Joint Hearing of the House Small Business and Oversight and Government Reform Committees

Impact of Political Donation Disclosures

Statement of Marion C. Blakey

President and CEO of Aerospace Industries Association

May 12, 2011

Chairman Graves, Chairman Issa, Congresswoman Velazquez, Congressman Cummings, members of the Small Business and Oversight and Government Reform Committees; my name is Marion Blakey and I am the President and CEO of the Aerospace Industries Association (AIA).

I am here today representing 393 member companies of the aerospace industry and their 800,000 U.S. workers to express our grave concerns about the provisions contained in the draft Executive Order (EO), "Disclosure of Political Spending by Government Contractors." The draft Executive Order (EO) would impose the requirement upon those bidding for government work that they disclose contributions and expenditures that they, their directors, officers, affiliates, subsidiaries—and presumably the directors and officers of those affiliates and subsidiaries--have made within the two years prior to submission of their offer to any federal candidate, party, or party committee and any third party entity that would use those contributions for communications during an election. The company representative submitting the proposed bid would be required to certify that the submission was accurate.

As written, the draft EO would introduce political contributions into the government contracting process. It is unclear how the information would be used by a contracting officer in the source selection process. This creates the possibility that donations to a particular party or candidate will be a consideration when evaluating contract proposals, whether specifically intended or not. This might also have the unfortunate consequence of contributing to the belief among some that particular political contributions are a requirement for winning contracts. **Political contributions should never be considered by any procurement officer when making a decision to either award or deny a contract to any entity.**

The draft EO appears to ignore current law barring government contractors from making "any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any political party, committee or candidate for public office" from corporate funds[1]. In fact, it goes

[1] 2 U.S.C. 441c, "Contributions by government contractors"

well beyond established law, requiring companies to report political contributions their officers and directors have legally made with their own personal funds, thus infringing on contractor employees' First Amendment rights. As drafted, the EO would extend this intrusive reporting requirement to include any employee who has made a political contribution via his or her corporate Political Action Committee (PAC).

Furthermore, under current election law campaigns are required to collect and report data on their donors--including their donor's employers. Today, if you want to know what political contributions have been made by the employees of any federal contractor, you can access a public database and simply begin a search by the employer name and up come the results. **Does providing this information to a procurement official make them any better informed on the merits of a proposal, or simply make them better informed on who has made political contributions to the administration or any other federal candidate?**

In order to comply with this draft executive order, each federal contractor will have to develop, implement and maintain a system to track and record all personal political contributions, to include retroactive contributions upon implementation. This will result in an additional cost burden that will be reflected in a contractor's overhead rates. This is particularly challenging for small companies, such as those in the extensive aerospace supplier base, who do not have a large corporate infrastructure to meet this new federal mandate.

The draft EO flies in the face of the many acquisition improvements enacted in the last two decades, as illustrated in such landmark legislation as the Federal Acquisition Streamlining Act (FASA – P.L. 103-355). Enacted in 1994 with the goal of lowering procurement barriers for companies wishing to do business with the government, FASA addressed the proliferation of administrative burdens associated with government contracting. Should the draft EO be promulgated, new administrative burdens associated with government contracting will be imposed, leaving many contractors, especially the small businesses who simply cannot assume these burdens, on the outside looking in at the government marketplace and its unwieldy and costly contracting processes and procedures.

Further, the certification requirement places an undue risk on small companies in the event that any of their directors, officers, affiliates, subsidiaries or the directors and officers of those affiliates and subsidiaries provide the prime contractor with inaccurate or incomplete information If the company submission for the contract contains a list of donors that is incomplete, even though the company tried to fully comply, they may find themselves in an expensive legal proceeding for violation of Title 18 and Title 31 of the U.S. Code for making false claims or statements. Smaller companies that cannot afford to defend

themselves in these situations may instead opt to avoid government contracting altogether.

This resulting impact is not necessarily restricted to small companies. The FY'96 Defense Authorization Act simplified commercial item acquisition by offering statutory relief from many, if not all, of the government-unique procurement requirements imposed on contractors selling commercial items to the government. If the draft EO with its language imposing disclosure and certification requirements is allowed to go forward, businesses of all sizes that primarily operate in the commercial marketplace are most likely to avoid federal contracting not because of concerns about transparency of political contributions but because of concerns about the burden of complying with the disclosure and certification requirement, as well as the consequences of inadvertent errors in reporting. This potential outcome could leave the government without access to those technologies and services that are vital to carry out its mission.

Requiring disclosure of political contributions by officers, directors, and other employees of the business may also have a chilling effect on an individual's right to engage in political speech in the form of contributions. Current reporting requirements for political contributions do not necessarily require reporting of such contributions to your employer. The draft EO will require that officers and directors report political contributions to their employer as part of their obligation to comply with the disclosure and certification requirement. Individuals may feel uncomfortable making their political views known to their employer through reporting of political contributions, yet the draft EO would require such disclosure, thus connecting employment with political affiliation in a way that would not exist if the individual worked for a business that does not sell to the federal government.

Requirements already exist to ensure transparency of political contributions. Those requirements apply evenly across the board for all individuals and organizations that make political contributions. The EO would impose an undue, additional burden for duplicative reporting by federal contractors that would not apply to individuals and organizations whose conduct is also affected by the actions of the federal government, such as regulatory oversight, but who are not necessarily in the business of selling goods and services to the federal government.

AIA and its member companies support efforts to ensure that there is greater transparency and accountability in the federal contracting arena. However, we do not support actions which would introduce politics into that arena, increase the regulatory burden and risk for companies, or infringe upon the Constitutional rights of a particular segment of the corporate citizenry.

As I stated earlier, **political contributions should never be considered by any procurement officer when making a decision to either award or deny a contract to any entity.** Eliminating any requirement that companies report political contributions to their contracting officers is an important step towards safeguarding against the risk that politics ever gain a foothold as a source selection factor in the federal contracting process.