



U.S. SMALL BUSINESS ADMINISTRATION

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BEFORE THE

**SUBCOMMITTEE ON CONTRACTING AND WORKFORCE
U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON SMALL BUSINESS**

“Subpar Subcontracting: Challenges for Small Businesses Contractors”

OCTOBER 6, 2011

Chairman Mulvaney, Ranking Member Chu, and members of this Subcommittee, thank you for inviting the U.S. Small Business Administration (SBA) to testify today. My name is Joseph Jordan and I am the SBA’s Associate Administrator of Government Contracting and Business Development.

Our top priority at the SBA is to maximize opportunities for small businesses and ensure that the benefits of our programs flow to the intended recipients. My office works each day to provide increased opportunities for eligible small businesses to compete for and win federal prime contracts, as well as subcontracts. Contracting with small businesses is a win-win. Small businesses—who are drivers of the American economy—get the revenue they need to grow and create jobs. Meanwhile, the federal government and large prime contractors have the opportunity to work with the most innovative and responsive companies in the country.

My office’s primary objective is to ensure that eligible small businesses receive their fair share of federal prime and subcontracts. We are always looking for ways to increase small business contracting opportunities, and in the two and a half years I have been in my position, the Federal government has made significant improvements. For example, in fiscal year 2010, small businesses won nearly \$100 billion, or 22.7% of federal prime contracting dollars. This marks the second consecutive year of increase after three consecutive years of decline and was the largest two year increase in over a decade. Small businesses also won \$74 billion, or 35.4% of subcontracting dollars, which was a marked increase from 2008 and 2009 when 28.6% and 31.8% of subcontracting dollars were awarded to small businesses, respectively. Although these numbers have increased over the last two years, SBA remains committed to working with Federal agencies to get more contracts and subcontracts into the hands of small businesses.

In terms of subcontracting, our focus at the SBA is on three main areas:

- (1) Working with agencies and prime contractors to make sure small businesses get their fair share of Federal subcontracting opportunities.
- (2) Ensuring that when a small business is a Federal prime contractor, it complies with the limitations on subcontracting requirements.
- (3) Developing and maintaining the tools, systems and resources needed to monitor and track subcontracting achievements.

I would like to take this opportunity to share with you our initiatives to address each of these areas.

First, one of our top priorities is to ensure small businesses receive substantial Federal subcontracting opportunities. For small businesses, subcontracting to a prime contractor is not only a good source of revenue, but it also allows them to gain relevant federal government contracting experience. This may increase their chances of receiving future prime contracts because their subcontracting experience may be used as examples of past performance when they bid on future contracts.

To help increase small business subcontracting and improve oversight of the process, my office has a team of Commercial Market Representatives (CMRs) who are stationed across the country. Their responsibilities include counseling small businesses on how to obtain subcontracts; conducting matchmaking events between large prime contractors and potential small business subcontractors; providing training on the Subcontracting Assistance Program for both large and small businesses; and conducting compliance reviews of large business prime contractors. Our team also performs reviews on subcontracting plan compliance for specific contractors. Additionally, we maintain relationships with large prime contractors and work with them to ensure they are aware of the small business subcontracting programs and any updates to programs.

SBA is also focused on working with all federal agencies to ensure prime contractors are kept accountable to their subcontracting plans. When a prime contractor submits a bid for a contract that is expected to exceed \$650,000, it must also submit its plan to utilize small businesses for subcontracting. Prime contractors must report their small business achievements in the electronic subcontracting reporting system (eSRS). After which, contracting officers are required to review the Individual Subcontracting Plan every six months to ensure the contractor is complying with the subcontracting plan. SBA works with agencies to ensure prime contractors stick to their subcontracting plans during the performance of the contract. Additionally, SBA reviews a sample of Individual Subcontracting Reports and contacts the contracting officer if a contractor is not on target to meet its goals and has not provided a plan of action. We are also in the process of scheduling training sessions for contractors and agencies on how to appropriately review and track subcontracting data.

Additionally, the Small Business Jobs Act of 2010 (Jobs Act), which we thank Congress for passing, included several provisions specifically related to holding prime contractors more accountable to their subcontracting plans and subcontractors. To ensure the best possible implementation of the Jobs Act provisions, SBA organized and hosted a comprehensive 13-city nationwide listening tour to solicit feedback from small businesses and key stakeholders. During this tour, we received positive feedback from small businesses about the subcontracting provisions. We published these proposed subcontracting rules in the Federal Register yesterday, October 5, and we will be accepting public comments for 60 days from the date of publication.

The first provision is designed to prevent small business subcontracting misrepresentations. As part of the implementation of this provision, SBA is proposing to amend our regulations to make it clear that contracting officers (or administrative contracting officers if applicable) are responsible for monitoring and evaluating the prime contractor's small business subcontracting plan compliance. Additionally, we are proposing that contracting officers have the ability to require contractors to provide updated subcontracting plans in certain circumstances, such as when an option is exercised and when a firm's status changes from small to other than small.

The second provision is aimed at mitigating "bait and switch," which is when a prime contractor references a small business as its subcontractor in its bid or proposal, but does not utilize the small business in actual performance. With this new provision, if this event occurs, the prime contractor must provide an explanation in writing to the contracting officer and it may have an impact on their contract performance review, which could result in them being rated lower in past performance for future contract opportunities.

The last provision requires prime contractors to notify a contracting officer whenever they reduce a payment or are more than 90 days delinquent paying a small business subcontractor if the prime contractor has been paid by the government. The Jobs Act requires contracting officers to consider failure to pay subcontractors in a timely manner when evaluating past performance and to describe and record these determinations in the Federal Awardee Performance and Integrity System.

Our second area of focus is ensuring that when a small business is a prime contractor, it meets the limitations on subcontracting that apply when a contract is set-aside for small business concerns. Statutes and regulations were developed to ensure that if a small business concern is awarded a set-aside contract, the firm will perform a substantial portion of the contract. For example, in the case of a contract for services (except construction), the concern must perform at least 50 percent of the cost of the contract incurred for personnel with its own employees. In the case of a contract for general construction, the concern must perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials). Although monitoring compliance with the limitations on subcontracting is the responsibility of the contracting officer, SBA is committed to working closely with the Office of Federal Procurement Policy (OFPP) and agencies to ensure they have the appropriate training, tools and support needed to monitor compliance.

My office also conducts surveillance reviews of contracting activities, which are periodic reviews to provide recommendations on how to increase opportunities for small business and to ensure the contracting officers are in compliance with small business policies and regulations. The purpose of these reviews is to:

- Assess the quality of a buying activity's small business program;
- Determine whether the activity routinely conducts adequate market research to identify set-aside opportunities and uses each of the small business programs;
- Evaluate the activity's impact on small business; and
- Recommend changes to improve small business participation in the contracting activity's acquisition process, both at the prime and subcontract level.

As a part of these reviews, my team reviews compliance with subcontracting regulations and provides recommendations to agencies on how to improve these processes and procedures to ensure compliance. We are currently in the process of developing a systematic and analytical procedure for conducting surveillance reviews. This method will establish clear and standardized selection criteria for determining contracting activities to review, as well as a standard approach to conducting the reviews.

In addition to these reviews, SBA takes action against firms that violate the limitations on subcontracting. For example, we have proposed firms for government-wide suspension and debarment for violation of these limitations. We recently tightened the rules applicable to the 8(a) program by requiring participants to report on how joint ventures met the limitations on subcontracting in connection with specific contracts, both during contract performance and upon completion of performance. Additionally, as I mentioned to this Subcommittee at a previous hearing, SBA has implemented a comprehensive three-pronged strategy to identify, prevent and pursue non-compliance or fraud across all our government contracting programs. The three prongs of our fraud, waste and abuse strategy are as follows:

1. Effective certification processes
2. Continued surveillance and monitoring
3. Robust and timely enforcement.

This comprehensive strategy has already had significant impact. For example, last year, SBA suspended a large company based on evidence indicating a lack of business integrity in federal procurements involving small business and an intentional disregard for compliance with the limitations on subcontracting and non-manufacturer rule provisions. We are highly focused on being more proactive and effective than ever before in protecting our programs and the legitimate small businesses that benefit from them. In the last two years, SBA has initiated more government-wide suspension and debarment actions than it had in the previous ten years.

Our third area of focus is ensuring agencies and contracting officers have the tools, systems and resources needed to monitor and track subcontracting achievements. We work closely with OFPP and the General Services Administration (GSA) to ensure these tools are available. The two primary systems used to capture federal subcontracting information are: the Electronic Subcontracting Reporting System (eSRS) and the Federal Subaward Reporting System (FSRS).

eSRS captures prime contractors' small business subcontracting accomplishments. Prime contractors enter the percent of their contracts that were subcontracted to small businesses and agencies are able to utilize this data to track and monitor their small business subcontracting performance in relation to their goals outlined in subcontracting plans. FSRS, in support of the Federal Funding Accountability and Transparency Act, collects data on subawards made by prime grantees or prime contractors, such as the amount of the subaward and place of performance. Collecting this data ensures that there is full transparency and accountability of subawards made by grantees or contractors to the general public.

eSRS and FSRS were built on the same platform and both tools pull award information from the Federal Procurement Data System, which captures prime contracting data reported by the agencies. GSA is currently undergoing an effort to combine eight federal procurement systems and the Catalog of Federal Domestic Assistance into one new system, called the System for Award Management (SAM). SAM will provide a single entry point for both contractors and government procurement personnel, integrating not only eSRS and FSRS, but also the other acquisitions systems in that portfolio, to assist in improved overall award management. According to GSA, SAM is being deployed in phases with the first phase is scheduled to be available in the first half of calendar year 2012.

As demonstrated by the initiatives and efforts described in this testimony, SBA has taken great strides to strengthen our small business prime and subcontracting programs and strategy to combating fraud, waste and abuse. These efforts are critical in ensuring small businesses have even greater access to federal contracting opportunities. While we have made significant progress, we continue to look for ways to identify further opportunities for improvement and to maximize small businesses' access to this important source of revenue so that they can grow their businesses and create jobs.

Thank you for allowing me to share SBA's views and initiatives with you today, and I will be happy to answer any questions you may have.