

Testimony of

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**To the U.S. House of Representatives Committee on Small Business
Subcommittee on Contracting and the Workforce
*“Hotline Truths: Issues Raised by Recent Audits of Defense Contracting”***

February 25, 2016

Chairman Hanna, Ranking Member Takai and distinguished Members of the Subcommittee, thank you for this opportunity to respond to recent reports from the U.S. Department of Defense’s Office of the Inspector General that found that specific contracting officials with the Regional Contracting Office – National Contracting Region (RCO-NCR) and the Marine Corps System Command (MSCS) did not hold large prime contractors accountable for meeting small business subcontracting goals. I am privileged to speak before you on behalf of the Association of Procurement Technical Assistance Centers and the small businesses across the country that we serve.

My name is Chuck Spence. I am Deputy Director of the Utah PTAC and President of the Association of Procurement Technical Assistance Centers – APTAC – which is the professional organization of the 98 PTACs nationwide.

As you may know, the Procurement Technical Assistance Program was created by Congress in 1985 to help small businesses compete for federal, state and local government contracts. It is funded and administered through the Defense Logistics Agency and supported by state or local governments, educational institutions, and non-profits which must provide a non-federal funding match of up to 50% to be eligible for a PTAC Cooperative Agreement award. Our purpose is to assist local small businesses at little or no cost by preparing them to become capable government contractors, on the belief that a broad base of small business suppliers provides the highest quality and best value to our government agencies and at the same time creates a strong and vibrant economic base for our communities. Last year we helped over 57,000 small businesses win government contracts and subcontracts valued at over \$12 billion.¹

In addition to our work helping small business secure prime contracts, PTACs are deeply engaged with subcontracting issues. Not only do we help small businesses identify subcontracting opportunities, connect with and market to prime contractors, and generally become responsible, “procurement ready” subcontractors, we are often contacted by large primes for assistance with developing subcontracting plans and locating small business vendors with the specific capabilities needed to meet their requirements. Every day, we confront with our clients the challenges of the subcontracting environment. My testimony today reflects input from some of our most experienced procurement

¹ Based upon statistics voluntarily reported to APTAC by 83 of the 98 Procurement Technical Assistance Centers.

professionals; I am privileged to share their insights in the hope they will support your efforts to improve opportunities for our nation's small business contractors.

We are not surprised by the OIG findings in response to Defense Hotline allegations. On the contrary, we suspect that the problems identified – lack of adequate policies for requiring subcontracting plan submissions and reports, insufficient training for contracting officials regarding their responsibilities for evaluating and administering subcontracting plans, and failure to monitor compliance with subcontracting plans – are common across all federal agencies, because the root causes are not unique. From our perspective, at the heart of not only the circumstances described in the OIG reports, but agency subcontracting failures generally is an unrealistic overreliance on contracting officers to protect the interests of small businesses through faithful enforcement of FAR Subpart 19.7 with insufficient support and resources to do so. The consequence is likely a widespread loss of opportunities for small businesses.

We applaud Chairman Chabot, Ranking Member Velázquez, and the House Small Business Committee for the ambitious effort to address these issues through HR. 4341, *The Defending America's Small Contractors Act of 2016*. The bill's comprehensive approach to clarifying the language and definitions of contracting provisions in the Small Business Act - as well as promoting greater transparency in goaling and accountability in execution - is much needed. I'd like to comment on a number of provisions of this robust legislation that we think are particularly relevant.

Advocates for Small Businesses

The acquisitions workforce is an enormous, disparate, often overworked, and continuously shifting body. Their top priority is the procurement of goods and services to meet agency requirements in the most cost-effective manner possible so as to deliver value to the taxpayer. They are increasingly pressured to more effectively harness innovation and technology to better serve their end-users, while addressing new challenges such as cyber-threats. It is little wonder that understanding and enforcing small business subcontracting requirements might be prone to neglect – as is evidenced in the OIG reports.

SBA Procurement Center Representatives (PCRs) and Commercial Market Representatives (CMRs) play a critical role enabling increased opportunities for small businesses, and the Committee is right to expand and clarify their responsibilities. Providing PCRs the authority to review “*any solicitation for a contract or task order,*” clearly articulating the responsibilities of Commercial Market Representatives with regard to subcontracting, and allowing both PCRs and CMRs to delay acceptance of subcontracting plans if they fail to provide maximum practicable opportunities for small businesses are very important steps in empowering these officials to advocate on behalf of small businesses, and we enthusiastically support them.

We are concerned, however, about the level of effectiveness that can reasonably be expected from PCRs and CMRs if their ranks are not sufficient to do the job. A review of the SBA's CMR Directory at <https://www.sba.gov/content/cm-directory> and PCR Directory at <https://www.sba.gov/content/pcr-directory> indicates that SBA has just 27 CMRs, 6 PCR Area Directors and 48 PCRs to service the entire

country. An SBA Office of Inspector General Report in FY 2006 found that CMRs monitored less than half of the 2,200 largest prime contractors². In a 2008 report, the GAO noted that the 59 PCRs on staff at the time were acknowledged to be not a sufficient number to fulfill their mission³.

We believe that the need for these experts/advocates has grown and become more urgent – and are glad to see the Committee’s support for them in H.R. 4341. But we’d like to encourage you to also take whatever action is within your power to support increasing the size of the PCR and CMR workforce to maximize their effectiveness government-wide. Taking the OIG Hotline reports as examples: PCRs might have been instrumental in helping the RCO-NCR and MCSC develop subcontracting policies and train acquisition staff as called for in the reports. Active involvement by CMRs might have brought to light and corrected failures to properly monitor subcontracting plan compliance before they resulted in Hotline complaints. The work of these professionals can directly address the deficiencies noted if they are sufficiently staffed.

Post-award Compliance Resources

We particularly note the Bill’s requirements that the SBA make available – to a number of entities including the PTACs – *“a list of resources for small business concerns seeking education and assistance on compliance with contracting regulations (including Federal Acquisition Regulations) after award of a contract or subcontract.”* We agree that supporting the ability of small firms to perform successfully is essential to small business contracting programs. While we welcome attention to the issue, we believe that PTACs are perhaps the most extensive resource available for just such education and assistance. With over 600 procurement professionals in 300 offices in every state of the nation, the District of Columbia and the territories of Puerto Rico and Guam, our charge clearly includes working with small businesses on post-award compliance issues, and we do so regularly. Most PTAC counselors have extensive – and ongoing – FAR training. We hope that the SBA will feature PTACs prominently on this list of resources, but also encourage PCRs, CMRs, OSDDBU officers and prime contractors to refer small business contractors to the PTACs, so that we can help them fully understand the requirements of their contracts and subcontracts, allowing them to successfully comply. We ask that the Committee remember that the PTACs can be a valuable resource in this regard.

Good Faith Compliance

We are pleased to see that fulfilling reporting requirements is being added to the list of items for which a prime contractor’s failure to comply can be deemed a material breach reflected in past performance evaluations, and even more so the stipulation that SBA provide examples of activities that would be considered a failure to *“make a good faith effort to comply”*. We hope that the SBA will use a fair but rigorous test; the current standard provides no incentive for primes to make extra efforts to include small businesses.

² SBA, Office of the Inspector General, *Review of SBA’s Subcontracting Assistance Program*, Audit Report No. 7-33 (Washington, D.C.: Sept. 28, 2007)

³ *Small Business Administration: Agency Should Assess Resources Devoted to Contracting and Improve Several Processes in the 8(a) Program*, GAO-09-16 (Nov 21, 2008).

Past Performance

The “*Pilot Program to Provide Opportunities for Qualified Subcontractors to Obtain Past Performance Ratings*” addresses the critical need for small businesses to compile a record of experience to be competitive for prime contracts. We are particularly glad to see that the structure provides for the contingencies of non-response or disagreement between the contracting officer, the prime contractor, and the subcontractor. Our only concern about this provision is whether the additional administrative responsibilities will be attended to in a timely manner (as proscribed), particularly given the shortage of CMRs, whose participation is integral to the program.

GAO Review of the SBA’s Office of Government Contracting and Business Development

A significant impediment to small business contractors is the complexity and redundancy of the various small business certification programs. The current conundrum with regard to the Woman-owned Small Business program only underscores the challenges of SBA certification processes from the perspective of both agency and small business. Small business concerns that are eligible to participate in more than one program (ie: a Woman Service-Disabled Veteran-owned small business operating in a HUBZone), faces overlapping but inconsistent requirements that can be overwhelming for a small firm. Simplifying and unifying the certification processes could go a long way toward bringing more eligible small firms into the government marketplace. Consequently, we are pleased to see the call for a Comptroller General study to identify ways in which SBA contracting programs and operations could operate more efficiently and consistently. We very much look forward to the report and would be pleased to provide input if appropriate.

Additional Issues

While not addressed directly in H.R. 4341, there are a few additional issues that we believe could be helpful in creating an environment that would support greater participation of small businesses in government procurement. I offer them here for your consideration as you contemplate future actions regarding small business contracting.

Technology

We believe that significant gains can be accomplished by better harnessing the technology systems associated with government contracting and subcontracting to automate certain functions and further increase transparency, especially in regard to compliance with subcontracting requirements under FAR 19.7. Compliance can only be enforced when failure to comply is known. The current necessity for busy contracting officers to proactively and manually monitor subcontracting compliance creates an administrative burden that may be a major factor in their failures to do so.

Strategic modification and integration of eSRS, FSRS, and other contracting data systems could provide to contracting officers and CMRs automated notices of failures to comply with eSRS reporting requirements, allowing officials to take immediate action with the contractor to spur compliance. Such a notification system could well have remedied – or even prevented – some of the deficiencies noted in the “Hotline” reports. In general, leveraging technology to make it as easy as possible for officials to enforce subcontracting compliance is likely to deliver the most effective enforcement.

Careful development of these data systems could also serve to improve public access to subcontracting data, with potentially a tremendous impact on small business access to subcontracting opportunities. Specific suggestions from some of our PTAC Members are included in Appendix A.

Motivating Prime Contractors

Meeting agency subcontracting goals would be much easier if prime contractors had a meaningful stake in their achievement. As noted above, there is currently no real incentive to comply with subcontracting requirements, and the enforcement of compliance via the assessment of liquidated damages has proven ineffective, as no firm has ever been penalized under it.

Finding alternative incentives (or disincentives) to prime contractor compliance could shift the balance by giving primes a clear competitive interest in providing and protecting small business opportunities. One of our PTAC members, Jeff Cuskey of the Montana PTAC, has put forth some suggestions in this regard for your consideration. They are included in Appendix B.

Conclusion

APTAC members believe there is a tremendous amount of room for increasing small business subcontracting opportunities, and we are happy to see the proactive, comprehensive effort by Chairman Chabot, Ranking Member Velázquez and the House Small Business Committee through *The Defending America's Small Contractors Act of 2016*. Along with the important changes outlined in the Bill, we hope that sufficient personnel and technology resources can be dedicated to effectively execute these critical programs, and we encourage the exploration of means to provide large prime contractors a clear interest in creating more opportunities for small business as well.

Thank you.

APPENDIX A

APTAC Member Suggestions for Technology System Enhancement to Support Small Business Subcontractors

- Provide for subcontracting opportunities to be posted well in advance of a prime contractor's selection of teaming partners and proposal or quote deadlines. Generally, a small business will not have much success becoming a subcontractor if they wait until the government solicitation is posted on FEDBIZOPS (FBO.Gov) since the turnaround time for a prime contractor to submit their proposals or quotes may be relatively short.
- Make subcontracting plan information publicly available upon prime contract award, which would allow small business subcontractors themselves, who have arguably the most powerful interest in effective subcontracting programs, to participate in policing the compliance of primes.
- Modify the ESRS reporting requirements to include a requirement that prime contractors update their SBA Subcontracting Directory data whenever any of the required 11 subcontracting plan elements change.
- Make ESRS data accessible to the public, turning the system into a "Dynamic Subcontract Plan Search (DSCPS)" database with search functionalities similar to SBA's Small Business Dynamic Search (DSBS) database. This could replace the current minimally functional Subcontracting Opportunities Directory and become the primary searchable data base for subcontract plans and subcontract plan points of contact. To enhance search capabilities, FAR 19.704(a)(3) could be revised to include the principal NAICS, PSC and FSC codes and associated key words – in addition to the current requirement of a description - related to the products and/or services to be subcontracted.
- Modify SUB-Net to include: (1) more non-construction related subcontract opportunities, (2) a means to further refine search results, (3) a way to filter out or eliminate advertisement postings and (4) the ability to export the file to an Excel CSV file to facilitate additional data sorting.
- Improve data fields in the Federal Procurement Data System (FPDS) to include original solicitation number and a meaningful description of the items acquired or the purpose of the contract action/modification. This would allow advanced searches within FPDS to locate products/services of interest to the small business.

Appendix B

Suggestions for Alternate Incentives/Disincentives for Prime Contractors to Maximize Small Business Subcontract Opportunities

Provided by Jeff Cuskey, Montana PTAC

- (1) Provide monetary incentives for awarding subcontracts to qualified HUBZone or other targeted small business concerns (i.e., establish a HUBZone Incentive Program that would be similar to the current DoD Indian Incentive Program).
- (2) Provide a price preference to large prime contractors that meet or exceed their negotiated small business plan goals. To reduce the administrative burden associated with such a program, the SBA could be required to issue an annual goaling report on all large prime contractors that were required to file subcontracting plans during the report year. Those large prime contractors that meet or exceeded their subcontract plan goals for the year would be afforded a ten percent price preference over large business offerors that did not meet their subcontract plan goals during the report period. The price preference could go on indefinitely if the prime continued to meet or exceed their annual subcontract plan goals in subsequent years. This approach would not require additional direct budget outlays, however SBA would most likely need additional resources to implement the program. The subcontract plan goaling reports should be posted publicly on SBA's website.
- (3) Include the requirement to perform subcontract plan goal management and performance assessments in FAR Subpart 44.3 as part of Contractor Purchasing Systems Reviews (CPSRs). The current language at FAR 44.303(g) requires a review of the contractor's "planning, award, and postaward management of major subcontract programs," however this language does not require the review of a large prime contractor's subcontract plan management and performance. In addition to adding this requirement, the Subcommittee should consider requiring the withdrawal of a large prime contractor's purchasing system whenever the prime contractor has failed to meet its subcontract plan goals two years in a row. This "enforcement" approach and "penalty" provides a potentially feasible and enforceable alternative to assessing liquidated damages, as it would not be subject to the current stringent requirement to prove the contractor failed to act in "good faith".