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BEFORE THE COMMITTEE ON SMALL BUSINESS AND

ENTREPRENEURSHIP

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Chairwoman Snowe and Members of the Committee, I am pleased to be here today to discuss contract bundling.

I. Background

This Administration is working hard to create an environment where small businesses can flourish and apply their talents to the many pressing needs facing our government. We are exploring ways to promote greater participation from this underutilized segment of our economy. For small businesses, the primary issue is access to the federal marketplace and the opportunity to compete. And, for us, as policymakers, the issue is a dramatically reduced contractor base, and the mounting lost opportunity cost of choosing among fewer firms with fewer ideas and innovations to deliver products and services at lower prices.

II. Small Business Agenda

On March 19, 2002, the President unveiled a Small Business Agenda that made several proposals to increase the access of small business to federal contracting opportunities. The Agenda called upon the Office of Management and Budget to develop a strategy for unbundling federal contracts. As you know, contract bundling is defined in the Small Business Act as "consolidating two or more procurement requirements for goods or services previously provided or performed under separate, smaller contracts into a solicitation of offers for a single contract that is unlikely to be suitable for award to a small business concern." While statutory and regulatory provisions recognize that contract bundling can have some benefits these provisions address the detrimental effects that this contracting practice can have on small business opportunities. An agency decision to bundle contracts must be justified by a determination that quantifies substantial benefits to be derived from the bundling.

A. Contract Bundling Strategy

My office formed and chaired an interagency working group to develop the strategy requested by the President. In June we held a public meeting to give interested parties - - especially small businesses - - an opportunity to express their views on this important subject. Taking these views into consideration, I submitted a strategy to the President in October 2002. A copy of this strategy entitled "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business" is attached to my testimony. We found that, although contract bundling can serve a useful purpose, the negative effects of contract bundling over the past 10 years cannot be underestimated.

Not only are substantially fewer small businesses receiving federal contracts, but the federal government is suffering from a smaller supplier base. As we have broadened the scope of contract requirements into fewer and fewer contract vehicles over the past decade, the pool of small business contractors receiving new contract awards declined from 26,000 in 1991 to about 11,600 in 2000. When small businesses are excluded from federal opportunities through contract bundling, our agencies, small businesses, and the taxpayers lose.

The strategy outlines nine specific actions the Administration is taking to eliminate unnecessary contract bundling and mitigate the effects of bundling that agencies find to be necessary and justified. These nine recommendations can be divided into three categories: (1) promoting leadership and accountability; (2) closing regulatory loopholes; and (3) mitigating the effects of necessary and justified contract bundling.

1. Promoting Leadership and Accountability

The strategy also seeks to more clearly focus the resources of agency offices of small and disadvantaged business on the President's Small Business Agenda and on implementing the strategy. In speaking to small businesses throughout the country, it has become clear to me that accountability and leadership are the keys to making progress. With successful implementation of this strategy, we believe that we can reduce a significant barrier to entry and, in doing so, allow small businesses to bring their innovation, creativity, and lower costs to the federal marketplace. We are holding agencies accountable. Agencies have begun reporting to OMB on their efforts to reduce

contract bundling and to mitigate the effects by increasing the overall access of small business to federal contracting opportunities. Through their President's Management Council representative, agencies report quarterly to OMB on actions they are taking to implement each of the nine action items identified in the strategy. For the first reporting period, we asked agencies to report on actions taken and planned before issuance of implementing regulations. By doing so, we are sending a message that - - although regulatory change is vital to successful implementation - - several agency actions are not, and should not, be dependent upon issuance of regulations.

2. Closing Regulatory Loopholes

Several actions identified in the strategy call for cleaning up regulatory loopholes that have allowed certain types of contracts and contract actions to escape bundling reviews. My office formed and is heading an interagency task force to develop regulations to amend both the Federal Acquisition Regulation (FAR) and Small Business Administration (SBA) bundling regulations to help implement the strategy. Proposed regulations were published in the *Federal Register* on January 31, 2003.

In general, the proposed regulations would (a) make clear that multiple award contracts and orders under such contracts are not exempt from regulatory requirements and procedures designed to eliminate unnecessary contract bundling and mitigate the effects of bundling, (b) provide more effective agency small business contracting review procedures, and (c) require agencies to identify alternative strategies that reduce bundling and justify decisions not to use those alternatives.

a. Multiple award contracts

Our report to the President found that multiple award contracts and task and delivery orders placed against such contracts are not uniformly reviewed for contract bundling issues. This lack of uniform review is a problem because, while there has been a sharp decline in other contract actions, there has been a significant increase in orders under these types of contracts. To close a loophole that might allow agencies to avoid justification and mitigation procedures that would otherwise guard against unwarranted bundling of task and delivery orders under these contracts, we intend to clarify that contract bundling regulations and procedures apply to various types of multiple award contracts and task and delivery orders placed against such contracts. The proposed regulations would make this clarification by specifically including these types of contracts and orders within the regulatory definition of contract bundling.

b. Small business contracting review procedures

Our report to the President found that, while some agencies may require participation of a small business specialist in the acquisition process, there is no government-wide requirement for participation by a small business advocate (internal or external to the agency) as a member of the acquisition planning team. We believe that more active involvement in agency acquisitions by agency small business specialists and agency offices of small and disadvantaged business will help balance the need to provide small business contracting opportunities with equally legitimate demands for making the acquisition process quicker and less complex. To enable this involvement, the proposed regulations would establish screening procedures, whereby agency small business

specialists would conduct more-thorough reviews of acquisitions for bundling issues and concerns (i.e., bundling reviews). Agency small business specialists would be required to notify agency offices of small and disadvantaged business when an acquisition plan or strategy would, in their opinion, allow unnecessary or unjustified contract bundling.

These proposed bundling reviews would be conducted when contracts are above certain agency-specific acquisition dollar thresholds. The bundling threshold for most agencies would be acquisitions above $2 million. For NASA, GSA, and Energy, the bundling threshold would be acquisitions above $5 million. The bundling threshold for Defense Department acquisitions would be $7 million. I want to emphasize that the proposed bundling reviews would be in addition to current statutory and regulatory requirements for agency contracting officer review and justification of all bundled contracts.

We are also proposing to significantly lower the dollar threshold for "substantial bundling" from $10 million (annual average) to the agency-specific acquisition thresholds identified above. Under SBA regulations, agencies must provide additional justification for bundling that is considered "substantial bundling" - - currently defined as bundled acquisitions that average more than $10 million each year. The additional requirements for justifying substantial bundling include documenting (1) assessments of specific impediments to participation by small businesses as prime contractors, and (2) actions designed to maximize small business participation as prime contractors and

subcontractors at any tier. The proposed regulations would apply these additional justification and documentation requirements to these lower dollar acquisitions.

c. Identification of alternative strategies and justification

Our report to the President recognized that we cannot afford to revert back to the paperwork and labor-intensive acquisition system of the past nor can we pursue operational efficiencies at the expense of reducing small business opportunities. We must find an appropriate balance between operational efficiency, opportunity, and fairness. We must also recognize that bundling decisions should not be an "either or" decision, i.e., a decision to either bundle or not bundle acquisitions. Like any acquisition strategy, analysis of bundling should account for how it would help or hinder the operation of programs within and across agencies. For example, the Administration's E-Government initiatives often require integration that may be facilitated by bundling if the agency demonstrates substantial benefits. However, even in instances where bundling is found to be necessary and justified, agencies should seek alternative acquisition strategies that have less negative impact on small businesses.

We are proposing to add new bundling justification procedures - - at the agency-specific acquisition thresholds identified above - - to require agencies to identify alternative acquisition strategies that would result in less bundling. The rules would also require agencies to justify not choosing those alternatives. Our intent is not to increase agency paperwork but to cause agencies to give more thought to the impact of their bundling decisions and how they might achieve operational efficiencies and increase

opportunities for small business. On a system-wide basis, the proposed regulations would require agency offices of small and disadvantaged business to periodically conduct reviews of their agencies' acquisition offices overall efforts to increase opportunities for small businesses and report their findings to the agency head.

3. Mitigating the Effects of Contract Bundling

Our report to the President identifies actions we are taking to mitigate the effects of contract bundling when agencies find it to be necessary and justified. Specifically, we are counting on agencies to do their part to strengthen prime contractor compliance with subcontracting plans and facilitate development of small business teams and joint ventures. The proposed regulations would require agencies to assess prime contractor compliance with goals identified in their small business subcontracting plans, as part of the agencies' overall evaluation of the prime contractor's performance. Since this "past performance" information is often used as a significant factor in agency decisions to award contracts, this regulatory requirement should provide strong incentive for prime contractors to increase subcontracting opportunities for small businesses. We can also work with agencies to ensure that they properly account for subcontracting activities when addressing goals for small business.

Our report to the President recognizes that successful implementation of these mitigating actions relies more on agency initiative, rather than issuance of regulations. We are counting on agencies to strengthen their oversight of contractor efforts to comply with their subcontracting plans, by establishing procedures that designate agency

personnel responsible for monitoring contractor compliance. We are also counting on agencies to train and otherwise facilitate early development of teams of small business contractors to compete for upcoming agency procurements.

Our office will continue to look for ways to improve the subcontracting process, including ways in which we can increase small business access to subcontracting opportunities by, for example, providing greater incentive for prime contractors to follow through with their subcontracting plans. At some point, we will request public views on this important area.

B. Competitive Sourcing

Although the relevance to small business may not be evident at first glance, we are opening procurement opportunities for small business by opening the government's commercial activities to expanded competition between public and private sources. Today, most of the 850,000 full-time-equivalent employees that agencies have identified as performing commercial activities (i.e., nearly half of all federal employees) are insulated from the dynamics of competition. To improve and expand competition for these activities, OMB has proposed significant revisions to OMB Circular A-76, the process to determine whether commercial activities will be performed by public or private sources. On average, small businesses receive more than 60 percent of the awards made to private sector firms through the A-76 public-private competition process. Increasing competition for commercial activities performed by government personnel increases opportunities for small business.

III. Conclusion

Our office will continue to take a leading role in implementing the President's strategy on contract bundling. Public comments on the proposed regulations are due by April 1. We plan to continue working with our interagency task force to develop the regulations, through resolution of public comments and issuance of final rules to implement appropriate changes to both the FAR and SBA regulations. To further ensure agency accountability, we have asked agencies to report quarterly to the Office of Management and Budget (OMB) on the status of their efforts to address contract bundling issues. Our office will be monitoring agency actions and we will provide additional guidance as necessary. This concludes my prepared remarks. I am happy to answer any questions that you might have.