

**Testimony of
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on behalf of the
U.S. Women's Chamber of Commerce**

**Before the House Small Business Committee
Subcommittee on Contracting and Workforce
for the Hearing
"Continuing Challenges for Small Contractors"
Wednesday, November 18, 2015, at 10:00 a.m.
Rayburn House Office Building, Room 2360**

Chairman Hanna, Ranking Member Velazquez, members of the committee – thank you for this opportunity to provide testimony before the Subcommittee on Contracting and Workforce.

I am Karen Ward, President and CEO of WESSGRP. I am testifying today on behalf of the U.S. Women's Chamber of Commerce. My firm, which is certified EDWOSB by the U.S. Women's Chamber of Commerce, provides system engineering, cyber-security, database administration, software engineering and program management support to the federal government and commercial markets.

Access to federal contracts is vital for the continued growth and vitality of American small businesses, the people they employ and their communities. In today's environment of declining federal spending and declining government suppliers, it is doubly important to ensure transparency in contracting and that the mandatory goal of *maximum practical opportunity* for small business concerns¹ is being met government wide through direct small business prime contracts and subcontracting with small business.

¹ See 15 U.S.C. 644 §15(g)(1)(B): Achievement of Government Goals, <http://goo.gl/Fq268c>
—Each agency shall have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate in the performance of contracts let by such agency. The Small Business Administration and the Administrator for Federal Procurement Policy shall, when exercising their authority pursuant to paragraph (2), insure that the cumulative annual prime contract goals for all agencies meet or exceed the annual Governmentwide prime contract goal established by the President pursuant to this paragraph.

Facts:

- In FY2014 there were 36,000 fewer small business government suppliers than there were in FY2008.²
- Small business awards were \$23.6B less in FY 2015 than they were in FY 2010 – including a large contraction of \$20B between FY2014 and FY2015 alone.³
- Annual SBA goaling reports or procurement scorecards do not tell us how many new suppliers are securing awards each year or how many suppliers are lost or acquired. Nor do they report the acquisition vehicle used or the amount of competition.
- SBA goaling reports or procurement scorecards tell us nothing about the details of contracts and contractors by agency, buying center, region or NAICS. They tell us nothing about the number of small businesses receiving contracts by socio-economic category or the number of actions broken into dollar size ranges.
- And, SBA goaling reports or procurement scorecards tell us nothing about the actions excluded from small business goals.

Annual Small Business and Federal Procurement Reports contain extremely limited information providing few insights into the details of how federal acquisitions and small business goals are being met.

Many on this committee may not know – prior to 2008, much of the informative data I just named as missing from SBA reports was included in an annual Federal Procurement Report.⁴ But, in January 2007, the Small Business Administration announced a sweeping, gutting change to the annual Small Business Procurement Scorecard.⁵ This change, along with the development of the Federal Procurement Data System – Next Generation, rendered the small business and federal procurement reports to be nothing more than a simple list of aggregated spending numbers. The current SBA goaling reports and federal acquisition reports are the antithesis of transparency.

² See <https://www.fpds.gov/>, Unique Vendors Reports from FY 2008 and FY 2014. The Federal Procurement Data System - Next Generation reports there were 144,857 unique small business vendors during FY 2008 vs. 108,762 unique small business vendors during FY 2014.

³ See <https://www.fpds.gov/>, Small Business Goaling Reports

⁴ FY 2007 Federal Procurement Report. Section 1: Total Federal Views - <https://goo.gl/LBUPDQ>, Section 2: Geographic Views - <https://goo.gl/acCBd4>, Section 3: Agency Views - <https://goo.gl/bmFktt>.

⁵ Letter from Fay Ott, Associate Administrator for Government Contracting and Business Development to the Directors of the Offices of Small and Disadvantaged Business Utilization, Re: Small Business Procurement Scorecard Guidance for Fiscal year 2008, 1/10/07.

https://www.sba.gov/sites/default/files/aboutsbaarticle/goals_revised_guidelines.pdf

I ask that Congress act to require the SBA to restore the goaling and federal procurement report format to include the in-depth data and analysis as was present prior to FY2008.

Inappropriate use of “grandfathering” is causing billions of dollars in awards to large businesses to be reported as part of small business goal achievement each year.

Federal agencies may be incorrectly attributing billions of dollars in awards annually as awards to small business – even when the business has been acquired by a large business and no longer qualifies for small business goaling.

13 C.F.R. 121.404(g)(1 and 2) states, a concern that represents itself as a small business qualifies and qualifies as small at the time of its initial offer. . . (and) is considered to be a small business through the life of the contract.

However the following important exceptions apply:

“(1) Within 30 days of an approved contract novation, a contractor must recertify its small business size to the procuring agency, or inform the procuring agency that it is other than small. If the contractor is other than small, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its small business goals.”

And, “(2)(i) In the case of a merger or acquisition, where contract novation is not required, the contractor must, within 30 days of the transaction becoming final, recertify its small business size status to the procuring agency, or inform the procuring agency that it is other than small. If the contractor is other than small, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its small business goals. The agency and the contractor must immediately revise all applicable Federal contract databases to reflect the new size status.”⁶

However, in 2014, SBA Administrator Maria Contreras-Sweet testified before the House Small Business Committee that, “We have a rule in place that says that once you get a contract with government, that you are given five years. And so if a large company acquires a small business, then it is grandfathered in for a number of

⁶ See CFR Title 13: Business Credit and Assistance, Small Business Size Regulations, http://www.ecfr.gov/cgi-bin/text-idx?SID=cb5092954b2d88cc6f0e0b5c902fb1c3&mc=true&node=se13.1.121_1404&rgn=div8

years.”⁷ This statement clearly contradicts the regulations – and the objectives of our government.

Additionally, the government reports regarding small business contracting do not provide transparency as to how many contracts awarded to small companies are truly being performed by small companies over the lifecycle of the contract and on IDIQs at award. There have been many instances where RFPs my firm has competed with companies classified as small but, if reclassified today, would no longer meet the parameters that classify the company as a small company.

I call upon Congress to require the SBA to include details in the annual goaling and procurement reports about the contract actions and dollars attributed to small business goaling with firms that are no longer small.

Exclusions to small business eligible actions rob small businesses of billions of dollars every year.

Each year, the Small Business Administration carves out billions of dollars in opportunities to be excluded from small business goaling. Most of these exclusions are without merit; the practice should be immediately terminated. In FY2014, \$73 billion of federal spending was not included as part of the “small business eligible” actions.⁸ Considering that, at a minimum, 23% of this spending should have been awarded to small businesses – small businesses lost over \$16 billion in opportunities in FY2014 alone.

For example, in FY2014 small businesses lost: \$12.4B from the Department of Defense, \$2.5B from the Department of State, \$2B from GSA. A public report prepared by the Department of the Army tells us, “If all the goaling exclusions were removed for FY14, Army’s base would grow by \$15.37B and small business dollars would grow by \$.71B which would decrease (Army) small business achievement by 5.50%.”⁹

⁷ Testimony of Small Business Administrator Maria Contreras-Sweet, U.S. House Committee on Small Business (Sept. 10, 2014), <https://goo.gl/nUXAMV>.

⁸ Per <https://www.usaspending.gov>, the federal government spent \$445.6B in contract actions. Per <http://smallbusiness.data.gov/>, the SBA attributed only \$367.2B as small business eligible actions. The SBA excluded \$78.4B in contract actions from small business eligible actions.

⁹ The Impact of Small Business Exclusions on Army’s FY14 Performance, 4/13/15. <http://www.sellingtoarmy.info/content/impact-small-business-exclusions-army%E2%80%99s-fy14-performance>

In 2001, the General Accounting Office directed the Small Business Administration to, “re-assess its rationale for making certain types of exclusions.”¹⁰ The GAO noted, “Since fiscal year 1998, SBA has directed FPDS to exclude certain types of contracts when calculating annual small business prime contract achievements.” However, “SBA’s rationale for making these exclusions is not documented.”

This report states that the reason for excluding foreign sales, contracts performed outside the United States, American embassies and certain actions by the Federal Highway Administration is because “small business have limited chance to compete for awards.” The report also finds SBA’s annual guidance on these exclusions “is confusing and incomplete.”

As a small company and a lead for small companies prior to starting my own firm, I have seen and demonstrated that small companies are capable of performing work overseas.

There can be no justification for claiming that American small businesses have limited chance to compete for awards pertaining to contracts performed outside of the U.S., foreign sales and American embassies – nor has the SBA provided evidentiary data to support this claim. Quite the contrary. In May 2015 the SBA Associate Administrator of Government Contracting stated: “We couldn’t find a justification to continue to exclude overseas contracts. So coming in 2016, we’re working with the Office of Federal Procurement Policy, Defense, USAID and State on including those contracts in the base.”

I ask that Congress act to require the SBA to end these unwarranted exclusions from small business goaling and require that any exclusions be fully reported and justified in small business goaling reports annually so that the entire small business community might see the billions of dollars of opportunity lost every year.

The federal government is still not meeting its subcontracting goals. Holding large business prime contractors accountable for their subcontracting plans can help the government meet these goals.

Subcontracting opportunities are very important to small business suppliers. As part of the Small Business Jobs Act of 2010, the SBA implemented rules that require prime contractors to ensure small business concerns are given the “maximum practicable opportunity” to participate in the performance of the work and conduct

¹⁰ Small Business: More Transparency Needed in Prime Contract Goal Program, U.S. Government Accounting Office, August 2001. <http://www.gao.gov/assets/240/231854.pdf>

market research to identify small business subcontractors and suppliers through “all reasonable means.”¹¹

As a subcontractor, I have seen issues associated with the ability to perform the work within the rates defined by the large prime. A prime contractor may detail a number of subcontractor positions on their subcontracting plan – but, the actual dollars attributed to these subcontractors for the work to be performed is not executable by the subcontractors. On several subcontracting plans, where my company has provided resources and capabilities and where the list of small businesses participating are within the framework defined by the subcontractor requirements, the rates provided for the subcontractor are not executable. Consequently, due to the inability of the small business contractors to fill these positions, the large prime ultimately fills the position with their own personnel.

I believe it is important to place a cornerstone of accountability at this juncture – to assure that prime contractors are adhering to “maximum practical opportunity” requirement. Federal code states that Procurement Center Representatives shall, “be an advocate for the maximum practical utilization of small business concerns in Federal contracting.”¹² As such, it is appropriate for PCR’s to delay the acceptance of prime contractor subcontracting plans should these plans not exhibit maximum practical small business participation.

I ask Congress to require Procurement Center Representatives to review all subcontracting plans to make sure these plans are assuring the “maximum practical opportunity” for small businesses to participate in the performance of the work and empower the PCRs to delay the acceptance of prime contractor subcontracting plans should these plans not meet this requirement.

Thank you for this opportunity to provide testimony and thank you for your efforts on behalf of small business federal suppliers.

¹¹ See Federal Acquisition Regulations, 52.219-8 Utilization of Small Business Concerns, https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1136032

¹² See 15 U.S.C. 644 §15(l)(2)(H), Awards or contracts. <https://www.law.cornell.edu/uscode/text/15/644>