



**Testimony of Ms. Jennifer Bisceglie  
President, Interos**

**On Behalf of  
Women Impacting Public Policy**

**Before the House Small Business Committee  
Subcommittee on Contracting and Workforce**

**“Subpar Subcontracting: Challenges for Small Businesses Contractors”**

**October 6, 2011**

Chair Mulvaney and Members of the Subcommittee, my name is Jennifer Bisceglie. Thank you for inviting me to testify today on behalf of Women Impacting Public Policy (WIPP) a nonpartisan organization that represents nearly one million women business owners with a coalition of 59 organizations that support its policy objectives. I serve as Chair of the Board of WIPP and am President of Interos, a small woman owned company specializing in integrated logistics strategies specifically as it relates to cyber security and supply chain risk management. One hundred percent of our billable work is subcontracting in the federal government sector. Our only Prime contracts are IDIQs: SEAPORT-e and a corporate consolidated GSA contract to include MOBIS and LogWorld.

Just two years ago, my company was growing, we had 10 employees, and we were optimistic about our work with the government. But an unfortunate development transpired with our largest prime contractor. In the span of two months, the prime decided to take away five of those positions without any recourse, so my company was cut in half. I was not able to talk to the government—they only have a relationship with the prime. I could not point to any violations of the subcontracting plan because those were not shared with us. In short, there was not much we could do to change the situation and we felt pretty powerless. If there is a silver lining, it forced us to diversify our customers among prime contractors and we are now seeking prime contracts ourselves so that we could be in control of our contracts but it has been a painful experience.

The title of this hearing “Subpar Subcontracting” encapsulates the experiences of many WIPP members who do subcontracting. Yet, this is the route that is most available

to women owned businesses when it comes to the federal contracting arena. Many of us are happy for the work, but frustrated when it comes to the limited rights our small businesses have with respect to carrying out the work.

The Small Business Jobs Act of 2010 contained an important provision, which WIPP advocated for—a requirement that prime contractors must use subcontractors listed in their subcontracting plans. We refer to it as “if you list us, use us.” Since subcontractors rarely have a direct relationship with the government customer, there are few avenues open to them to solve problems on a government contract, such as the one my company encountered. We are interested in knowing whether this requirement has made any impact in the agencies.

While we are on the subject of subcontracting plans, we wonder if prime contractors actually file the subcontracting plans? Does anyone in the government actually read the subcontracting plans? If no one reads them, how can there be any enforcement? If subcontractors do not have access to the plans, how can they tell if the prime contractor is in compliance?

WIPP does not believe the answer is to do away with filing subcontracting plans, we think the answer is better enforcement of the plans. With respect to primes who do not file their subcontracts, surely technology exists which triggers a red flag when a subcontract is not filed, for ease of monitoring purposes. Reminders are a commonly used tool in calendar software, so it does not seem to us to require extensive government resources to implement this suggestion. It would alert the prime, the contracting officer and the SBA of the missing data.

WIPP also suggests that the federal government should require disclosure of the

portion of the subcontracting plan to the sub that is listed. The government should require the primes to share that information with the subcontractor upon award as opposed to the current system, which if the prime does not readily agree to this disclosure, requires a subcontractor to actually pay for a FOIA report in order to access the information.

A more fundamental problem is the confusion surrounding limitations on subcontracting contained in the Small Business Act. First, we learned something by preparing this testimony because small businesses are told repeatedly by agencies that primes are required to perform 51% of the work. Upon reviewing the law, we found that the actual percentage the prime is required to perform is 50%. Let me just say that if the agencies do not understand the rules, small businesses certainly are not going to understand them. While it is our responsibility as federal contractors to read the FAR and understand acquisition rules, we are, after all, running businesses. This rule just does not make sense.

In the case of service contracts, the prime is required to perform 50% of the **cost** of contract performance incurred for personnel with employees of the prime. As we interpret this, in order for a firm to be in compliance with this requirement, they would have to know their subcontractors' personnel costs to make the calculation. No business we know is going to share that information in either the commercial or government market. Second, this requirement basically requires a cost based accounting system that many small businesses are not required to use – and therefore do not use - due to cost.

WIPP suggests that the Subcommittee take a look at amending the law to achieve the intention of the law, which we believe is to ensure that the prime performs at least

50% of the work. A suggested change that would be helpful in making this rule effective is to require 50% of the **price** of the contract, not the cost of the contract. In addition, it is our view that in the case of small business set aside contracts, the 50% should be calculated by including all small businesses on the contract, both prime and subcontractors. This will ensure a uniform allocation of small business work as more women owned businesses bid for prime contracts.

While we are on the subject of subcontracting plans, we note that there are really two databases in which subcontracting plans are entered—FSRS and eSRS. The FSRS states “Prime Grant Recipients awarded a new Federal grant greater than or equal to \$25,000 as of October 1, 2010 are subject to FFATA sub-award reporting requirements as outlined in the Office of Management and Budgets guidance issued August 27, 2010. The prime awardee is required to file a FFATA sub-award report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to \$25,000.” The eSRS, on the other hand, according to its website collects the following: “This report collects prime contractor and subcontractor subcontract award data for a specific Federal Government agency when a Prime/Subcontractor: (a) holds one or more contracts over \$650,000 (over \$1.5 million for construction of a public facility); and (b) is required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), HUBZone Small Business (HUBZone SB), Veteran-Owned Small Business (VOSB), Service-Disabled Veteran-Owned Small Business (SDVOSB), Alaskan Native Corporations (ANC) and Indian Tribes concerns under a subcontracting plan with the Federal Government.”

It seems to us that the two databases are collecting much of the same information but do not communicate with each other. We suggest the Subcommittee review the systems and suggest changes because this strikes us as another example of wasteful effort on the part of government and the businesses that file the paperwork. We were unable to identify any penalties for noncompliance to either system.

In conclusion, subcontracting is a good way for women owned businesses to get involved in government contracting. With the implementation of the women owned small business procurement program, we expect the ability to bid on more prime contracts will increase. Nevertheless, many small businesses excel in the subcontracting arena. WIPP urges the Subcommittee to examine and push for changes that will make more small businesses successful subcontractors, such as clarification of the subcontracting rule. We believe that compliance requirements can only work if penalties are put into place. WIPP believes that in order to make the subcontracting rule effective, the percentage should be clarified—is it 50% or does the government really mean 51% of the work must be performed by the prime? And in the case of small business set aside contracts, all small businesses on the contract should be counted toward the 50% requirement. Finally, we believe a few basic changes in the electronic reporting systems could result in much better data on subcontracting plans thereby enhancing compliance.

Thank you for giving WIPP the opportunity to testify on this important issue. We welcome any questions.