

**Testimony of**

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

**On**

**Access to Federal Contracts: How to Level the Playing Field**

**October 29, 2007  
Bowie State University, Maryland**

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Chairman Cardin and Members of the Senate Committee on Small Business and Entrepreneurship:

Good afternoon. I am Anthony Martoccia, Director of the Department of Defense (DoD) Office of Small Business Programs (OSBP), in the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD/AT&L). Thank you for inviting me to appear before you to discuss the Department's Small Business Programs. I welcome the opportunity to participate in this hearing because this is a topic that is very important to me.

Small business and small disadvantaged business (SDB) are vitally important to the job growth and the economic strength of the country. They play an important role in the Department's overall mission to deter our enemies and protect the security of the United States. With this in mind, I am very proud to report that from fiscal year (FY) 2000 through FY 2006, the Department has met or exceeded the 5 percent government-wide statutory goal for small disadvantaged business. Preliminary analysis of FY 2007 data indicates that DoD will again achieve the SDB goal. Nevertheless, I am concerned that DoD has not achieved the 23 percent overall small business goal. DoD OSBP has begun a preliminary investigation to determine the reason for this disparity.

Mitigating Potential Barriers

The Federal Government is required to provide all small businesses the maximum practicable opportunity to participate in its procurements. This guiding principle, in combination with progressive legislation and a healthy economy, has created an optimal environment for small business. Due to the unique requirements, terms, and conditions imposed on Federal procurement however, the ability of DoD and the other agencies to achieve the statutory goals may be inhibited. The following discussion considers a number of these potential barriers, and how they are addressed within the Department:

Contract Consolidation and Strategic Sourcing - In the mid-1990s, Congress passed several statutes requiring the Government to buy products and services

more efficiently. DoD acquisition professionals became adept at leveraging the immense buying power of the Defense Department to enable prudent stewardship of public funds. The consolidation of several requirements into a single contract to save money and gain other benefits became one such strategy. Consolidation occurs when requirements previously performed by either large business or small business under two or more separate, smaller contracts are combined into one contract or order. Benefits of such consolidated actions must be documented, justified, and approved prior to such action being taken.

Since October 2005, the Office of Management and Budget has required Federal agencies to use strategic sourcing as a means to streamline the procurement process. Strategic sourcing uses an agency's spend analyses to make informed business decisions about acquiring commodities and services more effectively and efficiently. This process helps agencies optimize performance, minimize price, increase achievement of socio-economic acquisition goals, evaluate total lifecycle management costs, improve vendor access to business opportunities, and otherwise increase the value of each Federal dollar spent.

Although consolidation and strategic sourcing reduces the number of available contract opportunities, both consolidated and strategic sourcing actions are awarded to small businesses and may be awarded under one of the special small business set-aside or sole source authorities.

An example of small businesses benefiting from strategic sourcing is the U. S. Department of Navy Clerical Support Services contracts awarded October 13, 2006. This consolidated solicitation limited competition to 8(a) small disadvantaged businesses, Historically Underutilized Business Zone (HUBZone) small business concerns, and service-disabled veteran-owned small business (SDVOSB) firms. Over 100 proposals were received and evaluated, and nine contracts were awarded. Contracts were awarded to one SDVOSB firm, one SDVOSB that is also a HUBZone concern, one SDVOSB that is also a woman-owned small business, one HUBZone small business that is also a veteran-owned small business, one 8(a) SDB that is also a veteran owned small business, three 8(a) SDB's that are also women-owned small businesses (WOSB), and one 8(a) SDB.

Contract Bundling - Contract bundling occurs when requirements that previously were, or could have been, performed by small business are combined into a single procurement, resulting in an acquisition that is unsuitable for award to small business. The bundled action may be unsuitable for award to a small business due to its dollar value, geographic dispersion, technical diversity, size or specialized nature, or any combination thereof.

DoD discourages the practice of contract bundling; any acquisition strategy that contemplates bundling must first undergo a rigorous justification and approval process. The Federal Acquisition Regulation requires contracting officers and/or acquisition teams to consult with the Small Business Administration (SBA) Procurement Center Representative (PCR) as soon as feasible once it has been determined that a bundled contract will result from the solicitation. Early consultation with the SBA PCR helps to focus the contracting officer's/acquisition team's market research, aid in the development of a more effective acquisition strategy, and minimize any adverse impact on incumbent small business. Bundling may only be used when the Department has determined it will derive a measurable and substantial benefit through the use of this type of acquisition strategy.

The Department requires analysis of alternatives including methods for mitigating the impact to small business, even if bundling can be justified by its anticipated benefits. If small business prime contracting opportunities are not available, DoD acquisition professionals are obliged to develop strategies that set aggressive small business subcontracting goals, including methods for ensuring that the goals are achieved.

Subcontracting – It is the responsibility of both DoD contracting officers and small business specialists to ensure prime contractors put forth their best efforts to achieve subcontracting goals. In particular, DoD procurement regulations require contracting officers to challenge any SDB subcontracting goal less than 5 percent. A small disadvantaged business goal of less than 5 percent must be approved one level above the contracting officer.

Military Departments and Other Defense Agencies (ODAs) 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. Another effective approach is to use prime contractors' proposed subcontract performance as a source-selection factor.

Since monitoring subcontracting achievements can be very complex and time-consuming, many Military Departments and ODAs delegate this responsibility to the Defense Contract Management Agency (DCMA). Such delegations may involve the administration of individual subcontracts and/or a prime contractor's entire small business program. DCMA has developed extensive guidelines to evaluate a prime contractor's individual subcontracting plan(s) and overall compliance with its small business program. DCMA also negotiates divisional and corporate-wide subcontracting goals with major defense contractors under the DoD Comprehensive Subcontracting Plan Test Program and evaluates and monitors these plans.

DCMA conducts annual small business program compliance reviews to assess the effectiveness of a prime contractor's overall small business subcontracting program. These reviews are conducted for major DoD prime contractors, i.e., those contractors that have been awarded \$100 million or more during the past fiscal year. The reviews focus on the prime contractor's deficiencies in small business subcontracting performance based upon completed subcontracting plan reports. In accordance with the Memorandum of Understanding (MOU) between DCMA and the SBA, the SBA shall be notified of an anticipated compliance review. DCMA must perform all small business program compliance reviews in accordance with the MOU.

In FY 2007, DCMA completed 108 compliance reviews. The review findings will give the Department a better understanding of the difficulties small business owners encounter as subcontractors under DoD contracts.

If a contractor fails to make a good faith effort to achieve its subcontracting goals, contracting officials annotate 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 to which small business, SDB, HUBZone, veteran-owned small business, SDVOSB, and women-owned small business are proposed for participation contract performance in all negotiated procurements that are required to have a subcontracting plan.

Competition – The Administrator, Office of Federal Procurement Policy's memorandum of May 31, 2007, underscores the importance of competition as a means to save taxpayer money, improve contractor performance, curb fraud and promote accountability for results. Within DoD, competition is the preferred method for acquiring goods and services. The importance of competition and the need to dedicate even greater emphasis towards its promotion was recently addressed in the Director, Defense Procurement and Acquisition Policy's memorandum of July 26, 2007. The Department's preference for competition extends to small business, SDB and 8(a) procurements and in procurements involving 8(a) Alaska Native Corporation (ANC) firms. Noncompetitive acquisition strategies are the exception to the norm, and the reasons for not using competitive techniques must be justified.

#### Accountability

One of the concerns that emerged from the Federal downsizing period of the

1990s was the effect these efforts may have had on Government accountability. With regard to DoD's Small Business Program, there is a process in place to ensure the Department is accountable for its small business performance. The DoD Small Business Program Strategic Management System (SMS) is used to administer the DoD Small Business Program, to drive continuous improvement, and to promote consistent reporting to the Office of the Secretary of Defense (OSD) by all DoD components, including the Military Departments and Other Defense Agencies (ODAs).

In accordance with the DoD SMS, each Military Department must submit two Small Business Program reports each year including a mid-year and a year-end (annual) report. The annual report serves to document the Component's Defense Small Business Program results for the ending fiscal year, describes progress in implementing its small business initiatives, and identifies any new initiatives to improve the Component's Small Business Program. These individual reports are consolidated into the DoD Small Business Report that is reviewed by the Secretary of Defense and used in DoD's Annual Report to Congress to establish appropriate DoD-wide goals for future fiscal years.

In addition, the SBA's Small Business Procurement Scorecard has brought an added degree of transparency to the Federal Government's small business achievement record. The Scorecard rates Federal agencies' progress in providing small business opportunities and is part of a larger movement emerging in new procurement regulations to more accurate tracking of small business contracting.

## Contracting with 8(a) Alaska Native Corporation Firms

The Department adheres to statutory and regulatory requirements when contracting with 8(a) Alaska Native Corporation (ANC) firms, to ensure that the interests of the taxpayers are safeguarded. (The term “8(a) ANCs” refers to small businesses owned and controlled by ANCs.) Section 8(a) of the Small Business Act, as amended by Public Law 85-536, the SBA’s 8(a) Business Development Program and the Alaska Native Claims Settlement Act and Title 13 of the Code of Federal Regulations provide the framework for the Department’s 8(a) ANC acquisition policy. Under Title 13 of the Code of Federal Regulation, Section 124, 506(b), the SBA may award a sole source 8(a) contract to an 8(a) Program Participant owned or controlled by an Indian tribe or an ANC where the anticipated value of the procurement exceeds the applicable competitive threshold, if the SBA has not already accepted the requirement into the 8(a) Program as a competitive procurement.

The Department is monitoring the dollars obligated under 8(a) ANC contracts. In FY 2005, approximately 17.3 percent of the 8(a) dollars obligated by the Defense Department were in support of 8(a) ANC contract actions. By FY 2006 this percentage had dropped to 15.8 percent. The DoD OSBP will continue to closely monitor 8(a) ANC award data.

The Government Accountability Office (GAO) Report GAO-06-399 “Contract Management – Increased Use of Alaska Native Corporations’ Special 8(a) Provisions Calls for Tailored Oversight” noted that oversight was an area of vulnerability under 8(a) Alaska Native Corporation (ANC) contracts. DoD addressed the GAO’s findings in its FY 2007 Small Business Training conference. The Military Departments have also stepped up their training efforts within their respective organizations.

On February 28, 2007, a new 8(a) Partnership Agreement between the SBA and the DoD was signed. The 8(a) Partnership Agreement between the SBA and the DoD allows for much more expeditious award of 8(a) contracts. Under the Partnership Agreement, the SBA delegates to the USD/AT&L its authority to enter into 8(a) prime contracts and to award performance of those contracts to eligible 8(a) firms. In keeping with the findings noted in GAO-06-399, the new Partnership Agreement provides greater clarification of the responsibilities of the SBA and DoD, and emphasizes the need to include and adhere to monitoring and oversight provisions for all DoD 8(a) contract actions directly awarded to the 8(a) Participants via SBA’s delegation of authority.

## Ongoing Initiatives To Improve DoD's Small Business/SDB Performance

The Department of Defense has implemented numerous initiatives aimed at improving its small/small disadvantaged business performance:

Minority Contract Enhancement Program – In FY 2007, DoD OSBP was provided funds by Congress to develop a Minority Contract Enhancement Program. The funds were used to award a contract to a minority-owned 8(a) firm for the development and support of a DoD Minority Contract Enhancement Program (MCEP). The contractor will provide specialized and professional assistance to small, minority-owned businesses, including 8(a) Participants, to help these firms become successful DoD suppliers. The assistance provided will be in addition to, and not duplicative of, the services already provided by Government agencies to small businesses. The DoD MCEP will also include measurable goals and metrics to assess the success of the program.

The Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs – SBIR and STTR have long provided excellent opportunities for minority-owned small businesses to participate in technology research and development for the Department of Defense. Historically, about 10 percent of both Phase I contract awards for technology feasibility and Phase II contracts for technology prototyping and demonstration have gone to minority-owned firms. In FY 2006, 296 Phase I and Phase II contracts were awarded to minority-owned firms, with a total value of over \$101 million.

The DoD Mentor-Protégé Program (MPP) – The DoD MPP was initiated in late 1990 by Public Law and was formulated to incentivize large Defense prime contractors to work with small disadvantaged businesses to enhance their capabilities and their competitiveness within the defense supplier base. Since then, WOSB, veteran-owned small business, SDVOSB and HUBZone small business concerns have also been extended eligibility under amended legislation.

Of the 803 small businesses that have participated in the DoD MPP since its inception, fully 522 or 65 percent of the small businesses helped as protégés qualified as SDBs. These protégés, about 150 active agreements each year, are located in virtually every state in the union. More significantly, SDB protégés have accounted for an average of 12 percent of all SDB prime contract awards made by the Department during the last four years, over \$1.5 billion in prime contract awards annually. Equally significant is the fact that the average prime contract award for SDB protégés in the program was over \$5 million, nearly three times that of a non-protégé SDB concern. In the last three years DoD MPP has made an effort to instill a more technology based manufacturing focus to the DoD MPP to better address the evolving needs of the warfighter. This has included an

emphasis on such joint programs as Robotics, where three of the ten protégés are SDBs.

Training the Acquisition Workforce – The Department has placed increased emphasis on educating the acquisition workforce in key areas of small business contracting, especially in the area of bundling and consolidation. DoD has established a small business training program as a joint initiative between DoD OSBP and the Defense Acquisition University (DAU). In FY 2006, a member of the DoD OSBP staff presented a live Webcast on contract bundling and consolidation that is available for viewing online. (The Air Force small business office has also developed an online bundling course that is available on their Web site.) Subsequent to DoD OSBP’s initial Webcast, this office featured a presentation on subcontracts, and in the near future we will Webcast a segment on the DoD’s SBIR/STTR programs. In addition to these on-line presentations, DoD OSBP staff has provided train-the-trainer sessions at many conferences throughout the past two years.

DoD Small Business Community of Practice – Recently, DoD OSBP and DAU collaborated with representatives from the Army, Navy, and the Air Force to develop a Small Business Community of Practice to provide an easy to use, online source of small business program information for the acquisition workforce. The intent of DoD’s Small Business Community of Practice is to provide a “one stop” location to easily access best practices and lessons from acquisition professionals throughout DoD. The site was unveiled in March of 2007 and may be accessed at <https://acc.dau.mil/smallbusiness>.

Small Business Size Standards – DoD OSBP is concerned that a number of size standards in critical Defense industries have not kept pace with the U.S. economy. We believe an upward adjustment of the small business size standards in these industries will improve small business’s ability to take on an even greater role in DoD procurement. In March of FY 2007 DoD OSBP met with representatives from the SBA and the Office of Federal Procurement Policy, Office of Management and Budget to discuss this issue at length. All parties agreed that a comprehensive review of the size standards is needed.

#### Base Closure and Realignment Act (BRAC)

The National Defense Authorization Act for Fiscal Year 2002 amended the Defense Base Closure and Realignment Act (BRAC) of 1990 (P.L. 101-510) to authorize a round of closures and realignments in 2005. The Department is in the process of initiating activities to ensure it implements the recommendations within the statutory six-year period that will end on September 15, 2011. BRAC 2005 affects over 800 locations across the United States through 24 major closures, 24

major realignments, and 765 lesser actions.

DoD was actively involved in the passage of law to designate all military installations affected by BRAC as HUBZones. This measure was signed into law by the President in December of 2004. While the Department does not have a small business program that specifically addresses BRAC, all such acquisitions must adhere to the same laws and regulations set forth in the Small Business Act, the Federal Acquisition Regulation (FAR) and the Department of Defense FAR Supplement. In short, providing maximum opportunity for small business is always a primary consideration in any acquisition strategy that has been developed to fulfill BRAC requirements.

The following discussion highlights a few of our BRAC success stories:

#### Southern Performance-Based Contracting (U.S. Air Force)

The Air Force plans to consolidate several BRAC environmental projects under two separate contracts, one of which will be set-aside for small business. The objective of this project is to implement reasonable, aggressive, and appropriate cleanup actions to ensure protection of human health and the environment, reduce the Air Force's financial liabilities, and achieve site closure for 18 open and post-closure sites at Bergstrom Air Force Base (AFB) and Reese AFB, Texas; Eaker AFB, Arkansas; England AFB, Louisiana; Homestead AFB, Florida; and Myrtle Beach AFB, South Carolina. This effort will involve environmental restoration, environmental remediation and/or environmental monitoring activities.

The original acquisition strategy for this requirement contemplated a single full and open competitive solicitation. The change in acquisition strategy is a result of industry comments and intense market research on the part of the DoD small business specialist.

#### BRAC Transition Assistance Contract (U.S. Navy)

The Naval Air Warfare Center Weapons Division (NAWCWD) has awarded an 8(a) contract for employee transition assistance to an SDVOSB firm, C. J. Turner, Incorporated. Mr. Calvin Turner, the owner of the firm, was severely injured in an Army helicopter accident which killed ten in his command. During the 52 months Mr. Turner endured his thirteen surgeries and intense physical therapy, he was also giving careful consideration to his future career. He chose transition counseling. Mr. Turner and his highly experienced team now operate the Career Transition Center at the NAWCWD Pt. Mugu, California site to assist individuals impacted by realignment of functions as a result of BRAC 2005.

## U.S. Army Staff Augmentation Contract

The Army Contracting Agency (ACA) intends to award a contract to provide critical staffing support during the BRAC period at affected Army installations. This requirement has been set aside for SDVOSBs. The ACA will issue a multiple-award contract with an estimated total value of approximately \$500 million, and a period of performance of one year, with four one-year options, to obtain staffing support. This action is the largest staff augmentation contract ever awarded by the ACA; several SDVOSBs are preparing to take part in this contract, and it is anticipated that there will also be opportunities for small businesses to participate as subcontractors.

### Commitment to Achievement of Small Business Goals by Senior DoD Management

As the Director of DoD's Small Business Program Office, I am a member of the USD/AT&L staff. This provides an opportunity to meet with senior level management staff at weekly USD/AT&L staff meetings and share DOD OSBP's small business agenda with them. Through these interactions I have obtained leadership commitment to promote small business programs within their organizations. DoD small business programs are an integral part of the USD/AT&L Strategic Goals Implementation Plan. At the Component level, the Small Business Program Directors at the Army, Navy, Air Force, the Defense Contracts Management Agency, and the Defense Logistics Agency have each implemented small business strategic plans for their respective departments and agencies.

The Deputy Under Secretary of Defense for Acquisition and Technology, the Honorable Dr. James Finley, is a strong proponent of the DoD Small Business Program. Among his many duties, it is his responsibility to brief the Secretary of Defense on DoD's progress in achieving small business goals. Dr. Finley is a frequent keynote speaker at small business events, either those sponsored by the Department or by small business organizations. DoD's small business performance is a topic that Dr. Finley frequently refers to when he addresses DoD leadership

### Conclusion

Today I have given a brief overview of a number of DoD issues and initiatives that effect small and minority-owned small businesses. I wish to thank the small business community for their outstanding support of our men and women in uniform.

I appreciate the Committee's continued interest and oversight of DoD's Small Business Programs and look forward to your questions and to any comments you may have that will guide us toward working more effectively with small business. This concludes my testimony.

Thank you.