

**SMALL BUSINESS CONTRACTS:
HOW OVERSIGHT FAILURES AND REGULATORY
LOOPHOLES ALLOW LARGE BUSINESSES TO GET
AND KEEP SMALL BUSINESS CONTRACTS**

HEARING

BEFORE THE

AD HOC SUBCOMMITTEE ON CONTRACTING
OVERSIGHT

OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

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TUESDAY, JULY 26, 2011

U.S. SENATE,
AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:06 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Claire McCaskill, Chairman of the Subcommittee, presiding.

Present: Senators McCaskill, Tester, and Portman.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. The hearing will now come to order. I know that Senator Portman will be here, and I know he would want us to go ahead and begin, and we will defer to him as soon as he arrives. Let me begin with my opening statement.

This week Washington is focused on the debt ceiling and the looming possibility that our country will default on our obligations. This is a time for all of us here to take a hard look at the way the government is doing business.

Today's hearing is about restoring honesty, transparency, and accountability to one particular part of the government's books: The way that the government awards and tracks small business contracts.

Several decades ago, Congress passed legislation establishing annual goals for small business contracting. The goal is now set at 23 percent. Last year, the government announced that it had reached 22.7 percent.

This is a laudable achievement. Unfortunately, as today's hearing will show, it is also an empty achievement. Many of the contracts that the government counts when it tallies the awards it says have gone to small businesses are, in fact, performed by large businesses. Today, we are going to examine how it is that a system that should be helping small businesses is, in fact, doing little more than helping the government play a numbers game.

This is not the Subcommittee's first hearing on problems with small business programs. Two years ago, the Subcommittee held a hearing on the multiple preferences for Alaska Native Corporations (ANCs) in the Small Business Administration's (SBA's) 8(a) pro-

gram for small and disadvantaged businesses. At that hearing we examined how special preferences in the 8(a) program allowed Alaska Native corporations—many of which are very large businesses indeed, with revenues far in excess of \$100 million per year and multiple subsidiaries—to be considered “small” businesses by the Federal Government.

Today we are going to look at some of the other ways that the government’s small business rules benefit large corporations. Since 2005, the SBA Inspector General (IG) has included in their list of the agency’s top management challenges the fact that many contract awards recorded as going to small businesses are actually performed by large businesses.

In many cases this happens because the current regulations allow contracts to be counted this way. In preparation for this hearing, we looked closely at the ways that the size standards for small businesses allow the government and contractors to game the system to their advantage. The SBA sets size standards for businesses for each of the more than 1,200 industries defined under the North American Industrial Classification System (NAICS), a business classification system maintained and used by the U.S. Census Bureau for statistical purposes.

When the Federal Government awards a contract, the contracting officer (CO) determines the North America Industrial Classification System code to describe the product or service being bought. NAICS is the acronym for this code, the classification system. The size standard for the NAICS code defines the size of business that can be counted as small for the contract based on either a business’ revenue or the number of employees it has.

Yet even though the contracting officer should have the ability to choose a NAICS code that best fits the contract, SBA has created a special exception that swallows the whole rule. Even if you do not make anything and you are just buying products from a large business for resale to the government, with a markup, you get to be considered a manufacturer. This allows a bigger size standard to be used, which means that a business that might be too large to qualify as small can get the contract, and the government can count the dollars toward meeting their small business goals.

For example, one contractor, immixTechnology, resells commercially available information technology hardware and in 2009 had approximately \$400 million in revenue and 150 employees. In 2010 immixTechnology received more than \$18 million in new small business contracts for resale and wholesale contracts. SBA generally limits wholesale companies to a maximum size standard of 100 employees and retail companies to a maximum revenue of approximately \$7 million to \$30 million, depending on the industry, both standards that immixTechnology far surpassed. But SBA has also created an exception which requires the government to use the classification for a manufacturing company for contracts like this one, which sets the size standard at 500 employees. All of a sudden, a big company like immixTechnology, for all intents and purposes, is called “small” for the government’s books.

In meetings in preparation for this hearing, the Subcommittee learned that the NAICS system was not designed for use as a government contracting tool. That disconnect may be at the root of

some of the abuses that we now see in small business contracts. I am going to be asking our witnesses today whether there is a more rational way of determining size.

I will also be asking questions today about all the complicated ways that small businesses certify that they are small and what happens when they grow large or get bought and are not small anymore by anyone's standards.

My biggest concern here is that the system doesn't seem to make sense. Small businesses are one of the most important parts of the U.S. economy, and government contracts can be an important economic opportunity for small businesses and an effective way that the government can use its spending power to help small businesses succeed. We need to make sure that the system provides them the opportunities that they need to be successful. We do not need to be spending taxpayer dollars to prop up a system that allows the government to take credit and large businesses to profit at the expense of the small businesses that the system is meant to help.

I thank the witnesses for being here today, and I look forward to their testimony. Senator Portman.

OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. Thank you, Madam Chairman. I appreciate your holding this hearing. And as you just said, this is an issue that this Subcommittee has looked at before, so I appreciate your continued focus on it, and I am glad to be joining you today to take it to the next step. I think it is critical that this good work you have already started continues.

This hearing on small business comes at a difficult time, doesn't it? We are looking at high unemployment, over 9 percent nationally, and when you really look at the numbers of people who are not looking for work anymore or are underemployed, it is closer to 16 percent in Ohio. Those are about our numbers. We are looking at not just relatively high unemployment but also people being unemployed for a long time. This is a record number of folks being unemployed for 6 months or more. So we have a lot of challenges in front of us, and small businesses are being looked to pull us out of what is a very disappointing recovery.

And that has always been true. When you look back in history, whether it is the Great Depression or recessions we have been in before, it is small businesses that tend to hire first and tend to bring us out, and we are not seeing that in the way that we should. I think there are a lot of reasons for it. We are not creating the conditions for small businesses to be able to grow and prosper. There is a lot of uncertainty out there. I think we are talking about that on the floor of the Senate and the House this week. Part of that uncertainty is where we are going with the budget deficit and the taxes and regulations and so on.

The Small Business Administration, of course, is supposed to be helping to create more economic activity among the risk takers and innovators and small businesses, so this is an appropriate focus for us today.

I am told that over two-thirds of the new net jobs over the past 15 years have been created by small businesses, by the way. Those are SBA numbers.

I grew up in a small business, as did a lot of Americans. My dad started a small business when he was 40 years old. He left a job as a salesman, and he risked it all. He lost money the first few years, but it finally caught on, and he went on to be a successful small business person, as is my brother, who still works at the company. And if we do not get these small business entrepreneurs and innovators back in the game again, creating jobs and opportunities, we are not going to be able to get out of either the economic issues we are in or also to be able to deal with our fiscal challenges because we need more growth.

So this, again, is an appropriate hearing at a time when we need to be focused on how do we get these businesses going.

By the way, U.S. Bank recently did a survey of small businesses nationwide, and they reported that 75 percent of small businesses have no plans to expand in the next 12 months. So we need to do everything we can to try to help them expand.

One of the things that can be done is to ensure that any Federal program that is designed to promote economic development and promote small businesses is working, and working efficiently and effectively and has measurable results to help get us back on track.

The contracting set-aside programs that the Chair talked about a moment ago created by the Small Business Act are among the tools we can use to help small businesses. These programs open the doors to procurement opportunities, and we are going to hear a lot about that from the witnesses today, some of whom have been doing this for a long time and can tell us whether it is working or not. The Chair just talked about some of the definitional problems. What is a small business? How often do they have to report? Is once every 5 years adequate? What happens when a small business becomes a big business? Should they still get the same set-aside?

And, by the way, this is no small line item. In Fiscal Year 2010 the SBA reported that Federal agencies awarded nearly \$98 billion of all prime contracts to small businesses. That is just shy of that 23 percent yearly target that is established by law, and we have to be sure that target is met and that it is done, again, in a way that truly helps small businesses. Oversight is important here, and, again, that is what this hearing is about.

One of the perennial challenges has been the problem of unqualified large businesses profiting from these small business contracts. The SBA Inspector General has identified this issue as a top management priority every year since 2005, and it is appropriately, again, a focus of the hearing today.

More broadly, we have seen that the enticement of limited competition has led to fraud and misrepresentation across several small business contracting programs. For example, the Government Accountability Office (GAO), reported last year that it identified 14 firms that received set-side or sole-source 8(a) contracts worth \$325 million through fraud, and, again, this is an appropriate focus of this Subcommittee. These 14 firms then received another \$1.2 billion in other Federal obligations since entering the 8(a) program, including \$17 million in awards through the 2009 stimulus bill.

So fraud and oversight failures like these are unacceptable. We need to focus on them and figure out how to stop them. They not only short-change the taxpayers but, of course, those businesses that should be benefiting are injured.

I look forward to hearing from our good panel here today, Madam Chairman, and, again, thank you for holding this hearing. I look forward to a good conversation about the management and oversight challenges in these small business contracting programs.

Senator MCCASKILL. Thank you, Senator Portman.

Senator Tester, thanks for joining us this morning. Would you like to make an opening statement?

OPENING STATEMENT OF SENATOR TESTER

Senator TESTER. I would. Thank you, Madam Chairman, for having this hearing, and I want to thank the witnesses for being here today. We all understand how important it is creating jobs. We also understand that there is no more proven job creator than small businesses. Montana is no exception where the vast, vast majority of our businesses are small.

Right now many of these businesses are struggling. The uncertainty of a debt ceiling is probably part of the reason. We need to do a better job of coming together here with reasonable solutions, but these small businesses are not looking for a bailout or a hand-out. They are looking for a level playing field so that they can compete, and one thing that we can do here is make sure that level playing field is, in fact, level. And we should not allow the large businesses to come in and elbow out the small ones to get those contracts that are set aside for the small businesses.

This, quite frankly, from my perspective is going to be something that saves the government money, and I think that the Chairman talked about approaching the 23 percent, but, in fact, that is not what has occurred at all. So we need to do a better job making sure that the small business carveout actually does go to small businesses, and I am eager to hear from the witnesses how we can improve that process, how we can make it better, how we can eliminate the loopholes, the waste, the fraud, the abuse so that businesses truly do get a fair shake. And so I want to thank you for that, Madam Chairman.

On a side note, I would say it is good to see that you still have John LaBombard working on your staff. It is good to see that he still has gainful employment.

Senator MCCASKILL. He has lasted a couple of weeks. It is great.

This is an inside joke. I stole this staff member from Senator Tester, so he is cranky about it. [Laughter.]

Senator TESTER. Actually, I gave him a great recommendation.

Senator MCCASKILL. You did, in fact, and it is great to have him.

Let me introduce our witnesses for today. Joseph Jordan was appointed as Associate Administrator of Government Contracting and Business Development at the United States Small Business Administration in March 2009. Prior to joining SBA, Mr. Jordan was an engagement manager with McKinsey & Company, a global management consulting firm.

Mauricio Vera is the Director of the U.S. Agency for International Development's (USAID) Office of Small and Disadvantaged Business Utilization (OSDBU). Since October 2009, Mr. Vera has served as Chair of the Federal Office of Small and Disadvantaged Business Utilization Council. Before joining USAID, Mr. Vera managed the small business program at the U.S. Nuclear Regulatory Commission. Mr. Vera has also served as a Senior Financial Analyst at the Small Business Administration.

Mindy Connolly was appointed to be the Chief Acquisition Officer (CAO) of the General Services Administration (GSA) in February 2011. Prior to joining GSA, Ms. Connolly was a Senior Procurement Policy Analyst at the White House Office of Federal Procurement Policy (OFPP). Before joining the Federal Government, she worked in acquisition for Honeywell International's Defense Division.

It is the custom of this Subcommittee to swear in all witnesses that appear before us, so if you do not mind, I would ask you to stand. Do you swear that the testimony you will give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. JORDAN. I do.

Mr. VERA. I do.

Ms. CONNOLLY. I do.

Senator McCASKILL. Thank you very much.

We will begin our testimony this morning with Mr. Jordan. Welcome and thank you for being here.

STATEMENT OF JOSEPH G. JORDAN,¹ ASSOCIATE ADMINISTRATOR, OFFICE OF GOVERNMENT CONTRACTING AND BUSINESS DEVELOPMENT, U.S. SMALL BUSINESS ADMINISTRATION

Mr. JORDAN. Thank you, Madam Chairman. Chairman McCaskill, Senator Portman, and Senator Tester, thank you for inviting the U.S. Small Business Administration to testify this morning. And having been at the hearing 2 years ago that you referenced, it is very nice to be back. My name is Joseph Jordan, and I am the Associate Administrator for the SBA's Office of Government Contracting and Business Development.

My office works each day to ensure that small businesses receive their fair share of over \$400 billion in Federal contracts. We are always looking for ways to increase small business contracting opportunities, and I am proud to say that in the 2½ years I have been in my position, we have made significant improvements.

Today I would like to share with you three key initiatives that my office has been focused on: One, the small business procurement goaling process and scorecard; two, our three-pronged approach to combating fraud, waste, and abuse; and, three, the implementation of the Small Business Jobs Act (SBJA) of 2010.

First I will discuss the small business procurement goaling process and scorecard. SBA oversees the Federal Government's efforts to meet the statutorily mandated small business goals, including the goal of awarding 23 percent of prime contracting dollars to small businesses.

¹The prepared statement of Mr. Jordan appears in the appendix on page 31.

The first part of the goaling process is working collaboratively with all 24 CFO Act agencies to set small business procurement goals for each of them using a fact-based and data-driven approach.

The second part of the process is to continually monitor progress toward these goals and to provide training and support to agencies wherever needed.

The last and most public phase of the goaling process is the publication of our annual scorecard. Last month we published the Fiscal Year 2010 scorecards which showed that the government awarded 22.7 percent of contracting dollars to small businesses, marking the largest 2-year increase in over a decade. While we will always push to do more, we are proud of the improvement we have made in the scorecard process and methodology. Two years ago we redesigned the methodology to provide a clearer, more transparent report of small business contracting performance and to ensure the scorecard would incentivized the desire outcomes.

Additionally, although only the agency awarding a contract may enter or modify its data, SBA has developed a robust data quality review process to identify any potential anomalies. We work closely with agencies to resolve these anomalies after they have certified their data to the Office of Management and Budget's (OMB's) Office of Federal Procurement Policy and GSA and before we publish the scorecard.

It is also important to note that there are many legitimate reasons for a small business contract to look like it was awarded to a business that is other than small such as: If a business grows out of being small during a multi-year contract, regulations consider the recipient to be small for up to 5 years or the length of that contract, whichever is shorter.

Second, many firms operate in multiple industries and may meet the size standard to be considered small for some of them and not for others. We work closely with the Office of Federal Procurement Policy, the Defense Acquisition University, and the Federal Acquisition Institute to ensure contracting officers have appropriate training on how to classify and report these contracts.

I would now like to share our approach to combating fraud, waste, and abuse in our contracting programs. We have no tolerance for fraud, waste, or abuse in these programs and have, therefore, implemented a comprehensive, three-pronged strategy to identify, prevent, and pursue fraud across all government contracting programs.

The first prong of our strategy is designed to ensure that there are effective certification processes on the front end and make sure only qualified eligible firms participate in these programs.

The second prong is conducting continued surveillance and monitoring on these firms once they are in our programs.

The last prong of the strategy is taking robust and timely enforcement on any non-compliant or fraudulent firms.

We have made significant improvements in all three phases and maintain our focus on ensuring benefits of small business contracting programs only flow to the intended recipients.

Last, I would like to share our efforts to implement the Small Business Jobs Act of 2010. We thank Congress for passing this important piece of legislation which included 19 provisions related to

small business contracting. We are in the process of implementing these provisions and are excited about the impact they will have not only on small businesses but also in improving the contracting oversight process. These three initiatives demonstrate the steps that SBA has taken to strengthen our goaling process, data quality efforts, and approach to combating fraud, waste, and abuse. These efforts are critical in ensuring small businesses gain access to Federal contracting opportunities.

While we have made significant progress, we continue to look for ways to identify further opportunities for improvement and maximizing 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 that you may have.

Senator McCASKILL. Thank you, Mr. Jordan. Mr. Vera.

STATEMENT OF MAURICIO P. VERA,¹ CHAIR, INTERAGENCY COUNCIL OF FEDERAL OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION DIRECTORS, AND DIRECTOR, OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Mr. VERA. Good morning. Chairman McCaskill, Senator Portman, Senator Tester, thank you for inviting me to testify this morning. My name is Mauricio Vera, and I am the Director of the U.S. Agency for International Development's Office of Small and Disadvantaged Business Utilization. I also currently serve as the Chair of the Federal OSDBU Directors Interagency Council, and it is in that capacity, not as a representative of USAID, that I was invited to speak to you this morning.

Section 15(k) of the Small Business Act requires that all Federal agencies with procurement powers establish an OSDBU. OSDBU Directors are the primary small business advocates within each Federal executive agency, responsible for promoting the maximum practicable use of all designated small business categories within the agency's Federal acquisition process. OSDBU Directors are tasked with ensuring that their agency and its prime contractors comply with Federal laws, regulations, and policies related to the award of contracts and subcontracts to small businesses. By law, OSDBU Directors shall report directly to the agency head or the deputy. This is important because it helps to ensure that OSDBU Directors have direct access to their agency's top decisionmakers in order to advocate effectively.

The Federal OSDBU Directors Interagency Council is an informal organization of Federal small business program officials that meets monthly to discuss issues that are important to accomplishing our respective missions and share best practices for the utilization of small businesses. The Council is led by an Executive Committee that is elected annually for 1-year terms by the voting membership. At the end of September, I will complete my second year as the elected Chair of the Council. Although the Chair is elected by the group, he or she has no authority to speak for any

¹The prepared statement of Mr. Vera appears in the appendix on page 39.

of the individual members of the Council. And while every Director formally advocates for the priorities of his or her agency, the Council does share some common goals, and these include: Ensuring that information is disseminated to small businesses so that they can be fully informed as to the Federal laws, regulations, and programs that are relevant to their pursuit of Federal prime and sub-contracts; advocating Federal Government-wide compliance with laws, regulations, and policies designed to maximize the participation of small businesses; advocating training of the Federal procurement workforce and community in the principles and methodologies to maximize small business utilization; and, most importantly, identifying best practices, sharing ideas, and experiences among Federal agencies and private industry that will help leverage resources and develop solutions to more fully utilize small businesses in Federal procurement.

Agencies are mandated to establish small business procurement goals and negotiate these with the SBA prior to the beginning of each fiscal year.

For the past several years, as Joe alluded to, the SBA has also issued a Small Business Procurement Scorecard to, one, measure how well agencies are meeting their small business; two, provide accurate and transparent contracting data; and, three, report agency-specific progress. Each agency's overall grade is comprised of three quantitative measures: Prime contract goal accomplishment, subcontracting goal accomplishment, and progress plans for meeting its goals.

One of the measures in the progress plan section of the scorecard is that agencies should "demonstrate that small business data is accurately reported in the Federal Procurement Data System (FPDS)." The Federal Acquisition Regulation (FAR) and supplemental guidance from OMB's Office of Federal Procurement Policy also require agencies to annually verify that agency data captured in FPDS are complete and accurate. OFPP policy letters require agencies to verify that agency policies, procedures, and internal controls include regular reviews of procurement data and that agencies are appropriately sampling procurement records for accuracy on key data elements.

SBA provides each of the 24 agencies covered under the CFO Act an individualized anomaly report for the previous year. These anomalies are evaluated by the agency, and then the agencies are instructed to review and investigate each of them and either correct those that are in error or provide SBA with an explanation of why the transaction should not be corrected.

A number of OSDBU Council member agencies are taking concrete steps to mitigate the possibility of large businesses obtaining contracts that are set aside for small businesses and ensuring that their small business data are valid. Some of the best practices at various agencies include: Adding responsibility and accountability for data accuracy as an element in contracting officers' and other contracting officials' performance plans; mandating that contracting professionals participate in training that emphasizes the importance of accurate reporting; conducting random sampling of procurement actions to determine if businesses are coded correctly in FPDS and correcting those that have been miscategorized; and,

last, encouraging small businesses to update their information in the Central Contractor Registration (CCR) or Online Representations and Certifications Application (ORCA) databases to accurately reflect size and socioeconomic business status.

Thank you again for the opportunity to testify before your Subcommittee. Members of the Federal OSDBU Directors Interagency Council are committed to helping small businesses get their fair share and that our acquisition systems produce the good results that our taxpayers deserve. I welcome the opportunity to seek your advice and counsel on this important matter and am pleased to answer any questions you might have.

Thank you.

Senator McCASKILL. Thank you, Mr. Vera. Ms. Connolly.

STATEMENT OF MINDY CONNOLLY, PH.D.,¹ CHIEF ACQUISITION OFFICER, U.S. GENERAL SERVICES ADMINISTRATION

Ms. CONNOLLY. Good morning, Chairman McCaskill, Senator Portman, Senator Tester, and Members of the Subcommittee on Contracting Oversight. It is a pleasure to be here today to testify on behalf of the General Services Administration. My name is Mindy Connolly, and I am the Chief Acquisition Officer of GSA. This morning I will provide a summary of my written statement, which was submitted to the Subcommittee.

GSA shares the perspective on small business contracting and related data quality concerns in the findings of the Presidential Interagency Taskforce on Federal Contracting Opportunities for Small Business. We are working together with our colleagues at SBA to implement the task force recommendations while making progress to increase small business awards and improve data quality within internal GSA operations.

The task force identified three priority recommendations for Federal contracting: First, providing Federal contractors with stronger rules; second, developing a better equipped, informed, and more accountable workforce; and, third, improving outreach and making better use of data.

It is critical that these improvements be examined at the intersection of policy systems, our acquisition workforce, and business interests and behavior. Policy drives the regulations and business rules around which our systems are managed. The harmonization of policy and systems and training is needed to ensure only small businesses are the beneficiaries of intended contracting policy.

GSA recently received a grade of A from the SBA for our Fiscal Year 2010 small business performance.² Every member of the GSA leadership team is proud of the acquisition workforce across GSA that led to that success. In addition to meeting our own goals, our Federal Acquisition Service (FAS) helps other agencies accomplish their mission through our multiple award schedule (MAS) contracts, governmentwide acquisition contracts, and assisted acquisitions. Across the multiple award schedule contracts, over one-third of the orders go to small businesses, helping other agencies to meet or exceed their small business goals.

¹The prepared statement of Ms. Connolly appears in the appendix on page 43.

²The scorecard referenced by Ms. Connolly appears in the appendix on page 49.

The first priority of the task force is to strengthen rules and policies in order to promote contracting opportunities for small businesses. Many steps toward strengthening the rules are set forth in the Small Business Jobs Act of 2010, which, among many changes, promotes the increased transparency in contract awards to small businesses. SBA has the programmatic lead to issue policy, implementing the changes mandated by the Jobs Act. The FAR Council, of which GSA is a signatory agency, is paying close attention or is involved in those discussions, and I expect we will open a FAR case or cases to address the revised SBA regulations.

One regulatory issue for attention is the snapshot in time when a size determination is made to classify a business as “small” and thus eligible for the benefits reserved for small businesses.

When acquisition policy changes, acquisition systems changes must follow. Coordinating with the Chief Acquisition Officers Council and the Acquisition Committee for Electronic Government (ACE), GSA is the managing partner of the Integrated Acquisition Environment (IAE). The IAE is a set of governmentwide systems used by the Federal community and by those who seek to do business with the government. To better serve stakeholders, GSA is developing a new System for Award Management (SAM), that will replace the current FPDS-NG system. Once implemented, SAM will provide a single user-friendly interface that will reduce burden and errors among contracting officers and vendors alike. Reducing user error and duplicative entry improves data quality. In turn, improved data quality creates more accurate reporting and fosters improved decisionmaking.

As we move forward, the entire acquisition workforce will be critical to ensuring regulatory implementation achieves the intended objectives. To assist in meeting this challenge, GSA’s Federal Acquisition Institute is developing a Small Business Programs online continuous learning module, due to launch in September 2011. This module helps members of the acquisition workforce understand the current tools, processes, and resources available to facilitate proper awards to small businesses.

As Chief Acquisition Officer, I am committed to ensuring GSA maintains acquisition excellence in all of our activities, including small business contracting and reporting.

Chairman McCaskill, Senator Portman, Senator Tester, I am glad to answer any questions of the Subcommittee. Thank you.

Senator MCCASKILL. Thank you all for being here.

We will try to do 7-minute rounds, and we will do as many as we need to do to get everyone’s questions.

Let me begin. There are many problems here, and some of it is just a matter of complexity, but let me get at one of the more simple issues, and that is, should a contract be counted as small for the life of the contract? Let me give you an example. There is a Virginia-based company called VSE Corporation which now has over 2,800 employees and \$363 million in revenue. VSE is doing quite well and good for VSE. I am glad they are. That is not the issue. VSE is no longer listed as a small business, obviously. No casual observer would ever claim that VSE is a small business. Nevertheless, the Defense Department awarded a contract worth up to \$2.6 billion in 2008 to VSE as a small business, and the dollars obli-

gated to VSE under that contract today are still counted by the Defense Department toward its small business goals. The Department likes it. SBA probably likes it. But I do not see how that spurs the Department toward looking for small businesses in Missouri or other places to fill annual small business contracting goals. Today over \$30 million—today, with this company being the size that it is, over \$30 million in task orders under this contract are still counted toward small business contracting goals.

Doesn't keeping this contract on the record books as a small business contract skew the entire purpose behind keeping track of small business contracts, Mr. Jordan?

Mr. JORDAN. I do not believe so, Madam Chairman. I think that, as you rightfully said, this company has recertified their status, so any future awards that they would receive would not be through small business set-asides, and those dollars would not be counted as small.

I think what is behind the current regulations that say before your sixth year of a contract—so the length of the contract or 5 years, whichever is shorter—the agency may continue to receive small business credit for those dollars is intended to encourage agencies in an environment where we have 30,000 contracting officers trying to execute 5 million contracts and contract actions annually to do that in an effective and efficient way and find these multiple award contract vehicles that they can get into the hands of small businesses without penalizing that contracting officer and that agency by then locking in all those dollars into their spend base but not giving them any small business credit in the numerator because they did such a good job finding these small businesses that those small businesses grew and exceeded the size standard.

So I think it would be wrong if that entity went out and competed against other small businesses now and won any award, but at the time of their offer for that contract they were small. They received that contract—I do not know the individual case, but this does happen, as you have noted, more than just one time. They were right to receive that contract in being a qualified small business, and then at the end of 5 years or the life of that contract, whichever is shorter, they can no longer be counted as small.

Senator MCCASKILL. Well, I guess, I understand from your perspective you do not want to penalize the agency or the business that has grown. On the other hand, it inherently makes the number really misleading because they are—I mean, this is one example, but there are thousands of these examples where we are continuing to count toward a small business goal companies that are not small by anybody's measure.

So I guess what I am saying is by taking the position you are taking, you are essentially saying to the public, "By the way, we are saying 22.7, but do not believe it."

Mr. JORDAN. Well, on that point, I think we all strive for perfection, and we definitely want every single dollar that says it is going to small businesses to be going to small businesses, and we will do more to make sure that happens and that we hit the 23 percent, there is no fraud, waste, and abuse, small business contracts are going to small businesses.

When you look at it on a relative basis versus everything that has ever happened before, not only is the greatest 2-year increase in 10 years, but it is also done with the cleanest data ever. So we are very proud of that. What we have done on the specific issue is try to balance—keeping a level playing field, as Senator Tester said, so at the time of competition for a small business set-aside all those businesses are only small; do incentivize contracting officers and agencies to get contracts in the hands of small businesses; and then, balance with things like when there is a merger or acquisition, then they do have to recertify; they do have to go back and they will not get small business credit for that anymore, and a lot of contracting officers and agencies get frustrated because they say, Joe, I found this great small business. I locked in a 5-year contract with them. I am very excited that we are going to have all these small business dollars in our spend. But then the next day, fill-in-the-blank household large business bought them, and now I have locked that 5-year spend into my denominator, but I am not going to get any credit for that. I am going to, in fact, get penalized for it when you come out with the scorecard and show in a transparent way how we have done.

So we try to balance both sides of that to keep the behaviors we want incentivized but also, make sure that we feel we are confident that the small business contracting numbers we report are accurate.

Senator MCCASKILL. Yes, well, they are not.

Let me quickly go through this other question, and I may go over a little bit of the 7 because there is just a minute 31 left. But there are NAICS codes for manufacturing, and then there are NAICS codes for retail trade. And there are codes for wholesale trade, and there are codes for service. Yet SBA directs contracting officials to not use the codes for retail and wholesale and requires them to use manufacturing, which has much higher size standards.

For example, if you are in the resale business, if you do not make anything, you just buy and resell it, your size will be determined, as the case with manufacturers, based on the number of people you employ, not on your revenue, which allows many companies to be counted as small that might not otherwise qualify.

We looked at a number of examples and found some disturbing ones. For example, one business was awarded a contract for “other computer peripheral equipment manufacturing,” which lets businesses count up to 1,000 employees before it is no longer considered small, even though the business was not manufacturing a single thing. That business had a \$3 million contract to sell toner to the government. So all it was done was performing a middleman function selling toner, printer toner, to the government, and they were counted as manufacturing under the much higher standard.

How can you justify that?

Mr. JORDAN. So procurements are classified based on what you buy, not who provides them. So wholesale and retail NAICS codes, North American Industrial Classification System codes, do not apply to government procurements. So for a supply contract—

Senator MCCASKILL. Well, why not?

Mr. JORDAN. Because, again, the procurements are classified based on what is being purchased.

Senator MCCASKILL. Why? If they are performing a retail function, why don't you use the code for retail? Because that is what these guys are doing. They are not making anything.

Mr. JORDAN. The theory is that we are trying to get, again, small businesses on a level playing field to be able to compete while not just having them either inappropriately participate or act as a pass-through. So that is why we ask an agency for supply contracts to assign the NAICS code. To be eligible for a set-aside, the firm must manufacture the product of a small business. But you are right. The non-manufacturer size standard is 500 employees.

So it is an issue that we look at quite a bit. When do we grant non-manufacturer waivers? How do we make sure that we have small businesses in the process wherever they can compete and provide the government the best value? But it is definitely an issue that we continue to look at.

Senator MCCASKILL. Well, it does not make any sense. I mean, these guys are just selling toner. They are just a pass-through. Why in the world would you use the standard for manufacturing that is much, much higher? There is no reason to do that unless you are trying to pigeonhole people into a small business category that really are not a small business category. It seems to me that it is as plain as the nose on your face that this does not work.

My time is up, and I want to turn it over to Senator Portman, but I need a better answer than this is just the way we do it, because all this does is, once again, skew the numbers in a way that in the long run harms small businesses, because everybody gets complacent and fat and happy that we are making our 23-percent goal when in reality we have a monster-size company that is just selling toner that is beating out a whole lot of small businesses that might be able to sell that toner for the same price. Senator Portman.

Senator PORTMAN. Thank you, Madam Chairman.

Let me followup a little bit on the large business issue. You talked, Mr. Jordan, about the 5-year certification, which is current law. A simple question. Do you think there ought to be a recertification as a small business more frequently than the 5-year period?

Mr. JORDAN. Well, yes. As the Small Business Jobs Act has instructed us to do and we are now in the process—actually those regulations are over at OMB, so we are really getting them through the process pretty quickly on a relative basis. That dictates that in the Online Representations and Certifications Application, ORCA. This is the place that contracting officers go look and say, "Is this business small or not?" Small businesses must recertify now on an annual basis.

Now, for the Chairman's question, that does not affect that issue of if they were small at the time of offer and won that award that the rule is still 5 years or the length of the contract, whichever is shorter. But it will make sure that on an annual basis they are updating—on a minimum of an annual basis. If they exceed their size standard, they should do it like that. If they are bought, they should do it like that. But on a minimum of an annual basis, they are going into ORCA and updating their certification of size.

It also instructs us to review all of the size standards, which touches all of these issues within a 5-year period, and we are undergoing that right now.

Senator PORTMAN. I am not sure I understand why it doesn't address the Chairman's question. It doesn't address it because those are contracts that have already been entered into and they would not be affected?

Mr. JORDAN. Because the annual recertification of size will ensure that when there is a small business set-aside when a contract is being awarded, that those businesses that say they are small are. If it a typical base-plus-4 option, 5-year contract, that will still allow that agency to get small business credit for having awarded that contract to a small business for the life of that contract or 5 years, whichever is shorter. But that entity will not be able to compete once it is other than small for any small business set-aside contracts.

Senator PORTMAN. How about in terms of your goal? Because part of the Chairman's question was are these goals as reported really accurate. In other words, does this annual recertification affect the goals? Is this something that is reported through your measurement of the percentage of small businesses? I think the answer is no.

Mr. JORDAN. It will affect it by ensuring that there is no fraud, waste, or abuse in the system. That is what we are pushing on. It will affect it from that way, but not to the Chair's question, like you said, not for those types of contracts.

Senator PORTMAN. It does not change your reporting of the small business goals? Shouldn't it?

Mr. JORDAN. I think it is a fair discussion to have, but, again, the law talks about maximum practicable opportunity, and what I have done is, yes, look at what is the optimum way to run these things going forward, but also we need some relative comparisons. So looking backward, we are already measured against a tougher stick. Up until 2006, 2007, if you got that multi-year contract in the hands of a small business who was then bought by a large business, that contract would still count. Now that is no longer true. We have also taken significant proactive steps to clean the data so the anomaly reports that we generate for all the agencies took \$3 billion out of—

Senator PORTMAN. I assume you support—

Mr. JORDAN [continuing]. So I think the numbers are pretty good. Sorry, sir?

Senator PORTMAN. I assume you support all those things. The objective here is to be sure that you are meeting whatever your criteria area and—

Mr. JORDAN. Yes, meet and exceed every single goal is what we would like to do, absolutely.

Senator PORTMAN. Yes. But you almost sound like you are complaining about the fact that now you have better data. So, anyway, I think if there is a recertification process, you ought to be looking at it in terms of whether you are meeting your goals; otherwise, there is not credibility to the 23 percent. Complexity is one thing that is often cited as a reason. We have these set-asides for small businesses, that they do not have the ability to deal with the com-

plexity of contracting that large businesses do. And I think that is sensible. What concerns me is the fact that I am hearing from a lot of small businesses that it is incredibly complex to go through the process of certifying as a small business. And I do not know, Ms. Connolly or Mr. Vera might want to jump in here, too, but do you believe there are opportunities to simplify and streamline the process for eligibility? Right now folks tell me navigating the set-aside program is a whole other level of complexity, requiring, for example, identifying the appropriate industry code from a list of over 1,000 codes in the NAICS classification system, and other complexities. Is there a way to simplify and streamline it so that we are actually helping small businesses who, after all, are being given this opportunity in part because of the concerns about complexity? Thoughts?

Mr. JORDAN. I would just say quickly, absolutely, and that is something we are using technology to push on. It is something we heard a lot—

Senator PORTMAN. Absolutely we should be doing even more?

Mr. JORDAN. Yes, trying to streamline application processes, help automate some of those checks. All these types of things we are really pushing to do and are in the process collaboratively of doing.

Mr. VERA. If I may, Senator Portman?

Senator PORTMAN. Sure.

Mr. VERA. I would just add I agree wholeheartedly with my colleague Joe Jordan in some of the things that the SBA is doing in trying to streamline the processes, and certainly having been in this business for quite some time, I think it is a lot better than it used to be, and the use of technology has improved things tremendously. I think the agencies, we all try to do as much as we can with our limited resources, but certainly I personally think the SBA is doing a very good job in terms of educating—they did a tour—once the Jobs Act came out, they did a tour, a national tour to try to educate small businesses on some of the provisions of the Jobs Act, and I think it is better. It is complex. I agree that it is complex. But I think they try. On a daily basis they do a good job of trying to simplify things for the small businesses.

Senator PORTMAN. Going to the duplication issue for a second, GAO, recently completed an examination of 80 economic development programs of four different agencies, including SBA and Department of Commerce. GSA was not one. But it assessed the potential overlap and duplication in these programs, and 19 of these 80 were at SBA. I think this GAO report needs to be responded to because it talks about how to create savings, how to economize, and in this fiscal climate we are all looking for ways to save money.

Can you provide the Subcommittee with any update on the SBA's efforts here to identify opportunities for consolidation of overlapping programs or cost-saving collaboration that comes out of this GAO report?

Mr. JORDAN. I can get back to you. I know that there have been conversations. We are always striving to do everything we can effectively and efficiently as well. But I would want to give you the most up-to-date answer, so I will have to—

Senator PORTMAN. I think any estimates on potential savings, looking at what they have identified, is something that the Sub-

committee would be very interested in. Will you get back to us on that?

Mr. JORDAN. Yes, sir.

Senator PORTMAN. One final one. My time is expiring here, but this goes to the competition issue. Under the Small Business Act, a set-aside is permitted if the contracting officer determines there is a reasonable expectation that at least two responsible small businesses will submit bids and a fair market price can be secured, and we want to encourage competition. But the Federal Acquisition Regulation permits a contracting officer to proceed if only one bid is ultimately received, effectively making it a no-bid contract or a sole-source contract.

What percentage of contracts that are competed as a small business set-aside result in a single offer or a no-bid or sole-source?

Mr. JORDAN. I am not sure what the exact percentage is, but we can look it up. I can get that back to you.

Senator PORTMAN. I think it is important for the Subcommittee to know and also telling us what is your process for evaluating why a single bid was submitted and correcting whatever market research methods you need to get more bids, because if, in fact, this set-aside program is becoming a sole-source program, we would like to know that and talk about ways to either re-solicit it or provide more opportunities and more competition.

Mr. JORDAN. And to that second point, Senator, that is where we spend a lot of time on outreach, as Mauricio said, and going around the country and making sure the small businesses are aware of all the opportunities here, but also the training through the Defense Acquisition University and Federal Acquisition Institute that the Small Business Jobs Act empowers us to now go out and make mandatory will be very helpful at the contracting officer level as well. So getting both of those folks into the room so that—

Senator PORTMAN. Any sense of the percentage of non-competed sole-source contracts, Ms. Connolly or Mr. Vera?

Mr. VERA. I do not have those numbers.

Senator PORTMAN. Is it substantial?

Mr. VERA. In my experience, I can only speak for my agency. I do not think there are very many where we actually only get one bid on a contract that is a set-aside.

Senator PORTMAN. Ms. Connolly.

Ms. CONNOLLY. I agree with you colleagues. I do not have the number available, but generally when we set aside for small business, it is because we know that there are two or more small businesses who can meet that requirement. OFPP has asked us to reduce high-risk contracting, and although the FAR actually currently States that we can consider a single bid in an environment of competition. If all of the vendors thought that they were submitting competitive bids, we do not currently code that as a sole-source. It is presumed competition. But OFPP and especially Dan Gordon has made that a highlight of reducing our high-risk contracting, is that we should really evaluate. And when we receive only one bid, we should be re-looking at our solicitation, we should be looking at our requirements and really analyzing what we have done as a government to signal to industry that our requirements

were not open for all to bid on or they were not stated in such a way that everyone understood them.

Senator PORTMAN. Thank you.

Thank you, Madam Chairman.

Senator McCASKILL. Thank you. Senator Tester.

Senator TESTER. Thank you, Madam Chairman.

This is a question for Ms. Connolly. I just want to talk about the bidding process overall. When a project is put out for bid, is there a contingency available for cost overruns? And is it a basic percentage or how does that work?

Ms. CONNOLLY. Your question covers, I guess—

Senator TESTER. Let us say it is a building project.

Ms. CONNOLLY. Five to \$6 million—a number of actions, but a building project, I think it varies across agencies. One of the fundamentals of project management is building in a management reserve into your project management process.

Senator TESTER. OK, but let us say, just to get right down to it, if a person puts in a bid and there is a cost overrun, is that generally accepted if it is under a certain percentage?

Ms. CONNOLLY. I do not believe there is any provision for that to be generally accepted.

Senator TESTER. OK. So it is done with a change order or it is not done at all? It is prohibited?

Ms. CONNOLLY. I guess just to—at an award, I mean, the bids would be submitted in a competitive environment, and so there would not be a cost overrun at that point. Cost overruns happen—hopefully not, but unfortunately too often after award. And so, I mean, that is a first issue for the contracting officer. The vendor has to support their cost increase, and depending on the terms and conditions of the specific contract, they will take certain actions. But generally they review that and look at the role of the—compare that to what was actually required by the contract versus what has happened by the performance of the contractor.

Senator TESTER. I got you. Generally speaking, are cost overruns common? If it is bid at \$100 million, do they usually come in at \$100 million when they are done, or is it usually more than that?

Ms. CONNOLLY. I do not have that—

Senator TESTER. If you could get back to me on that, that would be good.

Ms. CONNOLLY. I would be glad to.

INFORMATION FOR THE RECORD FROM MS. CONNOLLY

The difference between a bid amount, the award amount, and the final payment amount on a very large contract can vary for many reasons. Large cost type contracts often have multiple simultaneous cost drivers. Reasons that there are differences between what was awarded and the final price include: Potential cost overruns by the vendor (which must be determined allowable, allocable, and reasonable by the contracting officer), the government changing its requirements based on newly defined needs or due to fluctuations in anticipated funding over the life of the contract.

Delays in a funding timeline can result in cost overruns because GSA typically sequences a project by pursuing site and design work in a single year and construction work in one or more future fiscal years, depending on the size of the project. When funding is not allocated in a given fiscal year, costs can increase due to cost escalation or updated requirements. Designs can also become obsolete over time, which could result in costly redesigns. If the time lag is significant, costs further increase. This can be contrasted with projects where the full cost is provided in one

fiscal year. For instance, through the American Recovery and Reinvestment Act of 2009, GSA was able to pursue over 260 major new construction and modernization projects. With the full funding in one year, we were able to use more efficient contracting methods to deliver the projects faster and with significant savings.

Senator TESTER. Best-value standard takes in the quality of the overall packages, takes in price as a part of it, but it is not the entire part of it. There was a bid granted in Montana, a large firm outside the State, a large firm inside the State, which is fine. The bid was given to the large firm outside the State. The bid was \$8 million higher on a project that was considerably less than \$100 million. And we were told that the reason that bid was given to the other contractor was because of best-quality standard, best-value standard.

It seems to me that large national firms have an advantage over large local firms on Federal projects. Do you see it that way? The reason is because it comes back, when the bid comes back and they say, "Senator Tester, we were low bidder on this by \$8 million. Tell me why we did not get the bid." And I can get a hold of your agency, and you say it is because of best-value standard. And we say, "What is best-value standard?" And they say, "Well, it is the price that we believe to be the best value, and we believe that \$8 million higher"—which was about 14 percent higher—"is a better value." Can you give me any insight into any of that and how it works?

Ms. CONNOLLY. I am not familiar with that particular transaction, and I have not been—

Senator TESTER. And I do not want to mention names.

Ms. CONNOLLY. Having been a front-line CO and working many source evaluation boards, best value is one of the most challenging tasks that we do. I think we have across the Federal Government, I think in some ways we have—it was a new tool that was provided to us, and I think we have gone into using it—we went from only having low-price, technically acceptable to best value.

Senator TESTER. Yes.

Ms. CONNOLLY. And my personal opinion it is probably a tool that we have overused and it is time to move back to the center.

Senator TESTER. Right. I will tell you, I will be the first one to tell you that low bidder is sometimes low bidder for a reason. You do not get the best value.

Ms. CONNOLLY. Right.

Senator TESTER. There needs to be better clarification on what you are using. Now, if you are using a contractor that does a lot of bids with the Federal Government that we are pretty comfortable with doing and somebody wants to bid on that project and we say, I would love to, but this guy, I am comfortable with this company over here, and so we are going with this even if it is 10 or 15 percent higher, that is a non-starter in my book, and I do not care if it helps a Montana company or hurts a Montana company. The fact is you need to look at all of it. That is all. And so I would ask you to go back and do just as you said, move it more to the middle, because I think that it is important. And thank you for your answer.

Mr. Jordan, I think this goes to the Chairman's question about miscoding, improper classification of large businesses, and some of those large businesses get small business contracts. Let me lay out

a scenario to you. You have a small business that got a 5-year contract and in the process it became a big business. And you said each year they recertify online. While they are doing that small business contract for that 5 years, are they still classified as a small business if, in fact, online they have certified that they are bigger than a small business?

Mr. JORDAN. They are not classified as a small business for any future award. The agency continues to get small business credit for that contract that they received when they were small.

Senator TESTER. That is fine. And I do not know the circumstance you talked about, Madam Chairman, with the Department of Defense contract, but it appeared to me that they were given a contract as a small business when actually they were a big business when the contract was given. Or is that incorrect?

Senator MCCASKILL. No, I think they were legitimately a small business when the contract was given, but now they in a short period of time have become a very big business, and their number still is counted toward a small business goal.

Senator TESTER. Yes, well, it appears to me that if we are really going to utilize small businesses, if we are really going to encourage them to be a part of the equation, be part of that level playing field that you and I both agreed to, that there would be no reason why you could not get more aggressive then and move them back. And we all want businesses to grow, but the fact is if they have grown because of that contract, that is a good thing. And so we need to look for other small businesses we can grow.

Is there a problem with that? Is it too much of a bookkeeping headache or what?

Mr. JORDAN. No, I think that the way that we perceive the level playing field issue is that once they have grown to be other than small, that they are not competing against small businesses as if they were a small business themselves. And that is not happening. Or that is not what the issue in this case would be. The question is: Should that agency who found a legitimate small business lock them in for multiple years and then become somewhat a victim of their own success as that small business did exactly what we hoped they would do—grow their business and create jobs. Should that agency continue to get small business credit for that contract that they did award to a small business that has subsequently grown, that is the question at hand, and clearly I think we should have some followup conversations with the Committee because that seems to be a hot topic. But that is the challenge: How do we incentive the contracting officers?

Senator TESTER. I got you. I mean, here is the deal from my perspective, and maybe I oversimplify it, but we have tons of technology out there, a small business becomes a big business pretty quickly. And, by the way, the standards for small businesses are pretty damn big, in my book anyway. But the bottom line is I think you could easily do it. Then you can get more aggressive and offer more small business contracts. That is all.

I want to thank you all for your testimony. I appreciate it. Thanks.

Senator MCCASKILL. Thank you, Senator Tester.

Let me make sure that I put on the record—I know the answer to this question, but I want it in the record. The giant ANCs that are huge and that are multinational corporations that do not have to compete and can legally front, which means you can hire an ANC to do anything for you and they get the no-compete status even if the company doing the work is a big multinational corporation—all of the money that the ANCs contract with the government, they are all counted in this small business total, too, are they not?

Mr. JORDAN. I do not believe that is true, no. The ANCs who are in the 8(a) program, those contracts are, but not every ANC subsidiary is in that program. So I would need to confirm—

Senator MCCASKILL. Well, why would they not be in the program? Because they get to stay forever. They do not age out.

Mr. JORDAN. The parent is not in 8(a) program. It is that their subsidiaries can be in that program. But those subsidiaries are held to the same 9-year term that any other participant is. It is just that they can put additional subsidiaries through the program. So sometimes those subsidiaries graduate, become other than small, and still compete on full and open competitions and win contracts. I do not believe those contracts are counted in the small business numbers.

Senator MCCASKILL. OK. Well, if you would look at that—

Mr. JORDAN. Absolutely.

Senator MCCASKILL [continuing]. Because there is no reason for an ANC to ever graduate. They do not have to. They can just hand off. They can just do tag team. It is a loophole so big that this building could drive through it. And so, I want to find out what percentage of the small business number, the 22.7 percent, is ANC contracts.

Why are we using the NAICS? Why are we using that code classification? The Census Bureau people told staff in preparation for this hearing that it was never intended to be a contracting tool. So why are we using it? Isn't it complex and clumsy and does not really—isn't there some shoe-horning going on here? Anybody? This question is open to anybody. Why are we using it?

Ms. CONNOLLY. Senator McCaskill, I know that SBA has built their size standards to the NAICS codes, and I will defer to my colleagues for that question. But I think it is—if it is not NAICS codes, it is necessary for us to have some framework to define what the companies are offering. We have frameworks and, unfortunately, they are often thousands of numbers that we have to—somewhat give us these anomalies of what companies are doing. And I do not know. If it were not NAICS codes, it seems that we would need something equally as complex or equally detailed. The detail gives us more granular ways to identify the work that we are spending taxpayer dollars on.

Senator MCCASKILL. I get that, but, I mean, commonsense here—I have now gotten into the weeds on this, and, frankly, I have not really gotten into the weeds in this hearing because I feel for the people in the audience. I mean, it is painful. Let me give you just one formula here on how you determine small.

Sigma equals 414IISCR where S1 is greater than S2 greater than S3 greater than S4, and that does not count the footnotes.

And there is a Four-Firm concentration ratio, a Gini coefficient, the Herfindahl-Hirschman Index. Really? It seems to me that somehow under the rubric of complexity and trying to get to a granular level, commonsense is taking a vacation. And as we talked about before, we are not even using the NAICS codes because we are saying everybody, if they are selling stuff, is a manufacturer whether they manufacture anything.

So it seems to me that we could just step back from this and go, OK, if you are retail, this is small; if you are manufacturing, this is small. Maybe two classifications for manufacturing. I agree that manufacturing widgets is different than manufacturing airplanes. And if you are wholesaling, there is this. And if it is professional services, it is this. And maybe you classify within professional services some broad categories of professional services.

And, you could sit around a room with good acquisition personnel and say, OK, we are going to forget—because, honestly, I think that the small businesses have to spend a lot of time and energy navigating this whole code situation and figuring out the formulas and figuring out the computation on the formulas. And I think everybody is so used to using it in your world that you do not realize how nuts it is and that nobody is willing to tackle it because it just seems overwhelming.

Am I off the mark here?

Mr. JORDAN. I do not think so. I think that Dr. Connolly appropriately raises the challenge, which is how do we separate—where do you draw the line between the various industries for which you are setting individual standards? The Office of Size Standards that sends these reports up to me—and I can assure you not being a Ph.D. economist that learning about the Gini coefficient and the Four-Firm concentration ratios and those types of things, that we do to set the one line—and that is the other challenge. There is one line. There is no small and medium businesses. You are small or other than small. Where below that you could be—you have special preference access and above which you are, out competing with everybody else. Those two things present a pretty big challenge, and so we go in and look at all the data to say: Where is the right place to draw that where we allow small businesses to grow up to that point and then through that point, and they will successfully be able to compete full and open after that, but we are not making it so high we are stifling entrepreneurship and new business starts and that sort of thing. And it is one of the most challenging things we do. Every one of the size standards that we are advising now goes out for public comment and those types of things.

What we do try to do for simplification standpoint—and as I said to Senator Portman, we can do more here, and we are trying to do more. GSA and SBA are working together actually on some things there. But right now all we really need from the firm is how many employees do they have and what are their trailing 3 years of revenue. And then that determines what the size standards are, because they are everyone revenue or employee based. They do not need to go through a long, complicated multivariate regression to figure out if they are small or not. They just need to know what their employees and revenues are.

That being said, the more that we can do to get more small businesses into the contracting arena is a win-win, and so simplification certainly is something we want to do there and is a place we are pushing.

Senator MCCASKILL. Well, and I know how much work there is to do. We do have real problems with the data. We have real problems with training in terms of contracting officials and challenges with the acquisition workforce. Taking some of the complexity off their plate seems to me—if you are—I mean, I think probably I could get some small businesses in this room that would tell you—that would argue with you that it is simple. But if you are trying to simplify for the companies, then all of these complex formulas and so forth, it just seems to me that we could clear that out. And I bet you we could save some money if we did that.

My time is up. Senator Portman, do you have more questions?

Senator PORTMAN. Thank you, Madam Chairman. I should probably stop here, but I do have more.

Again, at the risk of boring the audience, as you said, with the technical questions, one thing I found that was interesting is that the SBA Inspector General in the 2010 annual report called a GSA multiple award schedule provision a “loophole.” The report said that in the GSA multiple award schedule contracts that contain multiple industrial codes creates a loophole. His quote was, “Currently a company awarded such a contract can identify itself as ‘small’ on individual task orders, even though it does not meet the size criteria for the applicable task. Thus, the agencies may obtain small business credit for using a firm classified as small when the firm is not small for the specific orders under the contract.”

Ms. Connolly and Mr. Jordan, can you provide the Subcommittee with an update on GSA’s response to that finding and any action GSA has taken or plans to take in response to that?

Ms. CONNOLLY. Senator Portman, I am familiar with the SBA IG report, and I was not able to speak to the IG directly to understand any nuances of that, but I will continue to answer, but I want to first acknowledge that the report was directed to SBA to take internal management actions to address those regulations. But, of course, whenever it involves our GSA multiple award schedules, SBA cannot do it alone. GSA and SBA need to work together on that. And what I found out as part of coordination for this hearing is I was pleasantly surprised to find out the Federal Acquisition Service and SBA have been working together closely to fine-tune some of the instructions.

We have a system now—and if everybody is—people can be doing the right thing to apply the predominant NAICS code to the schedule, which covers a broad range of usually supplies and services. The contracting officer can be doing the right thing to code that according to current policy and regulations, and the awarding task order or delivery order contracting officer can be following appropriate instructions and recognizing that NAICS code has already been assigned, and they cannot change that in the system. And to the best of my understanding, I believe that is what the SBA IG is calling a “loophole.” And I know in—it does happen, and that is what GSA and SBA are working on to resolve.

Senator PORTMAN. Anything further, Mr. Jordan?

Mr. JORDAN. Sure. I agree with everything Mindy said, and I really appreciate the collaboration by GSA and the Office of Federal Procurement Policy. This ties into the discussions we are having as we implement the Small Business Jobs Act provision around task order set-asides for multiple award contracts and how all these things work together. That law asked Administrator Mills, OFPP Administrator Dan Gordon, and GSA Administrator Johnson to work together to implement these task order set-aside rules and how they will look going forward, and this issue that my Inspector General has had for a management challenge in my shop for a few years now is certainly something that we are working to come to a final resolution on and that all parties can agree to.

Senator PORTMAN. All right. This is why I probably should have stopped my questioning earlier because let me just list some of the things we talked about today.

This multiple award contracts issue is the latest in the complexity that is around the set-aside program. We have talked about, as Senator Tester said, large businesses elbowing out small businesses. And the Chair has probed that, as I have, on why are large businesses securing some of these contracts that should be for small businesses. And, frankly, in a system like this, with less competition, it encouraged gaming of the system. And there is some gaming of the system we have talked about. The complexity we have talked about that makes it very difficult for a lot of small businesses to even access this opportunity. And, again, what I hear from small businesses is: It is supposed to be an opportunity for us because of the complexity of Federal contracting, we are small businesses, we do not have the sophistication, and yet we are finding that the complexity of this program is too much for us; we are trying to grow our businesses and not be focused on government complexity.

Duplication we have talked about, the GAO report, and we look forward to hearing back from you on that. And then the competition issue, which is maybe the most fundamental one, if you have, under the FAR, the ability to have only a sole source, does that make sense for the taxpayer?

All this leads to a fundamental question that I want to get on the record and get your response to, with the incredible fiscal challenges that we face, with this ongoing discussion that we are having about how to be sure that everything in government is as cost effective as possible. And I think knowing—I think it is fair to say, we can stipulate that anytime you limit competition for Federal contracting, there is going to be a cost to the taxpayer, and whether it is this set-aside or others, if you restrict competition, it tends to increase the contract price.

Again, \$98 billion in prime contracts to small businesses, not meeting the 23-percent target but coming close, CRS tells us that about \$56 billion of that have been awarded through some kind of restricted competition or sole-sourcing in 2010, and not all sole-sourcing but restricted rather than an open competition.

So I guess I would ask you this question: Is it fair to say that the major small business contracting programs come at a premium to the taxpayers? Is this an unbudgeted cost that follows from the competition? And are you aware of any effort to try to estimate

what that is? Do you have any cost—what is the cost to the taxpayer of having this restricted competition? Mr. Jordan.

Mr. JORDAN. I do not have a quantified cost, and I do not have a quantified benefit, but I can say unequivocally that small business contracting is a win-win. It is a win for the small businesses; it is a win for the government. And, it is a third win for the taxpayers as well.

I have been doing this for 2½ years, and there are certainly complexities. We have tried to streamline and will do more. There are rules that we did not think made sense, and we have changed many of those and will change more. But if there is one thing that I have seen and have no question about is that these small business set-aside programs are good. They are good for the economy. They are good for the growth of small business. This revenue is important oxygen these firms need to grow and create jobs, and I have no questions about that.

Senator PORTMAN. Good answer, but has there been any evaluation? Are you aware of any evaluation of what the cost—

Mr. JORDAN. I am not aware of any.

Senator PORTMAN. Ms. Connolly.

Ms. CONNOLLY. Senator Portman, I am not familiar with the CRS number, but I wonder if we are having competition set aside for groups of small businesses, if that is being calculated into the number. And so that is my—

Senator PORTMAN. I think it is just a number saying that it is not an open competition. The general rule, of course, in government contracting is it should be open and, that is—open and full competition is what the Competition Contracting Act says, full and open competition. So when it is not full and open competition, it is more restricted. I think that is where their number comes from.

Ms. CONNOLLY. Yes, full and open competition. We also have other requirements which require us to set aside—

Senator PORTMAN. No, I know. That is—

Ms. CONNOLLY [continuing]. Awards under the simplified acquisition threshold for small businesses. So I guess we have competing—

Senator PORTMAN. Exactly. Has anybody ever evaluated what the cost is of that?

Ms. CONNOLLY. I am not aware of that type of evaluation.

Senator PORTMAN. Do you think SBA would be able to evaluate those costs?

Mr. JORDAN. I do not know. I mean, I think that the challenge would be you cannot just evaluate a short-term cost. You need to evaluate the long-term cost. Building a monopoly could in the short term deliver great prices that year, but then the reason that our laws are against that is because in the long term the power changes and then you do not get good price or good value. And by getting rid of the small businesses who may be undercut by large businesses—

Senator PORTMAN. I do not think anybody is talking about a monopoly, just—

Mr. JORDAN. It is restricting—

Senator PORTMAN [continuing]. Open and fair competition.

Mr. JORDAN. Well, I think where the calculation would be a factor is the fairness, because a large business may be able to eat a lower price now, putting those small businesses out of business. Then there are no small businesses to provide those goods or services, and large businesses say we are going to recoup all those losses, and then some, government, because you have nobody else to procure from. And that is what I would need to look at if a study like that would be done, and I think it would be pretty—well, it would certainly be pretty complex. I do not know if we would have all the data available to do it.

Senator PORTMAN. I just think it is a question to be asked. Again, as I said at the outset, I think this is an important program, and we need to be sure small businesses who are struggling right now and who are going to be the way in which, in my view, we get out of this difficult economic situation and have the opportunities. But it is also a program, rife with inherent issues, and, again, I listed them a moment ago. I will not go back over it. But there is complexity involved here, and there is a restriction of competition to the point that there is sole-source contracting, which is certainly not the intention of Federal procurement laws and regulations generally where you want to have competition, because ultimately the taxpayer pays. Mr. Vera.

Mr. VERA. If I may, Senator Portman, while I do not have any of the quantifiable data that you are seeking, I would just say that small businesses absolutely do benefit from the set-aside programs. We as advocates would argue in most cases—after doing the appropriate market research that the FAR requires, we would argue for a set-aside if it makes sense, and the reason being that small businesses have limited resources to market to the agencies. So if it is a full and open scenario, they may not want to compete against the huge firms in a set-side—that they have more ability to pursue the contracts, and that is why we advocate for that.

Senator PORTMAN. Well, again, I think simplification and streamlining, dealing with some of these definitional problems, are really important to make sure small businesses want to compete even under the SBA program because some of the small business groups I talk to and small businesses themselves, again, are frustrated by it. I think there are probably some small business groups represented behind you here. Maybe I am not hearing the full story, but some of them tell me, frankly, this is not a top priority for them because it is complicated and costly. So we need to do a better job of making these programs work better for small businesses and ultimately be sure it is all working for the taxpayer.

Thank you, Madam Chairman.

Senator MCCASKILL. Thank you, Senator.

I want to go back and correct the record or clarify the record as it relates to the question that Senator Tester asked about the business, was it small at the beginning and then grew to be so large, the example I used at the opening of my questioning. And let me point out that this brings in another issue, because VSE benefits from the coding. The code for this particular contract was aircraft manufacturing, which sets a size standard for a small business at 1,500 employees. That is the largest possible business size under the SBA's standards.

If the government had determined that the code for the contract was aircraft maintenance and repair services—which, by the way, that is what this contract was for—the size standard would have been \$7 million and this company would have never qualified. Had the government used the appropriate code which more closely matches the contract description, they never would have the set-aside in the first place.

So now they have exceeded even the largest standard, but they started out being coded at a standard much larger than they should have ever been coded. And it gets back to my question before: Why is everybody a manufacturer?

Mr. JORDAN. Well, on this issue—I do not know the specifics of this case, but on the issue overall I actually think that we will have a tremendous amount of common ground because I hate NAICS code shopping. I think that contracting officers need to select the most appropriate NAICS code for that procurement. Now, that is different from the wholesale/retail issue that we spoke about before, but what you are implying—and this is not the only case where that is raised to me—is that a contracting officer is choosing a NAICS code because they want the higher size standard, not because it is the most appropriate for that solicitation. That is something that my procurement center representatives that work with the buying activities, when they see that happen, they push back strongly. I have had protests and other issues come to me on that issue, and it is something we work on the training on the front end and the accountability on the back end to try to make sure does not happen, because I agree, it is very inappropriate to NAICS shop because you are looking for a certain size standard, and even worse, if it is because you want a certain firm or firms to be part of that competition.

Senator MCCASKILL. So can you pull this thread and go back to the contracting officer that shopped for this code and clearly used the wrong code that allowed this huge contract to be part of the small business calculation now since 2008? And does something happen to that contracting officer that clearly decided they wanted this company to be able to qualify for the set-aside when they really should not have? What happens?

Mr. JORDAN. With this particular case, I do not know—yes, we are happy to look into it, to the first part of your question. With how will that play out, I just do not know without all the facts of the case. But, in terms of an accountability piece of this, which I think you are also alluding to, we are now pushing to get small businesses achievement, small business contracting included in the performance plans for Senior Executive Service (SES) members in the contracting officer chain of command, because there are 30,000 contracting officers doing 5 million contracts a year. They make mistakes. And if that is the case, that is one thing.

Senator MCCASKILL. I do not think this is a mistake.

Mr. JORDAN. But there are other issues as well, exactly, and we want to make sure that all the folks—chief acquisition officer, senior procurement executives, heads of contracting activities, all the way down—have skin in the game in making sure the right thing is done, and the right thing is getting small business contracts to small businesses.

Senator MCCASKILL. I would love to get a room of contracting officers—and maybe you can comment on this, Ms. Connolly or Mr. Vera. I would love to get a bunch of contracting officers in the room with truth serum and say, “Do you have any fear that if you shopped the code to be able to include a company in a small business set-aside, do you have any fear that there will be any accountability if clearly you have shopped the code and put the wrong code on a company?” What do you think? Anybody afraid of that in the acquisition personnel world?

Ms. CONNOLLY. I am not afraid of that. I think by far the majority of our acquisition workforce has the highest integrity, is passionate about their work and feels that they are doing a very patriotic duty to spend the taxpayer dollars. I do acknowledge that between the systems that we have there is probably—in the whole continuum, there are probably contracting officers and small businesses who are overwhelmed by the complexity of the systems that they are required to use, and we have training for the contracting officers. We have some training for the vendors. There is a continuum of people who have trouble selecting the right NAICS code among all the other things that they are doing. If they are a small business, they are out delivering their products and services.

Senator MCCASKILL. Well, don't you think, though, it would be pretty easy to figure out whether somebody is manufacturing airplanes?

Ms. CONNOLLY. Yes.

Senator MCCASKILL. I mean, with all due respect, either you are building airplanes or you are not. I can see where there could be some coding issues that would be hard to maybe pick which one, but I cannot imagine one that would be much easier than figuring out whether somebody is building—whether they are repairing airplanes or building airplanes. I mean, those are not kissing cousins. Either you are putting an airplane together from scratch and selling it or you are not.

Ms. CONNOLLY. That seems entirely clear-cut.

Senator MCCASKILL. Yes.

Ms. CONNOLLY. But I have to admit, as a contracting officer I have been in specific procurements in my career where something that originally—let us say it looked like we were buying a supply because of—as we developed the statement of work, that—and understood really what we needed as an agency, I am personally familiar with instances where that supply, because of the way we needed it delivered and the services that we needed to accompany that delivery, that became a service contract. So that is the appropriate action when you have gone from a supply to now I need services, I need delivery, I need sizing, I need the vendor to determine those for us or deliver those services in conjunction with the item. It is appropriate to change the NAICS code to a service.

Senator MCCASKILL. Well, and I agree that there are going to be places where there is gray and it will be hard for the contracting officer and hard for the vendor, and I get that. But maybe I am somewhat jaundiced by my experience into looking into defense contracting. I think that sometimes there is a tendency in the defense world that I want what I want from who I want it from when I want it, and I am going to use the contracting rules and regula-

tions in a way that will allow that result. And, by the way, if we are talking about shooting fish in a barrel, it probably is the Department of Defense, because I think we all know that they are the big gorilla when it comes to contracting in the Federal Government.

So I would certainly encourage you all to pull the thread when you see an instance where it appears there has been code shopping and make sure that the acquisition force at DOD understands that somebody is watching and paying attention.

Finally, the last thing that we have not covered that I wanted to cover briefly was self-representation. Have you found contractors that have misrepresented their size status? Anybody?

Mr. JORDAN. I can say yes. SBA handles size protests, so while your size status is a self-certifying thing, an interested party—be that another bidder, the contracting officer, whomever—can protest that. And last year, I think SBA handled just over 700 of these size protests, and I think just under 200 of them were sustained. So we do see that frequently, and I have a team of folks who handle those protests very quickly so as not to slow down the process but to make sure that business who said they are small in fact is.

Senator MCCASKILL. And what happens to the people that have misrepresented their size status, that have actually lied about how big they are?

Mr. JORDAN. We have a range of enforcement actions, and not just that we have them, we are actually using them. So there are suspensions—

Senator MCCASKILL. This is not like debarment, you are actually using it?

Mr. JORDAN. We have suspensions and debarments, which we are using, and I have the statistics that show that they are going up and up. For the first time, for example, this year, referrals to SBA suspension and debarment officials from internal sources outnumber those that are referred from GAO. So we are really driving things through that process.

Senator MCCASKILL. Good.

Mr. JORDAN. In addition, the Small Business Jobs Act gave us another really important arrow in our quiver around presumption of loss, which says if you misrepresent your size or status to win an award, then the government can sue you civilly for the full value of that contract. So we will keep the building you built, we are going to debar you, and we are going to sue you and get our 50 million bucks back.

Senator MCCASKILL. Have we done that yet?

Mr. JORDAN. We have not implemented them. They are in the process of being implemented, but I am very excited about, not just the retributive, punishing the bad actors, but disincentivize anybody from trying.

Senator MCCASKILL. It is a sad day when I have to admit that excites me, too. [Laughter.]

That just shows you how wonky this stuff gets and how important I think it is. I think that would be terrific. And I really do think one of the things that government does not do well is deter. I think we put up with sloppiness because we are overwhelmed by the workload, and many times when there are bad actors, we do

not react swiftly enough or strongly enough, and that is something that does deter. As an old prosecutor, there are crimes you can deter and there are crimes you cannot deter. You all are in an area where you can deter a lot of bad activity by the way you handle the code shopping, by the way you handle misrepresentation of size, by the way you handle some of the twisting and turning that goes on in order to try to shoehorn businesses into a small business category. And some of this is the pressure that we are putting on these agencies to do more business with small business and them trying to react to that. So we have to be careful that we do not incentivize to the point that we are forcing people to try to miscode in order to “make a number.” And I think that is the other danger we have here.

Clearly, we did not do 22.7. I do not know what we did, because there is a bunch of money in there that is not really from small businesses. I would like to see that number go down if it meant it was more accurately reflecting the amount of business that we were actually doing with small businesses across this country.

That concludes the questions I have. We will look forward to the answers to the questions that you all were gracious enough to indicate you would get back to us with. Thank you all. I do know this is hard stuff. I do know that you guys are not going to have a ticker-tape parade in terms of being heroes to the American people. You will forever be in a category of very important work that does not get enough positive attention, but there are people out here—and I know many of them serve on this Committee—that really appreciate the work you do.

So thank you for being here, and I will look forward to maybe an answer as to why—especially I am anxious to know why we cannot change that manufacturing classification.

Thank you, Mr. Jordan, thank you, Mr. Vera, and thank you, Ms. Connolly.

[Whereupon, at 11:35 a.m., the Subcommittee was adjourned.]

APPENDIX



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

Testimony of Mr. Joseph G. Jordan
Associate Administrator for Government Contracting and Business Development
U.S. Small Business Administration

July 26, 2011

U.S. Senate Subcommittee on Contracting Oversight **Committee on Homeland Security & Government Affairs**

Chairwoman McCaskill, Ranking Member Portman, and Members of the Subcommittee, thank you for inviting the U.S. Small Business Administration (SBA) to testify this morning. My name is Joseph Jordan, and I am the Associate Administrator for the Small Business Administration (SBA)'s Office of Government Contracting and Business Development.

Our top priority at the SBA is to 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 contracts. As a principal advocate for small business procurement, our primary objective is to ensure that eligible small businesses receive their fair share of federal contracts. We are always looking for ways to increase small business contracting opportunities, and I am proud to say that in the two and a half years I have been in my position, we have made significant improvements.

I would like to share with you three key initiatives my office has been working on to ensure small business contracts get into the hands of small businesses:

- (I) The Small Business Procurement Goaling process and Scorecard
- (II) Our comprehensive, three-pronged approach to combating fraud, waste and abuse
- (III) The implementation of the Small Business Jobs Act of 2010

I. The Small Business Procurement Goaling and Scorecard

SBA oversees the Federal government's efforts to meet the statutorily mandated small-business goals, which include for prime contracting dollars, awarding:

- 23% to Small Businesses
- 5% to Small Disadvantaged Businesses
- 5% to Women-Owned Small Businesses
- 3% to Service-Disabled Veteran-Owned Small Businesses
- 3% to Historically Underutilized Business Zone (HUBZone) firms

We oversee and manage the Small Business Goaling process, which includes three primary phases:

- (a) Setting small business contracting goals with the 24 Chief Financial Officer Act agencies and ensuring plans are developed to meet the goals
- (b) Tracking agencies' progress and providing ongoing training and support to their acquisition staff and small business teams throughout the year

- (c) Conducting a thorough review of contracting data that culminates in the publication of the annual Goaling Report and Scorecards

Small Business goals are set every two years, with the opportunity to renegotiate the year in between. During the goal setting process, my team and I are deeply immersed in engaging with senior leadership at the agencies to determine the appropriate goal for each agency based on maximum practicable opportunity. We also need to ensure we appropriately apportion responsibility to agencies to meet the Federal government's goal of awarding 23% of contracting dollars to small businesses, as well as the socio-economic and subcontracting goals. It is a collaborative, fact-based process to set these goals. As we work with individual agencies, we analyze a variety of factors including their past performance, their planned acquisitions, and any unique challenges they may face.

During the fiscal year, we track and monitor agencies' small business contracting performance closely. We review the data from the Federal Procurement Data System – Next Generation (FPDS) on a weekly basis. We stay in constant contact with each agency's Office of Small and Disadvantaged Business Utilization to find out how we can best support the agencies and address any issues they have with their small business contracting work. We also chair the monthly Small Business Procurement Advisory Council meetings. At the same time, our Procurement Center Representatives (PCRs) – SBA staff that work directly with contracting officers at the largest buying activities – offer support and monitor set-asides and conduct outreach to small businesses. Our PCRs also make sure that the agencies they work with are compliant with our regulations, and where SBA objects to a specific procurement action, our area office may issue a Form 70 Recommendation, stating our opposition.

One of the things that I am most proud of, and that we work on every day, is providing ongoing and effective training to procurement staff. We have found that small business training is essential not only to help procurement staff meet their goals, but also to make sure that their record-keeping – particularly the data in FPDS that we use for the Scorecard – is accurate, up to date, and complete. In fact, one of the recommendations of the President's Interagency Task Force on Federal Contracting Opportunities for Small Businesses was to make comprehensive small business training mandatory for procurement personnel.

The last and most public phase of the Goaling process is the publication of our annual Scorecard. Last month, we published the Small Business Procurement Scorecards for Fiscal Year 2010. These scorecards reflect the percentage of federal prime contracting and subcontracting dollars that are awarded to small businesses and provide a quantitatively-driven assessment of the Government's performance for all of our stakeholders. In Fiscal Year 2010, the government awarded 22.7% of contracting dollars to small businesses, which marks the largest two-year increase in over a decade.

While we believe that there is always room for improvement in the results, we take great pride in the integrity of the Scorecard process and methodology. SBA has been using Scorecards for nearly a decade, but when I arrived in my position over two years ago, we redesigned the format and methodology to provide a clearer, more transparent report of small business contracting performance and to ensure the elements of the Scorecard would incentivize desired behaviors and outcomes from agencies. We have utilized this new Scorecard format for two fiscal years now and we release Scorecards for each of the 24 Chief Financial Officer Act Agencies, as well as one for the Federal Government as a whole. Each scorecard shows achievement in three primary categories: (1) Prime Contracting, (2) Subcontracting and (3) Plan Progress. In addition, each Scorecard contains a letter grade, A+ through F, based the weighted score from each of the categories. Each agency's Scorecard is calculated based on goals set and agreed-upon during the goal setting process. Table 1 in the Appendix

outlines the weight of each category toward the final Scorecard letter grade and Table 2 shows the breakdown of scores for each letter grade.

We not only want the Scorecards to be a tool to hold agencies accountable to their small business goals, but to small businesses and the general public, as well. Our scorecard process can only provide real accountability and transparency if it is based on accurate information. Therefore, we work hard to verify the quality of the small business contracting data.

Although the data in FPDS is publically available, only the contracting agency can enter or modify its own data. SBA does not have the ability to edit another agency's contracting information. Each federal agency is therefore responsible for ensuring the quality of its own contracting data and is required to certify their data to the General Services Administration and the Office of Management and Budget, Office of Federal Procurement Policy each year. As I said earlier, we make data quality a focus of our ongoing training efforts so that we have quality data from the outset. However, Federal contracting officers award approximately 3 to 5 million contracts and contract actions each year.

Given the volume of contracts and number of contracting officers, we conduct our own rigorous analysis of the data and create anomaly reports to validate the small business contracting data and help agencies identify and correct possible errors. After the fiscal year is complete, we pull contracting data from FPDS and run a number of analyses and filters to identify contracts that potentially may have been incorrectly labeled as being awarded to a small business. An example of an analysis we do to identify anomalies is to compare the size standard for a contract's North American Industry Classification System (NAICS) code against the size of the firm at the time of award. We also filter out any companies that have been suspended or debarred or are household names that we know not to be a small business.

After we complete our analysis, we develop a customized anomaly report for each agency, and ask them to review each data anomaly to confirm that the contracting information is correct. If an agency finds an error, we ask them to correct it, because again, we do not have the ability to edit data in FPDS. After this review process, we lock the contracting data and develop the final Goaling report and Scorecards.

To provide clarification, a data "anomaly" does not necessarily mean a data "error." Our anomaly reports are intentionally over-inclusive; we look for any data that is out of the ordinary. We want to find anything that *could be* an error and share that with our partner agencies. In our Fiscal Year 2010 anomaly report process, over \$3 billion in contracts were identified to be incorrectly reported as going to small businesses and were corrected as a result of this rigorous exercise. Therefore, although there is always room for improvement, we are confident that the data in the FY 2010 scorecard is the most accurate that SBA has ever had.

It is also important to note that there are many legitimate reasons for a small business contract to look like it was awarded to a business that is other than small. Here are two of the most common reasons:

First, small businesses sometimes outgrow their size standards during the life of a contract. Size determinations are fixed at the time of the offer, so it is possible for agencies to get small-business credit for the later years of a contract when the contractor is no longer small. Current SBA and FAR regulations require a firm to recertify as a small business prior to the sixth year of any long-term contract. In addition, a firm must now recertify within 30 days in the event of a merger, acquisition, or

contract novation. If, upon recertification, the business is no longer small, the agency should not get small business credit for the remainder of the contract.

Second, a firm may operate in multiple industries, or NAICS codes, and size standards vary considerably by industry. In general, a business is classified as "small" based on either its annual revenue or number of employees. SBA bases size standards on the NAICS system, which has over 1,000 different industry classifications. Many government contractors operate across multiple NAICS classifications, and may be within the small business size standard for some of those industries but not for all.

For Example: A small business that operates cafeterias can have annual revenue of up to \$25.5 million, while a small business that operates snack bars can have maximum annual revenue of only \$7 million. Therefore, if a food service company has annual revenue of \$15 million and has contracts with the federal government for both a cafeteria and a snack bar, its cafeteria contract will count toward the small business goals, while its snack bar contract will not.

Anomaly reports are an important part of a broader effort to ensure data quality, and our efforts in this area are ongoing. We work continuously with agency procurement staff and leadership to conduct training to improve accuracy, provide tools to facilitate review of data, and implement improvements to procurement systems. In addition, we actively support government-wide efforts to improve data quality through participation in the Office of Management and Budget, Office of Federal Procurement Policy's Data Quality Task Force.

II. Combating Fraud, Waste and Abuse

As mentioned previously, our top priority is to ensure that the benefits of our programs flow to the intended recipients. We have no tolerance for fraud, waste and abuse in these programs and have therefore 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.

The first prong is designed to ensure there are effective certification processes that provide clear and comprehensive eligibility screening on the front-end to make sure only qualified, eligible firms participate in our programs. The small business community should clearly understand how each SBA program works, who is intended to benefit from it, and how to apply for it. Program eligibility rules should be straightforward and effectively applied. Therefore, the first prong is focused on having clarity and consistency at the front-end of each of our programs.

For example, if a firm would like to participate in the 8(a) Business Development program, it must be certified by SBA through an application process that determines whether it meets all the requirements of the program. We saw opportunities for fundamental improvements in how this certification was conducted. Therefore, for the first time in over a decade, SBA recently published a comprehensive revision to the 8(a) program regulations. The new regulations now clearly define the economic thresholds that 8(a) applicants must meet to become certified. They also tighten the requirements for joint ventures to make sure that non-disadvantaged firms do not unduly benefit from the program.

The second prong of our strategy is conducting continued surveillance and monitoring on firms once they are in our programs. Only those firms entitled to benefit from SBA's programs should remain in them. We therefore conduct ongoing reviews and monitoring of firms in our programs, including those which have been certified by SBA, as well as those which have self-certified (in those programs which permit self-certification). Review and monitoring confirms that only eligible firms have been certified, and identifies firms whose eligibility may have lapsed since certification. We use several tools in this stage, including site visits, eligibility reviews, and eligibility protests. Additionally, each program has developed unique processes to address eligibility issues.

For example, in the HUBZone program, we have significantly increased the number of site visits. A site visit involves SBA staff physically visiting a HUBZone firm's principal office to verify that the certified concern is operating out of that location. In fiscal year 2008, less than 10 site visits were conducted. In fiscal year 2009, we increased the number of visits to 910 and in fiscal year 2010, over 1,200 site visits were conducted.

Additionally, in fiscal year 2010, SBA began mailing eligibility verification letters to HUBZone firms asking them to certify, under penalty of perjury, that they met the eligibility requirements for the HUBZone program and were compliant with all applicable regulations. We mailed nearly 5,000 letters and in response, nearly 400 firms voluntarily decertified and over 1,250 firms were ultimately decertified due to their failure to certify eligibility status.

The last prong of the strategy is taking robust and timely enforcement on any non-compliant or fraudulent firms. SBA's programs must be reserved for those who are – and who remain – eligible. We have a range of enforcement tools to use when we have identified a firm which is ineligible (or no longer eligible) to participate in our programs. Certain firms may not be aware that they are out of compliance, and simply withdraw when made aware of their ineligibility. Others are bad actors, and are taking intentional and often fraudulent advantage of our programs. SBA has no tolerance for a firm found to be acting fraudulently, and where appropriate we will act decisively to oust them from our programs and from doing business with the government generally. We also refer fraudulent activity to the SBA's Suspension and Debarment officials, the SBA's Inspector General, and/or the Department of Justice.

Over the past two years, we removed over 4,000 firms from the HUBZone program, over 1,000 firms from the 8(a) program, and over 50 firms from the SDVOSB program. During that time, we have also suspended or proposed for debarment over 20 firms and individuals involved in procurement misconduct. Some examples illustrate what we do by way of enforcement:

- In 2009, SBA debarred a firm that, while seeking assistance through SBA's Certificate of Competency program to win a multi-million USDA contract, forged a bank official's letter. The firm submitted a bank letter that SBA determined was altered to make it appear more favorable to the firm.
- In 2010, we suspended two small businesses engaged in an agency's information systems procurements where the evidence indicated that they had knowingly acted as fronts for a large business.
- In 2010, we proposed debarment for an 8(a) and HUBZone contractor, a related firm, and three individuals. The firm was using an address in a HUBZone as a front, while the actual employees of the firm worked out of the offices of another related contractor. In addition, the evidence indicated that it was ineligible for the 8(a) program due to involvement by non-disadvantaged individuals in its management and control.

- In 2011, SBA suspended two firms and an individual based on their involvement with SBA's Service-Disabled Veteran Small Business Concern program. SBA received evidence that a firm which self-certified as a SDVO received a SDVO set-aside contract from the Department of Veteran Affairs for janitorial services. Instead of performing the required work, the firm subcontracted out the bulk of the work to a large, non-SDVO firm.

In addition to our own compliance, monitoring and enforcement efforts, we also conduct a thorough investigation and review of every firm cited in IG audits and GAO reports. We have and will continue to take any and all appropriate action, including suspension and debarment and referral to the Department of Justice, against any firm attempting to "game the system" with SBA's programs.

We have also recently assembled a Suspension and Debarment Task Force at the SBA, which is chaired by our General Counsel. The Task Force has developed a strategic framework for suspension and debarment of firms that use fraud or other wrongful practices to gain improper access to programs intended to benefit small business. The Task Force is working closely with every SBA program office and with the Agency's Inspector General to identify bad actors, vigorously pursue them, and expel them from further government business. SBA intends to continue to send the message that we take enforcement seriously and will come down hard on those who seek to take unfair advantage of our programs and services to the detriment of the many honest small businesses that depend upon those programs and services.

III. The Implementation of the Small Business Jobs Act

The Small Business Jobs Act (SBJA) of 2010 included 19 provisions related to small business contracting. We are in the process of implementing these provisions and are excited about the impact they will have not only on small businesses, but in also improving contracting oversight processes. Below are key details:

- Parity - The SBJA reaffirms "parity" among federal small business contracting programs. This means that contracting officers will be free to choose among businesses owned by women and service-disabled veterans, as well as businesses participating in HUBZone programs and 8(a) programs. This clarification will help federal agencies meet each of the government's small business contracting goals.
- Repeal of Competitiveness Demonstration Program - The law repeals the Competitiveness Demonstration Program, which actually harmed many small firms. By repealing this program, the SBJA reinstated set-asides in about 10 industries where small businesses typically excel, such as landscaping, construction and pest control.
- Annual certification of business size - The SBJA requires annual certification of a firm's size and status through the Government's Online Representations and Certifications Database.
- Presumption of Loss - The SBJA strengthens the government's ability to take legal action against willful misrepresentations of small businesses' size or status to gain a federal contract or grant.
- Policy on Prosecution of the size and status fraud - SBA will issue a government-wide policy on the prosecutions of fraud or misrepresentation of size standards, which will be published on agencies' websites.
- Mandatory small business training - SBA is currently implementing a provision of the SBJA, which was also a recommendation from the President's Interagency Task Force on Small Business Contracting to strengthen the skills of the acquisition workforce by revising existing core certification and requiring training on small business contracting.

As evidenced in this testimony, over the last two and a half years, SBA has taken significant steps to strengthen our Small Business Procurement Goaling process, data quality efforts and approach to combat fraud, waste and abuse. These efforts are critical in ensuring small businesses gain access to federal contracting opportunities. While we believe we have made significant progress, we know that there is more work that can be done. With that in mind, we are committed to measuring the outcomes of our efforts and continuing to look for ways to build on our current initiatives and identify further opportunities for improvement.

We thank you for this opportunity to share our approach and work to support small business contractors. We appreciate your continued commitment to supporting small businesses through government contracting and look forward to continuing to partner with you on this critical effort. I am happy to answer any questions you may have.

APPENDIX**TABLE 1 – Scorecard Letter Grade Calculation Methodology**

Small Business Contracting Goal (actual percentage divided by goal percentage)	Weight of Score toward Letter Grade
Prime Contracting Total	80%
• Overall Prime Contracting	48%
• Small Disadvantaged Business Prime Contracting	8%
• Women-Owned Small Business Prime Contracting	8%
• Service-Disabled Veteran-Owned Small Business Prime Contracting	8%
• HUBZone Prime Contracting	8%
Subcontracting Total	10%
• Overall Subcontracting	6%
• Small Disadvantaged Business Subcontracting	1%
• Women-Owned Small Business Subcontracting	1%
• Service-Disabled Veteran-Owned Small Business Subcontracting	1%
• HUBZone Subcontracting	1%
Plan Progress	10%
TOTAL	100%

TABLE 2 – Score Ranges for each Letter Grade

Grade	Score Range (based on actual achievement divided by goal)
A+	≤ 150% but ≥ 120%
A	< 120% but ≥ 100%
B	< 100% but ≥ 90%
C	< 90% but ≥ 80%
D	< 80% but ≥ 70%
F	< 70%

Testimony of Mr. Mauricio P. Vera

Chair, Interagency Council of Federal Office of Small & Disadvantaged Business Utilization Directors

And Director, USAID Office of Small & Disadvantaged Business Utilization (OSDBU)

Before the Senate Committee on Homeland Security and Governmental Affairs

Ad Hoc Subcommittee on Contracting Oversight

“Small Business Contracts: How Oversight Failures and Regulatory Loopholes Allow Large Businesses to Get and Keep Small Business Contracts”

July 26, 2011

Madam Chairwoman and distinguished Members of the Subcommittee, thank you for inviting me to testify this morning. My name is Mauricio Vera and I am the Director of the U.S. Agency for International Development's (USAID) Office of Small and Disadvantaged Business Utilization (OSDBU). I also currently serve as the Chair of the Federal OSDBU Directors Interagency Council, and it is in that capacity, not as a representative of USAID, that I was invited to speak. The Council is an unofficial long-standing working group of career civil servants who concern themselves with Federal Government procurement as it relates to small business. Although I am elected by the group, I have no authority to speak for any statutory organizations in the Federal Government, nor do I have authority to speak for any members of the group.

Section 15(k) of the Small Business Act requires that all Federal agencies with procurement powers establish an Office of Small and Disadvantaged Business Utilization. Some agencies have subsequently renamed this office, however they perform similar functions. For example, the Department of Defense calls its office the Office of Small Business Programs. OSDBU Directors are the primary small business advocates within each Federal Executive Agency, responsible for promoting the maximum practicable use of all designated small business categories within the agency's federal acquisition process. OSDBU Directors are tasked with ensuring that their agency and its prime contractors comply with Federal laws, regulations, and policies related to the award of contracts and subcontracts to small and disadvantaged businesses. By law, OSDBU Directors shall report directly to the agency head or the deputy. This is important because it helps to ensure that OSDBU Directors have direct access to their agency's top decision makers in order to advocate effectively.

The key responsibilities of the OSDBU Directors, as listed in Section 15 (k) of the Small Business Act, are as follows:

- Identifying proposed solicitations that involve significant bundling of contract requirements,
- Working with agency procurement officials to revise such proposed solicitations to increase the probability of participation by a small business,
- Facilitating the participation of small businesses as subcontractors if solicitations for bundled contracts are to be issued,
- Assisting small businesses in obtaining payments from an agency with which it has contracted,
- Helping small businesses acting as subcontractors to obtain payments from prime contractors,
- Making recommendations to contracting officers as to whether particular requirements should be set aside for small businesses,
- Maintaining supervisory authority over OSDBU personnel, and
- Cooperating and consulting with the Small Business Administration (SBA) in carrying out OSDBU functions and duties under the Small Business Act and assigning a small business technical advisor to each office with an SBA-appointed procurement center representative.

The Federal OSDBU Directors Interagency Council (the "Council") is an informal organization of Federal small business program officials. The Council is led by an Executive Committee which consists of the Chair, the Vice Chair, and a Secretary. These individuals are elected annually for one year terms by the voting membership. At the end of September, I will complete my second year as the elected Chair of the Council.

The Council meets monthly to discuss issues that are important to accomplishing our respective missions and share best practices for the utilization of small businesses.

As I mentioned previously, the OSDBU Council is an informal body and every Director formally advocates for the priorities of his or her agency. However, the Council does share common aims which are to:

- Ensure that information is disseminated to small businesses so that they can be fully informed as to all federal laws, regulations, programs and initiatives that are relevant to their pursuit of federal prime and sub-contracts.
- Highlight processes that will identify procurement opportunities for all designated small business categories, and ensure that such opportunities are presented in such a manner that they can be taken advantage of by small businesses. Such opportunities include those at both the prime contract and the subcontract level.

- Advocate federal government-wide compliance with all federal laws, regulations and policies designed to maximize the participation of all designated small business categories in the federal marketplace.
- Ensure that all OSDBU Directors and their staffs are provided sufficient information to effectively participate in accomplishing the mission, vision, and goals of the Council.
- Advocate training of the federal procurement workforce and community in the principles and methodologies to maximize small business utilization.
- Work with trade associations, federal prime contractors, and other interested groups to develop solutions to issues impacting procurement with the small business community.
- Create an environment that promotes innovation, and empowerment in utilizing small businesses to accomplish the Government's business.
- Identify best practices, share ideas, and experiences among federal agencies and private industry that will help leverage resources and develop solutions to more fully utilize small business in federal procurement.

Agencies are mandated to establish small business procurement goals and negotiate these with the SBA prior to the beginning of the fiscal year. The government-wide goals for prime contracting are 23 percent for small business. Included in this 23 percent are: 5 percent for small disadvantaged business, 5 percent for women-owned small business, 3 percent for service-disabled veteran owned small business, and 3 percent for small businesses in Historically Underutilized Business Zones (HUBZone).

For the past several years, the SBA has issued a Small Business Procurement Scorecard to (1) measure how well Federal agencies are meeting their small business and socio-economic prime contracting and subcontracting goals, (2) provide accurate and transparent contracting data, and (3) report agency-specific progress. Agency goals are negotiated with the SBA, and agency grades are based primarily on whether they have met their prime and subcontract goals. Specifically, an agency's overall grade is comprised of three quantitative measures: prime contract goal accomplishment (80% of the scorecard grade), subcontracting goal accomplishment (10% of the grade) and progress plans for meeting its goals (10% of the grade). Scorecards are widely distributed upon release and are publicly available on SBA's website.

One of the measures in the progress plan section of the scorecard is that agencies should "demonstrate that small business data is accurately reported in the Federal Procurement Data System (FPDS)". Also, the Federal Acquisition Regulation and supplemental guidance from the Office of Management and Budget (OMB) Office of Federal Procurement Policy (OFPP) require agencies to annually verify that agency data captured in FPDS are complete and accurate. The OFPP policy letters require agencies to verify that agency policies, procedures, and internal controls include regular reviews of procurement data and that agencies are appropriately sampling procurement records for accuracy on key data elements.

Every year, SBA provides each of the 24 Agencies covered under the *CFO Act* an individualized anomaly report for the previous year. These anomalies are usually instances where the size of the business is in question for obvious reasons (e.g. an obviously large business may be erroneously listed as small) or there is incomplete data related to the business size or there are other issues that SBA has identified as potential areas for questions. Agencies are then instructed to review and investigate each of these anomalies and either correct those that are in error or provide SBA with an explanation of why the transaction should not be corrected.

A number of Council member agencies are taking concrete steps to mitigate the possibility of large businesses obtaining contracts that are set aside for small businesses and ensuring that their small business data are valid. Some of the best practices at various agencies include the following:

- Adding responsibility and accountability for data accuracy as an element in contracting officers' and other contracting officials' performance plans,
- Mandating that contracting professionals participate in training that emphasizes the importance of accurate reporting,
- Conducting random sampling of procurement actions to determine if businesses are coded correctly and correcting those that have been miscategorized, and
- Encouraging small businesses to update their information in the Central Contractor Registration (CCR) or Online Representations and Certifications Application (ORCA) databases to accurately reflect size and socio-economic business status.

Madam Chairwoman and Members of the Subcommittee, thank you again for the opportunity to testify before your committee. The members of the Federal OSDBU Directors Interagency Council are committed to helping small businesses get a fair shake and that our acquisition systems produce the good results our taxpayers deserve. I welcome the opportunity to seek your advice and counsel on this important matter and am pleased to answer any questions you might have.

**TESTIMONY OF
DR. MINDY CONNOLLY
CHIEF ACQUISITION OFFICER
U.S. GENERAL SERVICES ADMINISTRATION**

**FOR THE
U.S. SENATE SUBCOMMITTEE ON CONTRACTING OVERSIGHT
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS**

July 26, 2011

Good morning, Chairwoman McCaskill, Ranking Member Portman, and members of the Subcommittee on Contracting Oversight. It is a pleasure for me to be here today to testify for the first time as Chief Acquisition Officer of the General Services Administration (GSA).

Today I will share GSA's perspective on small business contracting, which conforms to the findings of the Presidential Interagency Taskforce on Federal Contracting Opportunities for Small Business, as well as the results of our work with colleagues at the Small Business Administration (SBA) to implement its recommendations. The Presidential Task Force identified three key priority objectives with actionable recommendations: (1) Providing federal contractors with stronger rules; (2) Developing a better equipped, better informed, and more accountable workforce; and (3) Improving outreach and making better use of data.

It is critical that these improvements be examined at the intersection of policy, regulations, and systems. Policy drives the regulations around which systems are managed. Greater harmonization of policy, regulations, and systems is needed to ensure that small businesses are the beneficiaries of contracting policy.

GSA has a record of exceeding our small business goals. We recently received a grade of "A" from the SBA for our FY10 small business performance. We're very proud of the workforce across GSA that led to that success. Our Federal Acquisition Service (FAS) helps other agencies accomplish their mission through our multiple award schedule (MAS) contracts, and government wide acquisition contracts. Across the MAS contracts, over 1/3 of the order awards go to small businesses, helping other agencies meet or exceed their small business goals.

Understanding NAICS Codes

Going forward, it is critical to understand the role the North American Industry Classification System (NAICS) codes play in determining business size when awarding contracts to small businesses. The NAICS codes are developed by the Department of Commerce to identify specific goods or services. SBA then develops size standards for each NAICS code, based on either the number of employees a company has or its annual revenue. A company can offer various goods and services that correspond to multiple NAICS codes. Therefore, an individual company may be classified as either "small" or "other than small," based on the procurement and the contracting officer's (CO's) determination of the appropriate predominant NAICS code at the time of solicitation.

It is, therefore, possible that a single company may be “small” for one procurement and “other than small” for another at the same time depending on the nature of the work for the government. There are two reasons for that possibility: first, because different NAICS codes have different size standards, SBA may apply different size standards to different contracts; and, second, businesses may naturally grow over the life of the contract. Sometimes both of those scenarios occur simultaneously.

When seeking federal contracts, businesses list the NAICS codes with which they are associated in CCR (Central Contractor Registration). They also represent their business size either in Online Representations and Certifications Application (ORCA) or through written certifications submitted to a CO. Contracting officers accept each offeror’s business-size representation unless that representation is challenged by another offeror or interested party, or the CO has a reason to question the representation. When a representation is questioned or challenged, SBA will make a determination as to business size. Business size representations (“small” or “other than small”) are recorded at the time of contract award and endure until a re-representation occurs.

Business Size Determination in Multiple Award Contracts

In the context of multiple award contracts, including GSA’s schedule contracts, the NAICS poses an additional challenge in reconciling the NAICS code on the prime contract with the NAICS code, usually more granular, for the task or delivery order, with the codes chosen by the vendors for marketing to the government. At present, the item that accounts for the greatest percentage of the total contract value will determine the NAICS code used to establish the size status of the offeror. This is referred to as the predominant NAICS code.

As a consequence, when task and delivery orders are placed against an offeror’s multiple award contract, the predominant NAICS code – and its business size determination -- will apply to all subsequent task or delivery orders, regardless of the individual content and associated NAICS codes for those orders.

The Task Force identified that rules need to be strengthened, and going forward we will work with SBA and our FAR Council stakeholders to ensure that the circumstances in multiple award contracts just described are appropriately addressed, taking into consideration the workload impact on COs and costs related to changes in the multiple Federal wide and agency systems supporting acquisition.

OPPORTUNITIES TO ADDRESS CHALLENGES

Strengthening rules

As the Task Force identified, the first priority is to strengthen rules and policies in order to promote contracting opportunities for small businesses. As one of three signatories to the FAR, GSA collaborates with other agencies represented on the FAR Council.

Some recent steps toward strengthening the rules are set forth in the Small Business Jobs Act of 2010, Public Law 111-240, which, among many changes, promotes the increased

contract awards to small businesses through key changes to federal procurement policies. While SBA has programmatic lead in small business issues, GSA is pleased to collaborate and provide consultation and support to SBA.

Once SBA issues its final rules implementing the policy changes mandated by the Jobs Act, the FAR Council will open a FAR case to address the revised SBA regulation. One regulatory issue for attention is the snapshot in time when a size determination should be made to classify a business as "small," thus eligible for policies benefitting small businesses.

Policy and rules establish criteria for awarding federal contracts to both small and large businesses. When acquisition criteria change, acquisition systems must follow suit. After the SBA and FAR regulations are amended, GSA will work to align the affected systems of the Integrated Acquisition Environment (IAE) or its successor, the System for Award Management (SAM) so they reflect new policy.

Implementing stronger rules as recommended by the Presidential Task Force that are at the intersection of policy, systems, workforce, and the economic engine of our small business has many interdependencies. However, I would emphasize that GSA is working closely with our SBA colleagues to ensure informed and timely regulatory implementation and systems development.

Aiding the Acquisition Workforce

The acquisition workforce is thousands strong across every federal agency and, collectively, they execute the policies and rules that flow from legislation. As we move forward to strengthen rules, the entire Acquisition workforce will be key to ensuring regulatory implementation achieves intended objectives. For that reason, comprehensive training is essential.

To assist in meeting this challenge, GSA's Federal Acquisition Institute (FAI) offers training for the acquisition workforce. Small business contracting is one area of training offered, and to address the need, FAI is currently developing the Small Business Programs online continuous learning module, due to launch in mid-September 2011. This module provides Government contracting professionals and program officials with an overview of the current small business types and programs. The course helps members of the acquisition workforce understand the tools, processes, and resources available to facilitate awards to small business. Upon completion of the course, our acquisition professionals will be better equipped to meet specific Federal acquisition requirements related to small business programs and to achieve agency small business goals, while supporting increased contracting and subcontracting opportunities for small businesses.

These small businesses work in partnership with the acquisition workforce in providing goods and services for the federal government. To facilitate that engagement, FAI also educates industry partners who seek procurement opportunities. For example, FAI recently launched an online-continuous learning module to instruct vendors on how to obtain a Certificate of Competency (COC) from SBA. The COC program allows a small business to appeal a contracting officer's determination that it is unable to fulfill the requirements of a specific government contract on which it is the apparent low bidder. The COC program helps

ensure that small businesses, especially those which are newly entering the federal procurement arena, are given a fair opportunity to compete for and receive government contracts. FAI's course identifies the various entities involved in the COC process, and it explains their roles and responsibilities.

Improved Outreach and Better Use of Technology and Data

Outreach efforts to small business community

GSA is actively reaching out to small businesses. GSA Office of Small Business Utilization (OSBU) leads the effort through several outreach initiatives. First and foremost, from January 2011 to present, GSA has hosted and participated in 225 outreach events for small businesses throughout the United States. The following are some examples of events where GSA met with small business groups and small business principals:

- Reverse 8(a) and HUBZone Matchmaker
- Women and Minority Business Forum
- Veterans Business Resource Summit
- Asian American Small Business Forum
- U.S. Hispanic Chamber of Commerce Business Matchmaking
- Native American RES 2011 Conference
- Minority Supplier Development Council Orientation Meetings
- Getting Back to Business GSA Procurement Summit
- National Center for Veteran Institute Procurement Conference

GSA is committed to increasing opportunities for small businesses, especially those for Service-Disabled Veteran-Owned Small Businesses, Small Disadvantaged Businesses, Women-Owned Small Businesses, and HUBZone small businesses. GSA has a healthy practice of conducting pre-bid/pre-solicitation conferences and vendor meetings, and we are encouraging more, as well as greater involvement of GSA's OSBU in these events. The Public Buildings Service now hosts vendor days for its buying portfolios, including a recent one in Washington, DC, that was a success and extremely beneficial to our industry partners.

As part of the Annual GSA Training Conference and Expo, OSBU sponsored its inaugural Small Business Symposium in May of this year. This event provided 400 small businesses an opportunity to engage directly with GSA and other Government agency buyers, to ask questions, and to learn about specific procurements.

We continue to actively post our outreach events on www.gsa.gov/events and are working to increase posting on www.FedBizOpps.gov.

To further enhance our outreach efforts, GSA will soon provide additional information to vendors on how to search and make use of the GSA Forecast of Contracting Opportunities. Also, GSA will increase and standardize use of continuous learning points as incentive for members of the acquisition workforce to participate in outreach events and to interface with the vendor community.

Together, these activities form GSA's concerted effort to enhance our contacts with the vendor community, including small businesses. We are committed to not only meeting but exceeding small business goals set for GSA. The small business goaling report attached to my testimony demonstrates GSA's ongoing commitment and success to this important effort. GSA received an overall "A" rating from SBA on its FY 2010 goaling report. Except for one category, we far exceeded established goals. GSA's Administrator has challenged the agency to close the gap in this one category in FY 2011.

Enhanced Use of Technology in Contracting

Communities involved in federal contracting use automated tools to capture and report contracting information. As policies and technology evolve, so must the tools and systems to implement them. Ideally, such tools and systems will reduce burden on contracting officers and vendors. Acquisition systems should capture acquisition data in an integrated and user-friendly environment. These data enable users to develop meaningful reports, conduct trend analysis, and make informed acquisition or policy decisions.

Coordinating with the Chief Acquisition Officers Council Acquisition Committee for Electronic Government (ACE), GSA serves as the managing partner of the Integrated Acquisition Environment (IAE). The IAE is a set of eight government-wide systems used regularly by the federal community and those who seek to do business with the government. To better serve stakeholders, GSA is developing a new System for Award Management (SAM) that will replace multiple current systems, including the current FPDS – NG system.

If fully funded, SAM will integrate the eight independent acquisition systems of the IAE and simplify the use of them – for both contracting officers and vendors. For example, instead of entering business identifiers in multiple systems, vendors will be able to make such entries only once in SAM. They will also use SAM to describe their businesses and to complete representations and certifications once as they now must do twice in Central Contractor Registration system (CCR) and Online Representations and Certifications Application (ORCA) respectively. In addition, SAM will also provide vendors with a list of all NAICS codes (North American Industrial Classification System). And, it will provide SBA size determination tables for businesses, regardless of whether a vendor has indicated specific NAICS as part of their usual business activities.

Once implemented, SAM will provide a single user-friendly interface that will reduce burden and errors among contracting officers and vendors alike. Reduced user error improves data quality. In turn, improved data quality creates more accurate reports and fosters improved decision making.

Commitment to Acquisition Excellence

Pursuant to my responsibilities as Chief Acquisition Officer (CAO), I monitor the performance of acquisition activities and acquisition programs of GSA. Anomaly reports, such as those provided by the SBA, are an opportunity to provide quality data and ensure that GSA meets its obligation to small business. When SBA provides GSA with their anomaly report, we research and explain the reasons behind all identified anomalies. When possible, we take corrective actions and ensure that we are using rational contracting processes in

awarding contracts to small businesses. Going forward, we will begin trend analysis of our findings. We anticipate that our findings will identify opportunities to (1) rectify any systemic issues, in either policy or technology (2) develop pertinent training for the acquisition workforce, and (3) improve acquisition practices through internal changes. Such changes may include updating the General Services Acquisition Regulation (GSAR), issuing acquisition alerts, conducting program management reviews of contracting activities, and ensuring resolution of identified issues.

In sum, as CAO, I am committed to ensuring that GSA maintains excellence in its acquisition activities, including small business outreach contracting and reporting. I am confident that these efforts will provide best value to our customer agencies in their important missions.

Like many of our taxpayers, and our country, GSA is challenged in a time of diminishing resources to keep up with calls for change. Funding for initiatives such as transitioning the Integrated Acquisition Environment (IAE) to the System for Award Management (SAM) is essential to move forward.

Madame Chair, Ranking Member Portman, there is a lot of work before us to do and we will move forward with our partners to assure its achievement. Thank you for the opportunity to share some of our GSA efforts. I will be glad to answer any questions of the Subcommittee.

General Services Administration
2010 Small Business Procurement Scorecard

A
108.7

FPDS-NG Data as of April 29, 2011
eSRS Data as of May 31, 2011

Prime Contracting Achievement:			108.70
	2009 Achievement	2010 Goal	2010 Achievement
Small Business	27.04%	27.00%	28.67% (\$2.325B)
Women Owned Small Business	5.79%	5.00%	5.93% (\$0.481B)
Small Disadvantaged Business	10.71%	5.00%	13.42% (\$1.088B)
Service Disabled Veteran Owned Small Business	1.90%	3.00%	2.22% (\$0.180B)
HUBZone	3.24%	3.00%	3.22% (\$0.261B)

Sub Contracting Achievement:			117.20
	2009 Achievement	2010 Goal	2010 Achievement
Small Business	18.53%	15.60%	31.30%
Women Owned Small Business	2.95%	5.00%	4.90%
Small Disadvantaged Business	4.06%	5.00%	5.20%
Service Disabled Veteran Owned Small Business	0.68%	3.00%	1.20%
HUBZone	0.41%	3.00%	0.90%

Plan Progress:		100
✓ Has implemented a strategy to increase the number of competitively awarded contracts to small businesses.		✓
✓ Has demonstrated top-level Agency commitment to small business contracting.		✓
✓ Planned significant events to increase small business participation in the procurement process during the period.		✓
✓ Demonstrated the small business data is accurately reported in FPDS-NG during the period. Verified & Cleared FPDS-NG Anomalies.		✓
✓ Demonstrated the policies and procedures are in place to ensure compliance with subcontracting plans and attainment of subcontracting goals during the period.		✓
✓ Demonstrated no unjustified bundling has taken place during the period.		✓
✓ Planned training to contracting staff/managers in executing small business/socioeconomic procurements during the period.		✓
✓ Planned to collaborate with SBA on formulation of small business procurement policy initiatives during the period.		✓
✓ Agency submits all strategic plans and reports that became due to SBA during the reporting period.		✓

Grading Scale	
A+	≤ 150% but ≥ 120%
A	< 120% but ≥ 100%
B	< 100% but ≥ 90%
C	< 90% but ≥ 80%
D	< 80% but ≥ 70%
F	< 70%

Comments:**Graded Agency:**

The \$2.3 billion in prime contracts GSA awarded to small business in FY 2010 represents 28.7 percent of eligible contract dollars, exceeding our 27 percent goal. This achievement reflects a \$2 million increase from FY 2009. GSA exceeded all subcategory goals, except for the service-disabled veteran goal, where we achieved 2.2 percent. We are working to improve in this area. Moving forward, GSA is implementing ways to increase small business contract opportunities, including a market research guide and training for GSA's acquisition teams, a more robust procurement forecast process, our Mentor-Protégé Program, and enhanced outreach efforts to small businesses.

In FY 2010, GSA encouraged acquisition teams to set aggressive subcontracting goals and implemented strengthened measures to increase small business subcontracting, such as goal monitoring through Procurement Management Reviews, reporting of contractors' performance against goals in the Past Performance Information Retrieval System, a desk guide and training for GSA acquisition staff, and targeted compliance reviews of prime contractors' progress against subcontracting plans.

Most government-wide multi-agency contracts (MACs) do not include subcontracting plans at the task order level or attribute subcontracting achievements to ordering agencies; instead Subcontracting Plans are tracked at the base contract (MAC) level. The Department of State (DoS) and GSA are piloting an approach to track small business subcontracting achievements for a major IT task, Vanguard II, that DoS has placed under GSA's Alliant GWAC. GSA is committed to DoS's exclusive scorecard credit for these achievements in the future (pending regulatory and system changes).

SBA's small business scorecard data does not fully tell GSA's small business achievement story. GSA's Office of Citizen Services and Innovative Technology partnered with a small business to create a web-based platform for engaging the public through competitions, Challenge.gov. This small business offered a no-cost service that saved the government an estimated \$2 million over a 2-year period. The government benefited from a nimble team and a cutting-edge product. This small business has grown and improved its product due to the wide exposure gained as a GSA partner.

SBA:

The General Services Administration (GSA) met 4 of its 5 prime contracting goals: Small Business, Women Owned Small Business, Small Disadvantaged Business and HUBZone. However, it did not meet its prime contracting goal for Service-Disabled Veteran Owned Small Business.

Fiscal year 2010 prime contracting achievement saw increases over FY2009 in Small Business, Women Owned Small Business, Small Disadvantaged Business and Service-Disabled Veteran Owned Small Business. GSA FY2010 achievement declined for HUBZone.

GSA regularly attends Small Business Procurement Advisory Council meetings.

**Post-Hearing Questions for the Record
Submitted to
Joseph Jordan, Assistant Administrator, Office of Government Contracting and Business
Development, U.S. Small Business Administration
From Senator McCaskill
"SMALL BUSINESS CONTRACTS: HOW OVERSIGHT FAILURES AND
REGULATORY LOOPHOLES ALLOW LARGE BUSINESSES TO GET
AND KEEP SMALL BUSINESS CONTRACTS"**

**Tuesday, July 26, 2011, 10:00 A.M.
United States Senate, Subcommittee on Contracting Oversight,
Committee on Homeland Security and Governmental Affairs**

1. **QUESTION:** What amount of contract spending represented in the Small Business Procurement Scorecards for the 2009 and 2010 goaling reports is from contract awards to Alaska Native Corporations? Please provide this information in terms of dollars, number of contracts, and percentage of the total for each year, as well as by awarding agency.

ANSWER: Below is the requested information for fiscal year 2009 and 2010. Please note that due to the manner in which data is captured in the Federal Procurement Data System, the data provided below is for all prime contracting dollars and includes contracts which are excluded from the annual small business goaling report. The data below is shown at the overall government-wide level. For data by awarding agency, please contact the respective agencies.

FY 2009:

- Alaskan Native Owned Corporation or Firm Actions: 14,012
- Dollars awarded to Alaskan Native Owned Corporation or Firm: \$3.8 billion
- Dollars awarded as Percentage of Total Prime Contracting Dollars: 0.71%

FY 2010:

- Alaskan Native Owned Corporation or Firm Actions: 19,745
- Dollars awarded to Alaskan Native Owned Corporation or Firm: \$5.0 billion
- Dollars awarded as Percentage of Total Prime Contracting Dollars: 0.94%

2. **QUESTION:** What does the Small Business Administration (SBA) exclude when counting small business contracts? What are the justifications for these exclusions? (Provide separate justifications for each exclusion.)

ANSWER: The SBA excludes a select number of contracts from its annual small business procurement goaling report. The primary justification for these exclusions is that these

contracts are not subject to the Federal Acquisition Regulation, which includes regulations on when small business awards and set-asides must be done.

The current contracts excluded from the annual goaling report are the following:

- Javits-Wagner-O'Day Program (JWOD, Sheltered Workshops)
- Federal Prison Industries (commonly referred to as FPI, or by its trade name UNICOR)
- American Institute in Taiwan: Awards with the American Institute in Taiwan designated as the contractor for the award and determined by a DUNS number of '161174503'
- Contracts performed outside of the United States: Awards performed outside of the US are designated when the country in the place of performance is NOT the United States
- Acquisitions by agencies on behalf of foreign governments or entities or international organizations: As designated in FPDS-NG with a "Foreign Funding" value of 'Foreign Funds FMS' and 'Foreign Funds non FMS'
- Contracts funded predominately with agency generated sources. Accordingly, the following Federal Government agencies are excluded:
 - FDIC, 5100
 - Postal Service, 1800
 - Bureau Of Engraving And Printing, 2041
 - United States Mint, 2044
 - Office Of The Comptroller Of The Currency, 2046
 - Office Of Thrift Supervision, 2047
 - Transportation Security Administration, 6965; 7013, (data are included when the signed date is equal to or greater than July 1, 2008)
 - Federal Aviation Administration, 6920
 - Tennessee Valley Authority, 6400
 - Administrative Office of the US Courts, 1027
 - Architect of the Capitol, 0100
 - Bankruptcy Courts, 1021
 - Central Intelligence Agency, 5600
 - Congressional Budget Office, 0800
 - Court Services and Offender Supervision Agency, 9594
 - Pretrial Services Agency, 959P
 - Federal Judicial Center, 1028
 - Overseas Private Investment Corporation, 7100
 - Supreme Court of US, 1001
 - US Courts of Appeals-Judicial Circuits, 1002
 - US District and Territorial Courts, 1012
 - Contracts awarded for the Defense Commissary Agency, (Awards with a Other Than Full and Open Competition value of "RES" for Resale).
 - Product Service codes for Leases in the format X***.
 - Product Service codes for Utilities S112 (Electric).
 - Tricare DODAAC - H94002. (based on Contracting Office Code)

- Centers for Medicare & Medicaid Services (CMS) non-appropriated funded contracts - 00NAF. (based on Contracting Office Code)
- In addition, there are purchases that are not reported to FPDS and therefore are also not included in the goaling base:
 - Financial assistance actions e.g. grants, cooperative agreements, subsidies, and contributions except for those Agencies who have a special module to accumulate information on these types of actions.
 - Imprest fund transactions, SF 44 purchases, training authorizations.
 - Micro-purchases (contracts valued less than \$3,000) including those obtained through the use of the government purchase card.
 - Interagency agreements with other federal agencies (e.g. Tennessee Valley Authority), independent federal establishments (e.g. Export/Import Bank of the US), or federally chartered sources (e.g. Howard University or the Smithsonian Institution).
 - Government Bills of Lading and Government Transportation Requests.
 - Actions using predominantly non-appropriated funds, except pursuant to funds held in trust accounts mentioned.
 - EDSTRIP and MILSTRIP requisitions.
 - Actions involving transfer of supplies within and among agencies and sub-agencies.
 - Orders from GSA Stock and GSA Consolidated Purchase Program.

3. **QUESTION: Statement.** There are NAICS codes for manufacturing, retail trade, wholesale trade, and services. However, in determining size standards, SBA requires contracting officials to use the NAICS codes for manufacturing, and not the NAICS codes for retail trade or wholesale trade, when buying a product from businesses that are not engaged in manufacturing, but are primarily engaged in retail trade or wholesale trade. NAICS codes for manufacturing have a higher size standard than codes for retail trade and wholesale trade. This allows many businesses to be counted as small that may not otherwise qualify as small.

Please explain the basis for the decision by the SBA to use the North American Industrial Classification System (NAICS) as part of the foundation for establishing small business size standards?

ANSWER: Section 3(a)(3) of the Small Business Act requires the Administrator to ensure that small business size standards vary by industry to reflect differing characteristics of various industries. Accordingly, SBA utilizes the North American Industry Classification System (NAICS) as the Federal government's comprehensive definition of industries in the U.S. economy instead of attempting to develop its own industry definitions. Prior to NAICS, SBA used Standard Industry Classification (SIC) System as a basis for its size standards.

Furthermore, the best source of objective industry data available to establish, review and modify size standards is from the U.S. Bureau of the Census' Economic Census, which collects and publishes data by NAICS industry.

Because the NAICS is developed for statistical data collection, SBA and other Federal agencies using NAICS for non-statistical purposes may modify the NAICS to accommodate their program purposes. For example, for Federal procurement, SBA has established special size standards for several sub-industries within the 6-digit NAICS industries, such as environmental remediation services and engineering services for military and aerospace equipment and military weapons.

4. **QUESTION:** There are NAICS codes for manufacturing, retail trade, wholesale trade, and services. However, in determining size standards, SBA requires contracting officials to use the NAICS codes for manufacturing, and not the NAICS codes for retail trade or wholesale trade, when buying a product from businesses that are not engaged in manufacturing, but are primarily engaged in retail trade or wholesale trade. NAICS codes for manufacturing have a higher size standard than codes for retail trade and wholesale trade. This allows many businesses to be counted as small that may not otherwise qualify as small.

Why does this requirement exist?

ANSWER: Procurements are classified based on what is being acquired, not who is supplying the goods. The primary goal is for agencies to acquire supplies from small business manufacturers. A non-manufacturer can qualify as a small business if it supplies the product of a small business, so the manufacturing NAICS code and size standard is needed to make a determination as to whether the non-manufacturer is supplying the product of a small business. Most manufacturing industries have a 500-employee size standard, with some manufacturing industries having higher size standards of up to 1,500 employees. The manufacturing NAICS code is also used to conduct market research to determine if small manufacturers exist. If an agency can demonstrate that no small business manufacturers exist, the agency can provide that information to SBA and SBA can waive the requirement that an offeror supply the product of a small business. Finally, the size standard for a non-manufacturer is always 500 employees, so there is no need to assign wholesale or retail codes to a procurement. The size standards that correspond to the wholesale and retail trade NAICS codes are used for financial assistance purposes.

The SBA established a 500-employee size standard for non-manufacturers for two reasons. First, SBA did not want to require multiple size standards for non-manufacturers (regardless of what specific wholesale or retail trade industries they are in) when Federal government procures manufactured products as small business set asides through distributors (i.e., non-manufacturers). A common size standard for non-manufacturers avoided that situation. Second, it is to recognize and accommodate a relatively common practice for manufacturers to bid on procurements of manufactured products that they do not produce with their own labor force, notwithstanding that they are capable of doing so. Such manufacturers must qualify as small businesses under the non-manufacturer size standard and applicable definition established by SBA (13 CFR 121). Therefore, in an effort to minimize the adverse consequences upon such concerns, the SBA established the 500-employee size standard for non-manufacturers. 500 employees is the predominant size standard for manufacturers.

5. **QUESTION:** The Small Business Jobs Act of 2010 requires SBA to periodically review current small business size standards and modify the standards to reflect changes in market conditions.

Has SBA reviewed any of the current small business size standards? If so, which standards have been reviewed so far?

ANSWER: SBA is doing a comprehensive review of all small business size standards to ensure that size standards reflect current industry structure and market conditions. We began this comprehensive review in 2007. Furthermore, the Small Business Jobs Act of 2010 requires SBA to review at least one-third of all size standards at least every 18 months, and complete the entire review in five years. We are doing this review on a sector by sector basis. To date, we have reviewed the receipts-based size standards for a number of sectors, which are at different stages of Federal rulemaking process as follows:

- **Final rules published** (Oct 6, 2010) – these three rules were effective November 5, 2010.
 - NAICS Sector 44-45: Retail Trade – SBA modified 47 size standards. The modifications included increasing 46 size standards and changing the basis of measurement for New Car Dealers from receipts to number of employees. Size standards in the Retail Trades Sector do not apply to Federal procurement; only to SBA loans and to all other Federal government programs, including Agencies' Regulatory Flexibility Analyses. These changes should have no impact on procurement because the 500 employee non-manufacturer rule applies to Federal procurement.
 - NAICS Sector 72: Accommodation and Food Services – SBA increased five size standards.
 - NAICS Sector 81: Other Services – SBA increased 18 size standards.
- **Proposed rules published in *Federal Register* for comments**
 - NAICS Sector 54: Professional, Scientific & Technical Services
 - Published proposed a rule on March 16, 2011 – SBA proposed to increase 35 size standards in Sector 54 and one in Sector 81, Other Services (we did not consider this one industry in the above rule for Sector 81 because of its shared businesses with those in Sector 54).
 - Comment period ended on June 15, 2011 (more than 1,400 comments received). SBA is currently evaluating and assessing the comments. With analysis of comments, preparation of the final rule, and review and clearance, it will be about six months before we have a final rule ready for publication in the *Federal Register*.
 - NAICS Sector 48-49: Transportation and Warehousing
 - Published on May 13, 2011 – SBA proposed to increase 22 size standards.

- Comment period ended on July 12, 2011 – We received only three comments. SBA is currently evaluating and assessing the comments. With analysis of comments, preparation of the final rule, and review and clearance, it will be about six months before we have a final rule ready for publication in the *Federal Register*.

- **Proposed rules under review**

- NAICS Sector 51: Information – This is currently under review by OMB's Office of Information and Regulatory Affairs. They received it on July 29, 2011, and have up to 90 days (normally) to complete the review. When they return it, we will likely have some changes to make. We expect to publish the proposed rule for comments in the *Federal Register* in Fall 2011. The comment period will be 60 days (unless extended).
- NAICS Sector 56: Administrative and Support, and Waste Management and Remediation Services – This is also currently under review by OMB's Office of Information and Regulatory Affairs. They received it July 29, 2011 as well, and have up to 90 days (normally) to clear our submissions. We expect to publish the proposed rule for comments in the *Federal Register* in Fall 2011. The comment period will be 60 days (unless extended).
- NAICS Sector 53: Real Estate, Rental and Leasing – This is currently going through internal SBA clearance. After that, we must send it to OMB's Office of Information and Regulatory Affairs for its review. OMB has up to 90 days to complete the review. We expect to publish the proposed rule for comments in the *Federal Register* by the end of 2011. The comment period will be 60 days (unless extended).
- NAICS Sector 61: Education Services – This is also currently going through internal SBA clearance. After that, we must send it to OMB's Office of Information and Regulatory Affairs for its review. OMB has up to 90 days to complete the review. We expect to publish the proposed rule for comments in the *Federal Register* by the end of 2011. The comment period will be 60 days (unless extended).

- **Proposed rules in progress**

- NAICS Sector 22: Utilities – We are working on this proposed rule now. However, we are awaiting external industry data, and we have put this on hold for the moment. Once we have industry data, we will move it forward within SBA for clearance.
- NAICS Sector 62: Health Care and Social Assistance Services – We are currently working on a draft of this proposed rule.
- NAICS Sector 71: Arts, Entertainment and Recreation – We are currently working on a draft of this proposed rule as well.

6. **QUESTION:** Has SBA made any modifications to the size standards based on its findings? If yes, what modifications have been made? If no, what is the justification for instances where SBA found a change in market conditions but declined to modify size standards?

ANSWER: As mentioned above, SBA modified several size standards in the first three sectors for which the final rules were published in October 2010. Specifically, SBA increased 46 receipts based size standards in Retail Trade, five in Accommodation and Food Service, and 18 in Other Services. SBA also changed the size standard for New Car Dealers from \$29 million in average annual revenue to a 200-employee size standard.

Similarly, based on the results, SBA proposed to increase 36 size standards for the Professional, Scientific and Technical Services (NAICS Sector 54) and 22 size standards for Transportation and Warehousing (NAICS Sector 48-49). Since SBA is currently working on the final rules for these sectors, at this point it is not possible to say how many modifications SBA will adopt in the final rules. Table below summarizes total numbers of size standards reviewed (or being reviewed) and size standards revised or proposed for revisions.

NAICS Sector	NAICS Sector Title	Status	No. of size standards reviewed	No. of size standards revised or proposed for revisions
44-45	Retail Trade	Final rule published	76	47
72	Accommodation & Food Services	Final rule published	15	5
81	Other Services	Final rule published	48	18
54	Professional, Scientific & Technical Services	Analyzing comments and preparing final rule	49	36
48-49	Transportation & Warehousing	Analyzing comments and preparing final rule	42	22
56	Administrative support & Waste Management Remediation Services	Proposed rule under OMB review	44	37
51	Information	Proposed rule under OMB review	20	15
53	Real Estate & Rental & Leasing	Proposed rule in SBA's clearance	25	20
61	Educational Services	Proposed rule in SBA's clearance	18	9
62	Health Care & Social Assistance	Proposed rule in progress	39	
71	Arts, Entertainment & recreation	Proposed rule in progress	25	
22	Utilities	Proposed rule in progress	9	

7. **QUESTION:** At the hearing, you discussed a process called “NAICS shopping” where contractors and contracting officers actively choose NAICS codes that provide the most beneficial size standard, even if the code doesn’t match the actual product or service being sought. This allows contractors to be counted as small that may not otherwise qualify as small and it allows contracting officers to award contracts to ‘small businesses’ that can be counted towards agency small business contracting goals.

What actions has SBA taken to combat “NAICS shopping”?

ANSWER: As I discussed at the hearing, “NAICS shopping” is an issue we are aware of and one that we work quickly to address when identified. We believe the current system in place is effective when problems and abuses do occur. SBA’s regulations and the Federal Acquisition Regulation requires a contracting officer to assign the appropriate NAICS code to contracts and orders that best describes the item or items being procured. SBA’s Procurement Center Representatives review procurements set-aside for small businesses, as well as those not set aside for small businesses. Where they feel that a NAICS code has been inappropriately applied, they will challenge that NAICS code. Once a procurement has been advertised, if an interested party or SBA feels that the NAICS code assigned does not properly represent the items being procured, they may appeal the designation to SBA’s Office of Hearings and Appeals.

8. **QUESTION:** How does SBA conduct oversight of this issue?

ANSWER: As described above, SBA closely monitors this issue and potential abuses through our Procurement Center Representatives. In addition, the appeal process provides a powerful tool for enforcement in this area. SBA recently amended its regulations to provide it with additional time to appeal NAICS code designations.

9. **QUESTION:** A report from the SBA Inspector General in February 2005 recommended that SBA work with the Defense Department and GSA to modify the Central Contractor Registration so that contractors would no longer be able to self-certify.

What has SBA done to implement this recommendation? If nothing has been done, why not?

ANSWER: SBA worked with the Integrated Acquisition Environment overseen by GSA to revise CCR. A potential contractor that represents itself as a “small business” is now required to submit its number of employees and average annual receipts and enter the applicable NAICS code the represents its primary industry. An algorithm then computes whether that business is a “small business” for its primary NAICS code and any other NAICS code entered by that business as it relates to a federal solicitation (contract).

10. **QUESTION:** When contractors represent their size status, they are supposed to represent the status based on the entire business concern. However, the identification number used to track contractors in all of the government systems (the DUNS number) does not represent a contractor’s entire business concern.

If the representation is supposed to reflect the entire business concern, why are all of the government systems which track these representations linked to a number which does not track an entire business?

ANSWER: This is an issue related to firm's DUNS numbers and how they are captured in government systems. The Integrated Acquisition Environment (IAE), which is housed at GSA, is currently working with Dun and Bradstreet to address this issue. SBA defers to our colleagues at GSA for the latest information on this issue.

11. **QUESTION:** What issues, if any, does this create when SBA is investigating contractors who might be misrepresenting their size status?

ANSWER: Generally, bidders for a federal contract know their competition. Once a contracting agency posts the notice of the apparent successful offeror, an interested party can protest the "size status" of that proposed awardee. SBA will then conduct a review of that business's size status. If it is found to be other than small, their small business size status is revised in CCR. They must be re-certified by SBA as "small" for that size standard before they can represent themselves as small for that NAICS code.

12. **QUESTION:** Do any government agencies have the ability to track the entire business concern? If so, which agencies?

ANSWER: Agencies can access the Dynamic Small Business Search engine through CCR. They can retrieve a small business's representations to all NAICS codes in CCR. In the system, the firm's status as a small business is listed next to each NAICS code. There are instances where a business is listed as "small" for some NAICS codes and "large" for others.

**Questions for the Record
Submitted to
Mauricio Vera, Chair, Federal Office of Small and Disadvantaged Business Utilization
Council
From Senator McCaskill
“SMALL BUSINESS CONTRACTS: HOW OVERSIGHT FAILURES AND
REGULATORY LOOPHOLES ALLOW LARGE BUSINESSES TO GET AND KEEP
SMALL BUSINESS CONTRACTS”**

**Tuesday, July 26, 2011, 10:00 A.M.
United States Senate, Subcommittee on Contracting Oversight,
Committee on Homeland Security and Governmental Affairs**

On June 3, 2011, GAO issued a report titled “Small Business Contracting: Action Needed by Those Agencies Whose Advocates Do Not Report to Agency Heads as Required.” In its report, GAO found that seven of the sixteen agencies under review failed to comply with the Office of Small and Disadvantaged Business Utilization (OSDBU) provisions in the Small Business Act, which require OSDBU directors to report directly to the head of an agency.

1. What is the potential negative impact for OSDBU offices and small businesses that may result from these agencies’ noncompliance with the provision of the law identified in GAO’s report?

Answer:

Having direct access to the highest levels of the agency is extremely important in order to be an effective OSDBU Director, and that is why the Small Business Act requires that an OSDBU director report directly to the head or deputy head of an agency. In my role as OSDBU Director at USAID, I report directly to the Deputy Administrator and participate in senior management meetings several times a week. This gives me direct access to the agency’s senior level leadership on a regular basis and has allowed me the opportunity to establish strong working relationships with each of them. It also sends a strong message to the rest of the agency that the agency leadership is supportive of, and attentive to, small business initiatives. This, in turn, allows me greater access to other leaders throughout the agency.

2. Does having a director who does not report directly to the agency head undercut the authority of the OSDBU director?

It is difficult for me to comment directly on the authority of OSDBU Directors at agencies that are not in compliance since I have not worked in that type of organization. However, I can say that OSDBU Directors face unique challenges on a daily basis; without direct access to the agency head or deputy, I believe that it would be much more difficult to advocate effectively for small businesses.

**Post-Hearing Questions for the Record
Submitted to
Mindy Connolly, Chief Acquisition Officer, U.S. General Services Administration
From Senator McCaskill
“SMALL BUSINESS CONTRACTS: HOW OVERSIGHT FAILURES AND
REGULATORY LOOPHOLES ALLOW LARGE BUSINESSES TO GET AND KEEP
SMALL BUSINESS CONTRACTS”**

**Tuesday, July 26, 2011, 10:00 A.M.
United States Senate, Subcommittee on Contracting Oversight,
Committee on Homeland Security and Governmental Affairs**

Under current rules, a single North American Industrial Classification System (NAICS) code is used to determine the small business size standard for contractors seeking award of a GSA Federal Supply Schedule contract. A contractor who is deemed “small” for the single NAICS code will then be considered small for every task or delivery order award under the contract, even if the contractor doesn’t meet the size standard for the individual product or service sought.

1. Why does this rule exist?

Answer: North American Industrial Classification System (NAICS) codes are classifications of industries that SBA uses when setting size standards. The SBA uses two primary measures of business size – average annual receipts and average number of employees. SBA is currently reviewing all size standards on a rolling basis. Current regulation require that the predominant NAICS code, and associated size standard, be assigned to each solicitation and resultant contract. There are times when a contractor may do business in an industry in which it would be determined small in one NAICS, and “other than small” for another. We recognize that, taken together, this framework has limitations and allows for anomalies. However, we also recognize that the problem is not unique to GSA Schedules and that changes to this framework pose a shared government-wide challenge that will require a thoughtful approach to avoid unintended consequences. As noted in our testimony, GSA is currently working closely with SBA and OFPP to assess various strategies for improving the framework for applying multiple NAICS and associated size status for multiple award contracts.

2. Does GSA believe this rule creates the potential for inaccuracies when determining annual small business contracting goals?

Answer: GSA recognizes how the rules and the framework impact annual small business contracting goals and shares the goal of improved accuracy of federal procurement data. We are working closely with SBA and OFPP to assess alternatives that will promote small business contracting, improve procurement data accuracy, and preserve the contracting tools designed to streamline the acquisition of solutions for agency missions. Careful consideration of new strategies is essential to avoid unintended consequences that could negatively impact the small business program and data integrity. For example, a

new rule to require size determinations or size certifications at the order level could pose significant risks. For example, agencies could find it difficult to do market research on available sources (i.e. small vs. large Schedule holder) if the size determination is made at the order level and not the contract level. We believe that our collaboration can result in the identification of approaches, supported by training and technology that promote small business contracting, improve confidence in procurement data, and the streamlined aspects of all IDIQ contracts, including GSA Schedules.

3. The Small Business Administration's Inspector General identified this issue with regard to GSA's schedule contracts over 5 years ago. Why has nothing been done to fix it?

Answer: While SBA's IG report is directed to SBA's internal management actions, GSA takes seriously the report's concerns because it specifically identifies GSA Schedules. We note, however that the concerns raised are not unique to GSA Schedules. The Small Business Jobs Act (SBJA) of 2010 at Section 1331 tasks the SBA to work with GSA and OFPP in implementing new set-aside rules for multiple award task and delivery order contracts. A FAR case has been opened to address this matter in accordance with Section 1331 of the SBJA. We are taking this opportunity to discuss and assess the alternatives available for addressing the SBA IG's concerns. GSA is also looking to work with SBA and other agencies to distinguish anomalies that are artifacts of the current policy from those that are miscoding or misrepresentations in order to support a targeted approach for improving data quality. Therefore, we believe that an integrated approach that includes policy, training, and technology improvements will produce the best results.

4. Is there any problem with requiring contracting officers to make a size determination for every order off of a GSA schedule contract?

Answer: Although we agree that this issue warrants attention, we also recognize the many interdependencies that require the alignment of policy, systems, and data validation as we move forward with SBA and the FAR Council on strengthening the rules and improving our processes. We note that there would be a number of challenges with requiring size determinations at the order level, regardless of whether the order was against a GSA Schedule contract, Government-wide Acquisition Contract (GWAC), or any other task or delivery order contract from a different Executive branch agency. Order level size determinations by contracting officers have the potential to greatly increase the risk of confusion and errors, adding to our procurement data validation concerns and multiplying the need to address anomalies that are not actual errors. It would add burden to using these types of contracts, which were intended to provide a streamlined acquisition tool for the acquisition workforce. Any changes would require substantial systems changes, which are currently not funded, and it would require substantial retraining of industry. To overcome these challenges would require a significant commitment of resources, including acquisition workforce training and funding.

When contractors represent their size status, they are supposed to represent the status based on the entire business concern. However, the identification number used to track contractors in all

of the government systems (the DUNS number) does not represent a contractor's entire business concern.

5. If the representation is supposed to reflect the entire business concern, why are all of the government systems which track these representations linked to a number that does not track an entire business?

Answer: The unique identification of federal contracting entities is a complex issue and significant changes to the current policy could have consequences well beyond federal procurement. GSA has committed to working with OMB, DoD, and SBA in examining the current policy.

It is not my understanding that a representation is required to represent an entire business concern, given the many types of organizational structures companies can legally choose. SBA has the programmatic lead for issues related to small business representations and I respectfully defer questions about those representations to them for further consideration.

6. Do any government agencies have the ability to track the entire business concern? If so, which agencies?

Answer: We are not aware of any agencies with this capability.

**Post-Hearing Questions for the Record
Submitted to Dr. Mindy Connolly
Chief Acquisition Officer, U.S. General Services Administration
From Senator Mark L. Pryor**

**“Small Business Contracts: How Oversight Failures and Regulatory Loopholes Allow
Large Businesses to Get and Keep Small Business Contracts”
July 26, 2011**

1. Are there ways we can tweak and improve the North American Industry Classification System of our rules? If so, what are some of the ways we can make improvements?

Answer: The Office of Management and Budget’s Office of Information Regulatory Affairs (OIRA) is responsible for setting statistical classifications. These classifications are determined by an interagency Economic Classification Policy Committee which is chaired by the United States Census Bureau. Every five years the Committee reviews the North American Industry Classification Systems (NAICS) codes. The next review process will begin early in 2014 and OMB will seek public comment through the Federal Register. SBA establishes size standards for private sector industries in the United States. The SBA uses two primary measures of business size – average annual receipts and average number of employees. SBA is currently reviewing all size standards on a rolling basis.

Also, as noted during the hearing, improvements in technology have resulted in significant benefits. For instance, by only requiring contractors to input their number of employees or revenues, errors are reduced in identifying whether a business is small in a specific NAICS. Other technology improvements will help more generally. The System of Award Management (SAM) is a consolidated hosting service which will establish one login (instead of eight) and one common database which will eliminate the need for redundant data entry. The system will integrate the eight existing Integrated Acquisition Environment (IAE) procurement applications into a common platform which will improve data quality, thereby reducing anomalies. GSA’s ability to implement SAM is premised on the availability of \$38 million in funding which has been requested (but not currently funded.)

Notwithstanding GSA’s plans to implement SAM, there are other projects that GSA has undertaken to improve data quality. We have incorporated systems training for contracting officers to reduce data entry errors and enhance understanding of the IAE environment. We have offered IAE training through the Federal Acquisition Institute. We will soon be working with SBA to review the methodology used in the agency’s production of its annual “Anomaly Report.” All of these steps will improve data quality.

As we work with the SBA and OFPP on implementation of the Small Business Jobs Act, we are identifying options for improving the rules and framework that support the small business contracting programs.

2. Your "A" grade from SBA is reflective of the hard work you've put into improving interaction with small business. What has been the biggest step in building this strong relationship?

Answer: GSA's Office of Small Business Utilization (OSBU), and its Regional Small Business Utilization Centers (SBUCs) seek to build and strengthen a trusted partnership with GSA's acquisition workforce by keeping them abreast of current and relevant small business policies, regulations, programs and trends, and work proactively with GSA contracting offices to promote small business success and improved internal collaboration and communication.

GSA's commitment to small business contracting begins at the top. The GSA Administrator's Office provides regular support for small business contracting by speaking at small business events. OSBU's Associate Administrator reports directly to the Administrator and participates in weekly Administrator Senior Management Team meetings, which is a platform for reinforcing support for the small business program and goals from across the senior leadership team. In addition, GSA's OSBU works closely with GSA's Chief Acquisition Officer and Senior Procurement Executive and major business lines' Acquisition Management leadership.

Most of the GSA's buying activity occurs within its regions. GSA's Regional Administrators also support the agency's efforts to assist small businesses in contracting with GSA and the federal government. This commitment is demonstrated in their active participation in outreach events targeted to the small business community. In addition, each regional office has appointed a Regional Acquisition Executive. GSA's Regional Small Business Utilization Centers (SBUCs) work closely with the Regional Acquisition Executive in many ways to ensure agency commitment to small business contracting. The regions host networking sessions, small business road shows, and collaborate with state and local government to educate small businesses on contracting opportunities with the federal government.

Through monthly webinars, we focus on assisting current GSA contractors by providing tips and strategies on "Marketing to the Federal Government," as well as helping small business that are Multiple Award Schedule contract holders with low or no sales to improve their performance.

In addition, GSA has improved upon small business successes through the GSA Mentor-Protégé Program. This program is designed to encourage and motivate GSA prime contractors to assist small businesses and enhance their capability of performing successfully on GSA prime contracts and subcontracts. The program is intended to foster the establishment of long-term relationships between small businesses and GSA prime contractors and increase the overall number of small businesses that receive GSA prime contract and subcontract awards. We currently have 81 active Mentor-Protégé Agreements in place and in good standing. A further breakdown of those Agreements will show that there are a total of 67 Mentors in the program where 41 are large businesses and 26 are small businesses. Some of our Mentors have multiple Protégés currently in the program.

Over the past 22 months, Protégés have reported 41 new contracts won as a result of assistance received from their Mentors, valued at up to \$260 million (including in some cases Indefinite Delivery Indefinite Quantity contracts with high dollar ceilings spanning multiple years). We

have also seen an increase in subcontracting awards to Protégés by the Mentors in relation to program participation. Protégés have reported 54 new subcontract opportunities from their Mentors.

Other steps to our success in small business contracting include the appointment of a top-level GSA executive (GSA's Commissioner for Federal Acquisition Service) to serve as GSA's Senior Agency Official responsible for implementing Executive Order 13360, which mandates that agencies take an active role in promoting contracting with service-disabled veteran-owned small businesses. In this role, this individual has spearheaded the 21 Gun Salute, GSA's action plan to meet and exceed its 3 percent contracting goal with service-disabled veteran-owned small businesses. GSA's acquisition policy leaders have issued guidance to all contracting personnel on meeting socioeconomic and small business contracting goals and resources available to identify veteran-owned firms.

GSA further demonstrate its commitment to the small business programs by recognizing GSA acquisition professionals through the *Above and Beyond* awards program. The Office of Small Business Utilization sponsors the *Above and Beyond* awards to honor outstanding and innovative GSA acquisition associates and/or teams who have contributed to the success of the GSA Small Business Programs by willingly going above and beyond their traditional responsibilities to encourage small business participation in GSA's procurement processes. Their support and dedication has been a key element in the increased availability of contracting opportunities for the Nation's small businesses.

Another big step towards our small business contracting success is national consolidated calendar of events published on the GSA's OSBU website, at <http://www.gsa.gov/portal/content/105221>, allowing vendors to view all upcoming events within their geographic area. This calendar lists the name of the event, location, date, and a point of contact. GSA is an active participant in over 350 conferences, marketing events, and trade fairs nationwide with members of Congress, other Federal Government agencies, trade associations, and professional organizations each year. We support congressional procurement fairs to highlight GSA opportunities and attend events held by small business advocacy groups. We partner with local and national chambers of commerce to provide assistance and guidance to small businesses interested in contracting with GSA.

Throughout FY 2010, we encouraged contracting offices to set aggressive subcontracting goals and implemented strengthened measures to increase small business subcontracting. In an effort to increase subcontracting opportunities for small businesses, GSA held "meet and greet" sessions for subcontractors and potential prime contractors to network before issuing the solicitations for large construction projects. We also devoted resources to guide large prime contractors to maximize their subcontracting goals prior to contract award and to help contractors make their best efforts to meet those goals after contract award. We added elements to our Procurement Management Reviews (PMRs) for review of contracting officer's monitoring of subcontracting plans, and reporting of contractors' performance and efforts to achieve small business goals in the Past Performance Information Retrieval System (PPIRS). GSA conducted subcontracting training in various regions and in some instances, invited the SBA Procurement Center Representative to participate. This added increased weight and expertise to the training.

We believe small businesses are key to helping us continue to be the strongest country in the world and a place where there is real opportunity for all. Our nation's small businesses are the engine that energizes our economy, and GSA is committed to increasing opportunities for these businesses.

Statement of Congressman Bennie G. Thompson
Ranking Member, House Committee on Homeland Security

United States Senate
Committee on Homeland Security and Governmental Affairs
Ad Hoc Subcommittee on Contracting Oversight

*Hearing on: "Small Business Contracts: How Oversight Failures and Regulatory Loopholes
Allow Large Businesses to Get and Keep Small Business Contracts"*

July 26, 2011

I would first like to thank Sen. McCaskill for conducting this hearing on the very important issue of examining how largely businesses routinely obtain small business contracts.

Sen. McCaskill and I share a commitment to small businesses.

In 1986, legislation was enacted that allows Alaska Native Corporations (ANCs) to participate in and receive the benefits of the 8(a) program, even if they do not meet the definitions of small, disadvantaged, or minority owned, that apply to other 8(a) participants.

The ANCs' "special procurement advantages" – including the ability to win uncapped no-bid contracts and remain in the 8(a) program for perpetuity – results in other 8(a) small businesses all over the country being crowded out of the Federal marketplace, through no fault of their own.

The need for reform became clear.

As a result, both Sen. McCaskill and I, introduced legislation to level the playing field for 8(a) firms.

Hopefully, our bills will be enacted into law.

Today the Subcommittee will examine another issue affecting the small business community for far too long – the ability of larger corporations to obtain and perform small business contracts.

This problem is not new.

In 2006, I wrote to the SBA Office of Inspector General and asked them to examine this phenomenon.

The impetus for that letter came from my oversight of FEMA's compliance with small business percentage requirements following Hurricane Katrina.

During that time, I determined that FEMA awarded a contract for nearly \$1 million to a business that it classified in its reporting numbers as small.

However, a simple search of the internet revealed to me that the contractor had more than 200 facilities in several countries, over 10,000 employees, and approximately \$4.5 billion in North American sales.

This was not a small business by any definition.

When we contacted the business they claimed that there had been a mistake. So we asked several other Departments to determine whether this same company had also been classified as small with those agencies.

The company had been classified as small on numerous occasions by several procurement offices in several departments.

Let's just say that it is unlikely that this same mistake kept happening without the company's active participation.

The SBA Office of Inspector General recommended two simple data entry fixes to resolve the problem of a large business being inadvertently classified as a small business.

Yet despite the simplicity of these corrections, it is my understanding that they have not been done.

This government spends hundreds of millions of dollars every year on computer systems and IT infrastructure. Yet, after 5 years, we still cannot get the agency to make data entry fixes.

I strongly urge the SBA to implement the OIG recommendations from this and subsequent reports on this issue and ask request that the Members of this Committee join me in seeking the solution to this problem.

At present, Federal government agencies are required to award at least 23% of its contracting dollars to small businesses. Congress must hold the Executive Branch accountable by ensuring that this percentage is met.

However, it is difficult to require accountability when the reported numbers can be legally skewed; data systems are plagued with mistakes, there is inadequate oversight, and outright fraud continues to exist.

On another note, I applaud the Administration's effort to reduce its overreliance on contractors by bringing government work in-house rather than relying on outside contractors to perform tasks that can be performed by federal government employees.

This is a policy that I have advocated for in the past and I agree with its intent.

I am concerned, however, that the method utilized by some agencies to determine which contracts to in-source is having a negative impact on some small businesses.

The twin federal goals of increasing government small business participation and increasing internal capacity are not mutually exclusive and federal in-sourcing policies should *not* hurt small businesses.

I therefore call upon the federal government to live up to its commitment to promote and protect small business as it implements policies to reduce costs by bringing Federal government work in-house.

We can do both.

I am pleased that Sen. McCaskill has convened this hearing and I look forward to continuing to work with her on this and other issues affecting the small business community.

