

**Testimony of**

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**Hearing of the  
U.S. Senate Committee on Small Business and Entrepreneurship**

**on**

**“Small Business Contracting”**

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Chairman Kerry, ranking member Senator Snowe, distinguished Committee members, it is my pleasure to testify before you today about small business contracting in the Department of Defense (DoD). Small businesses have proven time and again to be a wellspring of initiative, ingenuity, and tireless dedication to the mission of this Department. For this and many other reasons, DoD is a loyal supporter of the small business community. My testimony today will focus on contract bundling, small business size standards, subcontracting opportunities, and payments to small business.

Contract Bundling

In the mid-1990's, Congress passed several statutes requiring the Government to buy products and services more efficiently. Federal acquisition professionals became adept at leveraging the immense buying power of the Government to enable prudent stewardship of public funds with fewer internal resources. The consolidation of several requirements into a single contract to save money and gain other benefits is one such methodology.

Contract bundling however, is not viewed in the same light as consolidation. Contract bundling occurs when requirements previously suitable for award to small business and provided or performed under separate, smaller contracts are merged into a single procurement, resulting in an acquisition that is unsuitable for award to small business. Due to its negative impact on small business, DoD has long discouraged the practice of contract bundling and any acquisition strategy that contemplates bundling must undergo an extremely rigorous justification and approval process. Only when the Department has determined it will derive a measurable and substantial benefit can this type of acquisition strategy be used.

Bundling may not be used without first taking into account the effect it may have on the small business community. Even if bundling can be justified by its anticipated benefits, contracting professionals must develop acquisition strategies to mitigate the impact on small business. DoD acquisition professionals are obliged to develop

strategies that not only set aggressive small business subcontracting goals but ensure that these goals are achieved.

Training regarding bundling is a significant issue. For the past year, DoD has placed emphasis on educating the acquisition workforce on bundling through conferences, Web casts, and classroom training. The DoD Office of Small Business Programs (OSBP) is in the final stages of revising its Benefit Analysis Guidebook, which provides direction for avoiding or mitigating the impact of bundling, and as well as how to perform a benefit analysis. OSBP is also developing a Teaming/Joint Venture Guidebook and training to assist small businesses in pursuing larger procurements .

I have mentioned the importance of educating the workforce. I would also like to touch on data accuracy. In terms of keeping track of the incidence of bundling within DoD procurement, accurate record keeping is paramount. Recent events have served to focus attention on the challenges faced by DoD and other Federal agencies in obtaining accurate data. Data collection systems such as the Federal Procurement Data System, Next Generation (FPDS-NG), with the capability of reducing calculation time from months to milliseconds, must ultimately rely on the end user for source data. Human error occurs.

In May of 2007 the Under Secretary of Defense for Acquisition, Technology, and Logistics issued a memorandum to the Administrator for Federal Procurement Policy, Office of Management and Budget, affirming the Department's commitment to the establishment of infrastructure and policies and processes to ensure continuous improvement of data quality. DoD has dedicated a significant number of resources to ensure the successful transition into FPDS-NG.

### Small Business Size Standards

The Department is concerned that unrealistically low small business size standards will or have had a negative impact on the Defense small business supplier base. Although it may be difficult to fathom a multi-million dollar firm as "small", when judged within the context of the industry and the capital investment necessary to start, sustain, and build a business, the concept becomes a reality. The Defense Department believes that a number of size standards representing critical Defense industries have not kept pace with the U.S. economy. For example, the size and complexity of engineering professional and information technology services within DoD have increased dramatically over the last decade. DoD would favor the adjustment of small size standards as needed to keep them in line with the dynamics of the U.S. economy and the U.S. military.

DoD OSBP has met with representatives from the Small Business Administration (SBA) and the Office of Federal Procurement Policy, Office of Management and

Budget in March of 2007. All parties agreed that a comprehensive review of the size standards is needed and, that such a review would be more manageable if it began with a single or very small number of North American Industrial Classification System (NAICS) codes. In June of this year the SBA advised that they would proceed with the review, focusing on size standards associated with military systems and the engineering services. The Department is optimistic that resolution of the size standard issue will enable small businesses to take on an even greater role in the competitive playing field.

### Small Business Subcontracting Opportunities

The Department of Defense (DoD) offers two markets for small businesses seeking Defense contracting opportunities. The first market is prime contracting; the second market encompasses defense subcontracting, as many of DoD's requirements may be beyond the capacity of a single small business. Defense subcontracting offers tremendous economic opportunity for small businesses.

Military Departments and Agencies use various techniques to encourage prime contractors to subcontract and team with small business concerns. Contractual incentives that reward prime contractors for exceptional subcontract performance is one technique. In addition, we are increasingly using proposed subcontract performance as a source selection factor.

DoD also uses outreach as a means of promoting subcontracting with small business. A particularly useful forum for this has been the Tri-Association Advisory Panel on Small Business (TRIAD). TRIAD is an organization comprised of small business liaison officers from major prime contractors belonging to the Aerospace Industries Association, the National Defense Industrial Association, and the Government Electronics and Information Technology Association. This organization is dedicated to finding new ways to increase subcontracting opportunities for small business. The TRIAD meets three times a year; the Department is regularly invited to speak at these meetings and by doing so is able to focus attention on items of special interest, such as increasing contracting opportunities for small business.

It is the responsibility of both DoD contracting officers and small business specialists to ensure prime contractors' put forth their best efforts to achieve the small business goals established in their subcontracting plans. These goals are intended to challenge prime contractors to provide the maximum practical subcontracting opportunities to all small businesses. Here too, DoD recognizes the need for accurate data reporting and therefore strongly supports the implementation of the Electronic Subcontracting Reporting System on a DoD-wide basis.

Since monitoring subcontracting achievements can be very complex and time-consuming, many Military Departments and DoD Agencies delegate this responsibility, including the administration of individual subcontracts and/or the prime contractor's entire subcontracting program, to the Defense Contract Management Agency (DCMA). Subcontracting is an area of special interest for DCMA. DCMA conducts small business program compliance reviews to assess the effectiveness of prime contractors' overall small business subcontracting program and individual subcontracting plans. DCMA also negotiates individual, divisional, and corporate-wide subcontracting goals with major Defense Contractors, and when delegated, individual plans.

When a contractor fails to make a good faith effort to achieve its subcontracting goals, contracting officials will note this information in the contractor's official past performance record. Past performance information is maintained in the Government-wide Past Performance Information Retrieval System (PPIRS). PPIRS is used by DoD contracting officers to make required contractor responsibility assessments. DoD contracting officers must evaluate the extent of participation of small businesses in all negotiated procurements that are required to have a subcontracting plan.

One subcontracting initiative that is unique to the Defense Department is the Comprehensive Subcontracting Plan Test Program. The purpose of the Comprehensive Subcontracting Plan Test Program is to determine whether the negotiation and administration of comprehensive small business subcontracting plans on a corporate, division, or plant-wide basis increases subcontracting opportunities for small business concerns while reducing administrative burdens on contractors (participating firms are exempt from negotiating individual DOD contract-by-contract subcontracting plans) Under the Comprehensive Subcontracting Test Program, eligible contractors (selected by the Military Departments and Agencies) establish annual comprehensive small business subcontracting plans that cover their entire business operation in support of all DOD contracts and subcontracts. DCMA has the responsibility for the negotiation and administration of these plans. There are currently 14 firms participating in the program.

OSBP contracted with LMI Government Consulting to study the efficacy of the DoD Comprehensive Subcontracting Plan Test Program. The study offered a number of recommendations to improve the program. OSBP is currently reviewing these recommendations to determine which approach has the greatest potential to enhance the program. The publication number for the report is ATL56T1/March 2007.

### Payments to Small Businesses

The Department's policy is to assist small business concerns in obtaining payments under their [prime] contracts, late payment, interest penalties, or information on

contractual payment provisions. In particular, it is the policy of the Department to assist small disadvantaged business concerns by paying them as quickly as possible after invoices are received and before the normal payment due dates established in the contract. In fact, the regulatory restrictions prohibiting early payment do not apply to small disadvantaged business concerns.

In a Government Accountability Office Report published in May of 2006, it was noted that “DoD’s payment process often results in late payments to contractors – which for some small business contractors could lead to financial hardship.” The GAO further stated that “The delayed processing of these payment documents is caused, in large part, by the paper-driven nature of DoD’s vendor payment process...”

DoD has made great strides to eliminate payment delays by deploying the Wide Area Work Flow – Receipts and Acceptance (WAWF-RA) electronic invoicing system. 54.8% of DoD’s invoices are now processed under WAWF and the number of users grows daily. Pursuant with GAO’s recommendation, WAWF will soon be updated to include a small business indicator flag to alert DoD payment officials when an invoice is from a small business and to process the invoice as expeditiously as possible.

With regard to prime contractor payments to their small business subcontractors, it is the policy of DoD to ensure that prime contractors establish procedures for the timely payment of amounts due pursuant to the terms of their subcontract(s). Although DoD does not have privity of contract with subcontractors, a DoD contracting officer that determines a prime contractor’s certification of payment to be inaccurate in any material respect, must investigate the matter. Depending on the contract type and its nearness to completion, contracting officers will encourage the prime contractor to make timely payments to the subcontractor or, the contracting officer may reduce or suspend progress payments until the contractor complies. Failure of prime contractors to pay their subcontractors in a timely manner is negative past performance information that is reported into PPIRS.

### Conclusion

The small business community plays a prominent role in the acquisition of the materials, supplies, and services needed by men and women in uniform. DoD is committed to providing maximum opportunities for small business in both the prime contracting and subcontracting arenas. They are an integral to the success of our armed forces and it is DoD’s obligation to afford small business every practicable contracting opportunity.

Today I have given a brief overview of four critical issues as they relate to small businesses. I look forward to your questions and to any comments you may have that will guide us toward working more effectively with small businesses.

Thank you.