

**Testimony of Jamie Borromeo
President of The E & J Commission, LLC
Before the Subcommittee on Contracting and Workforce
U.S. House of Representatives on Small Business
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“Subpar Subcontracting: Challenges for Small Business Contractors”

Chairman Mulvaney, Ranking Member Chu, and members of the subcommittee, thank you for inviting me to testify today. My name is Jamie Borromeo, and I am the President of The E&J Commission, LLC, which is a contract research and strategies consulting firm based in Washington, D.C.

The E & J Commission prides itself in representing disadvantaged business communities by researching contracts available for small, disadvantaged businesses and assisting them with business development consultation. In my former capacity as Executive Director of the National Council of Asian American Business Associations, and in my former position as intern to Congressman Mike Honda who was the Chair of the Congressional Asian Pacific American Caucus at the time, I was exposed to a number of small business owners across America who would voice their challenges within both commercial and government contracting. This is why my business partner and I decided to create a social entrepreneurship initiative to assist some of the best and brightest minority and woman-owned companies in this space—so we could help them in understanding the nuances of this industry. Entering the federal market is one of the most challenging areas to break into as a small business owner, but even more so if cultural and linguistic barriers prevent one from being able to understand the complexities of government systems. So now, after 10 years of working with communities of color, I am certain that institutional discrimination within the federal contracting space still exists, and this is highlighted in the lack of subcontracting opportunities for our community. Subcontracting is the first point of entry for most small businesses attempting to enter the federal market because 1) Agencies like to see past performance from those seeking award and 2) subcontracting allows for the slow growth necessary so that the small business can gain experience, capacity and can acclimate to doing business in the federal contracting space.

Discrimination within the subcontracting process is very difficult to prove, especially when those on the program level are not outwardly excluding small businesses from participating. What some are doing is turning a blind eye to the issues. It is in their dispassionate and apathetic approach to the matter, rather than their intentional overtly discriminatory practices, which is the discrimination in this case. Doing nothing is just as bad as causing harm, and the lack of oversight of these passive actions are what concern me the most.

I would like to point out for the record that a good majority of OSDBU, SBA, MBDA and other small business advocates and agencies have good and well intentioned people working on behalf of their organizations, and we should continue to support their positions and even elevate their authority within the contracting space. However, much of the time, they are limited in their ability to advocate on behalf of qualified companies. They have not been allocated enough priority in their positions to effect positive change for the small business community because the agency does not see the value or does not grant them authority needed to affect contracts. Other times, they do not have enough of a relationship with the program office, where ultimately, the decisions are made when contracts are awarded. This could easily be remedied by ensuring that top agency officials from their respective agency mandate placing a higher priority on small business. The current leadership has to ensure this is reaching the contracting officer level.

Because this is a rather complex and nuanced issue, I would like to limit the issues I point out, as my brief time with you will only allow for a handful of these pressing issues to be discussed.

The first point I would like to address is the **lack of compliance with the subcontracting plans administered by the contracting officers**. I understand from many prime contractors, agency representatives, business community leaders and small business owners that I interviewed the past week that there is an issue with contracting officers not properly “evaluating subcontracting plans” or “monitoring, evaluating and documenting contractor performance” as prescribed in 48 C.F.R. 19.708 (b).

I have worked alongside the Asian American Justice Center, a civil rights organization for Asian Americans that addresses these issues through their Contractor Empowerment Program, currently led by Ms. Jeanette Lee. We have partnered to identify some of these challenges and have collected testimonials from small business contractors. Most are hesitant to provide testimonial because they are afraid of being black-balled or not maintain good rapport with an agency they still would like to receive work from; however, some brave contractors have emerged from the pack to describe their unjust experiences.

In our findings, we discovered the following fraudulent practices that create barriers to contracting opportunities for Asian Americans, women and other minorities, as outlined by Ms. Jeanette Lee:

1. “Because there is no enforcement, prime contractors often team up with minority contractors in order to win a bid, but then drop them from the contract once they receive the award. I’ve heard from several Asian American contractors that this is a prevalent and pervasive occurrence. “
2. “In addition, when there is no legal mandate for a goal – for example, in states that have passed legislation that prohibits affirmative action programs - then the prime contractors put in no real effort to utilize small or minority owned businesses. They will

hold “meet and greet” sessions and invite the businesses to attend, but in the end, none of these firms receive any work because the prime has already selected its sub-contractors. With no legal mandate from the government or authority from top management making diversity a priority, most of this activity is just lip service.”

3. “Primes will also ask small and minority businesses to identify experts who can perform certain jobs and when the minority business delivers that person, the prime wants to hire the person away from the minority business – essentially poaching the employee from the minority business. The small business usually refuses and then the prime will pursue business with someone else. “

These, among many others, are testimonials from contractors that are still looking for an entity to hold primes accountable for what was promised to these small businesses.

Another issue I would like to point out is that most contracts that are moved from large defense contractors to small businesses to reach set-aside goals, are still controlled and dictated by the large contractor in the end, in regards to who needs to be hired, what salary they will be paid, and what benefits they will receive. The way that this occurs is large contractors keep a list of disadvantaged business enterprises that are willing to do just about anything for a contract. It is common practice for a large contractor to work with an agency to move some of their contracts, which have recently been designated for set-aside program, to large contractor’s preferred vendors. These vendors will then continue to employ virtually all of the same employees that the large contractor employed with identical compensation packages. Therefore, in essence, these employees are still working for the large defense contractors who maintain the specifics of their employment throughout this process. When the small business protests, they seem to find that their current and/or future contracts disappear from that federal agency if not the federal space as a whole.

Because the small business owner is hungry for work, they feel lucky to be in the game. Money for morals is what is up for trade here, and until there are more small business opportunities and **legitimate** ones, it’s all one closed network that is circulating contracts and dollars among their own without informing, or much less encouraging competition.

Lastly, a major issue I would like to present for the record is the lack of market research conducted to find qualified small businesses. With Silicon Valley as my former home, I witnessed some of the most creative, talented and capable small businesses in the country produce and engineer products and services that are currently provided by large contractors. The boutique-sized company has just as many robust capabilities to do the work, however, because adequate market research is not conducted, government agencies are not utilizing their services. Making the connection with these companies takes additional work, but as one large defense contractor admitted to me, “We don’t have time to look through databases. “If we find an opportunity, we’re going to our existing contacts.”

The challenge for subcontracting then becomes “Who you know.” And **whom** you know is not necessarily determined by your skills, capability or work ethic.

My recommendations to the sub-committee is two-fold:

1) We must ensure that Contracting Officers and Technical Representatives (COTR) are complying with rules and systems in place to ensure prime contractors are performing well on existing contracts and subcontracting the proper amount to small businesses.

This can be done by requiring past performance reports are executed by the COTR team. The contractor should perform monthly performance reports and check-ins with contractors. I interviewed one former contracting officer who said that if the agencies and agency heads made it a priority in the contracting office, surely the contracting officers would as well. It takes leadership to enforce these and agencies are predominantly focusing on prime contracts, but now we need concerted efforts to focus on subcontracting efforts.

2) Diligent and proper market research performed by program offices is necessary.

I have met a number of small business representatives, but access to the program office is nearly impossible unless you have an existing relationship. And existing relationships are usually formed through large federal primes that “allow” the small business into their network. Program Office and Technical Representatives should be required to do just as many “meet and greets” as the Small Business offices are. Taking a meeting with a new small business is declined, for fear of protest on bids. Those are the excuses I’ve heard from program offices, but it should be a requirement to know the leadership behind who is providing the goods and services for the federal government, which is paid for the American taxpayer. It is our right to meet with those making the executive decision on who is winning these contracts and monitoring subcontracting plans. Leadership of agencies should also encourage the Program Office to network with the Small Business Program Office within the agency so that they build good rapport amongst each other.

I have additional comments I would like inserted in the Congressional Record that were not stated in this verbal testimony, so in the interest of time, I would like to thank the sub-committee for inviting me to this hearing, and I’d be happy to hear any questions you might have.

Jamie Borromeo, October 6, 2011
President
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