Statement of Magdalah Silva on Behalf of Women Impacting Public Policy and Coalition Partners:

National Women Business Owners Corporation (NWBOC)
WIPP Florida
Women Construction Owners and Executives (WCOE)
Kansas City Council of Women Business Owners
Boardroom Bound
National Association of Small Disadvantaged Businesses (NASDB)
National Association of Female Executives (NAFE)
Center for Women's Business Research

Before The Senate Small Business and Entrepreneurship Committee

"Increasing Government Accountability and Ensuring Fairness in Small Business Contracting"

July 18, 2007

Chairman Kerry, Ranking Member Snowe and Members of the Committee, I am Magdalah Silva, President and CEO of DMS International, Inc. a Management and Technology consulting firm located in Silver Spring, Maryland. DMS is a woman-owned company established in 1994 that has been providing information assurance, software development, statistical reporting as well as providing instructor and web-based training to both defense and civilian agencies. Our primary federal customers include the Department of Defense, Army, Navy and Air Force, as well as The U.S. Department of State and the Department of Housing and Urban Development. Thank you for inviting me to testify today.

My testimony today is on behalf of Women Impacting Public Policy. Women Impacting Public Policy (WIPP), a bipartisan nonprofit organization, represents well over half a million of women in business nationwide and 46 small business associations.

The title of this hearing so adequately reflects our overall concerns on federal contracting—ensuring fairness in small business contracting. Although the FY 2006 contracting numbers by the SBA have not yet been released, the statistics for FY 2005 showed that the small business goal of 23% was exceeded—25.4%—but the government failed to meet its goal for women-owned businesses. In FY05, only 3.3 percent of federal contracts were awarded to women-owned businesses. That represents billions of dollars, according to an annual report prepared by the House Small Business Committee majority staff.

We have said for as long as WIPP has been in existence that P.L. 106-554, the law authorizing the Women-Owned Small Business Federal Contract Assistance Program, must be implemented in order to meet the five percent goal for women-owned businesses passed by Congress. This is a critical tool to helping women-owned businesses grow and diversify into the federal marketplace. For seven long years, women have waited for the SBA to implement this program. For seven long years the SBA has studied and restudied this issue. We have waited long enough.

Some of our members have been able to obtain 8(a) status as a way of becoming more competitive in the federal marketplace. WIPP notes that the 8(a) income thresholds have not been updated since 1989. That presents a real problem for the program—the thresholds are so low in 2007 dollars that the program is really set up to fail. If a business owner does not have assets on which to draw, the business is less likely to succeed.

Furthermore, WIPP members believe that the contracting goal of five percent should be increased. We strongly agree with the H.R. 1873, the Small Business Fairness in Contracting Act, passed by the House, which raises the overall small business goal from 23 percent to 30 percent and raises the women owned goal from 5 percent to 8 percent. In addition, we support inclusion of overseas contracts in the small business goals also included in H.R. 1873.

We look to Congress to reverse the trend toward contract bundling that still occurs despite the President's initiative in 2002 which clearly stated that unbundling of contracts was a priority of this Administration. When the President launched the initiative in 2002, the Office of Management and Budget (OMB) reported that for every $100 awarded on a bundled contract, there is a $33 decrease to small businesses. They went on to say, that because these types of contracts "run longer and encompass a greater scope, competition is reduced in terms of frequency and the number of opportunities" for small business. Despite strong evidence that bundling is not good for small business or

the government, a 2004 Government Accountability Office (GAO) Report No. 04-454 "Impact of Strategy to Mitigate Effect of Contract Bundling on Small Business Is Uncertain", shows that federal agencies are confused over what constitutes "contract bundling" which results in poor accountability and disparity in reporting. While 928 bundled contracts were captured in the Federal Procurement Data System (FPDS), only 24 of those contracts were reported by agencies to the GAO. We urge the Committee to clear up the confusion for the agencies and continue its efforts to unbundle contracts. Additionally, WIPP believes construction services should also be included in the contract bundling definition, if the value of the construction contract is more than $65 million.

According to WIPP's 2007 Annual Issues Survey, one-half of the federal contractors who responded were primes contractors and one-half were subcontractors – so subcontracting is very important to our membership and all small business. As federal contracts get larger, subcontracting integrity becomes more important.

With regard to subcontracting, we continue to believe that "if you list us use us" is an important principle. We were heartened by the language (Section 1102) included in last year's version of the Senate SBA Reauthorization bill that addressed this issue and urge the Committee to include it in this year's version. Small businesses spend thousands of dollars in staff resources to be a part of the subcontracting plan on a prime contractor's bid. Our membership tells us that all too often the prime, after winning the contract, takes their portion of the work "inside" or simply reverts to using the same old subcontractors they have used in other bids. The Committee language last year required the prime contractor to utilize the small businesses it included in its subcontracting plan unless the small business could no longer meet the requirements. It also included penalties for violating the subcontracting plans.

Prompt payment from the prime contractors to the subcontractors continues to be an issue for small businesses. The Prompt Payment Act addresses only the relationship between the prime contractor and the agency. The agency is required to pay its prime contractors with 30 days. Our members tell us that some agencies pay more quickly than other agencies. The larger problem and one that the law does not address is prompt payment from a prime contractor to a subcontractor. Currently, the government does not have the authority to intervene because its relationship is with the prime contractor, not the subcontractor. The relationship between a prime and a subcontractor is considered to be a commercial relationship with its own set of terms. Nevertheless, we continue to hear stories from our members that this is an ongoing problem. It seems to us that the government should withhold further payments to prime contractors who are not paying their subcontractors in a timely manner. This would require a change in the law.

Another issue for small businesses is the current size standards administered by the SBA. WIPP members tell us that as government contracts get larger, the small business size standards must be adjusted to reflect that trend. In some cases, the size standard limit restricts an award to very small companies instead of small companies. This inhibits the ability of our small businesses to compete in the federal market, and has the effect of ensuring that women and minority owned companies remain small.

In the construction industry, for example, the current size standards force a business out of the program before that company can compete on equal footing. So, the company ultimately fails; then, someone else starts a brand new company to fill the void – and the process starts all over again.

While we are not advocating a wholesale reworking of the size standards, we are suggesting that for those problematic ones, such as architecture, construction, and administrative services, to name a few, SBA should be willing to review them. This is critical not just for the federal government procurement, but also because states and cities look to the SBA size standards on which to base their own programs. This means that the unintended consequences mentioned above continue to be propagated across the whole country, ultimately hurting the very businesses the program was intended to help.

A potential problem is the recertification rule, 13 CFR Parts 121 and 124, that recently was published by the SBA and which went into effect June 30, 2007. The rule, entitled, "Size for Purposes of Government-Wide Acquisition Contracts, Multiple Award Schedule Contracts and other Long-Term Contracts; 8(a) Business Development/Small Disadvantaged Businesses; Business Status Determinations," addresses size recertification to ensure that companies being awarded small business contracts are in fact small businesses and to ensure accurate reporting by federal agencies. While WIPP supports the underlying reasoning behind requiring recertification of small companies, WIPP will be carefully monitoring the implementation of the rule to ensure that there are not unintended consequences to small businesses and their ability to grow.

Thank you for this opportunity to speak on a number of issues important to WIPP's members and all small businesses. We look forward to working with the Committee on changes to contracting laws and regulations to ensure continued small business growth in the federal sector.