

Testimony of

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**To the U.S. House of Representatives Committee on Small Business
Subcommittee on Contracting and the Workforce
*“Hotline Truths II: Audit Reveals Inconsistencies in Defense Subcontracting”***

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Chairman Knight, Ranking Member Murphy and distinguished Members of the Subcommittee, thank you for this opportunity to testify on the results of the recent report from the U.S. Department of Defense’s Office of the Inspector General review of small business subcontracting practices at Army Contracting Command (ACC) Redstone and ACC Warren.

My name is Tiffany Scroggs. I am Program Manager of the Washington State Procurement Technical Assistance Center (PTAC) and President of the Association of Procurement Technical Assistance Centers – APTAC – which is the professional organization of the 95 PTACs nationwide.

As you may know, the Procurement Technical Assistance Program – and hence the PTACs – was created by Congress in 1985 to help small businesses compete for federal, state and local government contracts. PTACs are funded and administered through the Defense Logistics Agency and are supported by state or local governments, educational institutions, and non-profits which provide a funding match. Our purpose is to assist local small businesses at little or no cost by preparing them to become capable government contractors, on the belief that a broad and strong base of small business suppliers provides the highest quality and best value to government agencies while creating a strong and vibrant economic base for our communities. Last year alone, PTACs helped over 48,000 small businesses win and fulfill government contracts and subcontracts valued at nearly \$20 billion.

Mr. Chairman, Ranking Member Murphy, I want to express my thanks and appreciation to each of you for your support of the PTAP. In addition to our work helping small business secure prime contracts, PTACs are deeply engaged with subcontracting issues. Not only do we help small businesses identify subcontracting opportunities, and generally become responsible, “procurement ready” subcontractors, we are often contacted by large primes for assistance with developing subcontracting plans and locating small business vendors with the specific capabilities needed to meet their requirements. Every day, we witness our clients confronting the challenges of the subcontracting environment. My testimony today reflects input from some of our most experienced procurement professionals across the country. I am privileged to share their insights in the hope they will support your efforts to improve opportunities for our nation’s small business contractors.

The IG’s findings are consistent with PTACs’ experience across all agencies and buying activities. We often find that contracting officers and prime contractors alike fall into one of three categories. First, the extremely diligent, second, the well-intentioned (but who do not devote sufficient resources to small

business subcontracting), and third, those who simply don't pay attention to what happens at the subcontracting level.

In the broader context of government acquisitions, expanding access to small business subcontracting opportunities is often not treated as a priority at any level – not by buying offices, not by agency leadership, and not by policy; as a consequence, it is not a priority for prime contractors either. But it should be.

It should be because the value that small businesses bring – the innovation, the agility, and the additional competition that results in better products and services at lower costs – are just as applicable to subcontracting as prime contracts. When we fail to establish and support practices that allow small businesses maximum opportunity for subcontracting, our nation's supply chain suffers. The products and services delivered solely under large, prime contracts (which represent an increasing share of government purchases) simply do not reflect the potential benefits that cutting-edge small businesses have to offer. Bottom line, our warfighters – actually everyone involved in or touched by government activities – are denied the rich contributions that small businesses can make.

Denied access to subcontracts limits the number and capability of small business contractors that can qualify to enter the acquisition pipeline. Subcontracting is the most realistic entry point for many small businesses seeking to supply the Government. Subcontracts usually involve responsibility for a smaller sub-elements of work and, thus, are easier to fulfill and represent less risk. Subcontracting is also a way for a small business to establish a "Government track record" of performance; having a positive past performance record is an important consideration on the part of government decision-makers when awarding contracts. Failing to maximize access to subcontracting opportunities results in fewer capable suppliers in the government marketplace.

I want to emphasize this: Maximizing access to subcontracting opportunities is not the same as maximizing subcontracting dollars awarded to small businesses, although that would be one result. Simply increasing awards to the same discreet set of small businesses – which often happens now – will not deliver the benefits I describe. We need to prioritize creating an open, vibrant environment that not only maximizes subcontracting opportunities but allows the greatest possible number of small businesses to compete for them.

Congress and units of Government can affirm that robust small business participation in the supply chain is a priority by focusing on four elements: Education, Oversight, Transparency and Incentives. Each of these are explored in the following comments. I conclude with additional information as to how the PTAC can assist in the effort.

Education

Sufficient and ongoing training for agency contracting staff and primes: Ensuring that not only agency acquisition staff, but prime contractor contract managers and small business liaison officers (SBLOs) understand 1) the regulations with regard to subcontracting goals, plans, and reporting, 2) the resources available to support meeting these requirements, and 3) the underlying importance of robust subcontracting to the agency mission would go a long way toward remedying situations such as those identified in DODIG-2018-086. As a result of heavy turnover within contracting offices, Contracting Officers are sometimes less familiar with the FAR or DFARS than businesses (even small businesses) that interact with them. Suggestions include:

- Developing high quality training modules for Contracting Officers that cover not only the specifics of FAR 19.7, but how to evaluate subcontracting plans (including claims that there are no subcontracting opportunities—or no small subs that can do the work—for a particular requirement) and how to monitor compliance.
- Developing high quality training modules for prime contractors on the requirements of FAR 19.7, on proper reporting and the use of eSRS (the electronic subcontract reporting system), on the small business programs generally – including the benefits that working with a wide diversity of small businesses can bring to their product – and on strategies/methods for identifying capable small business subcontractors (market research).
- Institutionalizing referral of prime contractors to their local PTAC for assistance with subcontracting plan development and compliance, locating capable subcontractors, or general small business outreach.

Oversight & Internal Controls

Sufficient resources for subcontracting plan oversight and compliance activities: We believe a primary factor in agency subcontracting failures generally is an unrealistic overreliance on contracting officers to faithfully enforce FAR Subpart 19.7 with insufficient support and resources to do so. Suggested remedies include:

- Increasing the number of SBA Procurement Center Representatives (PCRs) and Commercial Market Representatives (CMRs) government-wide to expand their ability to oversee and advocate for small business participation in large procurements.
- Ensuring that agency Small Business Offices are adequately staffed to engage with, educate, and support their buying activities, including empowering them to review subcontracting plans and oversee monitoring of subcontracting compliance.
- Requiring government Contracting Officer Representatives (CORs) to conduct subcontracting plan compliance reviews, consistent with their performance of on-site labor law compliance interviews.
- Developing technology tools to support monitoring of subcontracting plan compliance. The current necessity for busy Contracting Officers to proactively and manually monitor subcontracting compliance creates an administrative burden that may be a major factor in their failure to do so. Strategic modification and integration of eSRS, FSRS, and other contracting data systems could provide to contracting officers and CMRs automated notices of failures to comply with eSRS reporting requirements, allowing officials to take immediate action with the contractor to spur compliance.
- Create a Subcontractor Ombudsman resource empowered to facilitate remedy for subcontractors subject to mistreatment by their primes and/or to bring offending practices to the attention of the primary Contracting Officer for consideration with regard to subcontracting plan compliance and/or past performance.

Internal Controls: In the final analysis, the extent to which subcontracting opportunities are maximized in federal procurements depends upon Contracting Chain of Command commitment to ensuring that their activities carry out FAR Subpart 19.7, including actively investigating claims that subcontracting opportunities are not available is certain requirements. Should the Subcommittee wish to strengthen

processes to control for efforts to circumvent FAR 19.7, one of our members put forward the following suggestions:

- Just like Contracting Officers are required to post a Justification and Approval (J&A) whenever they intend to award a sole source contract based upon one of the seven FAR 6.3 exceptions to full and open completion, Contracting Officers should be required to post their market research results when they have made a determination that there are no subcontracting plan opportunities under an anticipated award to a large defense contractor that meets the current threshold requirement for a subcontracting plan.
- Include a new SAM Exception that depicts a large business that has not met its previous small business subcontracting plan requirements over the last three years.
 - Require any contracting activity's Contracting Officer to make a determination and findings (D&F) that must be approved at least one level above the Contracting Officer if that activity wants to issue a prime contract to any contractor that has a "Small Business Subcontract Plan Exception" listed in SAM.
 - Before a contracting activity can award a contract to a large defense contractor that has a SAM "Small Business Subcontract Plan Exception", the Contracting Officer shall require the large business to submit and negotiate an Individual Subcontract Plan and the contractor shall provide a certification that it will meet those small business subcontract plan requirements versus just making a good faith effort.

Transparency

Maximize transparency with regard to subcontracting opportunities. One of the biggest barriers to small business access to subcontracts is lack of information about opportunities. Unlike agency solicitations, which are posted on FBO.gov and perhaps even included in agency forecasts, there is no centralized listing of subcontracting opportunities or mechanism for identifying and connecting with potential buyers. Many large primes have established online "supplier portals" through which aspiring subcontractors can register, but these often serve as gatekeepers, preventing small businesses from connecting with users/decision makers to explore their potential for becoming a subcontractor/supplier. It is also common for primes to work with the same small businesses over and over, rather than competing new opportunities or re-competing continuing requirements. Suggestions include:

- Establishing a public platform (similar to FBO.gov; perhaps funded via some kind of Industrial Funding Fee) to which subcontracting opportunities can be posted. While SBA's SUBnet could theoretically be used for this purpose, at present it is in poor technological condition and is not up to date, with the latest list posted dated 2016.
- Encourage that all subcontracting plans be publicly posted (on a platform such as above), to include information on subcontract opportunities available with detailed information about where the solicitation can be accessed and the due date for response.
- Encourage/require large prime contractors to post a current and detailed acquisition forecast of upcoming subcontract opportunities, including when they are going to re-compete existing subcontract opportunities.
- Require SBLOs, Subcontract Plan Managers, and/or Small Business Mentor-Protégé Program Managers to register their contact information and areas of responsibility in a centralized,

searchable online database. One suggestion is to create new POC headings in SAM for these purposes. DoD OSBP maintains and publishes a list of SBLO personnel, but is not resourced sufficiently to keep the list current or complete. Critical (and required) information is not included in the list, particularly information that delineates the “area of responsibility” of the listed individuals. Frequently, the list is populated with individuals who are retired, deceased or who have never been engaged with small business subcontracting.

Maximize transparency with regard to compliance. Transparency is not only a powerful motivator for compliance, it expands the ability of other interested parties to support enforcement. Suggestions include:

- Make subcontracting plan information publicly available upon prime contract award to allow small business subcontractors themselves, who have arguably the most powerful interest in effective subcontracting programs, to participate in policing the compliance of primes.
- Make subcontractors privy to the content of their prime’s subcontracting reports to allow them to validate that the achievements are true and correct.
- Require a new Federal System for Award Management (SAM) certification that requires a large business to certify that it has complied with all small business subcontract plan requirements.
- Require each federal agency to publish a semi-annual report of all contractors that failed to meet their small business subcontracting plan requirements and indicate whether the agency imposed liquidated damages, to include agency rationale if no liquidated damages were imposed. Falsified reports of small business participation should be pursued under the False Claims Act.

Incentives

Creating incentives to encourage greater small business subcontracting: Creating an environment that rewards robust subcontracting may be more effective at expanding subcontracting opportunities than one that focuses on penalties. Some suggestions from our members include:

- Provide formal, professional recognition for Contracting Officers – and prime contractors – that meet or exceed small business contracting and subcontracting goals.
- Tie a prime contractor’s subcontracting plan compliance to their past performance record.
- Provide monetary incentives for awarding subcontracts to qualified targeted small business concerns (i.e., establish Incentive Programs similar to the current DoD Indian Incentive Program).
- Provide a price preference to large prime contractors that meet or exceed their negotiated small business plan goals. To reduce the administrative burden associated with such a program, the SBA could be required to issue an annual goaling report on all large prime contractors that were required to file subcontracting plans during the report year. Those large prime contractors that meet or exceeded their subcontract plan goals for the year would be afforded a ten percent price preference over large business offerors that did not meet their subcontract plan goals during the report period. The price preference could go on indefinitely if the prime continued to meet or exceed their annual subcontract plan goals in subsequent years. This approach would not require additional direct budget outlays, however SBA would most likely need additional resources to implement the program. The subcontract plan goaling reports should be posted publicly on SBA’s website.

PTACs' Role

PTACs play an important role in supporting subcontracting. Not only do we train small businesses with regard to regulations, certifications, marketing, bidding, contract administration and issues specific to subcontracting (like flow down provisions, back-bonding, and the potential for payment delays), we regularly work with prime contractors who come to us for help with small business outreach and subcontracting plan development. Some of our activities in this regard include:

- broadcasting “Opportunity Alerts” regarding subcontract opportunities or RFIs,
- supporting Industry Days and other prime contractor outreach activities,
- sponsoring Matchmaker events, allowing prime contractors and agency contracting officers the opportunity to connect with many small business owners, and
- working one-on-one with SBLOs and prime contractor personnel with regard to developing subcontracting plans.

Despite PTACs' active involvement with small businesses, far too few prime contractors work with PTACs, and PTACs are hampered by the same lack of transparency and access to information that limit our small business clients. We could deliver much greater benefit across the board if more prime contractors would contact and utilize us, and there was greater transparency with regard to current and upcoming subcontracting opportunities.

The value of the PTACs as an essential bridge between small business contractors and DoD was highlighted earlier this year in the Report of the Advisory Panel on Streamlining and Codifying Acquisitions Regulations (Section 809 panel) created in the FY2016, FY2017, and FY2018 National Defense Authorization Acts to find ways to streamline and improve the defense acquisition process.

The 809 Panel identified the PTAP as the only DoD-wide program or system designed to conduct outreach to bring small businesses into the defense market and noted that PTACs can help address the need for greater and more effective communication with small businesses seeking entry into the defense market, recommending a number of provisions that would expand funding available for individual PTACs and the PTAP overall. Just last week, the House Armed Services Committee Chairman's Mark echoed this sentiment in the FY2019 National Defense Authorization Act, which includes an authorization of \$50 million for the PTAP (up from \$38.5 million in FY18) and directs the Secretary of Defense to conduct enhanced outreach under the Procurement Technical Assistance Program to enable and promote activities to provide coordinated outreach to small business concerns through the PTAP

While these measures focus largely on DoD contracting – the same principles hold true for PTAC support for small business contractors across all agencies.

Thank you again for the opportunity to testify and for your support of the PTAP. APTAC members are privileged to be able to support our Government – and our small businesses – by helping to bring small business capabilities to the service of our country. We are always seeking ways to expand our reach and support small businesses more effectively, and we are gratified by this Committee's commitment to maximizing small business participation in the government marketplace. I hope that our input today has been helpful, and we stand ready to support the Committee's work in any way that we can.

Thank you.