



Testimony of Gloria Larkin

On behalf of

Women Impacting Public Policy

Submitted to the

House Small Business Committee
Subcommittee on Contracting and Workforce

*“Bungling Bundling: How Contract Bundling and Consolidation
Remain Challenges to Small Business Success”*

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Bungling Bundling: How Contract Bundling and Consolidation Remain Challenges to Small Business Success

Chairman Hanna, Ranking Member Meng, and distinguished Members of the Subcommittee, thank you for the opportunity to testify this morning.

My name is Gloria Larkin and I am President of TargetGov at Marketing Outsource Associates, Inc., and serve as Vice-Chair of the Educational Foundation of Women Impacting Public Policy (WIPP). I have been in business since 1997 and my firm helps companies of all types pursue, propose, and win federal contracts. As a result, we have specific experience in the challenging world of bundled and consolidated contracts.

I am also here today representing Women Impacting Public Policy (WIPP). WIPP is a national nonpartisan public policy organization advocating on behalf of its coalition of 4.7 million business women including 75 business organizations. WIPP plays a key role in developing women-owned businesses into successful federal government contractors through its Give Me 5 and ChallengeHER programs.

In our view, bundling and consolidation continues to hamper small businesses in the federal marketplace. We believe that contracts that can be serviced by small businesses should not be subject to any form of consolidation.¹ It is our recommendation the following actions be taken to minimize unnecessary and unjustified consolidation: 1) improve the collection of statutorily required data from agencies to measure the impact of bundling and consolidation on small businesses; 2) complete the regulatory actions required in the National Defense Authorization Act for FY2013 (P.L. 112-239) and the Small Business Jobs Act of 2010 (“Jobs Act” P.L. 111-240); and 3) increase outreach to small business vendors regarding the consolidation and bundling processes.

As this discussion begins, we value the Congressional direction already given on this issue in the Small Business Act (P.L. 85-536), which notes that the government should:

Aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government be placed with small-business enterprises...[in order] to maintain and strengthen the overall economy of the Nation.²

This is our guiding principle to improve small business access to government contracts. We concur that small businesses play a vital and irreplaceable role in growing and strengthening the national economy and deserve broad access to government contracts.

¹ For the purposes of this testimony, consolidation and bundling will both be used to refer to the contracting practice of merging smaller contracts into a single larger contract, though *bundling* will be specifically used when considering the practice of consolidation with a finding that the new contract is not longer suitable for small business concerns.

² 15 U.S.C. § 631

Changes To Contracting Over the Last Decade

Federal government purchasing has grown significantly over the last decade. According to USAspending.gov, federal spending increased from \$220 billion in 2000 to over \$500 billion in FY2013. Amid this tremendous rise in spending, agencies are consistently failing to meet the small business contracting goal of 23%. The last time the goal was met was FY2005. On that note, the data for women-owned small businesses are equally disappointing. Despite a new contracting program and the removal of the dollar caps on contracts in that program, as well as WIPP efforts to register more than 20,000 women-owned businesses in the SAM database, FY2012 marked another year in which the government failed to meet the 5% percent goal for purchases from women-owned small businesses—a goal it is yet to meet.

More awarded dollars in federal contracting does not mean more money to small businesses, largely because the number of contracts awarded has been declining since FY2008. Thus the average contract size is increasing—due in some part to policies like contract consolidation and bundling—which limits the number of businesses that can compete. This practice harms small businesses and this trend, while not surprising, is certainly threatening women-owned small businesses, the small business community in general, and their long term prospects in the federal market.

The last decade has not been all bad news. Indeed, there are many areas where contracting opportunities and education have been improved significantly. For example, WIPP applauds the government’s success in making positive changes in the market research process. We have seen the Sources Sought Notice and Request for Information (RFI) processes improve and grow in just the last two years, especially since the Office of Management and Budget (OMB) “Myth-busters” memorandums of 2011 and 2012.³ Sources Sought Notices grew from 50 to 70 in a typical month in 2011 to approximately 1,100 to 1,300 per month in 2013. This increase is indicative of the acquisition community’s efforts to perform mandated market research. Similarly, WIPP has stepped up to educate women-owned businesses in the importance of responding to these Notices and RFIs.

³ Daniel Gordon. Office of Federal Procurement Policy. ““Myth-Busting”: Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process.” Feb. 2, 2011.

<http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/Myth-Busting.pdf>

Lesley Field. Office of Federal Procurement Policy. ““Myth-Busting 2”: Addressing Misconceptions and Further Improving Communication During the Acquisition Process.” May 7, 2012.

<http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/myth-busting-2-addressing-misconceptions-and-further-improving-communication-during-the-acquisition-process.pdf>

Reports on and Examples in Contract Bundling and Consolidation

Congressional Research Service (CRS) reports prepared in the last few years detail consolidation and bundling with regard to federal contracting as well as legislative and regulatory changes to the underlying law. Key points from these reports include:⁴

1. Congress recognizes that bundling and consolidating can limit opportunities for small business to receive prime contracts.
2. To combat this limitation, statutory requirements mandate that agencies must: a) conduct market research to justify possible bundling; b) provide advance note to incumbent small businesses holding contracts that possibly may be bundled; and c) use certain procurement strategies for “substantial bundling.”
3. Consolidation has separate but similar requirements also aimed at ensuring all consolidated/bundled contracts are “necessary and justified.”
4. Protections exist that, if enforced government-wide, would keep small businesses from losing access to government contracts.
5. Legislative action aimed at improving these protections has existed in recent Congresses with varied levels of success and some regulations from previously enacted legislation are still awaiting promulgation.

Examples of these consolidated contracts (with contract ceiling value) in use today include: Department of the Navy SeaPort-e (\$50 billion), Department of Homeland Security FirstSource II (\$3.1 billion), NASA SEWP IV (\$5.6 billion), and Department of Health and Human Services CIO-SP3 (\$20 billion). These multi-billion dollar contracts are either agency-specific or government-wide contracts. Examining the largest, Navy’s SeaPort-e contract, shows that small businesses are not getting access to the bulk of the contracts.

Bloomberg Government reports that the Navy’s Seaport-e vehicle expects to award \$8 billion via task orders in FY2013.⁵ SeaPort-e, which provides professional services, is the largest multiple-award contract (MAC) in the federal government, with almost \$50 billion in orders since its creation in FY2004.⁶ Annually, the contract averages nearly \$6 billion, more than any other MAC outside the General Services Administration and Veterans Affairs Federal Supply Schedules. SeaPort-e reflects a larger trend toward consolidation in professional services government-wide.

⁴ See multiple reports by Kate Manuel all filed under CRS Report Number: R41133. These include “Contract ‘Bundling’ Under the Small Business Act: A Legal Overview” and multiple updates of “Contract ‘Bundling’ Under the Small Business Act: Existing Law and Proposed Amendments.”

⁵ Brian Friel, Paul Murphy, et al. “\$8 Billion in 2013 Opportunities On SeaPort-e Multiple-Award Contract.” Bloomberg Government. Nov. 14, 2012. http://www.bgov.com/news_item/BGflu73ZpTBruiiAEiZ9tQ. NB: All following data on SeaPort-e contract vehicle comes from this report.

⁶ Professional Services is the largest category of government spending. Overall, federal agencies spent \$77.6 billion on professional services in FY2011, \$20 billion more than the next category, research and development, with \$57.7 billion. Professional services include financial management services, engineering support, logistics management and office support.

With nearly 3,000 prime contractors on the contract, with “hunting licenses” to pursue individual task orders, the competition for task orders is fierce. But structural problems within the contract make that competition unfair.

SeaPort-e, as a cost-plus-fee contract, caps profit to 8% of the order’s value, two percentage points lower than the cap for services contracts set by federal acquisition regulations. Many companies that “win the contract” never bid on task orders because they cannot run and grow a company on such slim margins. Companies who can accept lower margins are taking over more contracts as smaller companies who cannot operate on such margins are leaving. Moreover, the SeaPort-e bid and proposal costs are rising, as task orders grow shorter, forcing them to compete more often. Limited profit margins, increasing competition issues, shorter contract awards, and consolidation are ultimately forcing many small businesses to leave what should be a lucrative market for all businesses.

Furthermore, in FY2012, 90% of small business awards on SeaPort-e came through set-asides — task order competitions limited only to small businesses. Set-asides accounted for 83% of small business wins by value on SeaPort-e from FY2004 through FY2012. Small businesses rarely win full-and-open task order competitions on Seaport-e, even for orders worth less than \$1 million. Only 20% of primes won orders, meaning 80% of companies have never actually secured work through SeaPort-e. The top 20 primes alone won over \$29 billion of the \$50 billion in SeaPort-e orders. The result is big companies getting bigger and small businesses struggling to compete.

Lastly, Navy buyers are mandated to consider using SeaPort-e before creating new contracts for professional services such as engineering and project management support. SeaPort-e is an example of a broader trend to increase the mandatory use of MACs government-wide as part of the “Strategic Sourcing” initiative being advanced by the White House.⁷ Increased mandatory MAC usage will force agencies to rely on a small pool of participating contractors, which further limits competition. WIPP opposes the implementation of Strategic Sourcing methods without adequate consideration and protection of small business concerns. We recognize that increased consolidation and bundling of contracts are symptomatic of this Strategic Sourcing initiative.

⁷ An effort to increase strategic sourcing was highlighted in an OMB memorandum cited below and has been a topic of consideration before in this Committee (June 13, 2013). Jeffrey Zients. Office of Management and Budget. “Improving Acquisition through Strategic Sourcing.” Dec. 5, 2012. http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-02_0.pdf

Burdens on Small Businesses Caused by Contract Bundling and Consolidation

According to WIPP members, the key reasons they are wary of entering the federal market include:

Costs Involved: The costs involved in pursuing a consolidated contract are astronomical. It is not unusual for large businesses to invest \$100,000 or even over \$250,000 in pursuing these large contracts through the entire proposal pursuit and writing effort. Small businesses invest \$20,000, \$30,000 or more in valuable, non-billable time to simply write a proposal, not taking into account the business development and marketing efforts that go into planning, positioning, pursuing, proposing and possibly winning a hunting license.

Time & Effort: In order to be considered as a viable competitor in these large contracts, vendors must enter the market 12 to 18 months before the contract is competed. They must spend time and money marketing their business to the multiple layers of decision-makers. This is difficult because for most small businesses, every person must be billable. Marketing and sales costs, however, cannot be billed and therefore, many times are eliminated from daily activities. Small business must choose between going to vendor outreach days, attending industry days where specific procurements are discussed, and making money on existing contracts.

Size: Seemingly, an engineering firm, with a size standard of \$14 million in annual revenue, pursuing a consolidated contract worth \$100 million cannot possibly win as a prime contractor. The government is prohibited from taking a risk in awarding contracts and requires that past performance show work on a similar sized contract. An engineering firm, with revenues of \$14 million, cannot show proof of performing a \$100 million contract. If they could, they would not be small. As these consolidated contracts increase in size, far exceeding the size standard for the small business, the burden to respond and win becomes an exercise in expensive teaming.

Bonding: Two US Army Corps of Engineers consolidated contracts are coming up this year (FY2014), one for \$200 million and the other for \$300 million. One is set-aside for small business and the other is set-aside for service disabled veteran owned small business. On the surface this is an excellent opportunity – \$500 million for small businesses. It seems hard to imagine that a small construction business with a size standards ranging from \$7 million to \$33.5 million could receive bonding for a contract valued at \$200 or \$300 million.

Teaming: One viable way a small company can pursue and win these large consolidated contracts is to team with other small and/or large businesses. This is fraught with costs, risks and dangers to all parties. If one business pursues a \$200 million dollar contract and each company only has a ten million dollar maximum bonding capacity, at least 20 or more

companies would have to team together. These teaming contracts are intricate.⁸ The costs involved in teaming are unallowable in the federal cost accounting process and must be borne by the small business directly.

Winners and Task Orders: When a small business is successful and actually wins a bundled contract, it is often only a first step. No money is actually paid for products or services until each awardee further pursues individual task orders on a competitive basis. The winners have simply won the right to limited competition in the pool of other winners. As we have seen, in the case of Seaport-e, 80% of companies are yet to be successful in that second effort.

Protests: As is the case with FirstSource II, the bundled/consolidated contract at Homeland Security, 29 small business awardees celebrated the win for this multi-year 3.1 billion dollar contract. However, protests were filed and despite investing all of the effort, time and tens of thousands of dollars in overhead and RFP response costs required to win, most awardees have been stopped dead in their tracks and prohibited from conducting business on this contract because other companies have protested parts of the acquisition process.

These burdens listed above negatively impact small businesses that already work in the federal sector as well as those wishing to enter the marketplace. We appreciate this Committee's efforts to improve the contracting environment through hearings and legislation over the past three years.

Recommendations to the Committee

WIPP offers the Committee these suggestions on removing some of the barriers consolidating contracts have created.

1. Improve the collection of statutorily required data from agencies to measure the impact of bundling and consolidation. Provisions in the Small Business Act as well as additional requirements in the 2010 Jobs Act require agencies and the Small Business Administration (SBA) to record and track consolidation and bundling via a database. At this point, that database does not appear accessible or complete. This data collection is vital, but our attempts at identifying this information through the Federal Procurement Data System (FPDS) have not been successful. Without adequate data from any source, we cannot entirely know how damaging unjustified consolidation is to women-owned small businesses.

⁸ At a minimum teaming requires companies to: develop trusting relationships, share delicate financial information, develop legal documentation as to who is responsible for what, who manages the federal reporting and DCAA accounting and compliance requirements, who manages the contract, how each teaming partner gets paid and how/when payments are distributed, what happens in the cases of default or substandard performance and a myriad other contract requirements.

2. Complete the regulatory actions required in the National Defense Authorization Act for FY2013 and the Small Business Jobs Act of 2010. These enacted pieces of legislation carry important provisions with regards to consolidation and should be promulgated by SBA and adopted by the Federal Acquisition Regulatory (FAR) Council. Regulations still in need of implementation include additions of bundling justifications to agency websites as well as procedural details on advance notice to small business vendors whose contracts may face consolidation.
3. Increase education efforts of small business vendors regarding the consolidation and bundling processes. As new rules and regulations are released, small businesses need to understand the consolidation process, as well as the appeal and protest processes for possibly unjustified or unnecessary consolidations or bundling.

Thank you to the Subcommittee holding this hearing today and for the efforts to make the contracting environment better for women-owned businesses. It is our hope that our identification of barriers and recommendations are helpful to your efforts to assist small businesses to become successful federal contractors. I am happy to answer any questions.