractor, what you experienced in terms of the difference of being a prime contractor and subcontractor. Mr. Head.

Mr. HEAD. To answer the previous question, from my industry's perspective, if bundling continues at the rate it is and escalates as it is, the ultimate price is to be paid. That is the total elimination from business altogether. That is one point. As far as choice of subcontractor or prime contractor, I don't know why anybody would want to be a subcontractor if they had the options of being a prime. As a subcontractor, you give up all rights that you have whether it is a FAR-based contract or not. You are totally subservient to that prime.

As was testified earlier, the Government really doesn't put any enforcement on the prime as far as how he handles the subcontractor. I could tell you in my business and probably a lot of these others, there are many primes that are excellent, well-run companies; but many of the others run through subcontractors, never paying them ever. When that job is done, they will just go to the next guy and the next guy and eat up subcontractors. We as subcontractors have nowhere to go.

Ms. SLATER. Ms. Velazquez, it is almost like saying that I have been rich, I have been poor and rich is better. Being a prime is much better than being a subcontractor. To be in control of one's fate is more than—is what we want to be. When we go into business is to be in control and to be able to ask for our money when our money is due and to be held accountable for the work that we do and not to have to answer to layers of people that don't have our best interests at heart.

Ms. RITTER. I would very definitely agree. I would not disagree with that at all. I would like to make one real quick comment. Someone asked a question about did you consider putting a whole bunch of small firms together and make a bid on a particular contract yourself. That is easily said. It is not so easily done. In our business we call those joint ventures when you get a number of engineering firms together and you create a joint venture. That is a legal entity. It requires lawyers and attorneys to draw up the papers, accounting-wise and so forth. It goes on for a while. You already are at a disadvantage to the large firms because you have incurred all of that just in order to be able to submit a proposal, whereas they have gone down the hall and asked their marketing department to put it together. It is not as easy as it sounds.

The previous panel said that we encourage those folks to get together. That is not always the answer because you are still not operating as a prime. You are, but you are not. You are operating with all of these partners that you have to get signatures from every step of the way and all of that. As Mr. Head alluded to, if those partners are in Alaska, New Mexico, Colorado, and California, the costs incurred are more than a small firm is willing to go.

Just to answer your previous question, I think in the AE industry, the cost is really incurred by the Federal Government because most of the small firms in the AE industry are just plain not going off those projects at all. They are just ignoring them. So asking what the cost is, right now the cost is none. We are not even considering them.

Ms. VELAZQUEZ. Thank you.

Mr. SMITH. Being an entrepreneur, it is more than just a word. I am an entrepreneur as we all are here. The nature of the entrepreneur is to be his own person. It would be like asking a football player or quarterback to be a water boy just to stay on the team or an artist to start handing paint to someone else or pouring it into a machine to do mechanical paintings. We are entrepreneurs. No, I would not want to be a subcontractor. I took all of the risks of leaving a job, what they called a good job, civil service, but it was a job. I had no desire to work for someone. I wanted to do my own thing.

Ms. VELAZQUEZ. Thank you. Mr. Moore.

Mr. MOORE. I don't think that it is to the government's advantage that we kill the greatest part of the competition that exists. In my contracts, particularly the one that I currently have at Camp Lejeune, there were 30 different small businesses that bid on that. If we form some sort of coalition, there is that many less people competing it. It is in the government's best interests that we compete with each other. We bring to the table with us our own individual insight into management, our own individual insight into cost savings. In our case we returned \$2.5 million to the Government up front when we won our contracts simply because we were that much lower than the next bidder. I have been on the contract 15 years, and it was not a misbid. It was the fact that it was competed that the Government saved that \$2.5 million.

Ms. VELAZQUEZ. Thank you. Thank you, Mr. Chairman.

Mr. SWEENEY [presiding]. Mr. Abercrombie, the gentleman from Hawaii.

Mr. ABERCROMBIE. Thank you, very much. I must say my friends, that when you talked about trying to put this team concept together that they put forward to you so cavalierly, it reminded me of General Clark trying to organize the Kosovo conflict, having to deal with 19 different nations deciding who in the hell is going to be able to bomb somebody. In this instance, it seems that you are the ones being bombed. I was pretty hard with some of the people that were here before. I don't want to give the wrong impression on that. I am upset with them because I wish they would be swinging the bat on your side instead of against you, particularly from the Small Business Administration.

I would like your comments. I think from what I am gathering out of this and out of the material here, the SBA needs some real clout. They need some enforcement clout. They need to be able to go to the Department of Defense or any of the other departments and say, look, here is the what the deal is and you are going to do it or we are going to sanction you. They need to be the cop on this beat it seems to me. Somebody has got to be the cop on the beat. I don't think that you could do it internally. Like the Department of Defense, Mr. Moore. I don't think you are going to get that internally. You have got to have somebody be able to come in and make that happen. Does that make sense?

Mr. MOORE. That is exactly right. The Department of Defense isn't going to police this issue. Small business has got to be the one that steps up and advocates for us. There is nobody else.

Mr. ABERCROMBIE. Not just be an advocate, but they have got to have some enforcement power. They need to be able to say this is

the way that it will be done and it has to be enforced. They shouldn't have to go to court and prove it or some appeals judge or anything. They should be able to decree whether or not the contract is being lived up to correctly. Does that make sense?

Mr. MOORE. It does. On that very point——

Mr. ABERCROMBIE. We can legislate that, can we not?

Mr. MOORE. You sure can.

Mr. ABERCROMBIE. Let me ask apropos of that. This has to do with payment. You folks were here, I think, when I was questioning before. Unless I am losing my hearing in my old age, the way that I heard it is I could not get an answer to the why and how, especially on the how part. How do they do the enforcing? They say they are committed and this and that. Everybody is committed. What is the argument about when you have got ham and bacon, the pig is committed? There is no question about that. I am sure Mr. Moore understands that part, but that doesn't solve anything for the pig.

On this particular instance, unless there is a mechanism to enforce prompt payment and a sanction attached to it, I don't think that it is going to happen? Am I correct on that? You are always going to be on the Oliver Twist side of things. You have got your begging bowl out there and if somebody wants to fill it full of gruel, fine. But if they don't want to do it, you are standing there with your begging bowl. Am I correct? Now, what would it be if we could write legislation that said if you did not get paid in the same 2 weeks, quick pay—isn't that the period that prime gets it in, 2 weeks? Isn't that right? Is that correct? Fourteen days. Is it 14 working days?

Mr. MOORE. Ten-day prompt payment.

Mr. ABERCROMBIE. Why shouldn't you be paid 10-day prompt payment or the contract gets suspended for the prime, if you happen to be a sub?

Ms. RITTER. The only problem with that is it also gets suspended for the sub.

Mr. ABERCROMBIE. Why?

Ms. RITTER. Because if the only legal agreement is between the agency and the prime——

Mr. ABERCROMBIE. I am talking about where the agency pays the prime. You could suspend the prime or not allow them to have a further contract.

Ms. RITTER. Not allowing them to have a further contract is okay. But cutting that contract off also cuts us off.

Mr. ABERCROMBIE. No. The way that I am thinking of it then is the way here. You would be held harmless. The agency would pay you. No reason why they can't do that.

Ms. RITTER. Right now, I think legally there is——

Mr. ABERCROMBIE. Legally because they only have the contract with the prime. There should be a pass-through in the contract that is signed with the prime. I am not trying to keep you from being primes; I will get to that. I am saying should you be a sub-contractor, there should be in the original contract with the prime a pass-through or its equivalent requirement that is part and parcel of the original contract, that is simply required of them.

Ms. RITTER. It sounds like a terrific idea. I would applaud your efforts to do that. Let's not lose sight of another problem that Ms. Hill Slater brought up, that we also don't have any control of when the prime decides to submit your invoice. If I send an invoice to a prime today, I have no idea when he is going to submit that to the agency. It could be with his—I say his, with its invoice this month. It might be in their October invoice. I have no way of knowing that.

Mr. ABERCROMBIE. I think that goes back to what we set up in the first place with the responsible agency. This is elementary stuff, the same kind of thing that you require yourselves. If you have a salesperson working for you, you don't say, well, submit the activity that you got, if you don't do it this week, do it next week, or something like that. If you have an order out there that we are supposed to have that in 30 days, take a couple weeks to turn it in.

You don't have that in your own business. You have rules and procedures that have to be followed or the person isn't going to be working for you very long. If you don't follow it yourself, you are going to be out of business. I keep thinking of my dad. I got my start in life—I am sure all of the politicians here can appreciate it. My dad was a retail food broker. I was in the retail food trade cold-calling people to try to get pickles and baked beans on people's shelves and saying that we would service it for them. I had a delicatessen saying, what do you mean, you are going to come out here and service a half dozen jars of pickles? I said, if I want your business, I will. You better believe I am going to do it. I don't want you to have to think about it.

That is the way that my dad did business. When Don Abercrombie showed up, you knew it was being done right. You didn't have to give it a second thought. That was servicing. And servicing, there is no magic to services. You know who is doing that. I just don't—I don't see any of this. I think this is just the big guys kicking the living hell out of you and taking the money and run and they don't have to own up if it doesn't work out. It seems to me that we should be able to write some fundamental legislation here with respect to procedures and the quick pay.

I think that we need to look into how much the prime is able to take away from the sub, too. In my State we have rules on that. You can't use the prime as a club to beat the subs into the floor so that you can make a profit or unfair profit off of them. That is something that I think needs to be looked into it. Let me just ask a couple of more. I appreciate your indulgence, very much, on this.

Mr. Smith, I was not here when you were first speaking. I had to be elsewhere. You indicated that your contract is being pulled early. How is that possible? If you are fulfilling all of the terms of your contract, what kind of a contract is it that says one side can pull out of it? I don't expect that you could pull out of it if you wanted to or try to change the terms of the contract with the DOD.

Mr. SMITH. I was simply notified that my contract was going to be part of a bundle.

Mr. ABERCROMBIE. What part of your present contract gives them the right to say, well, we are changing the rules on you?

Mr. SMITH. I have no idea.



Mr. ABERCROMBIE. Mr. Chairman, I think that is something that needs to be looked into. My view of a contract is both sides have to live up to it. I don't think that the Federal Government has the right to say, I am going to live up to the contract as long as I find it convenient.

Mr. HEAD. Unfortunately, many of them are written that way. That is the term that is used, "for convenience of the Government."

Mr. ABERCROMBIE. That is something that we have to look at. I don't see how you can be required to make investments of yourself and then you leave that for somebody else to pick up on. That is fundamentally unfair.

With respect to, Mr. Moore, the Marine Corps there, is this service-wide? Do you have any information on that? That each of the services—I am on the Armed Services Committee—to my knowledge has a food supply division or sector.

Mr. MOORE. The Marine Corps has represented that it is about to be service-wide. Everybody is watching to see what the Marine Corps does with theirs and how successful it is to implement their own.

Mr. ABERCROMBIE. Why would they go outside of their own supply systems?

Mr. MOORE. It makes no sense. For the public good, it makes no sense at all. Whether there is personal gain involved or not, I can't address that issue.

Mr. ABERCROMBIE. I see. Last question that I would like to ask: Do any of have you any opinion as to whether or not some of the people who are involved in doing these contracts and so on, do you have any information, anecdotal or otherwise, about people leaving the service and then going to work for the companies they have been dealing with as agents for the Government?

Mr. SMITH. I simply know of one company. All employees are former Government employees.

Mr. ABERCROMBIE. Do you think it might be a good idea if we wrote legislation saying, for example, that somebody who has done business as an agent of the Government could not then become an employee of a company, say, for 2 years or something after they leave?

Mr. SMITH. Yes.

Mr. MOORE. Absolutely. In our industry, the top levels on the military side have complained for years that there is no revolving door for them because the industry is cluttered with mom and pop operations where there is no lateral move for them from the Government into our industry. It just happens that if the SBA is correct and their evaluation of what is going on or the Marine Corps is relying on to make this move, they are, in fact, inviting a large corporation that would have those types of revolving door jobs available to them.

Mr. ABERCROMBIE. I see. Thank you, Mr. Chairman. I would like to indicate or hope for the record that we need to take up that question as well because I don't think that we can assume that all of these contractual negotiations would necessarily be taking place in an objective context.

Mr. SWEENEY. I thank the gentleman. It will be noted as the highest priority. We all want to ensure that there is at least an arms-length agreement.

Let me just say this about the quick-pay issue. The Committee has already had conversation and been in with the subcontractors association. We have asked them to work with us on developing some options that may exist to deal with the privity issues so that there may be the development of a more direct relationship between subcontractors and the government agencies so there may be some at least dispute resolution.

Mr. ABERCROMBIE. You would certainly have my support on that, Mr. Chairman. Thank you.

Mr. SWEENEY. I thank the gentleman. Now, the gentlelady from California, Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chairman. I take very great exception to the way that small business is treated sometimes by Federal agencies. So you will hear me side with small business at every opportunity I can simply because that is the backbone of my economy in California. I would like to pose to you a challenge possibly to give us information how you feel we can best address the issues that are facing small business in the bundling area. What is it that you think is going to help?

We can sit here with all of our very able consultants, but a lot of our people are not the hands on. What is it that you feel, how can we close loopholes, what do we need to do as Members of Congress, what steps do we have to take to be able to ensure that, one, we increase the assistance to small business so they can become the contractors, the minority and women-owned contractors that we so desperately want to increase participation from? How do we get the agencies to understand that we mean business, business means business. And I mean literally mean business, the economy. And how do we put it in words so that there will be no mistake in anybody's mind what the end result is, and that is to prosper. As you prosper, so does the rest of the country. How do we begin?

This is a challenge for me and also for you, I do believe, and other small businesses like you. What do we need to do? We can talk all we want, but unless we define a path, begin to put it in a proposal and put it into language, then we are all spinning our wheels. I would ask you to consider that. If you want to send them to me, I am certain the Chairman, both the ranking minority person and the chair would be exceedingly thankful for some guidance to the business community. I know I would. Any suggestions?

Ms. SLATER. I have one suggestion. This is hard ball and may be extreme, but I think that I know that in private industry this is the way it works. If you don't deliver, you are out of business. Well, if the head of an agency can't deliver a 5 percent goal for women, maybe they don't need to be head of that agency. This is as simple as that. If we—that goes as far as 5 percent goal. But also bundling. Bundling is not good for business. If business is saying that it is not good for business, why are we still talking about it? I don't understand it. I thought that we are supposed to be saying—I thought—they are making rules that have nothing to do with us. I am missing something here. It is going backwards. We are being dictated to instead of dictating to the law makers. Bundling, where

are the people—do you have a similar panel like this that says bundling is good?

Mrs. NAPOLITANO. No. We have a work—

Mr. ABERCROMBIE. If the gentlelady will yield, unfortunately there are some. There are people that say that. They are the ones that have taken advantage of it. They are the kind of broker outfits that I talked about before. So this is—there is a competition going here. This is David versus Goliath.

Ms. SLATER. You know, it really isn't. Small business is the economic engine of this country. They may be bigger individually, but they are not bigger collectively. Small business is what runs this country. We employ more people than the Fortune 500, so we should have the bigger voice.

Ms. NAPOLITANO. One of my suggestions, Ms. Hill Slater, would be the possibility of getting small businesses a contract with Federal agencies together to form a coalition and go at it. I am talking as a businesswoman and as a person who has seen a lot of this happening in my area. And not to say that they are not trying. I don't know if you have ever worked for a Government agency, but bureaucracies are at its highest in the many areas that I have dealt with. How do you reform their thinking? That was my direction earlier with some of the members in the prior panel, how do we get the career bureaucrats to understand that we really do mean business because it is important for the economy, it is important for small business.

It just does not penetrate. It is business as usual until we take some effective steps and I mean effective, not just talk steps. Somehow we need to put that in proper perspective. I haven't heard anybody say this is what we need to do and this is where we are going. I congratulate the Chair and the ranking member because they have really advocated for small business, but we need your help if you can identify some areas that we can make a difference and how to do that.

Mr. MOORE. Congresswoman, just one of the steps that jumps out from being here today is there was a discussion earlier in the day about an initial idea of cost savings of 20 percent, quality improvement of 10 percent, cycle time improvement of 10 percent. It really doesn't matter what numbers they put on that as long as there is something. Today they can't even show that there is any improvement and they are going forward. There needs to be something in place that stops them until they can at least show there is an improvement of some kind at least in some area in order to go forward rather than a simple preference for large business.

Ms. RITTER. One of the other issues—and I am speaking before I have thought my words through, but I am trying to make a correlation between what you just said about career bureaucrats and Mr. Smith's definition of entrepreneur. There is no understanding—that is not fair. There is very little understanding at the bureaucracy level of the sorts of things that these five people have done. If you have never put your children's education on the line, if you have never put your mortgage on the line, there is no understanding of that. How that education comes to pass is difficult. But that is part of the problem. You hit it on the head. In the States—in the western States that are bundling these big AE services to—

gether, in their minds they are saying what a thing, I have got all of this out of the way in that amount of time. And they don't know the Mr. Smiths and the Ms. Hill Slaters and Mr. Heads down the line. They have lost their businesses because of one fell swoop decision they have made. So there is an enormous lack of understanding between the various groups involved. That is an education process I don't know how we would solve.

Ms. NAPOLITANO. That leads back to my issue on training and re-training. Thank you, Mr. Chairman.

Mr. SWEENEY. I thank the gentlelady. Let me just say in conclusion that I want to commend the panel. You probably are folks who least could afford the time that you have expended today. We understand that and appreciate that. But your insight was of great value. Let me just also address Mr. Moore and Ms. Ritter and your statements underlining all of this as well as not—the question of are we saving anything here in terms of dollars or resources or other things. But what is the quality, the result in quality? I think that you have shed some real light on it. I want to thank you for that.

With that I will conclude the hearing by asking for a motion for unanimous consent to leave the record open for 10 days for further comment.

Ms. NAPOLITANO. I move.

Mr. SWEENEY. Do we have a second, Mr. Abercrombie?

Mr. ABERCROMBIE. Oh, sure, you bet. Second.

Mr. SWEENEY. All in favor, say aye? Done.

Mr. ABERCROMBIE. That is a guest eye.

Mr. SWEENEY. We are adjourned.

[Whereupon, at 2:22 p.m., the committee was adjourned.]

## Opening Statement of Chairman Jim Talent

Good morning Ladies and Gentlemen, and welcome. Thank you for joining me this morning to examine the impact of contract bundling on small business. I am hopeful that through today's discourse we can begin working together towards a solution to contract bundling that best utilizes limited federal dollars but which also safeguards the ability of small businesses to compete for those dollars.

Unless contract bundling is undertaken responsibly, the cost cutting elements are penny wise and pound foolish. Simple economics dictate that if small businesses are locked out of competition, the few remaining competitors will face escalated demand and raise their prices accordingly. This is a blue print for monopolization. This is why Congress took legislative action in 1997.

On December 2, 1997, the Small Business Reauthorization Act of 1997 was enacted. In this Act, Congress specifically addressed the problem of unrestricted contract consolidation. Troubled by the fact that many contracting agencies favored consolidated requirements based solely on administrative savings, Congress sought to design a system of review aimed at identifying these requirements through market research and providing a mechanism for appeal on behalf of small businesses.

Yet as of today, PL 105-135 remains unenforceable. The Small Business Administration (SBA) has never promulgated regulations, even though the law specifically required a final rule within 270 days of the enactment. This past January, SBA finally printed a proposed regulation in the Federal Register to solicit comments. In the introduction to the proposed rules it states, "it is also clear from the statutory language requiring contracting officers to demonstrate 'measurable substantial benefits' and from tech Joint Explanatory Statement ...that Congress intends that meaningful controls should be in place that are capable of enforcement to preclude unnecessary and unjustified bundling." If SBA understands that, why don't these proposed regulations include actual measures? As it stands now, these regulations define as measurably substantial benefit as:

- (1) Cost savings and/or price reduction;
- (2) Quality improvements that will save time or improve or enhance performance efficiency;
- (3) Reduction in acquisition cycle times;
- (4) Better terms and conditions; or
- (5) Any other quantifiably substantial benefits.

How are these measurable? On contracting officer could very easily say that even marginal savings or changes in acquisition cycle times were enough, whereas a more conscientious contracting officer might challenge the same contract. What contracting officer is going to want to buck the force of federal procurement system to say that the benefits aren't substantial enough?

I'm glad that Dee Lee from OFPP and Richard Hayes from SBA are here today, because I want them to explain why these measurably substantial benefits aren't measurable. Do you believe that these rules are capable of enforcement to preclude unnecessary and unjustified bundling? I want to know when we can expect to see a strong final rule.

I also want all of our witnesses to address what they see as the current problems with small business participation in federal procurement programs, and how they would suggest remedying those problems. I am particularly interested in hearing about problems small businesses face as subcontractors. I'm hoping Robert Neal from DOD's Office of Small and Disadvantage Business Utilization will be able to give us some insight into ways those problems can be addressed. I also want our first panel to comment on the problems small businesses encounter with alternative contracting mechanisms, particularly ID/IQs.

I want to extend a welcome to Congressman Abercrombie who is joining the Committee today. Mr. Abercrombie has long been concerned with the problems of small businesses in the stream lined procurement environment.

I'd also like to welcome our other witnesses, who I'll introduce later in the hearing.

Now, I'll yield to Congresswoman Velasquez for any opening remarks she would care to make.

JAMES M. TALENT, MISSOURI  
CHAIRMAN

NYDIA M. VELÁZQUEZ, NEW YORK

**Congress of the United States**  
**House of Representatives**  
105th Congress  
**Committee on Small Business**  
2301 Rayburn House Office Building  
Washington, DC 20515-6315

**Contract Bundling Hearing**  
**U.S. House Small Business Committee**  
**The Honorable Nydia Velázquez**  
**Opening Statement**

Our nation is currently experiencing one of the largest economic booms of the century. Just in the first two quarters of 1999, the GDP increased over \$125 billion over last year. I am convinced that this incredible growth has small business at its base. According to the Small Business Administration Office of Advocacy, over 50% of all private sector output is attributed to small businesses.

Small businesses are creating the majority of jobs, with new and dynamic technologies coming from every corner of this country. When a difficult problem arises in corporate America, it is often a small business that they turn to. Entrepreneurs are the innovators, and the risk takers that keep this country in the lead. They are in demand everywhere, but in the federal government.

Just as with corporate America, our federal government should be utilizing the skills and expertise of our nation's small businesses. But, instead the agencies are looking for ways to cut costs. While this is a very important goal, it seems the only thing they are cutting is quality in service and access to government for our nation's small businesses.

In 1997 we recognized the challenges small businesses were facing and made changes in the SBA reauthorization act. These changes strengthened the tools that the SBA had to monitor and review federal agency bundling. Today we need to discuss if those changes are working.

But even if they are effective, those changes are not enough. For example, the recent language in the Senate DOD authorization bill further attacks small business. This legislation actually makes it easier to bundle contracts and grants DOD the ability to award and negotiate contracts without competition. This will likely lead to more awards to large businesses and less awards to small, minority and women-owned businesses. This is a backwards step on the path to fairness for small business.

The story is even worse for minority small businesses -- even though they represent some of the fastest growing sectors of the business community. The SBA Office of Advocacy estimates there were 3.25 million minority-owned businesses in 1997, generating \$495 billion in revenue and employing 4 million workers. Their numbers have been growing -- 168 percent over the last decade and their growth in revenues has been even more impressive -- 343 percent over the past decade.

With this kind of growth it should seem logical that minority businesses would be an integral part of the federal contracting, but that is just not the case.

With a lot more responsibility now given to the contracting officers to determine who wins the contract, minority businesses who do not have the relationship with those officers, are routinely shut out of the process.

For example: DOD's goal for women-owned businesses was to award them 5% of contract dollars, a reasonable goal based on past performance. However, so far this year only 1.7% of the work has been contracted to these businesses. This is well under our expectations. DOD is about 15% below its goal for small business procurement. If this trend continues it will result in \$4 billion less to small businesses this year. With these types of numbers it is hard to tell if we are looking at a genuine effort.

To address some of the problems with DOD I introduced legislation to help close that gap. The ACE bill will restore vital minority contracting rules which were stripped away last year. This bill will make changes to recognize the reality of discrimination and its direct impact on minority businesses.

Since then my concern over minority business contracting has grown. Because this is not just not happening within the DOD, this is a problem throughout the agencies. I have initiated a review of contracting practices within the federal government. We are going to hold agencies accountable by scoring their contract awards. And when we are through we will have a complete picture of how agencies are contracting and in what ways they need to improve.

Ensuring that small businesses are a part of the solution for our federal governments' problems is a priority for all of us here today. With that equation everybody wins. And taxpayers get more value for their money with vastly superior services, small businesses are able to sell their services while creating jobs for communities throughout our country.



A handwritten signature in cursive script, reading "Danny K. Davis".

Congressman Danny K. Davis  
Statement on  
Contract Bundling  
August 4, 1999

Mr. Chairman, Members of the Committee and the distinguished panel I welcome you. Today we are here to discuss the impact of contract bundling on small business.

Contract bundling is a growing problem and concern of the small business community. Unfortunately, it is a trend that is advancing through the instrument of contract

simplicity, but with devastating results. In the past couple of years, small businesses have contended they are being unfairly eliminated from the government contracting business because of the policy by federal agencies to consolidate several small contracts into one big contract. This contract bundling makes it difficult for small businesses to bid for the business.

It is clear, contract bundling and supplier consolidation are clear and present dangers to the survival of small businesses in general, and for women and minorities in particular, whose firms tend to be newer, smaller and under-capitalized.

Therefore, It is my hope that the committee and the SBA work together to continue provide and protect the interests that are so vital to our small businesses.

So I look forward to hearing the testimony of these distinguished panel members, we have here today, on best how to achieve this end.

Congressman Neil Abercrombie's Opening Statement  
Small Business Committee Hearing  
Contract Bundling and Federal Procurement Problems Facing Small Businesses  
Wednesday, August 4, 1999

Mr. Chairman and Ranking Member Velazquez, thank you for allowing me to participate in this important hearing on contract bundling and federal procurement problems facing small businesses. I am very pleased that the Committee is looking into this issue which is very important to my district.

In the State of Hawaii, small businesses make up 97 percent of all businesses. They are facing the eighth year of a recession and competition is fierce. They can not afford to be dealt an uneven hand in the federal procurement process. I was pleased that the committee invited Ms. Bernadette Paik-Apau, a small business person from my district, to participate at this hearing. Unfortunately, due to the continuing economic difficulties in our state and the enormous cost involved with traveling to Washington, she was unable to be here in person. However, Ms. Paik-Apau did submit written testimony.

I would like to take a minute to highlight some of the points raised in her testimony. Ms. Paik-Apau is the President of 'Anonui Builders Inc., a small construction firm that has participated as a prime and sub contractor in the federal procurement market. As a prime contractor, 'Anonui Builders Inc. received the 1998 National Department of Transportation, U.S. Coast Guard, Women Owned Small Business Enterprise of the year award. Ms. Paik-Apau states in her testimony that bundling contracts would place many projects out of reach and in essence force her company to bid as a sub-contractor which would be detrimental to the financial health of her business. Contract bundling removes projects from competitive bidding which is the main stay of the small contractor. Ms. Paik-Apau also states that bundled contracts encourage some larger contractors to act as mere "brokers" for the project and they ignore the required percentage of work that has to be performed by their own labor forces. In addition, she states that legislation and regulations regarding contract bundling are meaningless without enforcement.

Ms. Paik-Apau's testimony is a prime example of the hardships facing small businesses. The federal government should not be in the business of eliminating small businesses. We should be doing our best to ensure that everyone regardless of their business size has a fair chance to bid on federal contracts. I feel it is very important that the Small Business Administration (SBA) re-examine how its resources are allocated to help small businesses fight contract bundling and place a renewed emphasis on this issue. For instance, in Hawaii, we do not have a SBA Procurement Center Representative (PCR). As a result, Hawaii's small businesses are left having to contact a PCR located in California. This puts an additional burden of time and distance which my constituents must face. This is unfair.

We have a lot of Defense contracts being awarded in Hawaii and our small businesses desperately need someone on site to help them fight bundled contracts. In addition, I highly recommend that the federal agencies make sure their contracting officers understand how to deal

with bundled contracts, contracts for small businesses, and that they ensure that subcontracting plans are being implemented properly.

Contract bundling threatens thousands of small businesses. It is my hope that this hearing will provide some answers and give some direction as to how we can level the playing field for small businesses in the federal procurement market. As Members of Congress representing diverse constituencies across this nation, we realize that investing in our small businesses will pay dividends in jobs, better paychecks and more dollars in the pocket of everyone.

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**Statement of the**  
**Honorable Bob Filner**  
**August 4, 1999**  
**before the**  
**Committee on Small Business**

Mr. Chairman and members of the committee, I commend you for holding this hearing on the issue of contract bundling, and I appreciate the opportunity to introduce my constituent, Mr. James Smith.

In America, we tell our children that if they get a good education, work hard, give back to your country, and play by the rules, you can be successful. Mr. Chairman, James Smith listened as a child.

After giving back to his country by serving as a U.S. Marine, James went into business. He started United Janitorial by himself. Fifteen years later, he employs 50 persons in his community, and he is still giving back, by either leading or participating in activities too numerous for me to mention here. He is a model of hard work and success.

But now, Mr. Chairman, for the first time in his life, James has run into a problem that he hasn't been able to overcome with hard work



and fair play. The Department of the Navy's attempt to bundle several small 8A contracts into one large contract will cost him the majority of his business. His life's work will be shattered. And he's not alone. As he speaks to you today, he represents not only many other 8A small business contractors in my district, but small business persons all across America.

Mr. Chairman, this new concept of contract bundling is completely contrary to the intent of the SBA. It takes the "small" out of small business, and it certainly takes the "fair" out of fair play.

I ask you to listen closely, Mr. Chairman, as James tells his story. I believe you will agree that contract bundling is an idea best left on the drawing board.

Thank you again for holding this important hearing, Mr. Chairman, and I'm very proud to introduce my constituent, Mr. James Smith.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
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STATEMENT OF  
DEIDRE A. LEE  
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY  
BEFORE THE  
COMMITTEE ON SMALL BUSINESS  
UNITED STATES HOUSE OF REPRESENTATIVES

August 4, 1999

Chairman Talent, Congresswoman Velazquez and members of the Committee, I appreciate the opportunity to appear before you today to discuss the issue of contract bundling and the status of the Administration's efforts to implement the bundling provisions of the Small Business Reauthorization Act of 1997. Before discussing the issue of bundling specifically, I would like to emphasize the Administration's ongoing commitment to, and support of, small business participation in Federal contracting. While my office has been and remains an advocate for the pursuit of strategies that enable agencies to pursue their missions in the most effective manner, I firmly believe that this objective is not and should not be incompatible with a contracting environment that offers significant opportunities for small businesses. Let me briefly share a couple of examples to illustrate the point.

Small Business Competitiveness and Acquisition Reform Efforts

As I'm sure you are aware, multiple award task and delivery order contracts have become vehicles of choice for inter-agency acquisitions of information technology (IT) because they allow agencies to take advantage of advances in technology and changes in agency priorities in an opportune manner. The Transportation Department's Information Technology Omnibus

Procurement (ITOP) contract has become especially popular because of its ability to help agencies to efficiently meet their IT services needs. Equally significant is the fact that over 40 percent of the more than \$750 million in total prime contract dollars was awarded to small business prime contract holders. In fact, two of the small business contract holders performed so effectively that they are now large businesses and have successfully competed to become contract holders on the follow-on to ITOP, ITOP II. In January, the Secretary of Transportation was designated by OMB (pursuant to the Clinger-Cohen Act) as an executive agent for the ITOP II contract. As part of our oversight and evaluation efforts, Transportation will be providing us with data describing the total number and dollar value of task order awards to small businesses, small disadvantaged businesses (SDBs), and women-owned businesses.

Another significant example is the Department of Commerce's Commerce Information Technology Solutions (COMMITTS) contract, a \$1.5 billion, five-year multiple award contract for IT services set aside exclusively for small businesses. The 29 contract holders selected by Commerce include SDBs, 8(a) businesses, women-owned small businesses, and other small businesses. The COMMITTS program recognizes the growing role that IT industries play in the U.S. economy and the need to ensure that small businesses have an effective opportunity to compete in this rapidly changing marketplace. OMB recently decided to designate the Secretary of Commerce as an executive agent for COMMITTS. In doing so, the Director sought, in part, to help agencies take greater advantage of the services of qualified small businesses under a contract vehicle that has been shaped to support competitive and streamlined interagency acquisition of IT.

The Administration's small business service contractor streamlining pilot project is yet another example of how agencies can potentially benefit from acquisition reform while taking advantage of competitive small businesses. Under this pilot project, which was jointly initiated last summer by our office and the Small Business Administration (SBA), agencies are encouraged to waive the requirement for notice in the *Commerce Business Daily* when acquiring services valued between \$25,000 and \$100,000 (the simplified acquisition threshold) from competitive small businesses. Participating agencies (of which there are currently 14) agreed to use the Procurement Marketing and Access Network (PRO-Net) – a free-of-charge, Internet-based database of small business vendors – to identify potential small business offerors (in place of widespread synopsis). We expect that the pilot procedures, which entail the efficiencies of using an Internet database for identifying sources and simplified acquisition procedures, will permit agencies to quickly solicit and compete these requirements. This should allow participating agencies to better utilize the services offered by small businesses. At the end of the fiscal year, participating agencies will submit data to help us evaluate this effort.

These examples illustrate why we believe the benefits of acquisition reform are compatible with our promotion of strong small business participation.

#### Contract Bundling

Admittedly, there are occasions when it may be more difficult to effectively pursue small business participation and still reap the benefits of acquisition reform strategies. This may occur, at times, when agencies consolidate contract requirements to obtain cost savings, improved quality, or other benefits. It is important that agencies pursue appropriate mitigation where

consolidations make the scope of work so large or diverse that individual small businesses previously involved in smaller portions of the work cannot perform as prime contractors -- i.e., a contract "bundling." For example, under the Small Business Reauthorization Act, where the agency determines that a bundled contract offers a significant opportunity for subcontracting, the agency would be required to evaluate the rate of proposed small business subcontracting and an offeror's past performance in attaining goals for small business participation. At the same time, agencies must retain the ultimate discretion to decide if pursuit of a consolidation is necessary and justified in fulfilling their missions.

Consider, for example, the Treasury Department's recent decision to pursue the consolidation of desktop IT for its Departmental offices so that a single contractor is responsible for all of its desktop IT requirements -- rather than relying on different sources for hardware, software, and services. Treasury determined that a consolidated "seat management" approach would result in significant quality improvements and technical benefits as a result of: (1) making one contractor responsible for product compatibility and infrastructure interoperability; (2) eliminating the confusion, delays and denials of responsibility for installation problems or service interruptions; and (3) facilitating consistent, timely upgrades and refreshment of technology. Treasury also projected that it would achieve cost savings from consolidating its IT requirements. Treasury considered a woman-owned small business and an 8(a) business as potential prime contractors. Although the selected prime contractor is a large business, it is my understanding that the new contractor plans to award 30 percent of the subcontracted work to small businesses, including 5 percent to SDBs and 5 percent to women-owned small businesses.

Of course, even if an individual acquisition does not substantially further small business participation, an agency remains fully accountable for pursuing strategies that will help them achieve their small business contracting goals. Data currently available from the Federal Procurement Data System (FPDS) suggests that acquisition reform efforts -- including the pursuit of acquisition strategies involving the consolidation of contract requirements -- are not significantly distracting agencies in their efforts to achieve their small business goals. Specifically, FPDS data indicates that for the first six months of fiscal year 1999, agencies awarded approximately 17.8 percent of their contract dollars to small businesses, 5.4 percent to SDBs (including 8(a) awards), and 1.8 percent to women-owned small businesses. The average mid-year participation rates from the four previous fiscal years (fiscal years 1995-98) were 18.7 percent for small businesses, 5.4 percent for SDBs, and 1.5 percent for women-owned small businesses.

The Administration's challenge in implementing the bundling provisions of the Small Business Reauthorization Act of 1997 is to provide guidance that ensures appropriate thought is given to strategies that provide opportunities for small businesses without taking away agencies' ultimate discretion to pursue necessary and justified consolidations. With this framework in mind, let me turn to a brief discussion of the implementation of the statutory bundling provisions.

#### Implementation of the Statutory Bundling Provisions

Since enactment of the legislation, we have been working closely with SBA and the procuring agencies to develop an effective rule. A proposed rule was published in January. SBA

received and analyzed public comments. OMB received SBA's draft final rule at the beginning of this week. SBA will provide a general discussion of the public comments on the proposed rule. I will limit my remarks to the regulatory efforts to ensure that agency consolidations are necessary and justified.

As the Treasury example illustrates, there can be a variety of grounds that singularly or jointly form the basis for necessary and justified bundling, such as cost savings, quality improvements, reduction in acquisition cycle times, and better terms and conditions. I am pleased that the statute recognizes this point.

The statute further speaks to agencies demonstrating that the benefits of bundling be "measurably substantial" as a foundation for necessary and justified bundling. We are working with SBA and the procuring agencies to determine how best to implement this requirement. Our deliberations reflect a desire to see a rule that achieves strong small business participation consistent with the most efficient implementation of agency missions.

SBA has sought public comment on how to gauge "measurably substantial benefits." Unfortunately, the public comments on the proposed rule appear to provide no conclusive measure that effectively accounts for the diversity of potential benefits that might justify bundling. Just as development of an effective small business strategy is dependent upon the particular circumstances, the issue of whether or not benefits are measurably substantial to an agency may be dependent upon the particular circumstances. Therefore, it is difficult to develop a standard to quantify substantial benefits consistently in every case.

We hope to complete our deliberations shortly. In the meantime, I still expect agencies to work cooperatively with SBA in discussing potential contract bundlings and considering alternative strategies that promote small business participation.

#### Conclusion

Mr. Chairman and members of the Committee, let me reiterate that small business participation is compatible with acquisition reform. Efforts to undertake necessary and justified consolidations are no exception. Similarly, small business participation need not be incompatible with the most effective fulfillment of agencies' missions. We must pursue these objectives in harmony.

This concludes my prepared remarks. I would be pleased to answer any questions you or any members of the Committee might have.





U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

**STATEMENT OF**  
**RICHARD L. HAYES**  
**ASSOCIATE DEPUTY ADMINISTRATOR**  
**FOR**  
**GOVERNMENT CONTRACTING**  
**AND MINORITY ENTERPRISE DEVELOPMENT**  
**U. S. SMALL BUSINESS ADMINISTRATION**

**BEFORE THE**  
**COMMITTEE ON SMALL BUSINESS**  
**U. S. HOUSE OF REPRESENTATIVES**

**AUGUST 4, 1999**

Good morning Mr. Chairman and members of the Committee. I am Richard L. Hayes, Associate Deputy Administrator for the Office of Government Contracting and Minority Enterprise Development at the U.S. Small Business Administration (SBA). I am appearing on behalf of SBA Administrator Aida Alvarez, whose schedule does not permit her to be with you today. It is a pleasure to testify before the Committee about a matter of great importance to the Administration, namely the issue of contract bundling. We are pleased by the Committee's interest in this problem and its willingness to give careful consideration to an issue that potentially affects all of America's small business contractors.

At issue is the need to maintain a significant and meaningful opportunity for small businesses to provide goods and services to the Federal Government, as we continue to streamline and reform the government's acquisition processes. I believe that we can successfully achieve both of these objectives. The key is balance. Balance between obtaining quality goods and services at fair and reasonable prices, while ensuring that small businesses are not excluded from participating in

Federal Government acquisitions because the contracts are unnecessarily large, complex, or geographically dispersed.

Acquisition reform and managing for better results are key components of the Administration's reinvention initiative. These efforts are allowing agencies to use streamlined contracting practices to purchase goods and services in an efficient and cost-effective manner and thereby deliver better value to taxpayers.

Consequently, and in a downsizing environment, agencies are using Federal Supply Schedule (FSS) contracts, Government Wide Acquisition Contracts (GWACS), and Blanket Purchase Agreements (BPA) to satisfy their procurement requirements rather than negotiating separate, individual contracts. In 1998, more than \$18 billion in contracts were awarded under FSS and GWAC contracts. These contracting vehicles provide for streamlined ordering processes that allow agencies to obtain goods and services quickly and more efficiently.

Agencies are also using commercial purchase cards to streamline their procurement and payment functions. In FY 1998, government-

wide use of the card totaled over \$8 billion. We applaud this trend, and are working with the VISA and Master Card networks, which support the purchase card contracts, to increase small business acceptance of the purchase card. We are also working with VISA and Master Card to ascertain data that could help SBA assess the impact of these purchases on small businesses. We want to ensure that small businesses are not adversely impacted since the card is used for micro-purchases (purchases valued at \$2500 or less) which are exempt from the small business reservation set forth in the Small Business Act.

As you are aware, Congress has repeatedly recognized that the participation of small firms is vital to the growth of the U. S. economy. Small business participation increases the competition for government contracts, diversifies the supplier network and generates the majority of technological innovations. America's 24 million small businesses generate more than half of the nation's gross domestic product and employ more than 50 percent of the domestic workforce. Small businesses can be competitive both in terms of cost and quality in providing goods and services to the Federal Government.

Annual procurement preference goal achievements are reported to SBA by each major Federal government agency every year. In FY 1998, Federal agencies reported total purchases of \$181.8 billion, with \$42.5 billion, or 23.39 percent, awarded to small business firms. With a government-wide goal of awarding 23 percent to small businesses, we find this achievement very encouraging. However, we must continue to be strong advocates for small business to ensure that bundling does not negatively affect this achievement in the future.

By consolidating contract requirements, Federal buying activities may make small business participation less likely due to the size, complexity and monetary outlay required to perform large, multi-functional contracts. As the Committee is aware, instances of procurements involving consolidated requirements have increased during the past decade, a trend that is certain to continue. SBA's challenge is to respond to this trend and offer alternative acquisition strategies to ensure that small businesses retain their competitiveness in the Federal procurement market. This approach provides a win – win for both the Federal Government and America's small businesses.

In many cases, agencies are consolidating their supply requirements to take advantage of volume discounts and better terms and conditions. We understand the need for the government to utilize this advantage. However, we are concerned when government agencies do things such as combine different or geographically dispersed service requirements into one contract. Often these consolidated contracts for services are too large for effective small business participation. To offset such actions, we work with Federal agencies to develop alternative strategies that will maximize small business participation at the prime and subcontracting levels. As an example, the Department of Transportation, in its 1996 Information Technology Omnibus Procurement (ITOP I), structured its contract so that at least one contract within each of three service categories (systems engineering, systems operations and management and information systems security) would be awarded to small businesses and 8(a) firms. This division of major service categories allowed firms to provide the specialty services of their company, resulting in higher quality service to the government. Moreover, small businesses and 8(a) firms were awarded 45 and 23

percent of the dollars respectively. ITOP I was so successful that it reached its maximum dollar value in less than three years.

Consequently, the Department of Transportation recently used a similar approach under its ITOP II procurement.

The Department of Commerce structured its recently announced Commerce Information Technology Solutions (COMMITTS) multiple award GWAC as a total small business set-aside to enable agencies to access the services of small, small disadvantaged, 8(a) and women-owned small businesses. Twenty-nine small businesses received awards as a result of this strategy to full \$1.5 billion worth of information technology products. We support these innovative contracting strategies and encourage other agencies to use them as models to increase small business participation under large consolidated contracts.

What do we know about the impact of contract bundling on small businesses? In 1993, the SBA's Office of Government Contracting published a study on the impact of contract bundling on small business concerns. The study was conducted pursuant to Public Law 102-366, *the Small Business Credit and Business Opportunity Act of 1992*. The

study concluded that meaningful conclusions about the effect of bundling is hindered by lack of a universal definition of the term “bundling” and a mechanism to collect data on contract bundling.

In response to the results of the study, SBA undertook an initiative to define contract bundling and to collect bundling statistics at the activities that were covered by resident Procurement Center Representatives (PCRs). An *SBA Procedural Notice* was issued in the third quarter of 1993, which provided guidance to the PCRs for reviewing bundled requirements. The notice also required that PCRs report the number of bundled actions reviewed in their quarterly reports beginning with the fourth quarter of 1993.

In April 1996, SBA issued a Procedural Notice to its Government Contracting field staff that defined contract bundling as:

**Bundling is the consolidation of two or more requirements which individually were or could be performed by small business, for supplies, services or construction that is of a quantity, estimated dollar value or magnitude which makes it**



**unlikely that small business can compete for the prime contract.**

We also required our PCRs to keep detailed records of instances of contract bundling at the buying activities they covered. SBA covers 240 Federal buying activities, which represents most of the major purchasing offices out of a total of approximately 2,000. Therefore, the SBA data though helpful does not present a full picture of the impact of contract bundling. During the last few years, identifying, investigating and evaluating cases of contract bundling have become an important part of our PCRs' responsibilities in their support of small businesses. Our PCRs investigate all cases of contract bundling that are identified by the SBA, or reported by Federal buying offices and the general public. The public advises the SBA of contract bundling cases by using the "Bundling Hotline" on the Internet at [www.sba.gov/gc](http://www.sba.gov/gc). As an example, in FY 1998, our PCRs investigated 60 cases of contract bundling, valued at more than \$5 billion, and were successful in changing the procurement strategy to be more inclusive of small business in almost 90 percent of the cases.

After reviewing a case, our PCR makes recommendations to the buying agencies of an alternate acquisition strategy. In most cases, as a result of SBA intervention, we are successful in altering some or all aspects of the contract to provide small business opportunities. Two such success stories resulting from our actions involve our efforts with the Air Force. In 1998, the contracting activity at Patrick AFB, Florida, proposed to solicit environmental and ultra-trace forensic analysis services on an unrestricted basis, specifying multiple awards. The solicitation consolidated one requirement originally awarded as a small business set-aside, meaning that only offers from small firms were considered for award, and a second that had been a sole source award to an 8(a) firm. The PCR and the activity's small business specialist worked together to demonstrate to activity personnel the capabilities of the small business community to perform this requirement. Their efforts ensured that this \$86.9 million requirement was retained in the small business program.

A second example occurred at the Aeronautical Systems Center, Wright-Patterson AFB, Ohio. Our PCR noted that the solicitation, as proposed, bundled three requirements, including one that the Air Force had agreed to issue as a small business set-aside. The PCR demonstrated to the acquisition staff that a number of small business firms had the capabilities to perform the requirement. As a result, this \$90 million acquisition was retained as a small business set aside.

The SBA Reauthorization Act of 1997 established guidelines to assist agencies in evaluating their planned bundled acquisitions. The statute provides that consolidation of contracts is permissible when the agency proves that there are measurably substantial benefits associated with bundling the contract. The major elements of the statute include: (1) a definition of contract bundling; (2) a requirement that agencies show that a bundled procurement is necessary and justified; (3) a provision for small business teaming arrangements; and (4) an evaluation credit to large business bidders with the strongest subcontracting commitments.

SBA published a proposed rule in the **Federal Register** for public comment on January 13, 1999, in which we asked for suggestions on defining two key terms found in the statutory language. These two terms are “substantial bundling” and “measurably substantial benefits.” These terms are important in determining when a bundling of contracts may be necessary and justified and in setting the level of documentation required by an agency. In attempting to establish definitions that would meet the spirit of the law, and protect the interests of small business, without hampering the ability of agencies to meet their mission requirements, SBA invited the public to submit comments on how best to define those terms. None of the comments received provided any clear direction on developing a methodology for measuring the benefits of bundling a contract. Some of the commenters suggested that measurably substantial benefits be expressed in percentage terms of cost savings. Other commenters suggested that SBA should not attempt to express all identified benefits under a single quantifiable or “one size fits all” unit of measure.

We have forwarded a draft final rule to OMB for clearance. We will strive to resolve any issues or comments about how the draft final rule interprets measurable substantial benefits, or other issues, so that we may publish the final rule in the **Federal Register** in the not too distant future.

Once the final rule is published, regulatory guidance will be drafted and added to the Federal Acquisition Regulation. In addition, SBA will work to educate the Federal acquisition workforce about the procedures required in cases of contract bundling. We also plan to work with the Office of Federal Procurement Policy and other Federal agencies to come up with alternative acquisition strategies that may be applicable to various types of contracts.

In conclusion, the SBA pledges to continue to work with the acquisition community to ensure that each case of contract bundling is fully justified and is reported to the Federal Procurement Data System in accordance with the statutory and regulatory guidance. We believe that through these efforts, we will be able to both further the

Administration's goals for procurement reform and continue to ensure our Nation's small businesses a significant role in Federal acquisitions.

Thank you for inviting me to discuss with you the issue of contract bundling. I will be happy to answer any questions you may have.

**STATEMENT OF**

**MR. ROBERT L. NEAL, JR.**

**DIRECTOR  
OFFICE OF SMALL AND  
DISADVANTAGED BUSINESS UTILIZATION  
OFFICE OF THE UNDER SECRETARY OF DEFENSE  
FOR ACQUISITION AND TECHNOLOGY**

**BEFORE THE  
UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON SMALL BUSINESS**

**4 AUGUST 1999**

**FOR OFFICIAL USE ONLY UNTIL RELEASED BY  
THE HOUSE COMMITTEE ON SMALL BUSINESS**

Good morning Mr. Chairman, and distinguished members of the Small Business Committee. It is indeed a pleasure to appear before this Committee and discuss the importance of small business to the Department of Defense (DoD) and to outline some of our small business initiatives.

It is timely that you - the Congress, and we, the Executive Departments of the Federal Government - turn our collective attention to the important issue of "contract bundling." We have a shared concern that the practice of "contract bundling" may have, to some extent, limited the ability of small businesses to participate as prime contractors in the Defense marketplace. In order for us to address this issue we need to understand the magnitude of contract bundling, collect and analyze data, and develop policies that balance the needs of the small business community with the objectives of acquisition reform.

Congress under the Small Business Reauthorization Act of 1997 (Public Law 105-135) modified the Small Business Act to reflect your concern in this area. The Act states "...each Federal agency, to the maximum extent practicable, shall-



1. comply with Congressional intent to foster the participation of small business concerns as prime contractors, subcontractors, and suppliers;
2. structure its contracting requirements to facilitate competition by and among small business concerns, taking all reasonable steps to eliminate obstacles to their participation; and
3. avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation in procurements as prime contractors."

According to section 412 of the Small Business Reauthorization Act of 1997 the term "bundled contract" means a contract that is entered into to meet requirements that are consolidated in a bundling of contract requirements. The statute goes on to state that "bundling of contract requirements" means consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern due to-

- a. the diversity, size, or specialized nature of the elements of the performance specified;
- b. the aggregate dollar value of the anticipated award;
- c. the geographical dispersion of the contract performance sites; or
- d. any combination of the factors described in subparagraphs (a), (b), (c) and (d).

It is important to recognize that "contract bundling" has been occurring in procurement for some time. The current environment in Federal contracting is creating a new reality, one in which there is a greater potential for contract bundling. This new reality is driven in part by substantial downsizing that has occurred in the Federal acquisition work force and the need to improve efficiencies within our procurement system. These conditions do not appear to be diminishing; therefore, we must recognize the need to develop balanced policies that foster acquisition reform objectives and opportunities for small businesses. The question before us is this - What is the impact of bundling on prime and subcontracting opportunities for small businesses?

With respect to prime contracts, two major initiatives have been undertaken by the Department:

(1) bundling policy and (2) Air Force small business teaming pilot. The Department of Defense recognized early that the practice of contract bundling may negatively impact the ability of small businesses to participate in the DoD marketplace. Accordingly, DoD issued a policy memorandum entitled "Consolidation of Contract Requirements", which predates the Small Business Reauthorization Act of 1997. The policy memorandum, signed by the Deputy Secretary of Defense, is still in effect. It is noted that a significant amount of the language, tone and intent present in sections 411 through 417 of Public Law 105-135 is also present in the DoD policy memorandum. I have included a copy of this memorandum for the record.

In addition, the Air Force is currently testing a concept authorized by section 413 of the Small Business Reauthorization Act of 1997 which encourages the joint venture and teaming of interested small business concerns for the performance of a "bundled" or other large contract requirement.

While the foregoing policies address prime contracting opportunities, the current environment has resulted in increased subcontracting opportunities for small business concerns. In response, the Department has implemented several subcontracting initiatives.

First, DoD developed an outreach initiative to contact the top 120 DoD prime contractors. As part of this initiative, we solicited top-level management support for the small business subcontracting program, and asked these Chief Executive Officers (CEO) to reemphasize their responsibility to carry out the intent of Congress to provide maximum practicable opportunities for small business participation in subcontracts. These letters were signed by the Under Secretary of Defense for Acquisition and Technology and addressed to the corporate CEOs, soliciting their personal commitment to re-energize their small business subcontracting program.

The letter also asked the CEOs to assess their small business program and endeavor to identify initiatives, best practices, and performance-based metrics that have improved their subcontracting performance. As a follow-up to the Under Secretary's letter, I have received many response letters and conducted personal visitations. I plan to continue my extensive personal visitations with our major prime contractors to convey the message that their involvement is critical to providing meaningful small business subcontracting opportunities.

Second, DoD is reviewing our oversight and compliance of major prime contractors participation in our Comprehensive Subcontracting Test Program. Based on this review the Department may revise the oversight and compliance guidelines to improve program efficiencies.

Third, the Department has made subcontracting with small, small disadvantaged and women-owned small business an important element of "Past Performance." Past performance is now used as a key criterion in proposal evaluation.

Fourth, through our proactive implementation of the DoD Mentor-Protege program, the Department is encouraging the development of small disadvantaged business subcontractors with the technical qualifications to support complex DoD subcontracting requirements and the business acumen to do so, competitively.

Fifth, DoD and the Small Business Administration (SBA) have entered into a memorandum of understanding (MOU) that maximizes the use of government resources while minimizing the disruption on contractor activities. The MOU facilitates improved standardization of subcontract plan oversight and

compliance by providing for coordinated reviews between DoD and SBA.

Sixth, DoD via the DoD Regional Small Business Councils is developing innovative outreach approaches which target women-owned business concerns and identify relevant prime and subcontracting opportunities by industry area.

The DoD will continue to explore creative approaches to increase both prime and subcontracting opportunities for small business concerns within the current environment. In this vein, we continue to meet regularly with representatives from large business concerns, various trade associations, and small business concerns in order to gather input and gauge response of these initiatives.

In conclusion, Mr. Chairman, the Department of Defense is committed to providing, to the maximum extent practicable, small business prime and subcontracting opportunities. The Department shares your belief that the small business community is the cornerstone of this nation's economic success and technological innovation.

Thank you for affording the Department of Defense the opportunity to provide our views on both the importance of the Small Business program and on the efforts underway within the Department to mitigate the impact of contract bundling on small business, small disadvantaged business and women-owned small business.



## DEPUTY SECRETARY OF DEFENSE

 1010 DEFENSE PENTAGON  
 WASHINGTON, DC 20301-1010


28 OCT 1996

 MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
 DIRECTORS OF DEFENSE AGENCIES

SUBJECT: Consolidation of Contract Requirements

The Department of Defense (DoD) recognizes the critical role small, small disadvantaged, and women-owned small businesses play in DoD's ability to accomplish its mission. Thus, DoD is committed to fostering the use of the small business community in every aspect of its vendor base.

When we plan for the consolidation of several contracts or requirements into a single larger contract, we must consider the impact on small, small disadvantaged, and women-owned small businesses. I would like to emphasize the policy considerations that must be taken into account when contracts or requirements of a kind suitable for performance by small business are proposed for consolidation:

1. Requirements shall be packaged so as not to preclude performance by small, small disadvantaged, and women-owned small business concerns as prime contractors unless the consolidation will result in significant benefits in terms of reduced life cycle costs, improved services, or both. Any such determination shall be supported by market research analysis. The proposed consolidated procurement must be reviewed by the Small Business Administration procurement center representative in accordance with the Federal Acquisition Regulation (FAR) 19.202-1(e) if it is not set aside for small business. Any disagreements between the contracting officer and the procurement center representative should be resolved pursuant to FAR 19.505. Savings solely in the Department's cost of awarding or administering contracts is not sufficient basis for consolidation.
2. Solicitations for goods and services that would have previously been set aside for small or small disadvantaged businesses shall be reviewed for set aside under the order of precedence requiring consideration of award under section 8(a), or set aside under section 15 of the Small Business Act, prior to being included in a consolidated requirement.
3. Prior to contracting for a new requirement or a follow-on to an existing requirement, particularly for professional and technical services, the contracting officer shall conduct an analysis to determine if consolidation provides significant benefits. Prior to the exercise of an option, the contracting officer shall conduct such an analysis if the analysis was not conducted at the time of initial award. For each circumstance, if the analysis indicates consolidation will not provide significant benefits, the contracting officer shall break out tasks for competition. The awards shall be consistent with the order of precedence in the Defense Federal Acquisition Regulation Supplement (DFARS).



4. If it has been determined that consolidation of tasks will result in significant benefits, small, small disadvantaged, and women-owned small business firms shall be afforded the maximum opportunity to participate as direct awardees (particularly when multiple awards are anticipated) of portions of the proposed consolidated requirement. When establishing subcontract goals for the consolidated contract, the contracting officer shall consider the proportion, type, and level of sophistication of work previously awarded to small, small disadvantaged, and women-owned small business firms. The extent of small, small disadvantaged, and women-owned small business participation in contract performance shall be addressed during source selection, consistent with DFARS 215.605. The contracting officer shall consider using the incentive and award fee provisions in DFARS 219.708 to maximize both the magnitude and level of sophistication of work subcontracted to small, small disadvantaged, and women-owned small businesses.

5. This policy statement supersedes the policy statement signed by the Deputy Secretary of Defense, dated 1 June 1982, subject, "Consolidation and Small Business."

A handwritten signature in black ink, appearing to be "J. A. [unclear]", is written over a horizontal line.

**House Committee on Small Business**

**Contract Bundling**

**August 4, 1999**

**Testimony Presented By**

**Terry Head, President**

**Household Goods Forwarders Association of  
America, Inc.**

**Terry Head, President  
Household Goods Forwarders Association of America, Inc.**

Mr. Chairman and Members of the Committee, my name is Terry R. Head and I am the President of the Household Goods Forwarders Association of America. The Association's membership comprises all facets of the moving industry, including moving and storage firms, national van lines, line-haul firms, international and domestic forwarders, port agents, claims adjusters, material providers, insurance providers, technology firms, and others. Our members include some 1,500 international and domestic companies, the majority of which are small businesses. For the past fifty years the members of our Association have endeavored to provide the highest quality moves possible to our nation's military families.

I appreciate the opportunity to testify before this Committee on the problems and impact of contract bundling. It is the view of the relocation industry and the many small businesses who are a part of it, that contract bundling has become an alarming and ever broadening trend in Government procurement.

Contract bundling has become increasingly popular in the Department of Defense (DoD), as well as other Federal agencies. It is a strategy designed to reduce the number of contractors eligible to compete for Government business, thus reducing the burden upon the procurement bureaucracy. DoD programs that have been misleadingly characterized as "procurement reform" or cost-saving reform initiatives, such as household goods re-engineering, are really designed to simply bundle multiple small contracts into one big contract. This practice precludes all but the largest of contractors from competing for Government business by placing smaller companies at such a disadvantage that most are not eligible to effectively compete for Government acquisitions.

Contract bundling by Government agencies is having a devastating impact on an abundance of industries dominated by small business. The practice of bundling has evolved from situations whereby individual contracting officers sought to consolidate identical or similar requirements for goods and services in order to eliminate administrative burdens and to effect economies of scale. However, we have rapidly moved into an era of "mega-bundling," wherein Federal agencies are bundling acquisitions for vastly dissimilar goods and services, on a national or wide-area basis, making it virtually impossible for small businesses, even competing as part of a team or consortium, to compete fairly for Federal prime contracting opportunities.

It is no exaggeration to state that in the household goods moving industry, contract bundling by the Department of Defense threatens to eliminate a substantial portion of the industry's infrastructure. The moving industry is comprised of over 85 percent small business concerns. DoD is the largest procurer of moving services and with that enormous buying power has tremendous economic power over the industry. If DoD is allowed to continue and expand its practice of contract bundling and of consolidating its buying power into one or several large contracts, many of the industry's small business firms, both commercial and military, will be eliminated from their

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Household Goods Forwarders Association of America, Inc.**

historical role as DoD service providers.

Our industry has never endeavored to preserve anything more than a level playing field. Small business set-asides are not the answer to our problems. Being allowed to compete equally and fairly is what we wish to maintain.

As currently practiced, contract bundling is defined as the consolidation of two or more procurement requirements for goods or services previously provided or performed under separate, smaller contracts into a solicitation of offers for a single contract. The single contract is not likely to be suitable for award to a small business concerns due to the variance, size, or specialized nature of the elements involved; or the aggregate dollar value of the anticipated award; or the geographical dispersion of the contract performance sites; or any combination of the above. Substantial bundling occurs when, in addition to the presence of those factors, the scope of work covers multiple SIC codes, or the anticipated value of the resultant contract (including options) is expected to exceed \$50 million.

From my industry perspective, the Hunter Army Airfield Pilot is a classic example of a bundled contract. Prior to the launching of this pilot, approximately 43 percent of the Hunter awards were going to small businesses as direct prime contractors. The Hunter Pilot was awarded to a single large business contractor. At the end of the first year of the Hunter Pilot, only 35 percent of the moves were going to small businesses and that number was achieved only as the consequence of focused small business sub-contracting dictated to the prime contractor by DoD. One has to wonder whether the same results would have been achieved if DoD had left it up to the contractor to determine who participates as sub-contractors.

As more detailed background, in February 1997, the Army awarded a sole source contract to CENDANT Mobility under a re-engineering pilot project for the transportation of military household goods and baggage from the Hunter installation. At the time, the Army regarded this pilot project as the prototype for the re-engineered practices to be implemented throughout the Department of Defense for moving military families around the world.

There are several important points to make regarding this pilot program. CENDANT Mobility, a subsidiary of a multi-billion dollar corporation, won this bid with an offer of \$22.5 million to coordinate approximately 1,000 household goods moves annually for a three year contract period. Currently, the Army is paying approximately \$13.8 million for any three-year period. Since the Hunter Pilot was procured under the Federal Acquisition Regulations (FAR) the Army was not obligated to award the contract to the lowest bidder. In fact, CENDANT was the highest bidder by a significant amount. To put this another way, the Army had been paying approximately \$2,641 for all domestic moves from Hunter Airfield. Under the new re-engineered pilot program, it is estimated that the Army will be paying approximately \$7,000 per move.

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Household Goods Forwarders Association of America, Inc.**

For the sake of fair comparison, one of the reasons the pilot program at Hunter is more expensive than the current one is that the new program requires the contractor to provide full replacement coverage for the loss of or damage to household goods at the rate of \$5.00 per pound. The previous level of contractor liability was lower.

It appears that DoD is committed to a re-engineered Personal Property Program. One obvious question is, at what cost does DoD wish to deploy such a program? A fifty-nine (59) percent increase in expenses with no operational changes to achieve a better program certainly appears to be a waste of taxpayer dollars. Our concern is that such an increase in cost is allowed to become the standard methodology for the remainder of the DoD relocation program.

The Army projected an annual cost of \$21.1 million for all Army-wide relocation services. Yet the Hunter contract alone was awarded at \$22.5 million for just one installation over three years. At this rate, the total cost increase to the American taxpayer for such a re-engineered relocation efforts will overwhelm any hope of cost savings in the program. We recognize that the Army and the DoD keep focusing on the increased "quality of life" to be gained by the re-engineer effort, yet shouldn't there be a balance of the increased cost with what is, in actuality, to be gained in quality.

While outsourcing a portion of the Personal Property Program is desirable, the use of third party relocation entities, such as CENDANT Mobility brings no additional value to the process. It controls no trucks, no forwarders, no warehouses, no agents. CENDANT's strategy is simply to secure all of these services through sub-contractual arrangements with the major industry participants and add a significant fee on top of the contracts for its own benefit. The American taxpayer should not be required to pay for the creation of monopolistic practices by the DoD.

The Hunter pilot would appear to be coming to a close. Of a more immediate concern for our industry is the expansion of the bundled Hunter Army pilot program. Specifically, we are concerned about the elimination of small businesses as prime contractors coupled with the enormous cost increase incurred by DoD in the program and its proposed expansion pilot program, known as the Full Service Moving Project (FSMP).

The FSMP, soon to be launched by the DoD, is an expansion of the Hunter Army Airfield pilot. The General Accounting Office (GAO) has reviewed the cost accounting for the Hunter pilot, and the results should be troubling to Congressional policymakers, who are responsible for ensuring that every defense dollar possible is directed to military preparedness and weaponry.

For example, the Army reported that the cost of the Hunter pilot was 18.6 percent higher than the current system for domestic relocations and 40 percent more for international relocations. This raises several points.

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**Household Goods Forwarders Association of America, Inc.**

The FSMP, projected to be roughly a \$150 million program, represents about 10 percent of all military relocations. An 18.6 percent cost increase would entail additional cost outlays of \$27.9 million. The GAO reports that it is actually unable to validate that the cost increases for Hunter are only at 18.6 percent over baseline. In fact, the cost increases could be much higher. The 18.6 percent cost increase figure is not an appreciation over the existing program, but over a baseline that itself represents an increase over the existing program, according to the GAO.

The amount of small business participation at Hunter actually decreased during the pilot program. At the scale envisioned by the FSMP, a decline in small business participation will adversely affect capacity, and actually continue to drive up the cost of this relocation effort. This same phenomenon is currently in evident in the National Capital Area, one of the proposed test sites of the FSMP.

In 1997, Congress prudently included in the DoD Appropriations Act language requiring the GAO to analyze the results of the various DoD pilot programs that were being conducted. That language tasked GAO with validating the programs and the savings that the DoD achieved before any pilot program could be expanded. In its June 1999 report, GAO stated that it was unable to validate the cost savings of the Hunter pilot. Yet the DoD is being allowed to proceed with the expansion of the Hunter model with a mega-bundled pilot program under FSMP.

Mr. Chairman, for our industry this has been a contentious and highly charged issue. We are as weary of this issue as you and your colleagues on the Hill. As you are well aware, the Household Goods Forwarders Association has worked closely with your staff and members of the House Armed Services Committee to find a viable solution to this problem. With the assistance of your staff, we helped develop the so called CLASS initiative, a proposed legislative solution to the impact of contract bundling and re-engineering of the Military Personal Property Program.

Unfortunately, DoD was so insistent on being allowed to deny small firms the opportunity to compete as prime contractors that the agency used every possible tactic to prevent the CLASS alternative from becoming law or even being given just consideration. However, despite the failure of our combined efforts, what is at stake is so important for both the military families and our many small business companies to just allow the DoD relocation program to be compromised and subjected to huge cost increases due to the exclusion of small businesses as prime contractors.

HHGFAA and our industry have been portrayed as being opposed to any suggestion of re-engineering the DoD personal property program. As I noted in my March 18 testimony before the House Armed Services Readiness Subcommittee, the industry as a whole and our Association are committed to improving a program that both sides concede needs to be modified and improved. What we do not agree with is the arbitrary bundling of contract requirements, which prevents qualified high-quality small relocation firms from competing as prime contractors.

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Where our Association and DoD differ is over how the program should be modified to ensure that it addresses the primary goals of such a re-engineering effort, namely:

- 1) To provide the highest quality of service to the military family member;
- 2) To ensure that the American taxpayer is well served by securing the best value for Federal funds expended; and
- 3) To ensure that the small businesses, which comprise the overwhelming majority of our industry, are allowed to compete directly for business as prime contractors within this program.

This last point is of critical importance to an industry and a military that needs all available capacity during the peak moving periods. Further, it is crucial to maintain a military moving infrastructure that has for over 40 years specialized in moving U.S. military families to installations all around the world.

These goals are consistent with those for re-engineering DoD's personal property program as outlined by the 1996 DoD-Industry working group. However, the Department of Defense's mega-bundled "Full Service Moving Project" does not fully conform with these goals.

The FSMP is clearly a bundled contract. We are the first to recognize that bundled contracts often can save the Government money. However, in the FSMP, bundling costs the Government and the American taxpayer, impairs the quality of moves performed for military service members and their families, and will wipe out the overwhelming majority of the companies that comprise our industry. Thus, any legislation and subsequent implementing regulations must include mandatory provisions requiring contracting officers to quantify any expected cost savings. They must insure any analysis beyond the warm-and-fuzzy assertion that contract bundling is in the best interest of the Government. There should be a minimum threshold to be reached before a contracting officer can justify a decision to proceed with a bundled contract.

In addition, a contracting officer intending to bundle a contract that is expected to exceed a certain dollar threshold should be required to publish that intention in the Federal Register, Commerce Business Daily, and on the Small Business Administration Web Site.

The contracting officer should also be required to coordinate the proposed bundling with the appropriate SBA Procurement Center Representative. Further, specific notification should be provided to all small businesses who currently hold contracts being considered for bundling.

In the event it is determined that a requirement that has been previously bundled is to be re-competed in a bundled format, the contracting officer should provide an analysis demonstrating

**Terry Head, President  
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that the bundled contract has saved the government money over and above any administrative savings.

Moreover, we recommend that on an annual basis each agency be required to report to Congress, through the Small Business Administration, on all bundled contracts and the effects of bundling on small businesses, including attempts to maintain small business participation as prime contractors and actions taken to mitigate harm to this important sector.

Again from my Industry perspective, this brings us back to the critical question of capacity. The moving season for all types of moves, military, commercial and private is the same. It has been historically based on the school year. Under current conditions, there is a lack of capacity in critical channels during the peak of the moving season, the summer months when school is not in session. As all of you are aware, commercial moves pay higher rates than military moves. It doesn't take a genius to figure out which shipments will move during peak times if there is no competition among movers and forwarders.

Competition is the backbone of American political and economic institutions. This country has long adhered to the principle that competition is good. Awarding a contract to a single large entity does not create competition for the best price to the military, nor the best service to the military family being moved.

As stated earlier, the contract awarded under the Hunter model went to the highest bidder and the projected cost per move appears to have risen substantially higher than anything under the current program.

Maintaining small business firms in the relocation industry are the key to competition. Conversely, their very existence depends on their ability to compete with the large entities in our industry. To effect competitive pricing and assure needed capacity, small firms must be able to compete against larger relocation firms, and this requires that the playing field be as level as possible.

HHGFAA and its small business membership believe that on a level playing field small relocation companies can compete in terms of quality and price with any large firm. Our industry does not seek or support set-asides, just the assurance of a level playing field.

Mr. Chairman, my Association and the industry it serves strongly believe that the current system is broken, and we have consistently demonstrated our desire to work with the Department of Defense to develop a modified program that retains the best of what we currently do while eliminating the inefficient and sub-par performers in the existing program. Regrettably, we have been unsuccessful in working cooperatively with the DoD to develop alternatives because DoD feels that, by bundling requirements and geographic areas of responsibility, issues of quality and



efficiency can be resolved.

Put a different way, DoD appears to be insinuating that large firms provide good quality of service and small firms do not. The relocation industry, however, maintains that eliminating companies on the basis of size cannot and will not ensure higher quality or greater efficiencies. The bottom line is that DoD's contract bundling proposal does nothing to directly improve quality or reduce cost. Indeed, the only efficiency the DoD bundled proposal provides is to its own administrative bureaucratic infrastructure.

Mr. Chairman, on behalf of the hundreds of small businesses who have been dedicated over the past 40 years to providing the military with the best and most competitive program possible, we thank you for your efforts and urge you and this Committee to carefully consider the irreversible consequences that the DoD commitment to contract bundling will create for the American military families, for America's small businesses, and for the American taxpayer.

Statement of Mr. James Smith before the House  
of Representatives  
Committee on Small Business  
August 4, 1999

Mr. Chairman and members of the committee

My name is James Smith; I would like to begin by telling you a little about myself.

After serving in Vietnam as a combat Marine, I entered the world of small business. I did this by starting my own company, United Janitorial Services. Although it remains a small company, it has grown from one employee, to over fifty, and is the largest employer in my community. My family and I are very active in our community. I currently serve on the Board of Directors for the San Diego Boys and Girls Clubs, the CDC Board of Directors, and serves as Chairman of the Encanto Community Fund, which is a public benefit corporation.

It was not until I entered the 8(a) program, that I was offered the opportunity to really succeed and expand my company. Because of 8(a), I currently contract with the Department of the Navy. If the bundling of custodial contracts actually goes into effect, the change will have a devastating impact on my business and others like me. My business, along with many others will not be able to compete, ultimately forcing many of us into struggling subcontracting roles with minimal or no chance of development and growth. This hardly seems fair, considering the sacrifices and struggles that all of us have had to endure to ensure success for our businesses.

I know for a fact that bundling custodial contracts will eliminate current opportunities for my business and would in effect be a cancellation of my current contracts, ultimately causing my small business to lose 80% of its business, that's right, 80%. The bundling of contracts in other cities and states has proved that local businesses are in fact the losers. Recently, two large contracts in San Diego were bundled and the entire situation was a huge failure. These contracts were then set aside for 8(a) contractors who are performing successfully.

Mr. Chairman, on behalf of myself, and my fellow 8(a) contractors in San Diego, I would like to close by sharing with you the following information about the impact of contract bundling:

- Contract bundling will eliminate various opportunities for 8(a) contractors.
- It will force 8(a) contractors into a subcontractor role, with little or no chance of development and growth, or in many cases out of business entirely.
- Contract bundling will be put into effect with no studies on how the change will impact local businesses and the communities that they help to support.
- It will eliminate sole source contracts for many businesses.
- Current 8(a) contracts are distributed to various contractors, which encourage and support the development of local businesses. These contracts are essential to the survival of existing

businesses and those that are new to the program; Bundling of these contracts will cripple and possibly eliminate the 8(a) program.

In theory, contract bundling sounds great, maybe even practical. But in reality, hope of further success for small disadvantaged businesses and the vitality of many communities will be shattered.

The existence of small businesses all over the nation are being threatened, as huge companies force the smaller ones out of business, killing the entrepreneurial spirit of America. It is time for more support to be given to the small businesses of America, instead of less, which is exactly what the bundling of contracts will do.

Mr. Chairman and Members of the committee, I graciously ask for your assistance in preventing contract bundling which will without a doubt, have a devastating effect on my business and other small disadvantaged businesses in my community. This concludes my statement.

Thank You.

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NATIONAL ASSOCIATION OF WOMEN BUSINESS OWNERS



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REMARKS OF  
PHYLLIS HILL SLATER  
  
HILL SLATER, INC.  
GREAT NECK, NEW YORK

BEFORE THE  
  
COMMITTEE ON SMALL BUSINESS  
U.S. HOUSE OF REPRESENTATIVES

ON  
  
FEDERAL CONTRACT BUILDING  
AND  
SMALL BUSINESS UTILIZATION  
  
WEDNESDAY, AUGUST 4, 1999

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to discuss federal contract bundling matters and utilization of small businesses as prime and subcontractors.

My name is Phyllis Hill Slater and I am the President and Owner of Hill Slater, Inc., a second-generation family-owned business that has been serving the engineering and architectural community for nearly three decades. My father started the business, and we have worked long and hard to grow our business to 22 employees, including my daughter, who eventually will succeed me as head of the firm. Hill Slater, Inc. has been a federal contractor and subcontractor for most of its existence.

I also am a Past President of the National Association of Women Business Owners and address you today in both capacities.

According to the National Foundation for Women Business Owners, this year there are 9.1 million women-owned firms in the U.S. Women-owned businesses account for 38% of all firms in the country, employing over 27.5 million people and generating over \$3.6 trillion in sales. Nearly 4.6 million of those women-owned firms are in top-50 metro areas, employing 15.5 million people and generating over \$2.1 trillion in sales. I'm from Long Island, New York, and the Metropolitan New York City area is the #1 location for women-owned businesses.

#### **Contract Bundling and Small Business Utilization**

With the numbers of women-owned businesses in New York, one might conclude their use by the federal government on key area projects similarly would be high. After all, the 5% national federal procurement goal for contracting with women business enterprises is quite a small objective, is it not? My experience suggests otherwise. An example may be useful:

A new federal courthouse was to be built on Long Island. The General Services Administration wanted to contract solely with a nationally-known prime contractor for construction and equipping a turnkey building. The prime did not know all the Long Island "players" to assure the project moved forward with appropriate, continued funding and authorizations. I did. But Hill Slater couldn't be the prime contractor for this project and agreed to be the so-called "elite" minority/woman-owned firm. We were an important component to the winning of the contract and were to have a \$1 million subcontract.

There were quality assurance issues from the start, and I personally can be credited with keeping the project alive, using the fine reputation of my firm and my personal relationships to put the project back on track when it was in danger of being derailed due to poor prime management. For putting Hill Slater's reputation on the line to keep the project alive and moving forward, the firm was rewarded, right? Wrong. First, our involvement was cut to \$750,000; then, we were not used at all. Instead, the subcontract was shifted to a male-owned, woman-fronted firm, a buddy of the prime's owners. Hill Slater is still waiting for its fair share of this bundled contract.

What are some of the issues we can deduce from this example? Bundling is not good for some subcontractors, particularly those owned by women and people of color. All power and authority is with the majority firm, and the federal government does not enforce use of or even track, to any significant degree, those subcontractors who were key in attaining the successful bid. Nothing bad happens to a prime who says one thing in its proposal for the work and does another when it tackles the work. Women business owners and their enterprises have performed very well in the private sector, but the federal door continues to be open just a crack, despite a booming economy and a balanced federal budget. Women business enterprises have been described as the engine driving the U.S. economy, but we, in fact, are the ones who have been derailed from the federal track.



### A Good Example

An argument for contract bundling is cost efficiency. Hardly any other argument has been made *for* assembling such huge contracts with often-unrelated components, just for federal convenience. I have an argument *against* widespread use of the practice: small businesses who contract with the public sector and who perform well tend to enhance their opportunities in the private sector for business. Here's an example of one of the members of the National Association of Women Business Owners:

Rochelle Balch owns R.B. Balch & Associates, Inc. of Phoenix, Arizona, the third fastest-growing metropolitan area for women-owned businesses. The computer consulting firm was established in 1993 as a home-based business with one employee — Rochelle. She was “downsized” from a large corporation and obtained her first contract, for \$85,000, from the City of Phoenix. In 1994, revenues from the city were about \$500,000, and she began to leverage the fact of the business with Phoenix as she marketed to the private sector. The public-sector business added credibility to a small firm. Today, this single mother employs 32 people and in 1998 her firm enjoyed revenues of \$3.4 million. She added jobs to the Phoenix area and infused the economy with a healthy dose of sales.

The moral of the story and the summation of my remarks today? **Using small business works for us all.**



AMERICAN CONSULTING  
ENGINEERS COUNCIL

**Testimony of Cathy S. Ritter, P.E., FACEC  
ACEC Vice President**

**Before the House Committee on Small Business  
Hearing on Contract Bundling**

**August 4, 1999**

**Chairman Talent, Ranking Member Velazquez and members of the Committee:**

My name is Cathy S. Ritter, and I am President of the Constellation Design Group, a small woman owned firm in Timonium, Maryland. Today, I come before the Committee representing the interest not only of my own firm, but those of the nearly 4700 small firms represented by the American Consulting Engineers Council (ACEC).

The American Consulting Engineers Council (ACEC) is the largest national organization of engineers engaged in the independent practice of consulting engineering. ACEC has more than 5,700 member firms employing nearly 250,000 professional engineers, land surveyors, scientists and technicians who design over \$150 billion in construction projects annually. More than 77 percent of these firms are small businesses with fewer than 30 employees each. In accordance with the terms of rule XI, clause 2(g)(4), of the Rules of the House of Representatives, neither myself nor ACEC has received, any federal grant, contract or subcontract in the last two years.

Today, as the Committee reviews the practice of contract bundling and its effect on small businesses, ACEC would like to propose enforcement of contract bundling statutes that were passed in 1997. Legislation, seeking to alleviate the concerns of the small business community with regards to bundling has yet to have regulations promulgated, after nearly two years. We would also propose a set of solutions for insuring that the increasing bundling of services by federal agencies into Indefinite Delivery/Indefinite Quantity Contracts does not hamper small business opportunities.

**CONTRACT BUNDLING: REGULATIONS STILL PENDING**

Bundling is the Federal government's practice of consolidating smaller contracts into very large contracts. Often bundling results in contracts of a size or geographic dispersion that small businesses cannot compete for or obtain. As a result, the government can experience a

Statement of Cathy S. Ritter – ACEC Vice President  
Before the House Small Business Committee

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dramatic reduction in the number of offerors. This practice intended to reduce short term administrative costs, can result in a monopolistic environment with a few large businesses controlling the market supply. The Federal government should not abandon the innovative and competitive small business market for the purposes of administrative convenience.

Legislation was passed by this Committee as part of the Omnibus Reconciliation Act of 1997 (Public Law 105-135), which sought to alleviate this situation and provide a rational approach if bundling could be justified by a federal agency. ACEC worked closely with this Committee at that time to make sure that special incentives were provided to insure that small business opportunities were included in bundled contracts and to create a preference for teams which included small firm participants. These provisions were designed to promote small business opportunities and partnerships between small and large firms.

Sadly, it was not until January of this year, that the SBA released proposed regulations to enforce these provisions and after extensive comments, has yet to release a final rule. In the meantime, ACEC has seen the SBA apply some principles that have tended to bog down contracts instead of seeking to create business opportunities. We urge this Committee to request that the SBA promulgate a well crafted, final rule with all diligence. This rule should embody the goals set out in the statute, creation of small business opportunities. It should not become merely another bureaucratic tool that instead hampers opportunities.

#### USE OF INDEFINITE DELIVERY CONTRACTS

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Secondly, ACEC would like to highlight our concerns with regards to the increasing use of large Indefinite Quantity Contracts within Federal Agencies. Several years ago a number of Federal Agencies started using Indefinite Quantity Contracts (IQC) or open-end contracts for the procurement of A/E services. These contracts were typically for a base period of one year with an option for one additional year. Specific projects were not identified, but they were usually of a small size that did not warrant advertising and selection of an A/E on a specific project basis. The maximum total annual fees ranged from \$200,000 to \$400,000 per year with maximum, individual delivery order limits ranging from \$25,000 to \$75,000. This type of arrangement seemed appropriate for small remodel and maintenance type projects.

In recent years, the trend for some agencies has been toward larger IQC's with annual limits of \$1,000,000, individual delivery orders up to \$1,000,000 and three or four option years. Specific projects are not identified and there can be quite a variety of projects that are executed under the contract. It is not unusual for the IQC to cover a large geographic area.

One stated goal of these large IQC's is that they help the agency to award an A/E contract in a shorter time frame. A concern of ACEC is that these large IQC's, while helping to meet the goals of getting A/E's under contract sooner, may conflict with the goal of selecting the best qualified team for a particular project. A project with a design fee of \$500,000 - \$1,000,000 is large enough to warrant a specific A/E selection for that project. If this does not occur, and the design of a large project is performed by an A/E selected for an IQC that is non-project/facility type specific, the user of the facility may not get the quality of design they expect. This procedure is also not consistent with the intent of the "Brooks Act" Qualifications Based Selection procedure.

Statement of Cathy S. Ritter – ACEC Vice President  
Before the House Small Business Committee

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An additional concern is the increasing request for multiple and often disassociated services, in essence the capacity for a firm to do "everything". For instance, one advertisement in Oregon requested, "multi-disciplinary, architect-engineer services ... including architectural, structural, civil, mechanical, electrical, landscape, environmental, asbestos abatement, interior, interpretive, geo-technical, estimating, specification writing, drafting materials testing and construction inspection." Now that's a bit much! The mindset of the Federal Agencies is becoming multi-year, multi-discipline, multi-location, multi-etc., etc. etc., which favors firms located in large metropolitan areas that cover the globe. Such requirements limit the federal agency's opportunities to utilize the services of qualified firms in other areas or in smaller disciplines.

Delivery Orders of this type and with large geographic area and broad experience requirements will eliminate many qualified firms, regardless of size, from consideration. It will also tend to discourage the selection of small businesses for these type IQC's. *Small business firms are effectively shut out from a lot of this work when the announcement is for a multiple year, multimillion-dollar award with no specific project/facility type in mind.* Many small firms cannot afford the time and money pursuing work that they will likely not even be shortlisted for. In the eyes of agency selection committees, they do not have the staff capacity to do the work (even though no projects are identified). Their only choice is to track these large contracts and market to the large firms to hire them as sub consultants. One problem with this approach is that most large firms can provide all the services for the various disciplines, and again the small firm is left out. This is further complicated for small firms that are not DBE/SDB firms, since the subcontracting goals tend to discourage large multi-service firms from subcontracting work to these small firms.

Since government agencies are starting to place more emphasis on past performance during A/E selection, identification as a prime firm is becoming more important. The agency database on A/E performance keeps records under the name of the prime A/E only, so if a small firm is employed only as a sub-consultant, they do not have the opportunity to develop a database of past performance evaluations.

Some of the large IQC's have been awarded, but many have had few or no delivery orders executed. It seems that agency offices want one or two, just in case. It is expensive for A/E firms to market and obtain these "hollow" contracts. Although this cost is virtually the same for a small or large IQC, the emphasis there is on the award of any size IQC without strong indications of upcoming work.

#### **THE ALASKA EXAMPLE**

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The ongoing experience of our members with the U.S. Army Corp of Engineers (USACE) in Alaska highlights our concerns with regards to the use of ID/IQ's. Recent modifications of the Alaska District's contracting and procurement policies with respect to subcontracting will have a negative impact on both engineers who support prime contractors on environmental cleanup work, and on the prime contractors performing environmental remediation work. The following definition, provided by USACE, is intended to define the Corps approach to

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obtaining "best value" in subcontracting. In Amendment R002 of their Indefinite Delivery Type Remedial Action (IDTRA) request for proposal, the following definition was provided to prospective prime contractor's only a few days before the submittal deadline:

**BEST VALUE ANALYSIS**

*Because the type and value of remedial action or construction services cannot be quantified at this time, agreements with team member subcontractors [shall] not commit to an actual percentage of contract revenues. The team subcontracts are non-binding and all businesses will have equal access to compete for subcontract awards. (See Contract Clause I- 109, 52.244-5 Competition in Subcontracting)*

*The contractors shall review all local resources consistent with community base contracting requirements to include labor, training for local personnel, materials, equipment, services, and supplies. No preferences will be given to teaming relationship or team subcontractors. A best value analysis will be required with all Subcontractors quotes and submitted with the individual Task Order proposal. A minimum of two quotes will be required for each subcontracted item. (Emphasis added.)*

One effect of the amendment is that a key team member, a small business, who may have produced a major portion of the proposal for the remediation prime contractor, is no longer a teammate and has no rights to, or any edge over its competitors for subcontract work awarded to his team. We believe that this change, if applied to engineers, is contrary to the past philosophy of the Alaska District as well as most other USACE and U.S. Government agencies. Most of these agencies encourage teaming relationships and the USACE for years has promoted forming teams of small local Alaska firms to satisfy the USACE needs.

This interpretation when applied to future ID/IQ prime contracts hurts both the prime contractor (often a small local contractor) and the subcontractors (often an environmental professional) as follows:

- ◆ Prime contractors are generally good at performing the construction, but rely on subcontractors, including environmental consultants, to provide technical support during the life of the project. Most prime contractors, especially small contractors, rely on these subcontractors to give them the technical experience and qualifications to obtain the work, help them prepare adequate proposals, and to advise them of the latest techniques and environmental regulations applicable to their remedial services.
- ◆ If teaming is not encouraged and therefore these subcontractors do not participate in the initial proposal effort, many prime contractors (particularly small or 8a contractors) can't qualify and compete for these prime contracts.
- ◆ The reason that there is no incentive to assist a prime contractor with his initial proposal is that actually receiving any subcontract work becomes a two-step process:
  - ◆ i) the subcontractor first incurs the costs of competing and helping win the original prime contract, with no assurances of future work; and

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- ♦ ii) the subcontractor will then still have to incur additional proposal costs in competing for subcontract work on each task order.
- ♦ Since the only certain assurance the subcontractor receives is that he will be allowed to compete for subcontract work under a prime contract he already helped win, the subcontractor may as well skip the first step.
- ♦ If the selection process for subcontract work, particularly engineering services, is weighted heavily towards price, as opposed to qualifications, the quality of the work and public health and safety will be jeopardized, and in many cases result in higher remediation costs because the technical approach to the work as well as the qualifications and experience of the engineer are disregarded in favor of price.
- ♦ Competing subcontract work for each task order will stretch the delivery schedule and increase the cost to the USACE since the prime contractor will charge the USACE for its costs incurred in competing the subcontract work on each individual task order. It will also increase the subcontractor's overhead rate because of the additional time and expense of responding to each request. These increased costs and elongated schedules will likely be greater than any savings realized by competing the work. Time delays can be especially critical in Alaska where the construction season is short and winter work costs more.
- ♦ Based upon their prior working relationship, prime contractors and their subcontractors (particularly environmental consultants) learn how to best serve and complement each other and together form a team to provide quality service to the prime contractor's customer. By requesting that prime contractors openly compete subcontract work on each task order, the advantages of these relationships are often lost.
- ♦ Subcontractors may also be forced to work for difficult clients and provide low bids just to survive. This will encourage disputes and change orders rather than a cooperative team approach, ultimately resulting in delays and added cost to the USACE.

When the USACE's new approach is applied to **existing** prime contracts with teaming relationships, it will create additional problems to those listed above.

- ♦ Assuming the USACE has the authority to negate or interfere with the private contract rights of the prime contractor and his subcontractors, the prime contractor will be legally be liable for breach of contract. This is because the USACE is telling the prime contractor not to honor legally binding teaming agreements with his teammates.

We agree the USACE should make every reasonable effort to ensure that it receives quality work at a reasonable price. We also agree that there is nothing to prohibit the USACE from requiring or allowing its prime contractors to openly compete subcontract work. However, we believe that the above approach does not provide the USACE the "best value." The initial procurement process where "teams" are evaluated on qualifications and price, and then a prime contract is entered into based upon negotiation, provides adequate competition and assures that the USACE is getting "best value" without the need of openly competing

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subcontract work on an individual task order basis. The USACE and other Alaska clients in past years have supported a team or partnering concept on many remediation ID/IQ prime contracts and to our knowledge it has generally worked well.

With the teammate approach for remedial ID/IQ prime contracts, the USACE is assured of quality technical work from a proven team, and a faster schedule at competitive prices. This fast tracking of cleanup projects has worked well on prime contractor/subcontractor teams for recent United States Air Force (USAF) work in Alaska. If the USACE feels that a teammate's costs for technical services are unreasonable for any task order, they still have the latitude to request that the prime contractor negotiate scope or cost changes with the teammate or get a different subcontractor.

### RECOMMENDATIONS

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ACEC recognizes the need for Indefinite Quantity Contracts and offers the following suggestions on their implementation:

1. Limit the size of typical A/E IQ Contracts to \$750,000 and \$1,000,000 maximum limits per contract segment with maximum delivery order amounts up to \$250,000 each for the \$750,000 contract and limits between \$250,000 to \$1,000,000 for the \$1,000,000. The cap on the delivery order amount discourages large firms while allowing small firms to compete for the \$250,000/\$750,000 IQC's. Each contract would have a base period and option contract periods. Limit the option "contract periods" to two. There may be a rare need for larger contract limits and longer option contract periods, such as those used for environmental work or for the BRAC Process, which should be justified on an individual basis.
2. Do not preclude teams from competing for contracts and do not require teams of qualified firms to have to re-compete their subcontracting opportunities.
3. Be specific in the discipline or services required and the related type of facilities to be designed so the selection process will select the "best qualified" team for the contract. This will insure that an evaluation of the team is being conducted in a manner that assures "best value" to the government by promoting not just an evaluation of price and schedule, but also the teams qualifications.
4. Try to use a significant amount of each contract capacity by not having more contracts in place than needed. Consider establishing a significant minimum contract award amount during the life of the contract (e.g. 25% of maximum contract period amount) and require the amount to be paid to the A/E or the contract to be extended indefinitely until such minimum contract award has been satisfied. This should cause agencies to "think twice" before establishing these contracts.
5. Insure that all pertinent information, as identified above, is described in the CBD announcement to allow firms to pursue the IQ contracts that are "right" for them.

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6. The federal government needs to track and evaluate subcontracting opportunities and performance. This has been requested by statute in the past and has yet to be implemented.

#### CONCLUSION

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ACEC acknowledges and supports the government's efforts to create streamlined management that will create business opportunities and decrease costs to the government. However, small businesses should not suffer the loss of opportunities simply in name of progress. This Committee has endorsed intelligent initiatives designed to promote streamlining while protecting opportunities for firms of all sizes. We urge you to enforce those laws that have already been passed and commend to you changes that ACEC feels will improve the system for all.

Thank you for your consideration and I look forward to answering your questions.



Moore's Cafeteria Services, Inc.

**Congressional Testimony  
Before the House Committee  
on Small Business**

*Wednesday, August 4, 1999  
Room 2360, Rayburn House Office Building*

Distinguished Chairman Talent, Ranking Member Velasquez, Congressman Gonzalez and Members of the Committee:

My name is Dan Moore and I am the President of Moore's Cafeteria Services, Inc. headquartered in San Antonio, Texas. We appreciate being afforded this important opportunity to address this Committee on the issue of the Marine Corps bundling of food services. Moore's Cafeteria Services, Inc. was founded in 1981 by Genevieve and Mike Moore, my parents. Let me start by saying, Mom is the boss. We are a proud woman-owned small business and we believe that small businesses in this country have made America great. It is the spirit of entrepreneurship that is the fulcrum upon which the successes and challenges of a small business are balanced. Entrepreneurship is the very essence of our capitalism that you protect and promote in this committee. We thank you for your hard work and attention to the current proposed bundling of Marine Corps food services.

Moore's Cafeteria Services, Inc. has provided a wide variety of food services in the private sector and at military installations throughout the continental United States and Hawaii. Moore's is classified by the Small Business Administration (SBA) as a Woman-owned contractor. Our military experience has included contracts performed at Air Force installations including Edwards, Dover, Little Rock, March, Mather, and Travis Air Force Bases; Army Posts include; Fort Polk, Fort Shafter and Schofield Barracks; and Naval Installations include Naval Air Station North Island, Philadelphia Naval Yard and San Clemente Island Auxiliary Landing Field/Basic Underwater Demolition School.

#### **Performance of Food Services at Camp Lejeune**

Moore's Cafeteria Services has had the privilege to provide both Mess Attendant and Full Food Services to the United States Marine Corps, without a break in that experience, since May of 1986. During these 13 years of unbroken service to the Marine Corps, we have completed 3 contracts and we are in the first option year of a 4<sup>th</sup> contract. I can still remember the first time we walked into the mess hall at Camp Geiger where the Marine Corps feeds the School of Infantry. The Breakfast meal had just concluded, there were 100 "Mess Men" standing at attention being screamed at by two "buck" Chief Messman Sergeants, who were addressing various deficiencies in the "Mess Men's" performance that they had noted at breakfast. I'll never forget that

glazed stare in the Marine Mess Men's eyes, that stare that can only be achieved by a man who's been working from 3:00 in the morning until 9:00 at night for the last 30 days without a break. You see, mess duty was seen as a form of punishment that lasted for a month at a time. Consequently, the quality of the job that the Marine "Mess Men" did reflected their unhappiness at being "condemned" to Mess Duty, and the atmosphere of the meals was unbearable. I don't believe that a single minute of any meal period, I observed, passed without the sound of breaking glass, which was always accompanied by the cheers and jeers of the diners. You would be surprised at the devastation that can be wrought by 100 Marines. We replaced these 100 Marine Mess Men with food sanitation specialists who were (and remain) thrilled to have jobs that pay far more than the minimum wages that they were earning in the local economy. The quality of the messing services and the atmosphere in the mess hall improved remarkably. So much so that in the first year of our contract at Camp George that the Mess Hall won the Tri-Command for the "Best Mess Hall" aboard Camp Lejeune. A further benefit to the Marines was that 80% of these new mess hall workers were dependents of the Marines serving at Camp Lejeune and thereby improving the quality of life for those Marine families stationed there. MCS currently employs more than 400 food service professionals at Camp Lejeune.

Under the Marine Corps current evaluation system, the Contractor Performance Assessment Report (CPAR) rating from Camp Lejeune, Moore's received the highest possible rating "Exceptional" in the area of cost control having "exceeded many to the Government's benefit. The Program Manager specifically noted, "The Contractor negotiated an "exceptional" collective bargaining agreement (CBA) with the union during this period, that resulted in substantial cost savings to the Government." Not only did Moore's perform "within the total estimated contract cost," Moore's negotiated "numerous contract changes...which resulted in substantial cost savings to the Government."

Additional awards given to Moore's at Camp Lejeune include:

- "Exceptional" rating in the area of "Quality of Product or Service."
- Certificate of Commendation from MCSSS Commanding General "for Outstanding Mess Hall service at Mess Hall M455 from January 1998 through June 1998"

- Certificate of Merit “in recognition of contributions to the improvement of food service operations at Mess Hall M455 during the 1999 W.P.T. Hill Excellence in Food Service Awards Competition”
- Letter of Appreciation from Base Food Service Officer “for outstanding efforts displayed at Mess Hall 540 in support of ‘Cooperative Osprey 98’ from 2 through 19 June 98.”

We highlight these ratings as a way of indicating to you the expertise that Small Business has gained over the last 13 years of working with the Marine Corps to meet their Food Services needs. Small Business has expertly and economically supported Marine Corps Food Service and we wish to continue to serve their Food Service needs. When the Marine Corps competes their work among Small Businesses, they are consistently receiving great value and excellent quality. This is why we are here today; to discuss the bundling of food services, explain the proposal as described to us by the Marine Corps. We are here to tell you that this proposal will not save the government money. This idea will decimate small business involvement in government food service industry in government and will result in millions of dollars of waste for the military. We know how the government can save time and money and we are here to outline this for you as we have for the Marine Corps.

#### **Bundling of Food Services: The Marine Corps Initiative**

The Marine Corps proposes the bundling of food services and has proposed:

1. To Regionalize Food Services into two regions.
2. To Re-engineer Food Services through the incorporation of “Advanced Food Preparation” methods or Cook and Chill

#### **Item 1. The two regions.**

How did 5 regions come to be reduced to just 2 for Food Services only? In 1997, the Marine Corps established 5 *Regional Contracting Centers* along with 2 additional Contracting Centers that are in the Marine Material Command, these 5 *regions* are identified as:

- The Southeast Region (Based at Camp Lejeune, NC)
- The Northeast Region (Based on Quantico, VA)
- The Midwest Region (Based at Marine Corps Hdqtr, Washington, DC)

- The Western Region (Based at Camp Pendleton, CA)
- The Fareast Region (Based in Okinawa)
- The 2 Marine Corps Material Command Buying Centers are Albany, Georgia and Barstow, California

*The Marine Corps has informed the SBA that no little "Mom and Pop" Company could possibly handle anything so large as these two big regions.*

- With this 5 region structure already in place, the Marine Corps now plans to establish just 2 regions for the purposes of buying Food Service contracts, only. However, once the contracts are bought by Headquarters Marine Corps, the 2 Regions will go away because Headquarters Marine Corps will send the newly awarded contracts back to the previously established 5 regions to be administered.
- It is apparent that the Marine Corps has established these 2 artificial and very temporary "regions" in an effort to exclude Small Businesses. Who the Marine Corps frequently referred to in their Industry Forums as "mom and pop outfits".
- Even under the current Marine Corps plan, many Small Businesses have shown interest in bidding the two contracts. *The Federal Acquisition Regulation, FAR @ 19.502.2(b), Requires Contracting Officers to set aside for exclusive Small Business participation any procurement exceeding \$100,000.00, where there is a reasonable expectation of receiving fair market price offers from at least 2 small business capable of performing the contract requirements. The Contracting Officer is additionally required to make a reasonable effort to ascertain whether it is likely that offers from two such offers will be received. Information Ventures Inc, B-279924 August 7, 1998. Safety Storage, Inc. There are currently at least 7 Small Businesses that have declared their intent to submit proposals on these potential Marine Corps RFPs, and many more who have demonstrated interest.*

#### **Item 2. Advanced Food Preparation Methods ("Cook and Chill")**

**The first question that occurs when you talk about "Cook and Chill" is usually, what is it?** Well, my first contact with it came I the late 1960's when my Mom brought home some plastic bags and a heated crimper to seal the bags after she filled them with her "Irish Stew". Mom would cook a giant batch of her stew then place it into plastic bags while the stew was still hot, seal the bags

and freeze them. Then one of my sisters, or I, would boil some water and place the frozen bag of stew into the boiling water and leave it there until the water boiled again and served it for Dinner. Now, the proponents of the “Cook and Chill” technology (usually the people who sell it) will tell you how much more sophisticated the technology has gotten today, (not to mention how much more expensive its gotten) and explain that the food tastes “just like it did when it was first cooked”, a claim that was made back when my Mom bought our “cook and chill” equipment back in the ‘60’s. But it is still the same basic concept today that it was then. By the way, we never liked the frozen stew as well as the fresh stew. I’ve noticed that the most rabid proponents of “Cook and Chill” are unusually thin, there is an axiom in Food Service that you should keep in mind, “Never trust a skinny cook”.

The Re-engineered Marine Corp Food Service Concept doesn’t leave much room for “cook and chill”.

- The Marine Corps concept of “Cook and Chill” will impact only a small fraction of the cooking done in Marine Corps mess halls. On many days, items that will be “cooked and chilled” will be less than 10% of the total cooking effort.
  1. “Cook and Chill” has almost no application to the Breakfast meal, because this will remain a “cook to order” requirement and will be done at each individual mess hall.
  2. “Cook and Chill” will not effect the “Fast Food” line, such as hamburgers, hot dogs, fried chicken sandwiches, chicken nuggets, fried fish sandwiches, poor boy sandwiches, french fries, onion rings and various fruit turnovers. This category makes up over 50% of the food served at lunch and dinner.
  3. Frozen vegetables and rice products would still be prepared at each mess hall.
  4. Many baked goods and salad products are already commercially prepared and arrive at the mess halls in a ready to serve state.
  5. All main line entrees that require grilling or frying will continue to be grilled and fried at each mess hall.
  6. Whole muscle meats are best prepared on location rather than cook, blast, frozen and then thawed and re-heated.

So how did the Marine Corps decide that “Cook and Chill” was going to save them so much money?

During the East Coast Industry forum, a contractor asked if the Marine Corps had considered doing a smaller pilot-type project as opposed to diving into a ten-year contract. The contractor pointed out that the current initiative appeared to be a pretty big experiment. What if the Marine Corps got two or three years into this experiment and it wasn’t working out the way they had hoped? (The Marine Corps response was handled by Mr. Bob Zink).

*“You know this thing (cook and chill) has been studied and studied and studied to death. It’s time for the Marine Corps to step out and do something (with the information). Now, as you know and most people in the audience know, this (initiative) is an enormous undertaking its 56 buildings. The other services have come to us and met with us on a number of occasions; the Navy and the Army (and discussed the need to incorporate cook and chill technology) ... This thing (cook and chill) has been studied. I mean I can go back to food service documents (that are) at Headquarters Marine Corps; (and show you) its been studied to death for years and years and now it’s time to march out”.*

The contractor who asked the first question had a follow-up question. “Those studies that you spoke of, have there been dollars attached to those, or is the Marine Corps relying on a vendor’s claims about what could be done? (Again, the Marine Corps response was handled by Mr. Zink).

*“There has been dollars attached to (the studies) that (we have). (We have) had studies (done) internally (and) we have contracted the studies out over the years and there have been dollars attached to them. Now, they might be 1987 dollars as versus today’s dollars but we can convert that.”*

So where are all of the non-vendor studies that the Marines mentioned?

When they were asked for the 1987 study under the Freedom of Information Act, the Marine Corps responded that there was not a 1987 studies that the Marine Corps had put dollars on. What the Marine Corps provided us was a study that was done for the Navy in San Diego which when evaluated by the Navy, led them to conclude that it wasn’t economically feasible for them to build a “Cook and Chill” plant to support their six Naval facilities in San Diego. The Marine Corps also provided a “study” done by the Food Service Officer stationed in Okinawa at the time, which indicated that if the Marine Corps was to give him 4.5 million dollars to convert a dairy plant that the Marine Corps

owned in Okinawa into a “Cook and Chill” plant, that plant would pay for itself in 24 months. That plant has been opened for two months and the only thing they’ve been able to produce is some salads, which aren’t part of the “Cook and Chill” program. Obviously, these studies didn’t lead any reasonable person to conclude that Cook and Chill was going to save a lot of money. When we raised the issue with the SBA, they indicated that the Marines were relying on a study done by a giant multi-national corporation food service organization.

If the SBA is correct, and the only study that the Marine Corps has is from a large business, who would be excluded from bidding small business set asides, it might be in the large business’ self interest to suggest that the Marine Corps’ best option would be to use a contracting process that would allow them not only to compete, but would also exclude many (if not all) the Small Businesses that have traditionally performed these services.

It’s been our experience over the years that when giant multi-national companies publish studies, these studies utilize what can best be described as “rules of thumb”. One example of a “rule of thumb” that they use is; 8 to 12 patrons must be served for every man-hour expended. In real life, though the Marine Corps requires that its mess halls be fully manned for the entire meal period, even when the number of patrons to be fed is not sufficient to maintain 8 to 12 patrons for every man-hour used. This means that in some mess halls, the Marine Corps requirements and the “rules of thumb” are irreconcilably different.

This industry has been pioneered and refined by the Small Businesses, now some giant multi-national company wants to climb up on the foundation that we have built and make unqualified claims as to cost savings and the Marine Corps is blindly accepting their claims without bothering to independently verifying them.

#### **The Potential Long Term Impact of Bundling if the SBA is right about the Studies**

The Marine Corps envisions two or more production facilities being built off base, on private property. These facilities will then sell the food they prepared back to the Marine Corps. These facilities will also be free to sell food to any other entity that they wish to.

- Let’s say that a multi-national company just happens to win the Marine Corp East Coast Regional Food Service Contract. Being astute business men, they just might decide to build their government-funded facility in the



Raleigh-Durham, NC area where there just happens to be a large amount of college food service business, a large amount of county and city public school system food service business as well as some Federal food service business (i.e., the Triangle Research Park).

- What if the multi-national company just happens to compete for this kind of contract already. If they could bid on colleges, school districts, prison systems and GSA food service contracts and wouldn't have to include the overhead cost for a state of the art Central Food Production Facility in the price of their bids. The total overhead cost would be included in their contract with the Marine Corps. This would give them a substantial competitive advantage! I'm sure that never occurred to them when they made their study for the Marine Corps.
- They could propose the same menu items to each of these various potential clients. Instead of using the 200-gallon steam kettle to cook just enough spaghetti sauce for the Marine Corps, they could use the 800-gallon steam kettle and cook enough spaghetti sauce for everyone and not use any more labor. Think of it, not only could the giant multi-national company bid for the local food services contracts without including the overhead cost of the plant, they wouldn't have to include the cost of the labor to cook the food either. That should give them an incredible advantage. Though I'm sure that these things never occurred to them while they were preparing the "Study" for the Marines.
- Finally, consider that at the end of their contract with the Marine Corps, the plant that public money built would belong to that multi-national company. They re-bid the Marine Corps contract, and may not have to include the overhead to build Central Food Production Facility in their bid, which another company bidding the project in the future would.

#### **Cook and Chill is available and free**

- Why spend any money getting "Cook and Chill" technology when it's already available and it's free? DSCP, who currently handles all of DOD's subsistence needs, including the Prime Vendor Program, which the Marine Corps currently uses, can provide "Cook and Chill" right now according to Thomas J. Lydon, the Chief of the CONUS Branch/Food Service CBU. On

the surface, this seems like a much more logical way to source Cook and Chill.

- The Prime Vendors already have the logistical pieces in place.
  - DSCP represents a direct line between the subsistence suppliers and the Marine Corps.
  - DSCP, because they provide for the subsistence needs of DOD world-wide, has significantly more buying power through which to gain a greater advantage in obtaining the best possible pricing for the subsistence the Marine Corps requires, than any service contractor does.
  - DSCP's ability to support the military's world-wide deployment needs could be adversely effected by this initiative. The Marine Corps suggest two very different models for the purchasing of food by the potential successful contractor:
1. It was suggested at the East Coast Industry Forum, that the contractor would buy his food through the Prime Vendor Program. This approach would have Government Subsistence being sold to the Food Services Contractor and delivered to his off-base central preparation facility to be processed. The contractor would then prepare the food and sell it back to the Government with allowable up-charges included.
    - Since this plant will also be selling products to commercial entities, this presents some potential conflicts of interest.
    - Establishing cost controls and constant auditing will require additional Government resources.
  2. At the West Coast Industry Forum, it was suggested that the contractor would procure food through their own sources, process it and then sell it to the Marine Corps. This step would by-pass the DSCP all together.
    - The DSCP's ability to support the world-wide needs of DOD is supported by an infra-structure that requires that DOD participate in domestic efforts, not just selective foreign deployments.
    - *The obvious place to start looking, if you wanted to source "Cook and Chill" Food, would be with the agency that is charged with ensuring that your food needs are met. The agency that has access to the companies on the "cutting edge" of the technologies and processes in prepared foods.*

*Not only haven't they sought DSCP out, they have ignored DSCP's repeated offers to provide "Cook and Chill" to the Marine Corps. Why is that?*

#### **Advocacy on behalf of Small business**

Current advocacy with the Small Business Administration has been limited. We are aware that they requested industry forums on both sides of the coasts. However, the SBA did not attend the East Coast hearing and it was only after food service companies called the SBA pleading for advocacy that they attended the West Coast forum. At these forums, which I recorded and transcribed, the Marine Corps seemed to be informing us that regionalization would occur despite our concerns or actual knowledge of the industry in which we work. They also indicated that this issue again has been studied to death. Yet, as we indicated earlier, we have been unable to obtain copies of any studies. We have twice met with the SBA in Washington, D.C. and have been unable to obtain anything from them in writing after repeated requests. They indicated to us that it was the will of the Administration and Congress that bundling proceeds. They failed to mention to us the 1997 anti-bundling legislation. Our real advocacy has come from this Committee and your outstanding leadership Mr. Chairman and that of Congressmen Charlie Gonzalez, Ciro Rodriguez. In particular from this committee, we have appreciated the work of your staff and Trey Freels, III of the office of Congressman Gonzalez.

#### **Recommendations to Congress**

1. Encourage the Marine Corps and the Department of Defense to halt regionalization or bundling of food services.
2. Ensure that the SBA and the Marine Corps follow the 1997 anti-bundling legislation in contracting.
3. Obtain a copy of any and all studies the Marine Corps and the SBA utilize regarding this initiative.
4. Request the SBA and the Marine Corps provide an independent study of this issue incorporating real and actual savings and analysis utilizing actual occupational manpower levels.
5. Introduce legislation ensuring that government contracts be written in a manner allowing small business to compete:

- Extend the contracts for multi-year awards as opposed to a one year award with options so that small business may be able to receive the necessary banking funding.
6. Request that the SBA formally protest this decision.
  7. Request that the SBA vigorously advocate on behalf of small business in the food service industry.

We would like to point out that Moore's Cafeteria Services was the first contractor to be awarded a Marine feeding contract and have served continuously in three follow-on contracts. We are the prime contractor who has provided the training and developed the skilled work-force in the area. Under the proposed bundling or regionalization plan, we will be excluded or possibly be offered a sub-contract. Why would a multi-national company be allowed to step onto the backs of the Small businesses who have made the investment in developing the industry? If studied closely, it would be found that any savings would be illusory at best and the cost in the long run enormous.

In conclusion, we thank this committee for your time and advocacy on behalf of our nation's small business. We need your support and are asking for your continue advocacy to ensure that small businesses in the food service industry be treated fairly and equitable in the federal contracting and procurement system. Thank you.



August 11, 1999

Honorable James Talent  
2361 RHOB  
Washington, DC 20515

Dear Distinguished Chairman Talent:

Thank you, for the rare opportunity that you and your committee so graciously extended to the small businesses in my industry. Your command of the "bundling" of services was very encouraging and has given me a great deal of hope. I was staggered to hear that the Administration's Representatives admit to your committee that bundling has no measurable reason to commend it! It also became apparent that it was the Administration's intent to continue to ignore the 1997 "Anti-Bundling" Law and hide behind what the Administration continually referred to as "lack of (specific) guidance". I therefore welcome the additional opportunity that you have given Small Businesses to comment on what guidance should be given to the Administration concerning the "Bundling of Services".

I now realize that the "Bundling of Services" is not a decision made based on facts but rather based on an opinion that the "Bundling of Services" will result in cost savings, in improvement of the quality of service and in the reduction of "cycle time". This opinion is nothing more than an untested hypotheses and as such worthless unless tested against reality. To determine what is a fact requires first a decision on the criteria of relevance, especially on the appropriate measurement. This is the hinge of any effective decision and undoubtedly it will be the most controversial aspect. I think that Bundling should conform to the following presupposition:

1. The decision to "bundle" must not fetter competition for those products or services being bundled in the near term nor in the long term. In evaluating the impact on competition it should not be done on the raw numbers of bids submitted alone but also in the range of the bid prices. If the bundling of a particular product or service limits the number of bids received by more than 50% and/or reduces the price range of offers by more than 15% then the bundling initiative has clearly limited competition beyond an advisable level.
2. The assertion of savings and/or the assertion of improved quality must be established in a living demonstration of these savings and/or of improved quality that can readily be transferred into the government sector. If there is not a readily transferable example of the anticipated savings and/or of improved quality but there is a convincing hypotheses offered, then a viable test of these savings and/or of the improved quality should be

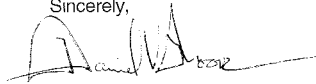
initiated on a limited bases to qualify and quantify any savings and/or improvement of quality in a realistic setting. The test should not exceed 1/12<sup>th</sup> of the Government's total requirement.

3. Cycle time should only be considered relevant in the event that by bundling a product or a service there will be an actual and significant reduction of the number of Civil Service employees. Making Civil Service jobs easier should not be given any weight at all!

With those presuppositions stated I would advise the following as a minimum standard which must be met in order for "bundling" to take place.

- Realistic anticipation of savings must be at least 15% off the actual bid price. If actual bids received do not reflect a savings of 15% then the procurement should be canceled the products or services should be unbundled and resolicited in their traditional format.
- The quantity of the number of units bundled must not cause the price for the products or services being procured to exceed the established Small Business Size Standard and the bundled products or services therefore must be competed among small business.
- The improvement in quality as measured by the end user or end consumer as being significantly (25%) better than the existing product or service. This would have to be done by actual survey of the end users or end consumers. Vendor assertions and civil service or military buyers opinions should be steadfastly ignored.

Sincerely,



Daniel V. Moore  
President

Preliminary Bundled Contract Statistics  
Eagle Eye Publishers, Inc.  
August 3, 1999

1. Between fiscal years 1989 and 1997, a total of 1,165,576 contracts were issued by all agencies reporting to the GSA's Federal Procurement Data Center. Of these, 103,745, or 8.9 percent, were bundled.
2. Between fiscal years 1989 and 1997, a total of \$1.637 trillion was awarded in federal prime contracts and \$927 billion of this total, or 56.6 percent, was awarded on bundled contracts.
3. The share of bundled contracts has grown annually since FY 1995 from 9.98 percent in FY95 to 12.4% in FY97.
4. Bundling is associated with a decline of dollars to small business. See regression statistics.
5. Bundling is growing in the Construction and Other Services sector, but appears to be declining in the R&D and Supplies and Equipment sectors. Where bundling is occurring it is harming small business. See accompanying charts.
6. Bundling increases dramatically with contract size (charts p. 19). The average bundled contract is 13.35 times the size of the average unbundled contract.
7. The small business share of all federal procurement dollars shrank by .3% between FY96 and FY97, from 18.7% to 18.4%. This share remained virtually unchanged in FY98 (18.42%).
8. The small business share of all federal contracts shrank 1.43% between FY96 and FY98, from 59.45% to 58.02%.
9. Average contract size has grown from \$915,000 in FY92 to \$1.1 million in FY98.



August 4, 1999

Representative Jim Talent  
Chairman  
House Small Business Committee  
Washington, DC 20515

Dear Chairman Talent:

This comment is submitted on behalf of Associated Builders and Contractors, Inc. for the August 4, 1999 hearing in the House Small Business Committee on contract bundling and federal procurement problems facing small businesses. ABC is a national trade association representing more than 21,000 general contractors, subcontractors, suppliers and related firms, a majority of which are small businesses operating as general contractors and subcontractors in a variety of specialty categories.

ABC is concerned that the construction industry has had little input into the formulation of the policies represented by the Office of Federal Procurement Policy's (OFPP) proposed Policy Letters 99-X on Promoting Subcontracting Opportunities and Administering Subcontracting Plans. Construction in general, and its value to the government, is enhanced by efficiency and certainty in the terms and conditions of the procurement process. Full and open competition for contracts provides the best chance to deliver such efficiency and certainty while curbing abusive practices of contracting agencies.

ABC was founded on the principle of full and open competition and has strong concerns against contract bundling. The Small Business Act requires that each federal agency "(a) void unnecessary and unjustified bundling of contract requirements that inhibits or precludes small business participation in procurements as prime contractors." 15 U.S.C. Sec. 632 (j)(3). Expanded use of contract bundling of construction contracts is an invitation to federal agencies to limit competition to contractors capable of bidding on larger contracts. Contractors unable to perform or gain bonding for such larger contracts would not be able to bid as prime contractors. Contract bundling is an artificial limitation on the number of bidders, which will ultimately drive up the cost to the government for construction services.

OFPP's proposed Policy Letters 99-X on Promoting Subcontracting Opportunities and Administering Subcontracting Plans, and 99-1, on Government-Wide Small Business, HUBZone Small Business, Small Disadvantaged Business, and Women-Owned Small Business Goals for Procurement Contracts, published at 64 Federal Register 16001, *et seq.*, April 2, 1999 would impose new requirements on contracting officers not found in the Federal Acquisition Regulation. It would require, for example, the contracting officer to determine in advance the



value of an indefinite delivery, indefinite quantity contract, which could result in additional requirements for bidders. In the construction industry, this would increase the cost of bidding with no gain for small business.

The proposed policy also allows contracting officers new latitude in evaluation of bids that will create uncertainty, and puts a premium on past performance reports. The immediate effect of this policy will be that contractors will be more likely to contest negative reports, even to the point of litigation.

The amount of discretion that contracting officers have is already problematic in federal procurement; evaluation of bids is becoming more subjective and more susceptible to favoritism. This proposed policy would be another step in that wrong direction. For example, the proposal gives no meaningful guidance on how agencies' contracting officers may weigh the subcontracting plan. The letter merely proposes that the agency may require that the subcontracting plan "account for a meaningful percentage ... of the total value." Clearly, this percentage will vary from agency to agency, and even from contracting officer to contracting officer. Similarly, the letter proposes a list of "parameters" which could be used to evaluate bids. Each of these parameters requires a subjective analysis by the agency.

Even more subjective are the suggestions for the use of past performance records to evaluate a subcontracting plan, whether a review of a contractor's past subcontracting performance is a matter of record or not. Viewed in its best light, this policy would reward those contractors with proven, documented, "successful" subcontracting plans. It would discourage those contractors with little or no history of subcontracting, that is, small businesses themselves.

ABC believes certain types of contracts, including job order contracts (JOCs), should be distinguished from bundled construction contracts. (JOCs provide more responsible facility maintenance and repair and minor construction and reduce engineering and procurement lead-times by awarding a competitively bid, firm-fixed price, indefinite-quantity, multitask contract to a single general contractor within a specific geographic area.) ABC members report that small business utilization as first tier subcontractors under such contracts ranges from 85 to over 90 percent of the contract value. Because JOCs and other similar construction contracts enhance government efficiency and provide expanded opportunities for small businesses, great care should be taken to ensure that they are unaffected by this proposed policy revision.

ABC opposes any new paperwork requirements or new recordkeeping requirements, both of which would be imposed by the proposed policy.

In particular, ABC is opposed to the requirement that the offeror/contractor be made responsible for the review, approval and monitoring of subcontractors' subcontracting plans beyond the responsibilities they already have under the FAR. Sec. 415 of the Small Business Act requires evaluation of subcontracting plans in the performance of contracts. In light of this, ABC has strongly recommended to the Small Business Administration that SBA develop a system for tracking and reporting on the utilization of small businesses as prime contractors, and first and second-tier contractors under construction contracts.

Small businesses should be allowed to bid for and acquire government contracts under a system of full and open competition. A recent GAO report that the small business share of services and construction contracts has increased since 1994 indicates at least a continued capacity to compete.

In conclusion, the government should strive for efficiency and timeliness in the contracting process. Delay and confusion can increase the costs of a construction project astronomically. ABC supports a system of federal procurement based on full and open competition, which would allow small businesses to compete for and win federal construction contracts.

Thank you for this opportunity to comment on the proposed policy letters. We are ready to provide further information and to answer any questions you might have on the foregoing comment.

Sincerely,

A handwritten signature in dark ink, appearing to read "Shane C. Downey", written over a horizontal line.

Shane C. Downey  
Washington Representative

17 August 1999

Honorable Jim Talent Chairman,  
House Small Business Committee  
2361 Rayburn Howe Office Building  
Washington, DC 20515

Dear Mr. Talent:

I would like to thank you for your recognition of the adverse impact that bundling is having on the small businesses of this nation, and the ultimate negative impact it will have on the economy if left unabated. Your statement pertaining to "a blueprint for monopolization" is insightful, and brings to mind the report delivered to the Senate Small Business Committee in 1946 entitled "Economic Concentration and World War II". This 1946 Report addressed the monopolistic control our economy had fallen into in the first half of this century when a handful of large corporations, through consolidations and mergers, were allowed to control our economy and thus ensure high prices, low wages and restrictive production, not to mention the demise of one-sixth of all of America's small businesses during the war years.

Most of us need no lesson in the economic state of our nation during that period. Subsequent to this Report, our country has maintained strong support for the well being of its small businesses due to the recognition of Congress that without small business, we essentially have no free enterprise economy. The result has been a strong and vibrant economy, which has enabled us to produce the greatest military in the world while our citizens experienced a tremendous rise in their standard of living. Unfortunately, the Defense Department over the past several years has encouraged a return to the monopolistic era of the earlier part of the century, and small business' ability to compete in the federal market are shrinking at an alarming rate. While many of us have repeatedly petitioned SBA for assistance in turning this negative trend, our pleas have fallen on deaf ears. If this trend towards bundling is not ceased immediately, the demise of small business is all too certain. I believe that in six months to a year, small businesses will have been locked out of most federal procurements forever. Let me explain.

Attached is a letter dated 3 Aug 99 from the Director of Procurement at Headquarters, Air Force Material Command. The subject of the letter is Competitive Advantage Strategy, and is sent to all subordinate Directors of Procurement at Air Force Material Command field locations. These activities collectively spend over eighty percent of the Air Force Procurement budget. Their strategy is simple -- to write a limited number of broadly scoped contracts which cover all procurement needs of the Air Force, assign high dollar ceilings (billions) to each contract, allow decentralized ordering by any activity, and write no more contracts for the next five to ten years. A good example is the FAST contract strategy being pursued at the Warner Robins Air Logistics Center. The intent of the FAST contract is to obtain, under one contract, spare parts, repair efforts, modifications to existing weapons systems, and virtually any type manpower support you can buy. The projected ceiling is \$4 billion over five years, and is being set up to allow other activities



**Phoenix**

Scientific Corporation 211 Independence Dr. • Warner Robins, GA 31008 • (912) 953-6562 • Fax (912) 953-6564

to place orders against it. The scope is so diverse that no reasonable person would conclude that it meets the requirements of CICA, but that is of no concern to Warner Robins.

These large omnibus contracts do not lend themselves to participation by small business as prime contractors, but ensure the future monopolistic control of DOD by a few select large businesses. GAO has previously shared their views on such approaches to both the Secretary of the Air Force and the Secretary of the Army by letters dated January 26, 1998 (Valenzuela Engineering, Inc. B-277979). It appears that neither Agency heeded the GAO letters, as both have pressed forward with the writing of large Omnibus contracts. The Air Force use of the Army's Rapid Response to Critical System Requirements (R2CSR) has removed requirements for work previously performed by small business and given it to large firms on a noncompetitive basis, often at an increase in cost to the Government. Now, the Air Force is attempting to write its own contracts with broad, diverse work requirements in order to compete with the Army. The losers are small business, the taxpayer, and eventually the economy. It's hard to blame the Air Force for trying to compete with the other Agencies. The real blame lies with senior Government officials in Washington whose duties are to protect our country from such behavior which, one could reasonably argue, borders on criminal behavior. The last time I checked, Congress had not repealed either the Competition in Contracting Act or the Small Business Act. DOD and SBA officials appear to be unaware of this fact.

In closing, I plead with your committee to put an immediate halt to the writing of large bundled contracts as well as the use of existing ones, as I doubt any in existence are in compliance with the Competition in Contracting Act, the Small Business Act, or the Small Business Reauthorization Act of 1997 (PL105-135 Section 411-416). Delayed action will only serve to allow the continued issuance of bundled contracts and the demise of small business. Action down the road will simply be "too little, too late".

Respectfully submitted.



Maurice J. Allain  
CEO

MJA/ww

enc:



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE MATERIEL COMMAND  
WRIGHT-PATTERSON AIR FORCE BASE OHIO

MEMORANDUM FOR SEE DISTRIBUTION

3 Aug 99

FROM: HQ AFMC/PK  
4375 Chidlaw Road, Suite 6  
Wright-Patterson AFB OH 45433-5006

SUBJECT: Competitive Advantage Strategy (SUSPENSE: 10 Aug 99)

1. I have approved a five-part strategy (Atch 1) for improving our ability to provide program managers with the right contract vehicles and business advice in situations where there are choices. The first part is to create a decision framework to help make business decisions and draw our attention to the various choices. This framework should also help us to create contract vehicles, which are competitive in our environment where different military services and federal agencies are marketing the use of their contract vehicles. The other key components of this strategy include: training our business advisors, creating a database of AFMC contracts with decentralized ordering, creating an approach (e.g., marketing) to keep our business advisors informed about our contracts, and sharing information and results with the Lightning Bolt 99-3 (LB 99-3) Teams who are developing market research centers of excellence.

2. Many center personnel have helped to develop this strategy since the need was first identified at the HQ AFMC/PK Directors' Conference, 23-24 Mar 99. Five centers (ASC, ESC, OC-ALC, OO-ALC, and WR-ALC) provided initial data and participated in an executive session on 19 May 99. A proposed five-part strategy evolved. Finally, the strategy was refined following center review and comment. Thank you for all your efforts.

3. The next step is to now develop and execute plans for each of the five components of the strategy. While several individuals have been identified to assist us, we could use additional help and field input. Please identify a focal point by 10 Aug 99 to assist with these various efforts. A milestone chart to implement each of the five parts of this strategy is attached (Atch 2).

4. If you have any questions, please call one of my action officers, Mr. Doug Jones, HQ AFMC/PKPC, DSN 986-0358, or Mr. Brandon Burton, HQ AFMC/PKPC, DSN 986-0329.

//SIGNED//

DARRYL A. SCOTT  
Colonel, USAF  
Director of Contracting

Attachments:

1. Five-Part Strategy
2. Milestone Chart

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AFRL/HEK  
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ESC/PIW  
ESC/PIH  
OO-ALC/PKL  
MSG/PK  
SSG/PK  
DET 1 AFRL/PK  
DET 8 AFRL/PK  
38 LS/LGC



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE MATERIEL COMMAND  
WRIGHT-PATTERSON AIR FORCE BASE OHIO

## Competitive Advantage

### Five-Part Strategy

#### 1. Create a Decision Framework

- For business advisors to advise Program Managers and requiring organizations
- When planning for future requirements, follow-on contract efforts, or new requirements
- Typical decisions to consider:
  - Should the AF keep requirement or should it contract outside the AF?
  - Do other vehicles exist?
  - Use existing contracts?
  - Center of excellence?
  - Lead center?
  - Broaden or consolidate requirements?
- For existing long term contracts—consider if restructuring to allow decentralized ordering would be best for the command if it's logical and possible.

#### 2. Improve Knowledge of Business Advisors

- Consider every contracts person (1102) a business advisor – role for the future
- Goal is for the business advisor to bring market knowledge and strategies to the customer (program manager)
- Develop roles, tools, and training for the business advisors
- Broaden strategic thinking, develop innovative approaches
- Possible topics to include:
  - How to compare various contract options—i.e., different agency contracts
  - Make business advisors aware of other center's contracts
  - What's in DoD and other agencies, like GSA
  - Improve business knowledge
    - Business case analyses, time value of money, opportunity costs, etc.
  - Increase understanding of Economy Act and MIPR rules
- Possible approach—Satellite broadcast training and web guide

#### 3. Select and Develop Data Base

- Need data base of AF contracts (with decentralized ordering or that allow use by other organizations) that business advisors and other organizations can use
- Select existing data base or create new one
- Define data needed and data protocols – easy to use, provides the right data
- Consider using E-Malls
- Consider "Country Store" like web site and tie it in to E-Malls tied into E-Malls
- Develop procedures for center data entry and updating

4. Develop marketing for awareness process

- Not marketing to other military services or federal agencies
- Focus on marketing to our business advisors to make them aware of our contracts and other possibilities
- Goes beyond just listing in a data base
- Getting awareness to buyer/CO (our business advisors) and other AF organizations
- Possible approach – Study how large business market to themselves, Combination of methods to get the word out
  - Part of Bus Advisor satellite broadcast
  - Articles
  - Info letters

5. Share Our Strategy (Synergy) With Lightning Bolt # 3 Team

**LB#3 - Centers of Expertise to conduct market analysis in support of commercial item acquisitions, the adoption of commercial practices, and price-based acquisitions.**

- Under LB#3, centers are identifying Centers of Excellence for market research
- Synergy through sharing of information and strategies
- Both groups need to be aware of each other's actions
- LB#3 to have operational pilot program by 1 Oct 99
- Follow-on teams will need to continue sharing information
- Likely that Centers of Excellence for market research would be the lead centers for writing decentralized ordering contracts that other organizations would order from
- Leverage our strategies with LB 99-3 to improve both of our products



Prepared Testimony of Ms. Bernadette Paik-Apau  
President, 'Anonui Builders, Inc.  
Kapolei, Hawaii

Thank you Mr. Chairman and members of the Small Business Committee for this opportunity to testify on Contract Bundling and its impact on small contractors. My name is Bernadette (Berni) Paik-Apau, a licensed Architect in the State of Hawaii and President of 'Anonui Builders, Inc. which holds a General Contractors license in the state of Hawaii. We are but one of the 97% of businesses in the state that are classified as small business.

I would have liked to personally testify before your committee but the expense of travel would have been prohibitive. The state of Hawaii's economy is such that a small business simply can not afford the additional expense of travel.

'Anonui Builders, Inc. has done federal contracts as both a prime contractor and a sub-contractor and as such can speak to these issues through personal experiences. As a prime contractor, 'Anonui Builders received the 1998 National Department of Transportation, USCG, Women Owned Small Business Enterprise of the year award.

As a small business and in particular as a small business in the construction industry, I am concerned about contract bundling of federal contracts and what it means to small businesses. I had looked forward to the opportunity of bidding larger federal contracts as a prime contractor. Bundling of contracts would put many projects out of reach and in essence force me to bid as a sub-contractor. My experience has shown that sub-contracting under a larger prime contractor can be detrimental to the financial health of a small contractor. I would like to summarize these concerns as follows:

- Bundled contracts would remove projects from competitive bidding by smaller contractors. Competitive bidding is the main stay of the small contractor.
- Bundled contracts would make projects too large for the small contractor to bid on and thereby limit bidding to a smaller number of large contractors.
- Bundled contracts encourage some larger contractors to act as mere "brokers" for the project and therefore not perform the required percentage of work by their own labor forces. It is difficult to see how this would save the government money since it simply creates another tier of cost to the government. The government would do better to let

out the contract as management contracts rather than construction contracts if all that is required is to manage sub-contracts. On the other hand, contract bundling also encourages larger contractors to do most of the contract by their own labor forces to keep profits within their company thus minimizing the opportunities for sub-contracting. In either case, the smaller contractor is left out in the cold.

- The 14-day quick pay act applies to the prime contractor but not the sub-contractor who often gets paid by the prime contractor up to 120 days after project completion. For a small contractor with minimal reserves, this places a tremendous burden on cash flow. Sub-contractors put money up front for materials and labor for which they must often wait long periods of time for payment. This hurts cash flow and restricts the ability of the small contractor to pursue or to do other projects.
- The State of Hawaii has a limit set as to how much a prime contractor can make over and above a sub-contractor. The federal government has no such limits and therefore larger prime contractors have been known to make up to a 50% mark up on sub-contracts often at the expense of the sub-contractor.
- If there is a disagreement in the contract concerning payment, small business can not afford to take on the large contractor who have lawyers on staff. The Miller Act is in place but it does not allow for reimbursement of lawyer fees that are often more than the amount fighting for. The only alternative left to the small contractor is to walk away.
- Legislation is meaningless without enforcement.

It is hoped that the committee seriously considers the impact to small contractors forced to become sub-contractors under contract bundling. Small business is the heart of Hawaii's economy. The small contractor needs the help of your committee to assure that fair and equitable opportunities are afforded them in an already difficult economic environment. To this end, it would be most useful to the small contractors if the committee address controls to bundled or large federal contracts including:

- Limits on prime contractor mark up on sub-contractors
- Extending the quick pay act to include sub-contractors and lower tier sub-contractors
- Include partial payment clauses which will allow sub-contractors to invoice and receive payment for work completed and/or materials

delivered regardless of when the prime contractor invoices the government

- Enforcement of regulations dealing with sub-contractor plans
- Assure that “brokerage” of contracts does not occur by enforcing current legislation which requires that a percentage of work be done by the prime contractor
- If contracts must be bundled, assure that a percentage is set aside for joint small business ventures

I believe strongly that small businesses will be negatively impacted by bundled contracts. Small business brings much to the economy of Hawaii and our nation and must be given every assurance of its survival through these difficult economic times. Thank you very much.

Kevin J. Kelleher  
President and  
Chief Executive Officer



September 2, 1999

The Honorable James Talent, Chair  
The Honorable Nydia Velazquez, Ranking Member  
Small Business Committee  
2361 Rayburn House Office Building  
Washington, DC 20515

Dear Congressman Talent and Congresswoman Velazquez:

It has come to my attention that you received incorrect information during your August 4, 1999 hearing on contract bundling. The testimony of Mr. Terry Head, President of the Household Goods Forwarders Association of America (HHGFAA) had many inaccuracies. Since Cendant Mobility is the contractor Mr. Head was discussing in his testimony on a Department of Defense (DoD) pilot program at Hunter Army Airbase, we feel it is imperative that you and other members of the House Small Business Committee receive correct information.

Mr. Head's organization is made up of small businesses that perform services primarily for families engaged in overseas moves. HHGFAA has continuously objected to the DoD's efforts to reengineer and improve the moving process for service members and their families.

Some of Mr. Head's erroneous/misleading testimony is discussed below (excerpts from his written testimony are contained in quotation marks):

- Mr. Head purported to provide the Committee with the "view of the relocation industry". HHGFAA represents a small portion of the relocation industry. The Employee Relocation Council (ERC) is the broadest-based trade association representing the relocation industry. The ERC is comprised of employers, real estate professionals, third party relocation companies and other suppliers. Parties interested in DoD relocation practices formed the Military Mobility Coalition to work with the DoD and military family groups to improve the moving experience for our uniformed service members. Some of HHGFAA's members are also members of ERC and MMC but this does not mean that Mr. Head is authorized or qualified to speak for the entire relocation industry. His testimony should be viewed as representing the limited perspective of freight forwarders only. The other relocation industry groups noted above would be pleased to provide your committee with their views on contract bundling and DoD reengineering, if requested.
- "Army awarded a sole source contract to Cendant Mobility...for Hunter". The Hunter project was a full and open competitive procurement. Mr. Head's organization financed bid protests before the GAO (see B-274285.2; B-2742285.3). After a full hearing, GAO denied all such bid protests.
- "Cendant was the highest bidder". We do not believe this to be true. The costs of Hunter cited in his testimony are based on the Army's model used only for procurement adjudication evaluation. GAO in its evaluation of Hunter, (see report GAO/NSAID-99-129), found an

overall increase of about 18.6 percent rather than the 59 percent Mr. Head cited in his testimony. GAO further attributed this increase to (1) difficulty in calculating accurate baseline costs which the Army believes were understated; (2) low volume of moves which did not provide enough leverage to negotiate better rates and discounts; (3) higher than expected costs of overseas shipments (domestic shipments were about 2 percent over the baseline); (4) relatively high unaccompanied baggage rates, which could have been lower using negotiated rates; (5) packing allowance for DITY moves, which was calculated using commercial rates during part of the 12-month test period, resulting in a higher rate; and (6) quality moving services, which cost more.

- "Hunter contract was awarded at \$22.5 M". Again this is the Army's evaluated bid price. Over the three years, the Army has actually spent far less -- approximately \$3 M or an average of \$3,000 per move versus an average of \$7,000 per move as stated by Mr. Head.
- "Cendant [or like companies] brings no additional value to the process". Cendant and relocation companies provide the single point of contact for the administration and management of this non-core DoD mission requirement making it a natural for outsourcing and reducing DoD infrastructure. Relocation companies provide a single point of contact for the military family that reduces their well-documented burden when moving for the government. Relocation companies provide an advocate for the family, particularly in the claims process. This advocate role is one of the biggest benefits of the Hunter pilot with claims being settled in an average of 19 days at full replacement value for the first time using a streamlined process so the service member does not have to waste valuable time during their move.
- "The FSMP, soon to be launched by the DoD, is an expansion of the Hunter pilot". The Hunter pilot was a single contract; FSMP (Full Service Moving Project) will take a two-contract approach. The transportation providers will bid and file rates with the government and get paid by the government. Any small business can apply, and if they pass government standards financial and performance, will be part of the program. Any small business may also bid for the move management contract. Same evaluation standards apply. How then does this, "eliminate small businesses as prime contractors" as Mr. Head states? All small business can compete and the requirements are not "bundled" in anyway that would negatively impact HHGFAA's membership. On the contrary the two-contract approach unbundles requirements.

There are other examples of inaccuracies and misleading statements by Mr. Head in his testimony and responses to questions, but we feel the foregoing points respond to the most glaring inaccuracies. We respectfully request that you include these comments as part of the official record of the hearing and we would be delighted to meet with you and your committee to answer any questions.

Sincerely,



Kevin J. Kelleher  
President and CEO  
Cendant Mobility

CC: Members of the Small Business Committee

### Proposed Bundling Regulations

#### Time

- PL 105-135, the Small Business Reauthorization Act of 1997, was signed into law on December 2, 1997.
- The act required the SBA and OMB to publish final rules on contract bundling no later than 270 days after enactment. To date, no final rule has been promulgated.
- The proposed rule was to be first published in the Federal Register 120 days after enactment, and the public was to have a minimum of 60 days to comment. A proposed rule was published in the Federal Register on January 13, 1999 - over a year after the final rule was to have been promulgated.
- The Committee has obtained a July 1998 draft of proposed regulations which differ significantly from those published in January 1999.
- By July of 1998, the regulations were already over due - a minimum of 210 days had elapsed since enactment.

#### Major Changes Between the January 1999 Proposed Rule and the July 1998

##### Proposed Rule

- *Adds a Provision Requiring the Preservation of Small Businesses as Prime Contractor*  
The January version recognizes that "where bundling is necessary and justified, the PCR will work with the procuring activity to tailor a strategy that preserves small businesses prime contract participation to the maximum extent practicable" (section (b)(5)(ii)). The July draft has no such provision.
- *Eliminates the Definition of "Substantial Bundling"*:  
The January version specifically eliminates the definition of *substantial bundling* defined in July draft (section (d)(1)(iii)) as follows:  
Substantial bundling occurs when a procuring activity consolidates procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to an individual small business concern, due to:
  1. the increased scope of work covers multiple geographic locations
  2. the scope of work covers multiple SIC codes; or
  3. the anticipated value of the resultant contract (including options) is expected to exceed \$50 million.
- *Definition of "Measurably Substantial Benefits"*  
The notice of proposed rulemaking (Section (d)(3)(iii)) eliminates the specific percentages attached to each factor in determining "measurably substantial benefits." The prior proposed draft (Section (d)(3)(ii)(A)) allocated a specific percentage that

each procurement activity must meet, in a minimum of three categories, to continue with a consolidated requirement. The percentages are as follows:

- Cost savings of more than 20%;
- Quality improvements that will save time, improve or enhance performance or efficiency by more than 10%;
- Reduction of acquisition cycle times of at least 30%;
- Better terms and conditions by at least 10%;
- Any other benefits of at least 50%

By contrast, the January version defines “measurably substantial benefits” as follows:

- Cost savings and/or price reduction;
- Quality improvements that will save time or improve or enhance performance or efficiency;
- Reduction in acquisition cycle times;
- Better terms and conditions;
- Any other quantifiably substantial benefits.

- *Measuring the Reduction of Administrative or Personnel Costs:*

The July draft (Section (d)(3)(ii)(B)) also specifically defines the reduction of administrative or personnel costs in a quantitative manner as an “administrative or personnel cost savings of at least 10% of the contract value (including options)”. In contrast, the January version (Section (d)(3)(ii)(B)) defines the same costs as “administrative or costs savings expected to be substantial, in relation to the dollar value of the procurement to be consolidated.”

- *Measuring the Cost Savings:*

The July draft (Section (d)(3)(ii)(C)) defines a specific formula for determining cost savings—“in determining whether a cost savings of at least 20% would be achieved through bundling, the procuring activity and the SBA must compare the price that has been charged by small businesses for the work that they have performed and, where available, the price that could have been or could be charged by small businesses for work not previously performed by small businesses.” The January version (Section (d)(3)(iii)(C)) retains the same language, however, eliminates the percentage requirement.

- *Documentation of Bundling:*

The January version (section (d)(3)(iii)) requires that a procuring activity that intends to use an acquisition strategy that includes bundled or *substantially bundled* procurement requirements “must document its acquisition strategy to include a determination that the bundling is necessary and justified, when compared to the benefits that could be derived from meeting the agency’s requirement through separate smaller contacts.” The July draft does not use the language *substantially bundled*.

**Issues Raised**

- Absent quantifiable and measurable cost savings and other benefits, the procurement officer will have the discretion to decide if a contract is substantially bundled. Why would procurement officers willingly open themselves to the possibility of challenges? Why would they decide to consider a contract substantially bundled if that meant they would then have to complete an additional level of analysis?
- Without enumerated and quantifiable measures, it is impossible to determine if a contract actually achieved the benefits which were to justify the bundle.



FROM THE SMALL BUSINESS REAUTHORIZATION ACT OF 1997

Title IV, Subtitle B--Small Business Procurement Opportunities Program

SEC. 411. CONTRACT BUNDLING.

Section 2 of the Small Business Act (15 U.S.C. 631) is amended by adding at the end the following:

“(j) CONTRACT BUNDLING- In complying with the statement of congressional policy expressed in subsection (a), relating to fostering the participation of small business concerns in the contracting opportunities of the Government, each Federal agency, to the maximum extent practicable, shall--

“(1) comply with congressional intent to foster the participation of small business concerns as prime contractors, subcontractors, and suppliers;

“(2) structure its contracting requirements to facilitate competition by and among small business concerns, taking all reasonable steps to eliminate obstacles to their participation; and

“(3) avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation in procurements as prime contractors.”.

SEC. 412. DEFINITION OF CONTRACT BUNDLING.

Section 3 of the Small Business Act (15 U.S.C. 632) is amended by adding at the end the following:

“(g) DEFINITIONS OF BUNDLING OF CONTRACT REQUIREMENTS AND RELATED TERMS- In this Act:

“(1) BUNDLED CONTRACT- The term ‘bundled contract’ means a contract that is entered into to meet requirements that are consolidated in a bundling of contract requirements.

“(2) BUNDLING OF CONTRACT REQUIREMENTS- The term ‘bundling of contract requirements’ means consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern due to--

“(A) the diversity, size, or specialized nature of the elements of the performance specified;

“(B) the aggregate dollar value of the anticipated award;

“(C) the geographical dispersion of the contract performance sites; or

“(D) any combination of the factors described in subparagraphs (A), (B), and (C).

“(3) SEPARATE SMALLER CONTRACT- The term ‘separate smaller contract’, with respect to a bundling of contract requirements, means a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.”.

SEC. 413. ASSESSING PROPOSED CONTRACT BUNDLING.

(a) IN GENERAL- Section 15 of the Small Business Act (15 U.S.C. 644) is amended by inserting after subsection (d) the following:

“(e) PROCUREMENT STRATEGIES; CONTRACT BUNDLING-

## Frequently Asked Questions

1. What exactly is the difference between a GWAC and a Multiple Award Schedule contract?

A Multiple Award Schedule is a Indefinite Quantity, Indefinite Delivery (IDIQ) contract available to all Federal agencies world-wide. Agencies place orders directly with the contractor. The middle man has been removed. Interagency Agreements are not required to use Multiple Award Schedules.

GWAC are contracts for various information technology resources owned by one Federal agency but all other federal agencies can use, on a limited basis. The owning (host) agency establishes the maximum value of the contract based on their requirements plus an additional 20% for other agencies.

2. Then what is the difference between a Multiple Award Schedule IDIQ contract and other agencies' IDIQ contracts?

The Multiple Award Schedules program provides Federal customers with over 4 million products from more than 6,000 vendors, without ordering restrictions, around the world.

Other agencies' IDIQs primarily are for use by the host agency. Access is limited to other agencies and limited sources are available. In some cases ordering must go through the "host" agency. Some require approval letters, documentation for best value selection, price determinations, etc.

3. How do I know I am getting the best price?

GSA's goal is to be your best value supplier of choice.

- Multiple Award Schedules contracts offer Most Favored Customer discounts.
- Quantity discounts may also be available.
- Additional price reductions may be obtained by individual agencies. (This provision alone prevents anyone from claiming to beat GSA prices without contacting Multiple Award Schedule contractors first.)

4. How is purchasing from Multiple Award Schedules better than purchasing on the open market?

When you purchase from Schedules you know that:

- GSA has already determined the price to be fair and reasonable. Synopsis is not required.
- Multiple Award Schedules contracts have been awarded in compliance with all applicable laws and regulations.
- Administrative time is reduced.
- A wide selection of commercial items are available. Easy ordering.

#### 5. Is it true ordering from Multiple Award Schedules is as easy as 1-2-3?

**YES! You simply:**

1. Obtain the Federal Supply Schedule or click on GSA *Advantage*™ (<http://www.fds.gsa.gov>)
2. Review products or services to make a best value selection. (Seek price reductions see FAR 8.404(b)(3) + (5)).
3. Place your order.

#### 6. Okay, but what about documentation requirements?

That's been simplified too. Your basic ordering information is all that GSA requires for most orders. For orders above the micropurchase threshold that are brand-name specific see FAR 8.404(b)(7).

#### 7. Can I order Multiple Award Schedules products electronically?

Multiple Award Schedules' implementation on GSA *Advantage*™, our electronic shopping mall, is successfully underway! Currently, GSA *Advantage*™ has over 325,000 items available and the number is growing daily. In the next 12 months all Multiple Award Schedules will be on GSA *Advantage*™. Electronic ordering through use of GSA *Advantage*™ allows you to send your order directly to the contractor creating a contractor -- customer relationship.

#### 8. Can the Multiple Award Schedules meet all of my needs? Even large or complex requirements? What if the Schedule contractor doesn't have everything under contract?

With over 4 million commercial items available Multiple Award Schedules can meet the vast majority of your needs. For those large or complex requirements Multiple Award Schedules contractors can now join with other schedule contract holders and submit a total solution to meet your needs under a Team Arrangement. The modification process allows contractors to modify contracts at any time during the contract period. Therefore, contractors have the ability to place,

under contract today, new items to meet your needs. This also assures the latest technology is always available to the customer. Incidental items may be added to a schedule delivery order as long as it results in the lowest overall cost, the appropriate procurement regulations have been applied, and the price has been determined fair and reasonable.

**Q: Sometimes I need delivery right away. Can I get it when I use Schedules?**

Multiple Award Schedule contractors are shortening their delivery times. Multiple Award Schedules contractors will identify items in their price list that can be delivered faster, overnight or within 2 days.

**Q: What is all this talk about a Blanket Purchase Agreement (BPA) under the Multiple Award Schedule? What exactly is it?**

Setting up a BPA with a Multiple Award Schedule contractor is a way to fill recurring needs while taking advantage of quantity discounts, saving administrative time and reducing paperwork.

In the past, individual orders under a BPA could not exceed the maximum order limitation. Today, that is no longer true. With the removal of the maximum order limitation, agencies are no longer restricted by any dollar limitations when placing orders under a BPA.

With a Multiple Award Schedule BPA you can order as much as you want, as little as you want and as often as you want. You can use a BPA as an ordering device that your field offices across the nation can participate in, allowing them to place orders directly. In doing so, your entire agency reaps the benefits of additional discounts negotiated into your own BPA!

Teaming Arrangements are permitted with Multiple Award Schedule Contractors in accordance with FAR 9.6. Teaming Arrangement may be incorporated into your BPA!

**Q: But I thought BPAs are for Simplified Acquisition Purchases and are restricted to \$100,000?**

The use of BPAs under Multiple Award Schedules have been permitted for a long time. Check Federal Acquisition Regulation (FAR) 13.202(c). "BPA's may also be established with Federal Supply Schedule contracts..." In the past, individual orders under a BPA could not exceed the maximum order limitation. Today, that is no longer true. With the removal of the maximum order limitation, agencies are no longer restricted by any dollar limitations when placing order under a Schedule BPA.

**12. What is this new Maximum Order Threshold that everyone is so excited about?**

This new commercial practice brings more value and choices to our customers. Customer orders will no longer be restricted by a maximum order limitation. New procedures have been developed that allow Schedules contractors to accept "any size" order. In accordance with FAR 8.404(b)(3) the maximum order threshold represents the point where it is advantageous for customers to seek a price reduction. In fact, for orders exceeding this threshold, after a customer reviews the pricelist(s) or GSA *Advantage*™, the FAR instructs customers to generally seek price reductions from schedule contract(s) appearing to provide the best value (considering price and other factors).

**13. How can I be sure the products or services I need will always be available on a Schedule Contract?**

Schedule contract periods are as long as 5 years with 5 year options.

**14. Can I use my Government credit card for payment?**

Acceptance of the government wide credit card is a strongly encouraged payment method. Generally, contractors that accept the credit card commercially will accept it under Schedules.

**15. When I place an order under a Schedule contract does it really meet Competition in Contracting Act requirements?**

YES! Use of the Multiple Awards Schedule program is a competitive procedure (see FAR 6.102(d)(3)).

**16. What about purchasing information technology (IT) products? Doesn't the FIRM still apply?**

No. Effective August 8, 1996, the FIRM was canceled and FAR Part 8.4 applies.

**17. But, I still have to do a CBD notice for ADP purchases over \$50,000?**

The requirement for synopsis proposed orders over \$50,000 against ADP schedules was eliminated in March 1995.

**18. Can you explain the "Teaming Arrangements" in more detail?**

Under a Team Arrangement Multiple Award Schedule contractors can join with other schedule contract holders and submit a solution, or proposal to meet a customer's needs.

19. How can I be certain I will always be able to get the latest technology under Schedule?

With the new modification process, Schedule contractors can continually refresh their Multiple Award Schedule contracts. With our ADP Schedules a continual open season permits offers to be submitted at any time.

[| News |](#) [| USA Advantage™ and Ordering |](#) [| BPAs and Contractor Team Arrangements |](#)  
[| Benefits of Schedules |](#) [| MAS Virtual Campus |](#) [| Schedules E-Library |](#) [| General Information |](#)  
[| How to Become a Schedule Partner |](#) [| Comments & Suggestions |](#) [| Home |](#)

assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Copies of the information collection may be obtained from Timothy Murray at the address shown above.

#### Regulatory Flexibility Act

On January 26, 1995, FSA published a final rule that established program requirements for the End-Use Certificate Program. A copy of this Regulatory Flexibility Analysis is available upon request from Timothy Murray, Warehouse and Inventory Division, FSA, STOP 0553, 1400 Independence Avenue, Washington, DC 20250-0553; telephone (202) 690-4321.

Because these changes will not have an adverse impact on a substantial number of small businesses, a Regulatory Flexibility Assessment is not required.

#### Background

This proposal will amend the regulations at 7 CFR Part 782 with respect to the U.S. End-Use Certificate Program. Since February 27, 1995, the effective date for the implementation of the End-Use Certificate Program, several items have been identified that could improve the effectiveness and the efficiency of the End-Use Certificate Program. To further ensure that Canadian wheat does not benefit from U.S. export programs, End-Use Certificates will include distinguishing characteristics of grade, protein content, moisture content, dockage and date of sale in addition to the class and/or varietal information currently collected for each shipment. These additional data are deemed necessary because imported wheat may benefit from U.S. export programs even if the imported wheat itself is not directly eligible for use under such programs. Such benefit may accrue if wheat of the type or quality used under U.S. export programs (including humanitarian assistance programs) is imported into the United States in anticipation of, or as a result of use of a similar type or quality of U.S. wheat under the U.S. program. Indeed, the Department of Agriculture is frequently implored not to take action to facilitate sales of U.S. wheat out of a concern that such sales will only encourage off-setting imports of Canadian wheat. The proposed rule will provide necessary information to

monitor for such an occurrence and potentially allow appropriate actions to minimize such an occurrence. In addition, these additional data will help facilitate effective program audits while minimizing the burden on importers of Canadian wheat.

FSA also proposes to replace the current definition used for "Importer" found at 7 CFR 782.2 with the same definition used by the U.S. Customs Service and found at 19 U.S.C. 1484(a).

The U.S. Customs Service has informed the Department of Agriculture officials that it will be amending the provisions of their basic import bond to allow for the assessment of damages if there is a failure to provide the End-Use Certificate in the time period provided by FSA.

#### List of Subjects in 7 CFR Part 782

Administrative practice and procedure, Barley, Reporting and recordkeeping requirements, Wheat.

Accordingly, it is proposed that 7 CFR part 782 be amended as follows:

#### PART 782—END-USE CERTIFICATE PROGRAM

1. The authority citation for part 782 continues to read as follows:

Authority: 19 U.S.C. 3391(f).

2. Amend § 782.2 to revise the definition for "Importer" to read as follows:

##### § 782.2 Definitions.

\* \* \* \* \*

*Importer* means a party qualifying as an Importer of Record pursuant to 19 U.S.C. 1484(a).

\* \* \* \* \*

3. Amend § 782.12(a) as follows:

A. Revise the first sentence to read as follows:

"Each entity that imports wheat originating in Canada shall, for each entry into the U.S., obtain form FSA-750, End-Use Certificate for Wheat, from Kansas City Commodity Office, Warehouse Contract Division, P.O. Box 419205, Kansas City, MO 64141-6205, and submit the completed original form FSA-750 to KCCO within 10 workdays following the date of entry or release."

B. Redesignate paragraphs (a)(6) through (a)(9) as paragraphs (a)(8) through (a)(11), and add new paragraphs (a)(6) and (a)(7) to read as follows:

##### § 782.12 Filing FSA-750, End-Use Certificate for Wheat.

(a) \* \* \*

(6) Grade, protein content, moisture content, and dockage level of wheat being imported,

(7) Date of sale.

\* \* \* \* \*

Signed at Washington, DC, on January 8, 1999.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 99-798 Filed 1-11-99; 10:02 am]

BILLING CODE 3410-05-P

#### SMALL BUSINESS ADMINISTRATION

##### 13 CFR Parts 121 and 125

##### Government Contracting Programs

AGENCY: Small Business Administration.

ACTION: Proposed rule.

**SUMMARY:** The Small Business Administration (SBA) proposes to add regulatory language addressing contract bundling, due to changes set forth in sections 411-417 of the Small Business Reauthorization Act of 1997 (Public Law 105-135). In addition, this rule restates SBA's current authority to appeal to the head of a procuring agency, decisions made by the agency that SBA believes to adversely affect small businesses. The statutory amendments recognize that the consolidation of contract requirements may be necessary and justified. In some cases, but require that each Federal agency, to the maximum extent practicable, take steps to avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation as prime contractors as well as to eliminate obstacles to small business participation as prime contractors. Section 414 of Public Law 105-135 requires that the Federal Procurement Data System (FPDS) be modified to collect data regarding bundling of contracts when a contracting officer anticipates that the resulting contract price will exceed \$5 million, including options. The SBA will confer with the Federal Procurement Data Center and analyze the data reported in the FPDS on all bundled contracts expected to exceed \$5 million in order to determine the impact on small business resulting from contract bundling and generate a report on the extent to which individual agencies are engaging in the practice of contract bundling.

**DATES:** Submit comments on or before March 15, 1999.

**ADDRESSES:** Address comments concerning this proposed rule to Judith Roussel, Associate Administrator for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Mail Code 6250, Washington, DC, 20416.

**FOR FURTHER INFORMATION CONTACT:** Anthony Robinson, Office of Government Contracting, (202) 205-6465.

**SUPPLEMENTARY INFORMATION:** Section 15(a) of the Small Business Act, 15 U.S.C. 644(a), authorizes SBA to appeal to the head of a procuring agency certain decisions made by the agency that SBA believes to adversely affect small businesses, including proposed procurements that include "goods or services currently being performed by a small business" and which are in a "quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely." Section 413(b)(1) of Pub. L. 105-135 added an appeal right to section 15(a) of the Small Business Act for "an unnecessary or unjustified bundling of contract requirements." It left intact, however, SBA's current appeal rights. In this regard, the Joint Explanatory Statement of the bundling provisions contained in Public Law 105-135 as set forth in the Congressional Record specifically provided that "[n]othing in [the bundling amendments] is intended to amend or change in any way the existing obligations imposed on a procuring activity or the authority granted to the Small Business Administration under section 15(a) of the Small Business Act." 143 Cong. Rec. S11522, S11526 (daily ed. Oct. 31, 1997).

Consistent with the statutory amendments, this rule defines "bundling," identifies the circumstances under which such "bundling" may be necessary and justified, and permits SBA to appeal bundling actions that it believes to be unnecessary and unjustified to the head of the procuring agency. It also authorizes two or more small businesses to form a contract team and for that team to be considered a small business for purposes of a bundled procurement requirement, provided that each small business partner to the teaming arrangement individually qualifies as a small business under the SIC code for the requirement. Finally, the rule restates SBA's current authority to appeal to the head of an agency other procurement decisions made by procuring activities that SBA believes will adversely affect small business.

The rule reorganizes and amends 13 CFR 125.2 to more clearly explain SBA's current rights under section 15(a) of the Small Business Act. The rule sets forth a procuring activity's current responsibilities to submit a proposed procurement to SBA for review

whenever the procurement includes in its statement of work, goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely. It also requires a procuring activity to submit a proposed procurement to SBA for review where a proposed procurement for construction seeks to package or consolidate discrete construction projects. In addition it authorizes SBA to appeal disagreements over the suitability of a particular acquisition for a small business set-aside first to the head of the contracting activity, and then to the head of the agency. This authority is currently granted to SBA by section 15(a) of the Small Business Act and was not affected by the addition of new rights regarding "bundling." This rule does not apply to contracts to be awarded and performed entirely outside the United States.

In implementing the new statutory bundling provisions, the rule also requires a procuring activity to submit a proposed procurement to SBA for review whenever the procurement includes in its statement of work "bundled" requirements, and authorizes SBA to appeal to the head of the contracting activity, and then to the head of the agency, "bundled" requirements that SBA believes not to be necessary and justified. Whenever the procurement includes in its statement of work a "substantial bundling" of contract requirements, Section 15(a)(3) of the Small Business Act requires that the procuring activity must document that the benefits to be derived from the bundled contract justify its use.

The Small Business Act does not define "substantial bundling." SBA seeks public comments on appropriate ways to define substantial bundling (e.g., in terms of a threshold contract value, or a threshold number of geographic locations and SIC codes).

The rule defines what "measurably substantial benefits" are for purposes of determining whether bundling is necessary and justified. The rule defines "measurably substantial benefits" to include, in any combination, or in the aggregate, cost savings; quality improvements that will save time, improve or enhance performance or efficiency; reduction in acquisition cycle times; better terms and conditions;

or any other quantifiably substantial benefits. In assessing whether cost savings would be achieved through bundling, the analysis must compare the cost that has been charged by small businesses for the work that they have

performed and, where available, the cost that could have been or could be charged by small businesses for the work not previously performed by small business. In order to proceed with a bundled procurement a procuring activity must quantify the identified benefits and explain how their impact would be substantial.

The statute recognizes that in some circumstances bundling should be permitted because of the benefits that flow to the Government because of it. Congress has made a determination that those benefits overcome any impact on small business in certain circumstances. However, it is also clear from the statutory language requiring contracting officers to demonstrate "measurably substantial benefits" and from the Joint Explanatory Statement cited above that Congress intends that meaningful controls should be in place that are capable of enforcement to preclude unnecessary and unjustified bundling. Pursuant to the statute, there are two requirements that must be satisfied. The benefits to be derived by the Government must be "measurable" and they must be "substantial." In order to be "measurable," the benefits must be quantifiable. Pursuant to the statutory language, however, quantifiable benefits are not sufficient to justify bundling unless they are also "substantial." As an example, OMB Circular A-76 sets forth a measure of substantial savings when determining whether the government will convert to or from in-house or contracted performance of certain commercial support activities. SBA is committed to developing objective and quantifiable criteria for determining when a consolidation of procurements will provide "measurably substantial benefits," and, thus, when bundling will be necessary and justified.

The proposed regulation identifies areas in which there may be "measurably substantial benefits," including cost savings or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, or better terms and conditions. The proposed rule does not however, set forth specific criteria for measuring whether these benefits or improvements, which are to be derived, are "substantial." SBA specifically requests comments on appropriate measurements that PCRs may use to gauge whether or not a benefit is "substantial."

The proposed regulation also reiterates the statutory requirement that the reduction of administrative or personnel costs alone cannot be a justification for bundling unless the



administrative or personnel costs are expected to be "substantial" in relation to the dollar value of the procurement (including options) to be consolidated. In determining whether the reduction of administrative or personnel costs are "substantial," the statute clearly requires a comparison between the administrative or personnel costs without bundling to those anticipated with bundling. As with defining substantial benefits, SBA is committed to implementing a quantifiable test for determining whether administrative or personnel cost savings are expected to be "substantial." SBA specifically requests comments on how best to define "substantial" administrative or personnel cost savings.

SBA is concerned that bundled contracts will render small business participation as prime contractors unlikely. SBA has proposed in § 125.2(b)(5), that its Procurement Center Representatives (PCR), in recommending alternative procurement methods to agencies, include, under appropriate circumstances, (1) breaking up the procurement into smaller discrete procurements to render them suitable for small business set-asides; (2) breaking out discrete components, where practicable, to be set aside for small business; or (3) when issuing multiple awards against a single solicitation, reserving one or more awards for small companies. SBA invites the public to offer suggestions on other creative strategies which may enhance small business participation as prime contractors.

**Compliance With Executive Orders 12612, 12788 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Chapter 3501 et seq.)**

SBA certifies that this rule, if adopted in final form, would not be a significant rule within the meaning of Executive Order 12866. The rule does not impose costs upon the businesses which may be affected by it. It is not likely to have an annual economic impact of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

SBA has determined that this rule may have a significant beneficial economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612. The proposed rule can potentially apply to all small businesses that are performing or may want to perform on the prime contract opportunities of the Federal Government. In Fiscal Year 1996, all

categories of small businesses were responsible for 314,965, or 68 percent, of the total number of contract actions in excess of \$25,000. While there is no precise estimate of the number of small entities or the extent of the economic impact, SBA believes that a significant number of small businesses would be affected. SBA has submitted a complete Initial Regulatory Flexibility Analysis of this proposed rule to the Chief Counsel for Advocacy of the Small Business Administration. For a copy of this analysis, please contact Anthony Robinson at (202) 205-6465.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule would not impose new reporting or record keeping requirements, other than those required on the Government by law.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of executive Order 12778, the SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of this order.

#### List of Subjects

##### 13 CFR Part 121

Government procurement, Government property, Grant programs-business, Individuals with disabilities, Loan programs-business, Small businesses.

##### 13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

For the reasons set forth above, SBA proposes to amend Title 13, Code of Federal Regulations (CFR), as follows:

#### PART 121—[AMENDED]

1. The authority citation for 13 CFR part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103-403, 108 Stat. 4176, 4188.

2. Section 121.103 is amended by revising paragraph (f)(3)(i) to read as follows:

##### § 121.103 What is affiliation?

\* \* \*

(f) *Affiliation based on joint venture arrangements.* \* \* \*

(3) *Exclusion from affiliation.* (i) A joint venture or teaming arrangement of two or more business concerns may submit an offer as a small business for

a Federal procurement without regard to affiliation under paragraph (f) of this section so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided:

(A) The procurement qualifies as a "bundled" requirement, at any dollar value, within the meaning of § 125.2(d)(1)(i) of this chapter; or

(B) The procurement is other than a "bundled" requirement within the meaning of § 125.2(d)(1)(i) of this chapter, and:

(i) For a procurement having a revenue-based size standard, the dollar value of the procurement, including options, exceeds half the size standard corresponding to the SIC code assigned to the contract; or

(2) For a procurement having an employee-based size standard, the dollar value of the procurement, including options, exceeds \$10 million.

\* \* \*

#### PART 125—[AMENDED]

3. The authority citation for 13 CFR part 125 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), 637 and 644; 31 U.S.C. 8701, 8702.

4. Section 125.2 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, by revising newly designated paragraph (b), and by adding new paragraphs (a) and (c) to read as follows:

##### § 125.2 Prime contracting assistance.

(a) *General.* Small business concerns must receive any award or contract, or any contract for the sale of Government property, that SBA and the procuring or disposal agency determine to be in the interest of:

(1) Maintaining or mobilizing the Nation's full productive capacity;

(2) War or national defense programs;

(3) Assuring that a fair proportion of the total purchases and contracts for property, services and construction for the Government in each industry category are placed with small business concerns; or

(4) Assuring that a fair proportion of the total sales of Government property be made to small business concerns.

(b) *PCR and procuring activity responsibilities.* (1) SBA Procurement Center Representatives (PCRs) are generally located at Federal agencies and buying activities which have major contracting programs. PCRs review all acquisitions not set aside for small businesses to determine whether a set-aside is appropriate.

(2) A procuring activity must provide a copy of a proposed acquisition

strategy (e.g., Department of Defense Form 2579, or equivalent) to the applicable PCR for to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located if a PCR is not assigned to the procuring activity) at least 30 days prior to a solicitation's issuance whenever a proposed acquisition strategy:

(i) Includes in its description goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely;

(ii) Seeks to package or consolidate discrete construction projects; or

(iii) Meets the definition of a bundled requirement as defined in paragraph (d)(1)(i) of this section.

(3) Whenever any of the circumstances identified in paragraph (b)(2) of this section exist, the procuring activity must also submit to the applicable PCR (or to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located if a PCR is not assigned to the procuring activity) a written statement explaining why:

(i) If the proposed acquisition strategy involves a bundled requirement, the procuring activity believes that the bundled requirement is necessary and justified under the analysis required by paragraph (d)(3)(iii) of this section; or

(ii) If the description of the requirement includes goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects.

(A) The proposed acquisition cannot be divided into reasonably small lots to permit offers on quantities less than the total requirement;

(B) Delivery schedules cannot be established on a basis that will encourage small business participation;

(C) The proposed acquisition cannot be offered so as to make small business participation likely; or

(D) Construction cannot be procured as separate discrete projects.

(4) In conjunction with their duties to promote the set-aside of procurements for small business, PCRs will identify small businesses that are capable of performing particular requirements, including teams of small business concerns for larger or bundled

requirements (see § 121.103(f)(3) of this chapter).

(5)(i) If a PCR believes that a proposed procurement will render small business prime contract participation unlikely, or if a PCR does not believe a bundled requirement to be necessary and justified, the PCR may recommend to the procurement activity alternative procurement methods which would increase small business prime contract participation. Such alternatives may include:

(A) Breaking up the procurement into smaller discrete procurements;

(B) Breaking out one or more discrete components, for which a small business set-aside may be appropriate; and

(C) When issuing multiple awards under task order contracts, reserving one or more awards for small companies.

(ii) Where bundling is necessary and justified, the PCR will work with the procuring activity to tailor a strategy that preserves small business prime contract participation to the maximum extent practicable.

(6) In cases where there is disagreement between a PCR and the contracting officer over the suitability of a particular acquisition for a small business set-aside, whether or not the acquisition is a bundled or substantially bundled requirement within the meaning of paragraph (d) of this section, the PCR may initiate an appeal to the head of the contracting activity. If the head of the contracting activity agrees with the contracting officer, SBA may appeal the matter to the secretary of the department or head of the agency. The time limits for such appeals are set forth in 19.505 of the Federal Acquisition Regulation (FAR) (48 CFR 19.505).

(7) PCRs will work with a procuring activity's Small and Disadvantaged Business Utilization Specialist (SADBUS) to identify proposed solicitations that involve bundling, and with the agency acquisition officials to revise the acquisition strategies for such proposed solicitations, where appropriate, to increase the probability of participation by small businesses, including small business contract teams, as prime contractors. If small business participation as prime contractors appears unlikely, the SADBUS and PCR will facilitate small business participation as subcontractors or suppliers.

\* \* \* \* \*

(d) *Contract bundling*—(1) *Definitions*—(i) *Bundled requirement or bundling*. The term "bundled requirement or bundling" refers to the consolidation of two or more

procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business concern due to—

(A) The diversity, size, or specialized nature of the elements of the performance specified;

(B) The aggregate dollar value of the anticipated award;

(C) The geographical dispersion of the contract performance sites; or

(D) Any combination of the factors described in paragraphs (d)(1)(i) (A), (B), and (C).

(ii) *Separate smaller contract*. A separate smaller contract is a contract that has previously been performed by one or more small business concerns or was suitable for award to one or more small business concerns.

(2) *Requirement to foster small business participation*. The Small Business Act requires each Federal agency to foster the participation of small business concerns as prime contractors, subcontractors, and suppliers in the contracting opportunities of the Government. To comply with this requirement, agency acquisition planners must:

(i) Structure procurement requirements to facilitate competition by and among small business concerns, including small disadvantaged, 8(a) and women-owned business concerns; and

(ii) Avoid unnecessary and unjustified bundling of contract requirements that inhibits or precludes small business participation in procurements as prime contractors.

(3) *Requirement for market research*.

(i) In addition to the requirements of paragraph (b)(2) of this section and before proceeding with an acquisition strategy that could lead to a contract containing bundled or substantially bundled requirements, an agency must conduct market research to determine whether bundling of the requirements is necessary and justified. During the market research phase, the acquisition team should consult with the applicable PCR (or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located).

(ii) The procuring activity must notify each small business which is performing a contract that it intends to consolidate that requirement with one or more other requirements at least 30 days prior to the issuance of the solicitation for the bundled or substantially bundled requirement. The procuring activity, at that time, should

also provide to the small business the name, phone number and address of the applicable SBA PCR (or if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located).

(iii) When the procuring activity intends to proceed with an acquisition involving bundled or substantially bundled procurement requirements, it must document the acquisition strategy to include a determination that the bundling is necessary and justified, when compared to the benefits that could be derived from meeting the agency's requirements through separate smaller contracts.

(A) The procuring activity may determine a consolidated requirement to be necessary and justified if, as compared to the benefits that it would derive from contracting to meet those requirements if not consolidated, it would derive measurably substantial benefits. The procuring activity must quantify the identified benefits and explain how their impact would be substantial. Measurably substantial benefits include any one, or more, of the following in any combination, or in the aggregate:

(1) Cost savings and/or price reduction;

(2) Quality improvements that will save time or improve or enhance performance or efficiency;

(3) Reduction in acquisition cycle times;

(4) Better terms and conditions; or

(5) Any other quantifiably substantial benefits.

(B) The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the administrative or personnel cost savings are expected to be substantial, in relation to the dollar value of the procurement to be consolidated (including options).

(C) In assessing whether cost savings and/or a price reduction would be achieved through bundling, the procuring activity and SBA must compare the price that has been charged by small businesses for the work that they have performed and, where available, the price that could have been or could be charged by small businesses for the work not previously performed by small business.

(4) *Substantial bundling.* Where a proposed procurement strategy involves a substantial bundling of contract requirements, the procuring agency must, in the documentation of that strategy, include a determination that the anticipated benefits of the proposed

bundled contract justify its use, and must include, at a minimum:

(i) The analysis for bundled requirements set forth in paragraph (d)(3)(iii) of this section;

(ii) An assessment of the specific impediments to participation by small business concerns as prime contractors that will result from the substantial bundling;

(iii) Actions designed to maximize small business participation as prime contractors, including provisions that encourage small business teaming for the substantially bundled requirement; and

(iv) Actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements.

(5) *Significant subcontracting opportunity.* (i) Where a bundled or substantially bundled requirement offers a significant opportunity for subcontracting, the procuring agency must designate the following factors as significant factors in evaluating offers:

(A) A factor that is based on the rate of participation provided under the subcontracting plan for small business in the performance of the contract; and

(B) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

(ii) Where the offeror for such a bundled contract qualifies as a small business concern, the procuring agency must give to the offeror the highest score possible for the evaluation factors identified in paragraph (d)(5)(i) of this section.

5. Section 125.6 is amended by adding the following new paragraph (g) at the end thereof:

**§ 125.6 Prime contractor performance requirements (limitations on subcontracting).**

\* \* \* \* \*

(g) Where an offeror is exempt from affiliation under § 121.103(f)(3) of this chapter and qualifies as a small business concern, the performance of work requirements set forth in this section apply to the cooperative effort of the team or joint venture, not its individual members.

Dated: December 22, 1998

Aida Alvarez,  
Administrator.

[FR Doc. 99-560 Filed 1-12-99; 8:45 am]

BILLING CODE 8025-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 98-CE-56-AD]

RIN 2120-AA64

#### Airworthiness Directives; Ayres Corporation S2R Series and Model 600 S2D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to supersede Airworthiness Directive (AD) 97-17-03, which currently requires inspecting the 1/4-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking on Ayres S2R series and Model 600 S2D airplanes, and replacing any lower spar cap where fatigue cracking is found. That AD resulted from an accident on an Ayres S2R series airplane where the wing separated from the airplane in flight. The proposed AD would retain the initial inspection and possible replacement requirements of AD 97-17-03, would require the inspections to be repetitive, would add certain Ayres airplanes to the Applicability of the AD, would change the initial compliance time for all airplanes, and would arrange the affected airplanes into four groups instead of three based on usage and configurations. The actions specified by the proposed AD are intended to detect fatigue cracking of the lower spar caps, which could result in the wing separating from the airplane with consequent loss of control of the airplane.

**DATES:** Comments must be received on or before March 15, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE-56-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted. Service information that applies to the proposed AD may be obtained from the Ayres Corporation, P.O. Box 3090, One Rockwell Avenue, Albany, Georgia 31706-3090. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Satish Lal, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office.

FROM THE SMALL BUSINESS REAUTHORIZATION ACT OF 1997

Title IV, Subtitle B--Small Business Procurement Opportunities Program

SEC. 411. CONTRACT BUNDLING.

Section 2 of the Small Business Act (15 U.S.C. 631) is amended by adding at the end the following:

`(j) CONTRACT BUNDLING- In complying with the statement of congressional policy expressed in subsection (a), relating to fostering the participation of small business concerns in the contracting opportunities of the Government, each Federal agency, to the maximum extent practicable, shall--

`(1) comply with congressional intent to foster the participation of small business concerns as prime contractors, subcontractors, and suppliers;

`(2) structure its contracting requirements to facilitate competition by and among small business concerns, taking all reasonable steps to eliminate obstacles to their participation; and

`(3) avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation in procurements as prime contractors.'.

SEC. 412. DEFINITION OF CONTRACT BUNDLING.

Section 3 of the Small Business Act (15 U.S.C. 632) is amended by adding at the end the following:

`(o) DEFINITIONS OF BUNDLING OF CONTRACT REQUIREMENTS AND RELATED TERMS- In this Act:

`(1) BUNDLED CONTRACT- The term 'bundled contract' means a contract that is entered into to meet requirements that are consolidated in a bundling of contract requirements.

`(2) BUNDLING OF CONTRACT REQUIREMENTS- The term 'bundling of contract requirements' means consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern due to--

`(A) the diversity, size, or specialized nature of the elements of the performance specified;

`(B) the aggregate dollar value of the anticipated award;

`(C) the geographical dispersion of the contract performance sites; or

`(D) any combination of the factors described in subparagraphs (A), (B), and (C).

`(3) SEPARATE SMALLER CONTRACT- The term 'separate smaller contract', with respect to a bundling of contract requirements, means a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.'.

SEC. 413. ASSESSING PROPOSED CONTRACT BUNDLING.

(a) IN GENERAL- Section 15 of the Small Business Act (15 U.S.C. 644) is amended by inserting after subsection (d) the following:

`(e) PROCUREMENT STRATEGIES; CONTRACT BUNDLING-

`(1) IN GENERAL- To the maximum extent practicable, procurement strategies used by the various agencies having contracting authority shall facilitate the maximum participation of small business concerns as prime contractors, subcontractors, and suppliers.

`(2) MARKET RESEARCH-

`(A) IN GENERAL- Before proceeding with an acquisition strategy that could lead to a contract containing consolidated procurement requirements, the head of an agency shall conduct market research to determine whether consolidation of the requirements is necessary and justified.

`(B) FACTORS- For purposes of subparagraph (A), consolidation of the requirements may be determined as being necessary and justified if, as compared to the benefits that would be derived from contracting to meet those requirements if not consolidated, the Federal Government would derive from the consolidation measurably substantial benefits, including any combination of benefits that, in combination, are measurably substantial. Benefits described in the preceding sentence may include the following:

- `(i) Cost savings.
- `(ii) Quality improvements.
- `(iii) Reduction in acquisition cycle times.
- `(iv) Better terms and conditions.
- `(v) Any other benefits.

`(C) REDUCTION OF COSTS NOT DETERMINATIVE- The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the cost savings are expected to be substantial in relation to the dollar value of the procurement requirements to be consolidated.

`(3) STRATEGY SPECIFICATIONS- If the head of a contracting agency determines that a proposed procurement strategy for a procurement involves a substantial bundling of contract requirements, the proposed procurement strategy shall--

`(A) identify specifically the benefits anticipated to be derived from the bundling of contract requirements;

`(B) set forth an assessment of the specific impediments to participation by small business concerns as prime contractors that result from the bundling of contract requirements and specify actions designed to maximize small business participation as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements; and

`(C) include a specific determination that the anticipated benefits of the proposed bundled contract justify its use.

`(4) CONTRACT TEAMING- In the case of a solicitation of offers for a bundled contract that is issued by the head of an agency, a small-business concern may submit an offer that provides for use of a particular team of subcontractors for the performance of the contract. The head of the agency shall evaluate the offer in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors. If a small business concern teams under this paragraph, it shall not affect its status as a small business concern for any other purpose.'

(b) ADMINISTRATION REVIEW- Section 15(a) of the Small Business Act (15 U.S.C. 644(a)) is amended in the third sentence--

(1) by inserting `or the solicitation involves an unnecessary or unjustified bundling of contract requirements, as determined by the Administration,' after `discrete construction projects,';

(2) by striking `or (4)' and inserting `(4)'; and

(3) by inserting before the period at the end of the sentence the following: `, or (5) why the agency has determined that the bundled contract (as defined in section 3(o)) is necessary and justified'.

(c) RESPONSIBILITIES OF AGENCY SMALL BUSINESS ADVOCATES- Section 15(k) of the Small Business Act (15 U.S.C. 644(k)) is amended--

(1) by redesignating paragraphs (5) through (9) as paragraphs (6) through (10), respectively; and

(2) by inserting after paragraph (4) the following:

`(5) identify proposed solicitations that involve significant bundling of contract requirements, and work with the agency acquisition officials and the Administration to revise the procurement strategies for such proposed solicitations where appropriate to increase the probability of participation by small businesses as prime contractors, or to facilitate small business participation as subcontractors and suppliers, if a solicitation for a bundled contract is to be issued.'.

#### SEC. 414. REPORTING OF BUNDLED CONTRACT OPPORTUNITIES.

(a) DATA COLLECTION REQUIRED- The Federal Procurement Data System described in section 6(d)(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4)(A)) shall be modified to collect data regarding bundling of contract requirements when the contracting officer anticipates that the resulting contract price, including all options, is expected to exceed \$5,000,000. The data shall reflect a determination made by the contracting officer regarding whether a particular solicitation constitutes a contract bundling.

(b) DEFINITIONS- In this section, the term `bundling of contract requirements' has the meaning given that term in section 3(o) of the Small Business Act (15 U.S.C. 632(o)) (as added by section 412 of this subtitle).

#### SEC. 415. EVALUATING SUBCONTRACT PARTICIPATION IN AWARDING CONTRACTS.

Section 8(d)(4) of the Small Business Act (15 U.S.C. 637(d)(4)) is amended by adding at the end the following:

`(G) The following factors shall be designated by the Federal agency as significant factors for purposes of evaluating offers for a bundled contract where the head of the agency determines that the contract offers a significant opportunity for subcontracting:

`(i) A factor that is based on the rate provided under the subcontracting plan for small business participation in the performance of the contract.

`(ii) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.'.

#### SEC. 416. IMPROVED NOTICE OF SUBCONTRACTING OPPORTUNITIES.

(a) USE OF THE COMMERCE BUSINESS DAILY AUTHORIZED- Section 8 of the Small Business Act (15 U.S.C. 637) is amended by adding at the end the following:

`(k) NOTICES OF SUBCONTRACTING OPPORTUNITIES-

`(1) IN GENERAL- Notices of subcontracting opportunities may be submitted for publication in the Commerce Business Daily by--

`(A) a business concern awarded a contract by an executive agency subject to subsection (e)(1)(C); and

`(B) a business concern that is a subcontractor or supplier (at any tier) to such contractor having a subcontracting opportunity in excess of \$10,000.

`(2) CONTENT OF NOTICE- The notice of a subcontracting opportunity shall include--

`(A) a description of the business opportunity that is comparable to the description specified in paragraphs (1), (2), (3), and (4) of subsection (f); and

`(B) the due date for receipt of offers.'.

(b) REGULATIONS REQUIRED- The Federal Acquisition Regulation shall be amended to provide uniform implementation of the amendments made by this section.

(c) CONFORMING AMENDMENT- Section 8(e)(1)(C) of the Small Business Act (15 U.S.C. 637(e)(1)(C)) is amended by striking '\$25,000' each place that term appears and inserting '\$100,000'.

#### SEC. 417. DEADLINES FOR ISSUANCE OF REGULATIONS.

(a) PROPOSED REGULATIONS- Proposed amendments to the Federal Acquisition Regulation or proposed Small Business Administration regulations under this subtitle and the amendments made by this subtitle shall be published not later than 120 days after the date of enactment of this Act for the purpose of obtaining public comment pursuant to section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b), or chapter 5 of title 5, United States Code, as appropriate. The public shall be afforded not less than 60 days to submit comments.

(b) FINAL REGULATIONS- Final regulations shall be published not later than 270 days after the date of enactment of this Act. The effective date for such final regulations shall be not less than 30 days after the date of publication.

(RULE SBA SUBMITTED TO OFPP in July 1998. [REDACTED])

**SMALL BUSINESS ADMINISTRATION**

13 CFR Part 125

Government Contracting Programs

AGENCY: Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Small Business Administration (SBA) proposes to revise part 125 of Title 13 of the Code of Federal Regulations (CFR) to add regulatory language addressing contract bundling, due to changes set forth in sections 411 through 417 of the Small Business Reauthorization Act of 1997 (Public Law 105-135). In addition, this rule restates SBA's current authority to appeal to the head of a procuring agency other decisions made by the agency that SBA believes to adversely affect small businesses. The statutory amendments recognize that the consolidation of contract requirements may be necessary and justified, but require that each Federal agency, to the maximum extent practicable, take steps to avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation as prime contractors as well as to eliminate obstacles to small business participation as prime contractors. Section 414 of The Act requires that the Federal Procurement Data System (FPDS) be modified to collect data regarding bundling of contracts when a contracting officer anticipates that the resulting contract price will exceed \$5 million, including options. The SBA will confer with the Federal Procurement Data Center and analyze the data reported in the FPDS on all bundled contracts expected to exceed \$5 million in order to (1) determine the impact on small business resulting from contract bundling and (2) generate a report on the extent to which individual agencies are engaging in the practice of contract bundling.

**DATES:** Comments must be submitted on or before [insert 60 days from the date of publication in the *Federal Register*].

**ADDRESSES:** Written comments should be addressed to Judith Roussel, Associate Administrator for Government Contracting, U.S. Small Business Administration, 409 Third Street, S.W., Mail Code 6250, Washington, D.C., 20416.

**FOR FURTHER INFORMATION CONTACT:** James A. Gambardella, Office of Government Contracting, (202) 205-6471, or Jose Gutierrez, Office of Government Contracting, (202) 205-6471.

**SUPPLEMENTARY INFORMATION:** Prior to the passage of the Small Business Reauthorization Act of 1997, Pub. L. 105-135, 111 Stat. 2592, 2617, § 15(a) of the Small Business Act, 15 U.S.C. 644(a), authorized SBA to appeal to the head of a procuring agency certain decisions made by the agency that SBA believed to adversely affect small businesses, including proposed procurements that include "goods or services currently being performed by a small business" and which are in a "quantity or estimated dollar value, the magnitude of which renders small business prime contract participation unlikely." Section 413(b)(1) of Pub. L. 105-135 added an appeal right to § 15(a) of the Small Business Act for "an unnecessary or unjustified bundling of contract requirements." It left intact, however,



SBA's current appeal rights. In this regard, the Joint Explanatory Statement of the bundling provisions contained in Public Law 105-135 as set forth in the Congressional Record specifically provides that "[n]othing in [the bundling amendments] is intended to amend or change in any way the existing obligations imposed on a procuring activity or the authority granted to the Small Business Administration under section 15(a) of the Small Business Act." 143 Cong. Rec. S11522, S11526 (daily ed. Oct. 31, 1997).

Consistent with the statutory amendments, this rule defines "bundling," identifies the circumstances under which such "bundling" may be necessary and justified, and permits SBA to appeal bundling actions that it believes to be unnecessary and unjustified to the head of the procuring agency. It also authorizes two or more small businesses to form a contract team and for that team to be considered a small business for purposes of a bundled procurement requirement, provided that each small business partner to the teaming arrangement individually qualifies as a small business under the SIC code for the requirement. Finally, the rule restates SBA's current authority to appeal to the head of an agency other procurement decisions made by procuring activities that SBA believes will adversely affect small business.

The rule reorganizes and amends 13 CFR § 125.2 to define SBA's current rights under section 15(a) of the Small Business Act. The rule sets forth a procuring activity's current responsibilities to submit a proposed procurement to SBA for review whenever the procurement includes in its statement of work, goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely. It also requires a procuring activity to submit a proposed procurement to the SBA for review where a proposed procurement for construction seeks to package or consolidate discrete construction projects. In addition it authorizes SBA to appeal disagreements over the suitability of a particular acquisition for a small business set-aside first to the head of the contracting activity, and then to the head of the agency. This authority is currently granted to SBA by section 15(a) of the Small Business Act and was not affected by the addition of new rights regarding "bundling".

In implementing the new statutory bundling provisions, the rule also requires a procuring activity to submit a proposed procurement to SBA for review whenever the procurement includes in its statement of work "bundled" requirements, and authorizes SBA to appeal to the head of the contracting activity, and then to the head of the agency, "bundled" requirements that SBA believes not to be necessary and justified.

- (i) In order to give meaning to the term "substantial bundling" that is used in the bundling legislation, this rule defines "substantial bundling" as a combination of benefits, to occur when a procuring activity consolidates procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to an individual small business concern, due to:
  - (a) the increased scope of work covers multiple geographic locations;

- (b) the scope of work covers multiple SIC codes; or
- (c) the anticipated value of the resultant contract (including options) is expected to exceed \$50 million.

In addition, the rule also defines what "measurably substantial benefits" are for purposes of determining whether bundling is necessary and justified. The rule defines "measurably substantial benefits" to include cost savings of at least 20%; quality improvements that will save time, improve or enhance performance or efficiency by more than 10%; or reduction in acquisition cycle times of at least 30%. In assessing whether cost savings of at least 20% would be achieved through bundling, the analysis must compare the cost that has been charged by small businesses for the work that they have performed and, where available, the cost that could have been or could be charged by small businesses for the work not previously performed by small business. In order to proceed with a bundled procurement a procuring activity must demonstrate measurably substantial benefits, at or above the percentages stated, in a minimum of three categories (i.e., cost savings, quality improvements, reduction in acquisition cycle, better terms and conditions or any other benefits).

SBA is concerned that bundled contracts will render small business participation as prime contractors unlikely. SBA has proposed in § 125.2(b)(5), that its Procurement Center Representatives (PCR), in recommending alternative procurement methods to agencies, include, under appropriate circumstances, (1) breaking up the procurement into smaller discrete procurements to render them suitable for small business set-aside; (2) breaking out discrete components, where practicable, to be set aside for small business; or (3) when issuing multiple awards against a single solicitation, reserving one or more awards for small, small disadvantaged or 8(a) companies. SBA invites the public to offer suggestions on other creative strategies which may enhance small business participation as prime contractors.

**Compliance with Executive Orders 12612, 12788 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Chapter 3501 et seq.)**

SBA certifies that this rule, if adopted in final form, would not be a significant rule within the meaning of Executive Order 12866. The rule does not impose costs upon the businesses which may be affected by it. It is not likely to have an annual economic impact of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

SBA has determined that this rule may have a significant beneficial economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. SS 601-612. The proposed rule can potentially apply to all small businesses that are performing or may want to perform on the prime contract opportunities of the Federal Government. In Fiscal Year 1996, all categories of small businesses were responsible for 314,965, or 68 percent, of the total number of contract actions in excess of \$25,000. While there is no precise estimate of the number of small entities or the extent of the economic

impact, SBA believes that a significant number of small businesses would be affected. SBA has submitted a complete Initial Regulatory Flexibility Analysis of this proposed rule to the Chief Counsel for Advocacy of the Small Business Administration. For a copy of this analysis, please contact Jim Gambardella at (202) 205-7325.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule would not impose new reporting or record keeping requirements, other than those required on the Government by law.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of executive Order 12778, the SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of this order.

**List of Subjects in 13 CFR Part 121**

Government procurement, Government property, Grant programs-business, Individuals with disabilities, Loan programs-business, Small businesses.

**List of Subjects in 13 CFR Part 125**

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

Accordingly, for the reasons set forth above, SBA amends Title 13, Code of Federal Regulations (CFR), as follows:

**PART 121-[AMENDED]**

1. The authority citation for 13 CFR part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c); and Pub. L. 102-486, 106 Stat. 2776, 3133.

2. Section 121.103 is amended by redesignating paragraphs (f)(3) and (f)(4) as paragraphs (f)(4) and (f)(5), respectively, by revising paragraph (f)(2) and by adding a new paragraph (f)(3) to read as follows:

**§ 121.103 What is affiliation?**

\* \* \* \* \*

(f) Affiliation based on joint venture arrangements. \* \* \*

(2) Except as provided in paragraph (f)(3) of this section, concerns submitting offers on a particular procurement or property sale as joint venturers are affiliated with each other with regard to the performance of that contract.

(3) Exclusion from affiliation. A joint venture or teaming arrangement of two or more business concerns may submit an offer as a small business for a Federal procurement without regard to affiliation under paragraph (f) of this section so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided:

(i) The procurement qualifies as a “bundled” requirement within the meaning of § 125.2(d)(1)(i) of this chapter; or

(ii) The procurement is other than a “bundled” requirement within the meaning of § 125.2(d)(1)(i) of this chapter, and:

(A) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the SIC code assigned to the contract; or

(B) For a procurement having an employee-based size standard, the procurement exceeds \$10 million.

\* \* \* \* \*

**PART 125-[AMENDED]**

3. Section 125.2 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, by revising newly designated paragraph (b), and by adding new paragraphs (a) and (d) to read as follows:

**§ 125.2 Prime contracting assistance.**

(a) General. Small business concerns must receive any award or contract, or any contract for the sale of Government property, that SBA and the procuring or disposal agency determine to be in the interest of:

(1) Maintaining or mobilizing the Nation's full productive capacity;

(2) War or national defense programs;

(3) Assuring that a fair proportion of the total purchases and contracts for property, services and construction for the Government in each industry category are placed with small business concerns; or

(4) Assuring that a fair proportion of the total sales of Government property be made to small business concerns.

(b) PCR responsibilities. (1) SBA Procurement Center Representatives (PCRs) are generally located at Federal agencies and buying activities which have major contracting programs. PCRs review all acquisitions not set aside for small businesses to determine whether a set-aside would be appropriate.

(2) A procuring activity must provide a copy of a proposed acquisition strategy (e.g., Department of Defense Form 2579, or equivalent) to the applicable PCR (or to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located where a PCR is not assigned to the procuring activity) at least 30 days prior to the solicitation's issuance whenever a proposed acquisition strategy:

(i) Includes in its description goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely;

(ii) Seeks to package or consolidate discrete construction projects; or

(iii) Would meet the definition of a bundled requirement as defined in paragraph (d)(1)(i) of this section.

(3) Whenever the circumstances identified in paragraph (b)(2) of this section exist, the procuring activity must also submit to the applicable PCR (or to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located where a PCR is not assigned to the procuring activity) a written statement explaining why:

(i) If the proposed acquisition strategy involves a bundled requirement, the procuring activity has determined that the bundled requirement is necessary and justified

under the analysis required by paragraph (d)(3)(ii) of this section; or

(ii) If the description of the requirement includes goods or services currently being performed by a small business and the magnitude of the quantity or estimated dollar value of the proposed procurement would render small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects,

(A) The proposed acquisition cannot be divided into reasonably small lots to permit offers on quantities less than the total requirement;

(B) Delivery schedules cannot be established on a basis that will encourage small business participation;

(C) The proposed acquisition cannot be offered so as to make small business participation likely; or

(D) Construction cannot be procured as separate discrete projects.

(4) In conjunction with their duties to promote the set-aside of procurements for small business, PCRs will identify small businesses that are capable of performing particular requirements, including teams of small business concerns for larger or bundled requirements (see § 121.103(f)(3) of this chapter).

(5) If a PCR believes that a proposed procurement will render small business prime contract participation unlikely, or if a PCR does not believe a bundled requirement to be necessary and justified, the PCR will recommend to the procurement activity alternative procurement methods which would increase small business prime contract participation. Such alternatives may include: (a) breaking up the procurement into smaller discrete procurements, (b) breaking out one or more discrete components, for which a small business set-aside may be appropriate, (c) when issuing multiple awards under task order contracts, reserving one or more awards for small, small disadvantaged or 8(a) companies.

(6) In cases where there is disagreement between a PCR and the contracting officer over the suitability of a particular acquisition for a small business set-aside, whether or not the acquisition is a bundled requirement within the meaning of paragraph (d) of this section, the PCR may initiate an appeal to the head of the contracting activity. If the head of the contracting activity agrees with the contracting officer, SBA may appeal the matter to the secretary of the department or head of the agency. The time limits for such appeals are set forth in § 19.505 of the Federal Acquisition Regulation (FAR) (48 CFR 19.505).

(7) PCRs will work with a procuring activity's Small and Disadvantaged Business Utilization Specialist (SADBUS) to identify proposed solicitations that involve bundling, and with the agency acquisition officials to revise the acquisition strategies for such proposed solicitations, where appropriate, to increase the probability of participation by small businesses, including small business contract teams, as prime contractors. If small business participation as prime contractors appears unlikely, the SADBUS and PCR will facilitate small business participation as subcontractors or suppliers.

\* \* \*

(d) Contract Bundling.(1) Definitions.

(i) Bundled requirement or bundling: The term "bundled requirement or bundling" refers to the consolidation 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business concern due to-

- (A) The diversity, size, or specialized nature of the elements of the performance specified;
- (B) The aggregate dollar value of the anticipated award;
- (C) The geographical dispersion of the contract performance sites; or
- (D) Any combination of the factors described in subparagraphs (i)(A), (i)(B), and (i)(C).

(ii) Separate smaller contract: A separate smaller contract is a contract that has previously been performed by one or more small business concerns or was suitable for award to one or more small business concerns.

(iii) Substantial bundling: Substantial bundling occurs when a procuring activity consolidates procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to an individual small business concern, due to:

- (a) the increased scope of work covers multiple geographic locations;
- (b) the scope of work covers multiple SIC codes; or
- (c) the anticipated value of the resultant contract (including options) is expected to exceed \$50 million.

(2) Foster small business participation: The Small Business Act requires each Federal agency to foster the participation of small business concerns as prime contractors, subcontractors, and suppliers in the contracting opportunities of the Government. To comply with this requirement, agency acquisition planners must:

(i) Structure procurement requirements to facilitate competition by and among small business concerns, including small disadvantaged, 8(a) and women-owned business concerns; and

(ii) Avoid unnecessary and unjustified bundling of contract requirements that inhibits or precludes small business participation in procurements as prime contractors.

(3) Market research. Before proceeding with an acquisition strategy that could lead to a contract containing consolidated procurement requirements, an agency must conduct market research to determine whether consolidation of the requirements is necessary and justified. During the market research phase, the acquisition team is encouraged to consult with the applicable PCR (or where a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located).

(i) The procuring activity is encouraged to notify each small business which is

performing a contract that it intends to consolidate that requirement with one or more other requirements at least 30 days prior to the issuance of the solicitation for the consolidated or bundled requirement. The procuring activity, at that time, must also provide to the small business the name, phone number and address of the applicable SBA PCR (or where a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located).

(ii) When the procuring activity intends to proceed with an acquisition involving bundled procurement requirements, the documentation of the acquisition strategy shall include a determination that the bundling is necessary and justified, when compared to the benefits that could be derived from meeting the agency's requirements through separate smaller contracts.

(A) The procuring activity may determine a consolidated requirement to be necessary and justified if, as compared to the benefits that it would derive from contracting to meet those requirements if not consolidated, it would derive measurably substantial benefits. Measurably substantial benefits include the following in combination:

- (1) Cost savings of more than 20%;
- (2) Quality improvements that will save time, improve or enhance performance or efficiency by more than 10%;
- (3) Reduction in acquisition cycle times of at least 30%;
- (1) Better terms and conditions by at least 10%; or
- (2) Any other benefits of at least 50%.

In order to proceed with a bundled procurement a procuring activity must demonstrate measurably substantial benefits, at or above the percentages stated, in a minimum of three categories (i.e., cost savings, quality improvements, reduction in acquisition cycle, better terms and conditions or any other benefits).

(B) The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the administrative or personnel cost savings are expected to be at least 10% of the contract value (including options).

(C) In assessing whether cost savings (a price reduction) of at least 20% would be achieved through bundling, the procuring activity and SBA must compare the price that has been charged by small businesses for the work that they have performed and, where available, the price that could have been or could be charged by small businesses for the work not previously performed by small business.

(4) Substantial bundling. Where a proposed procurement strategy involves a substantial bundling of contract requirements, the procuring agency must, in the documentation of that strategy, include a determination that the anticipated benefits of the proposed bundled contract justify its use, and should include, at a minimum:

(i) Identification of the specific benefits anticipated to be derived from the proposed bundling of contract requirements;

(ii) An assessment of the specific impediments to participation by small business concerns as prime contractors that result from the bundling of contract requirements;  
 (iii) Actions designed to maximize small business participation as prime contractors. This should include provisions that encourage small business teaming for the bundled requirement; and

(iv) Actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that are awarded to meet the requirements.

(5) Significant subcontracting opportunity. (i) Where a bundled requirement offers a significant opportunity for subcontracting, the procuring agency must designate the following factors as significant factors in evaluating offers for the bundled requirement:

- (A) A factor that is based on the rate of participation provided under the subcontracting plan for small business in the performance of the contract; and
- (B) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

(ii) Where the offeror for such a bundled contract qualifies as a small business concern, the procuring agency must give to the offeror the highest score possible for the evaluation factors identified in paragraph (d)(5)(i) of this section.

5. Section 125.6 is amended by adding the following new paragraph (g) at the end thereof:

**§ 125.6 Prime contractor performance requirements (limitations on subcontracting).**

\* \* \*

(g) Where an offeror is exempt from affiliation under § 121.103(f)(3) of this chapter and qualifies as a small business concern, the performance of work requirements set forth in this section apply to the cooperative effort of the team or joint venture, not its individual members.

Dated:

Aida Alvarez  
 Administrator