



1 the Government's books: the way that the Government awards  
2 and tracks small business contracts.

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

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

15         This is not the Subcommittee's first hearing on  
16 problems with small business programs. Two years ago, the  
17 Subcommittee held a hearing on the multiple preferences for  
18 Alaska Native corporations in the Small Business  
19 Administration's 8(a) program for small and disadvantaged  
20 businesses. At that hearing we examined how special  
21 preferences in the 8(a) program allowed Alaska Native  
22 corporations--many of which are very large businesses  
23 indeed, with revenues far in excess of \$100 million per year  
24 and multiple subsidiaries--to be considered "small"  
25 businesses by the Federal Government.

1           Today we are going to look at some of the other ways  
2 that the Government's small business rules benefit large  
3 corporations. Since 2005, the SBA Inspector General has  
4 included in their list of the agency's top management  
5 challenges the fact that many contract awards recorded as  
6 going to small businesses are actually performed by large  
7 businesses.

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

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

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

12           For example, one contractor, immixTechnology, resells  
13 commercially available information technology hardware and  
14 in 2009 had approximately \$400 million in revenue and 150  
15 employees. In 2010 immixTechnology received more than \$18  
16 million in new small business contracts for resale and  
17 wholesale contracts. SBA generally limits wholesale  
18 companies to a maximum size standard of 100 employees and  
19 retail companies to a maximum revenue of approximately \$7  
20 million to \$30 million, depending on the industry, both  
21 standards that immixTechnology far surpassed. But SBA has  
22 also created an exception which requires the Government to  
23 use the classification for a manufacturing company for  
24 contracts like this one, which sets the size standard at 500  
25 employees. All of a sudden, a big company like

1 immixTechnology, for all intents and purposes, is called  
2 "small" for the Government's books.

3 In meetings in preparation for this hearing, the  
4 Subcommittee learned that the NAICS system was not designed  
5 for use as a Government contracting tool. That disconnect  
6 may be at the root of some of the abuses that we now see in  
7 small business contracts. I am going to be asking our  
8 witnesses today whether there is a more rational way of  
9 determining size.

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

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

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

3 Senator Portman?

4 OPENING STATEMENT OF SENATOR PORTMAN

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

12 This hearing on small business comes at a difficult  
13 time, doesn't it? We are looking at high unemployment, over  
14 9 percent nationally, and when you really look at the  
15 numbers of people who are not looking for work anymore or  
16 are underemployed, it is closer to 16 percent in Ohio.  
17 Those are about our numbers. We are looking at not just  
18 relatively high unemployment but also people being  
19 unemployed for a long time. This is a record number of  
20 folks being unemployed for 6 months or more. So we have got  
21 a lot of challenges in front of us, and small businesses are  
22 being looked to to pull us out of what is a very  
23 disappointing recovery.

24 And that has always been true. When you look back in  
25 history, whether it is the Great Depression or recessions we

1 have been in before, it is small businesses that tend to  
2 hire first and tend to bring us out, and we are not seeing  
3 that in the way that we should. I think there are a lot of  
4 reasons for it. We are not creating the conditions for  
5 small businesses to be able to grow and prosper. There is a  
6 lot of uncertainty out there. I think we are talking about  
7 that on the floor of the Senate and the House this week.  
8 Part of that uncertainty is, you know, where we are going  
9 with the budget deficit and the taxes and regulations and so  
10 on.

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

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

18 I grew up in a small business, as did a lot of  
19 Americans. My dad started a small business when he was 40  
20 years old. He left a job as a salesman, and he risked it  
21 all. He lost money the first few years, but it finally  
22 caught on, and he went on to be a successful small business  
23 person, as is my brother, who still works at the company.  
24 And if we do not get these small business entrepreneurs and  
25 innovators back in the game, again, creating jobs and

1 opportunities, we are not going to be able to get out either  
2 of the economic issues we are in or also to be able to deal  
3 with our fiscal challenges because we need more growth.

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

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

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

17 The contracting set-aside programs that the Chair  
18 talked about a moment ago created by the Small Business Act  
19 are among the tools we can use to help small businesses.  
20 These programs open the doors to procurement opportunities,  
21 and we are going to hear a lot about that from the witnesses  
22 today, some of whom have been doing this for a long time and  
23 can tell us whether it is working or not. The Chair just  
24 talked about some of the definitional problems. You know,  
25 what is a small business? How often do they have to report?

1 Is once every 5 years adequate? What happens when a small  
2 business becomes a big business? Should they still get the  
3 same set-aside?

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

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

19 More broadly, we have seen that the enticement of  
20 limited competition has led to fraud and misrepresentation  
21 across several small business contracting programs. For  
22 example, the Government Accountability Office, GAO, reported  
23 last year that it identified 14 firms that received set-side  
24 or sole-source 8(a) contracts worth \$325 million through  
25 fraud, and, again, this is an appropriate focus of this

1 Subcommittee. These 14 firms then received another \$1.2  
2 billion in other Federal obligations since entering the 8(a)  
3 program, including \$17 million in awards through the 2009  
4 stimulus bill.

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

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

15 Senator McCaskill. Thank you, Senator Portman.

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

18 OPENING STATEMENT OF SENATOR TESTER

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

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

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

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

25          Senator McCaskill. He has lasted a couple of weeks.

1 It is great.

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

4 [Laughter.]

5 Senator Tester. Actually, I gave him a great  
6 recommendation.

7 Senator McCaskill. You did. You did, in fact, and it  
8 is great to have him.

9 Let me introduce our witnesses for today. Joseph  
10 Jordan was appointed as Associate Administrator of  
11 Government Contracting and Business Development at the  
12 United States Small Business Administration in March of  
13 2009. Prior to joining SBA, Mr. Jordan was an engagement  
14 manager with McKinsey & Company, a global management  
15 consulting firm.

16 Mauricio Vera is the Director of the U.S. Agency for  
17 International Development's Office of Small and  
18 Disadvantaged Business Utilization. Since October of 2009,  
19 Mr. Vera has served as Chair of the Federal Office of Small  
20 and Disadvantaged Business Utilization Council. Before  
21 joining USAID, Mr. Vera managed the small business program  
22 at the U.S. Nuclear Regulatory Commission. Mr. Vera has  
23 also served as a senior financial analyst at the Small  
24 Business Administration.

25 Mindy Connolly was appointed to be the Chief

1 Acquisition Officer of the General Services Administration  
2 in February of 2011. Prior to joining GSA, Ms. Connolly was  
3 a senior procurement policy analyst at the White House  
4 Office of Federal Procurement Policy. Before joining the  
5 Federal Government, she worked in acquisition for Honeywell  
6 International's Defense Division.

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

12       Mr. Jordan. I do.

13       Mr. Vera. I do.

14       Ms. Connolly. I do.

15       Senator McCaskill. Thank you very much.

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

1           TESTIMONY OF JOSEPH G. JORDAN, ASSOCIATE  
2           ADMINISTRATOR, OFFICE OF GOVERNMENT CONTRACTING  
3           AND BUSINESS DEVELOPMENT, U.S. SMALL BUSINESS  
4           ADMINISTRATION

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

13           My office works each day to ensure that small  
14 businesses receive their fair share of over \$400 billion in  
15 Federal contracts. We are always looking for ways to  
16 increase small business contracting opportunities, and I am  
17 proud to say that in the 2-1/2 years I have been in my  
18 position, we have made significant improvements.

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

25           First I will discuss the small business procurement

1 goaling process and scorecard. SBA oversees the Federal  
2 Government's efforts to meet the statutorily mandated small  
3 business goals, including the goal of awarding 23 percent of  
4 prime contracting dollars to small businesses.

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

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

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

23 Additionally, although only the agency awarding a  
24 contract may enter or modify its data, SBA has developed a  
25 robust data quality review process to identify any potential

1 anomalies. We work closely with agencies to resolve these  
2 anomalies after they have certified their data to OMB's  
3 Office of Federal Procurement Policy and GSA and before we  
4 publish the scorecard.

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

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

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

25       The first prong of our strategy is designed to ensure

1 that there are effective certification processes on the  
2 front end and make sure only qualified eligible firms  
3 participate in these programs.

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

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

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

12 Lastly, I would like to share our efforts to implement  
13 the Small Business Jobs Act of 2010. We thank Congress for  
14 passing this important piece of legislation which included  
15 19 provisions related to small business contracting. We are  
16 in the process of implementing these provisions and are  
17 excited about the impact they will have not only on small  
18 businesses but in also improving the contracting oversight  
19 process. These three initiatives demonstrate the steps that  
20 SBA has taken to strengthen our goaling process, data  
21 quality efforts, and approach to combating fraud, waste, and  
22 abuse. These efforts are critical in ensuring small  
23 businesses gain access to Federal contracting opportunities.

24 While we have made significant progress, we continue to  
25 look for ways to identify further opportunities for

1 improvement and maximizing small businesses' access to this  
2 important source of revenue so that they can grow their  
3 businesses and create jobs.

4 Thank you for allowing me to share SBA's views and  
5 initiatives with you today, and I will be happy to answer  
6 any questions that you may have.

7 [The prepared statement of Mr. Jordan follows:]

1 Senator McCaskill. Thank you, Mr. Jordan.

2 Mr. Vera?

1 TESTIMONY OF MAURICIO P. VERA, CHAIR, INTERAGENCY  
2 COUNCIL OF FEDERAL OFFICE OF SMALL AND  
3 DISADVANTAGED BUSINESS UTILIZATION DIRECTORS, AND  
4 DIRECTOR, OFFICE OF SMALL AND DISADVANTAGED  
5 BUSINESS UTILIZATION, U.S. AGENCY FOR  
6 INTERNATIONAL DEVELOPMENT

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

16 Section 15(k) of the Small Business Act requires that  
17 all Federal agencies with procurement powers establish an  
18 OSDBU. OSDBU Directors are the primary small business  
19 advocates within each Federal executive agency, responsible  
20 for promoting the maximum practicable use of all designated  
21 small business categories within the agency's Federal  
22 acquisition process. OSDBU Directors are tasked with  
23 ensuring that their agency and its prime contractors comply  
24 with Federal laws, regulations, and policies related to the  
25 award of contracts and subcontracts to small businesses. By

1 law, OSDBU Directors shall report directly to the agency  
2 head or the deputy. This is important because it helps to  
3 ensure that OSDBU Directors have direct access to their  
4 agency's top decision makers in order to advocate  
5 effectively.

6       The Federal OSDBU Directors Interagency Council is an  
7 informal organization of Federal small business program  
8 officials that meets monthly to discuss issues that are  
9 important to accomplishing our respective missions and share  
10 best practices for the utilization of small businesses. The  
11 Council is led by an Executive Committee that is elected  
12 annually for 1-year terms by the voting membership. At the  
13 end of September, I will complete my second year as the  
14 elected Chair of the Council. Although the Chair is elected  
15 by the group, he or she has no authority to speak for any of  
16 the individual members of the Council. And while every  
17 Director formally advocates for the priorities of his or her  
18 agency, the Council does share some common goals, and these  
19 include: ensuring that information is disseminated to small  
20 businesses so that they can be fully informed as to the  
21 Federal laws, regulations, and programs that are relevant to  
22 their pursuit of Federal prime and subcontracts; advocating  
23 Federal Government-wide compliance with laws, regulations,  
24 and policies designed to maximize the participation of small  
25 businesses; advocating training of the Federal procurement

1 workforce and community in the principles and methodologies  
2 to maximize small business utilization; and, most  
3 importantly, identifying best practices, sharing ideas, and  
4 experiences among Federal agencies and private industry that  
5 will help leverage resources and develop solutions to more  
6 fully utilize small businesses in Federal procurement.

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

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

19         One of the measures in the progress plan section of the  
20 scorecard is that agencies should "demonstrate that small  
21 business data is accurately reported in the Federal  
22 Procurement Data System." The Federal Acquisition  
23 Regulation and supplemental guidance from OMB's Office of  
24 Federal Procurement Policy also require agencies to annually  
25 verify that agency data captured in FPDS are complete and

1 accurate. OFPP policy letters require agencies to verify  
2 that agency policies, procedures, and internal controls  
3 include regular reviews of procurement data and that  
4 agencies are appropriately sampling procurement records for  
5 accuracy on key data elements.

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

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

1 small businesses to update their information in the Central  
2 Contractor Registration or Online Representations and  
3 Certifications Application databases to accurately reflect  
4 size and socioeconomic business status.

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

13 Thank you.

14 [The prepared statement of Mr. Vera follows:]

- 1 Senator McCaskill. Thank you, Mr. Vera.
- 2 Ms. Connolly?

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

4           Ms. Connolly. Good morning, Chairwoman McCaskill,  
5           Ranking Member Portman, Senator Tester, and members of the  
6           Subcommittee on Contracting Oversight. It is a pleasure to  
7           be here today to testify on behalf of the General Services  
8           Administration. My name is Mindy Connolly, and I am the  
9           Chief Acquisition Officer of GSA. This morning I will  
10          provide a summary of my written statement, which was  
11          submitted to the Committee.

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

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

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

9           GSA recently received a grade of A from the SBA for our  
10 fiscal year 2010 small business performance. Every member  
11 of the GSA leadership team is proud of the acquisition  
12 workforce across GSA that led to that success. In addition  
13 to meeting our own goals, our Federal Acquisition Service  
14 helps other agencies accomplish their mission through our  
15 multiple award schedule contracts, government-wide  
16 acquisition contracts, and assisted acquisitions. Across  
17 the multiple award schedule contracts, over one-third of the  
18 orders go to small businesses, helping other agencies to  
19 meet or exceed their small business goals.

20           The first priority of the task force is to strengthen  
21 rules and policies in order to promote contracting  
22 opportunities for small businesses. Many steps towards  
23 strengthening the rules are set forth in the Small Business  
24 Jobs Act of 2010, which, among many changes, promotes the  
25 increased transparency in contract awards to small

1 businesses. SBA has the programmatic lead to issue policy,  
2 implementing the changes mandated by the Jobs Act. The FAR  
3 Council, of which GSA is a signatory agency, is paying close  
4 attention or is involved in those discussions, and I expect  
5 we will open a FAR case or cases to address the revised SBA  
6 regulations.

7 One regulatory issue for attention is the snapshot in  
8 time when a size determination is made to classify a  
9 business as "small" and thus eligible for the benefits  
10 reserved for small businesses.

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

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

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

14           Chairman McCaskill, Ranking Member Portman, Senator  
15 Tester, I am glad to answer any questions of the  
16 Subcommittee. Thank you.

17           [The prepared statement of Ms. Connolly follows:]

1 Senator McCaskill. Thank you all for being here.

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

4 Let me begin. There are many problems here, and some  
5 of it is just a matter of complexity, but let me get at one  
6 of the more simpler issues, and that is, should a contract  
7 be counted as small for the life of the contract? Let me  
8 give you an example. There is a Virginia-based company  
9 called VSE Corporation which now has over 2,800 employees  
10 and \$363 million in revenue. VSE is doing quite well and  
11 good for VSE. I am glad they are. That is not the issue.  
12 VSE is no longer listed as a small business, obviously. No  
13 casual observer would ever claim that VSE is a small  
14 business. Nevertheless, the Defense Department awarded a  
15 contract worth up to \$2.6 billion in 2008 to VSE as a small  
16 business, and the dollars obligated to VSE under that  
17 contract today are still counted by the Defense Department  
18 towards its small business goals. The Department likes it.  
19 SBA probably likes it. But I do not see how that spurs the  
20 Department towards looking for small businesses in Missouri  
21 or other places to fill annual small business contracting  
22 goals. Today over \$30 million--today, with this company  
23 being the size that it is, over \$30 million in task orders  
24 under this contract are still counted towards small business  
25 contracting goals.

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

4           Mr. Jordan. I do not believe so, Madam Chair. I think  
5 that, you know, as you rightfully said, this company has  
6 recertified their status, so any future awards that they  
7 would receive would not be through small business set-  
8 asides, and those dollars would not be counted as small.

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

24           So I think it would be wrong if that entity went out  
25 and competed against other small businesses now and won any

1 award, but at the time of their offer for that contract they  
2 were small. They received that contract--I do not know the  
3 individual case, but this does happen, as you have noted,  
4 you know, more than just one time. They were right to  
5 receive that contract in being a qualified small business,  
6 and then at the end of 5 years or the life of that contract,  
7 whichever is shorter, they can no longer be counted as  
8 small.

9           Senator McCaskill. Well, I guess, you know, I  
10 understand from your perspective you do not want to penalize  
11 the agency or the business that has grown. On the other  
12 hand, it makes inherently the number really misleading  
13 because they are--I mean, this is one example, but there are  
14 thousands of these examples where we are continuing to count  
15 towards a small business goal companies that are not small  
16 by anybody's measure.

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

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

1 small businesses.

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

25           So we try to balance both sides of that to keep the

1 behaviors we want incentivized but also, you know, make sure  
2 that we feel we are confident that the small business  
3 contracting numbers we report are accurate.

4 Senator McCaskill. Yes, well, they are not.

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

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

20 We looked at a number of examples and found some  
21 disturbing ones. For example, one business was awarded a  
22 contract for "other computer peripheral equipment  
23 manufacturing," which lets businesses count up to 1,000  
24 employees before it is no longer considered small, even  
25 though the business was not manufacturing a single thing.

1 That business had a \$3 million contract to sell toner to the  
2 Government. So all it was done was performing a middleman  
3 function selling toner, printer toner, to the Government,  
4 and they were counted as manufacturing under the much higher  
5 standard.

6 How can you justify that?

7 Mr. Jordan. So procurements are classified based on  
8 what you buy, not who provides them. So wholesale and  
9 retail NAICS codes, North American Industrial Classification  
10 System codes, do not apply to Government procurements. So  
11 for a supply contract--

12 Senator McCaskill. Well, why not?

13 Mr. Jordan. Because, again, the procurements are  
14 classified based on what is being purchased.

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

19 Mr. Jordan. The theory is that we are trying to get,  
20 again, small businesses on a level playing field to be able  
21 to compete while not just having them, you know, either  
22 inappropriately participate or act as a pass-through. So  
23 that is why, you know, we ask an agency for supply contracts  
24 to assign the NAICS code. To be eligible for a set-aside,  
25 the firm must manufacture the product of a small business.

1 But you are right. The non-manufacturer size standard is  
2 500 employees.

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

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

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

1           Senator Portman?

2           Senator Portman. Thank you, Madam Chair.

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

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

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

1 certification of size.

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

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

9 Mr. Jordan. Because the annual recertification of size  
10 will ensure that when there is a small business set-aside  
11 when a contract is being awarded, that those businesses that  
12 say they are small are. If it a typical base-plus-4 option,  
13 5-year contract, that will still allow that agency to get  
14 small business credit for having awarded that contract to a  
15 small business for the life of that contract or 5 years,  
16 whichever is shorter. But that entity will not be able to  
17 compete once it is other than small for any small business  
18 set-aside contracts.

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

25 Mr. Jordan. It will affect it by ensuring that, you

1 know, there is no fraud, waste, or abuse in the system.

2 That is what we are pushing on. It will affect it from that  
3 way, but not to the Chair's question, like you said, not for  
4 those types of contracts.

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

7 Mr. Jordan. I think it is a fair discussion to have,  
8 but, again, the law talks about maximum practicable  
9 opportunity, and what I have done is, yes, look at what is  
10 the optimum way to run these things going forward, but also  
11 we need some relative comparisons. So looking backwards, we  
12 are already measured against a tougher stick. Up until  
13 2006, 2007, if you got that multi-year contract in the hands  
14 of a small business who was then bought by a large business,  
15 that contract would still count. Now that is no longer  
16 true. We have also taken significant proactive steps to  
17 clean the data so the anomaly reports that we generate for  
18 all the agencies took \$3 billion out of--

19 Senator Portman. I assume you support--

20 Mr. Jordan. --so I think the numbers are pretty good.  
21 Sorry, sir?

22 Senator Portman. I assume you support all those  
23 things. The objective here is to be sure that you are  
24 meeting whatever your criteria area and--

25 Mr. Jordan. Yes, meet and exceed every single goal is

1 what we would like to do, absolutely.

2           Senator Portman. Yes. But you almost sound like you  
3 are complaining about the fact that now you have better  
4 data. So, anyway, I think if there is a recertification  
5 process, you ought to be looking at it in terms of whether  
6 you are meeting your goals; otherwise, there is not  
7 credibility to the 23 percent. Complexity is one thing that  
8 is often cited as a reason. We have these set-asides for  
9 small businesses, that they do not have the ability to deal  
10 with the complexity of contracting that large businesses do.  
11 And I think that is sensible. What concerns me is the fact  
12 that I am hearing from a lot of small businesses that it is  
13 incredibly complex to go through the process of certifying  
14 as a small business. And I do not know, Ms. Connolly or Mr.  
15 Vera might want to jump in here, too, but do you believe  
16 there are opportunities to simplify and streamline the  
17 process for eligibility? Right now folks tell me navigating  
18 the set-aside program is a whole other level of complexity,  
19 requiring, for example, identifying the appropriate industry  
20 code from a list of over 1,000 codes in the NAICS  
21 classification system, and other complexities. Is there a  
22 way to simplify and streamline it so that we are actually  
23 helping small businesses who, after all, are being given  
24 this opportunity in part because of the concerns about  
25 complexity? Thoughts?

1           Mr. Jordan. I would just say quickly, absolutely, and  
2 that is something we are using technology to push on. It is  
3 something we heard a lot--

4           Senator Portman. Absolutely we should be doing even  
5 more?

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

10          Mr. Vera. If I may, Senator Portman?

11          Senator Portman. Sure.

12          Mr. Vera. I would just add I agree wholeheartedly with  
13 my colleague Joe Jordan in some of the things that the SBA  
14 is doing in trying to streamline the processes, and  
15 certainly having been in this business for quite some time,  
16 I think it is a lot better than it used to be, and the use  
17 of technology has improved things tremendously. I think the  
18 agencies, you know, we all try to do as much as we can with  
19 our limited resources, but certainly I personally think the  
20 SBA is doing a very good job in terms of educating--you  
21 know, they did a tour--once the Jobs Act came out, they did  
22 a tour, a national tour to try to educate small businesses  
23 on some of the provisions of the Jobs Act, and I think it  
24 has gotten better. It is complex. I agree that it is  
25 complex. But I think they try. On a daily basis they do a

1 good job of trying to simplify things for the small  
2 businesses.

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

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

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

22         Senator Portman. I think any estimates on potential  
23 savings, looking at what they have identified, is something  
24 that the Subcommittee would be very interested in. Will you  
25 get back to us on that?

1 Mr. Jordan. Yes, sir.

2 [The information follows:]

3 / SUBCOMMITTEE INSERT

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

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

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

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

24           Mr. Jordan. And to that second point, Senator, that is  
25 where we spend a lot of time on outreach, as Mauricio said,

1 and going around the country and making sure the small  
2 businesses are aware of all the opportunities here, but also  
3 the training through the Defense Acquisition University and  
4 Federal Acquisition Institute that the Small Business Jobs  
5 Act empowers us to now go out and make mandatory will be  
6 very helpful at the contracting officer level as well. So  
7 getting both of those folks into the room so that--

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

10 Mr. Vera. I do not have those numbers.

11 Senator Portman. Is it substantial?

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

15 Senator Portman. Ms. Connolly?

16 Ms. Connolly. I agree with you colleagues. I do not  
17 have the number available, but generally when we set aside  
18 for small business, it is because we know that there are two  
19 or more small businesses who can meet that requirement.  
20 OFPP has asked us to reduce high-risk contracting, and  
21 although the FAR actually currently states that we can  
22 consider a single bid in an environment of competition. If  
23 all of the vendors thought that they were submitting  
24 competitive bids, we do not currently code that as a sole-  
25 source. It is presumed competition. But OFPP and

1 especially Dan Gordon has made that a highlight of reducing  
2 our high-risk contracting, is that we should really  
3 evaluate. And when we receive only one bid, we should be  
4 re-looking at our solicitation, we should be looking at our  
5 requirements and really analyzing what we have done as a  
6 Government to signal to industry that our requirements were  
7 not open for all to bid on or they were not stated in such a  
8 way that everyone understood them.

9 Senator Portman. Thank you.

10 Thank you, Madam Chair.

11 Senator McCaskill. Thank you.

12 Senator Tester?

13 Senator Tester. Thank you, Madam Chair.

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

19 Ms. Connolly. Your question covers, I guess--

20 Senator Tester. Let us say it is a building project.

21 Ms. Connolly. \$5 to \$6 million--a number of actions,  
22 but a building project, I think it varies across agencies.  
23 One of the fundamentals of project management is building in  
24 a management reserve into your project management process.

25 Senator Tester. Okay, but let us say, just to get

1 right down to it, if a person puts in a bid and there is a  
2 cost overrun, is that generally accepted if it is under a  
3 certain percentage?

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

6 Senator Tester. Okay. So it is done with a change  
7 order or it is not done at all? It is prohibited?

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

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

24 Ms. Connolly. I do not have that--

25 Senator Tester. If you could get back to me on that,

1 that would be good.

2 Ms. Connolly. I would be glad to.

3 [The information follows:]

4 / SUBCOMMITTEE INSERT

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

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

23           Ms. Connolly. I am not familiar with that particular  
24 transaction, and I haven't not been--

25           Senator Tester. And I do not want to mention names.

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

8 Senator Tester. Yes.

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

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

15 Ms. Connolly. Right.

16 Senator Tester. So I like that involved, but there  
17 needs to be--this is my perspective. There needs to be  
18 better clarification on what you are using. Now, if you are  
19 using a contractor that does a lot of bids with the Federal  
20 Government that we are pretty comfortable with doing and  
21 somebody wants to bid on that project and we say, you know,  
22 I would love to, but this guy, I am comfortable with this  
23 company over here, and so we are going with this even if it  
24 is 10 or 15 percent higher, that is a non-starter in my  
25 book, and I do not care if it helps a Montana company or

1 hurts a Montana company. The fact is you need to look at  
2 all of it. That is all. And so I would ask you to go back  
3 and do just as you said, move it more to the middle, because  
4 I think that it is important. And thank you for your  
5 answer.

6 Mr. Jordan, I think this goes to the Chairwoman's  
7 question about miscoding, improper classification of large  
8 businesses, and some of those large businesses get small  
9 business contracts. Let me lay out a scenario to you. You  
10 have got a small business that got a 5-year contract and in  
11 the process it became a big business. And you said each  
12 year they recertify online. While they are doing that small  
13 business contract for that 5 years, are they still  
14 classified as a small business if, in fact, online they have  
15 certified that they are bigger than a small business?

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

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

1           Senator McCaskill. No, I think they were legitimately  
2 a small business when the contract was given, but now they  
3 in a short period of time have become a very big business,  
4 and their number still is counted towards a small business  
5 goal.

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

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

17           Mr. Jordan. No, I think that the way that we perceive  
18 the level playing field issue is that once they have grown  
19 to be other than small, that they are not competing against  
20 small businesses as if they were a small business  
21 themselves. And that is not happening. Or that is not what  
22 the issue in this case would be. The question is: Should  
23 that agency who found a legitimate small business lock them  
24 in for multiple years and then became somewhat a victim of  
25 their own success as that small business did exactly what we

1 hoped they would do--grow their business and create jobs.  
2 Should that agency continue to get small business credit for  
3 that contract that they did award to a small business that  
4 has subsequently grown, that is the question at hand, and  
5 clearly I think we should have some follow-up conversations  
6 with the Committee because that seems to be a hot topic.  
7 But that is the challenge: How do we incentive the  
8 contracting officers?

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

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

19       Senator McCaskill. Thank you, Senator Tester.

20       Let me make sure that I put on the record--I know the  
21 answer to this question, but I want it in the record. The  
22 giant ANCs that are huge and that are multinational  
23 corporations that do not have to compete and can legally  
24 front, which means you can hire an ANC to do anything for  
25 you and they get the no-compete status even if the company

1 doing the work is a big multinational corporation--all of  
2 the money that the ANCs contract with the Government, they  
3 are all counted in this small business total, too, are they  
4 not?

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

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

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

21 Senator McCaskill. Okay. Well, if you would look at  
22 that--

23 Mr. Jordan. Absolutely.

24 Senator McCaskill. --because there is no reason for an  
25 ANC to ever graduate. They do not have to. They can just

1 hand off. They can just do tag team. You know, it is a  
2 loophole so big that this building could drive through it.  
3 And so, you know, I want to find out what percentage of the  
4 small business number, the 22.7 percent, is ANC contracts.

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

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

24 Senator McCaskill. You know, I get that, but, I mean,  
25 common sense here--I have now gotten into the weeds on this,

1 and, frankly, I have not really gotten into the weeds in  
2 this hearing because I feel for the people in the audience.  
3 I mean, it is painful. Let me give you just one formula  
4 here on how you determine small.

5         Sigma equals  $414IISCR$  where  $S1$  is greater than  $S2$   
6 greater than  $S3$  greater than  $S4$ , and that does not count the  
7 footnotes. And there is a Four-Firm concentration ratio, a  
8 Gini coefficient, the Herfindahl-Hirschman Index. Really?  
9 You know, it seems to me that somehow under the rubric of  
10 complexity and trying to get to a granular level, common  
11 sense is taking a vacation. And as we talked about before,  
12 we are not even using the NAICS codes because we are saying  
13 everybody, if they are selling stuff, is a manufacturer  
14 whether they manufacture anything.

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

24         And, you know, you could sit around a room with good  
25 acquisition personnel and say, okay, we are going to forget-

1 -because, honestly, I think that the small businesses have  
2 to spend a lot of time and energy navigating this whole code  
3 situation and figuring out the formulas and figuring out the  
4 computation on the formulas. And I think everybody is so  
5 used to using it in your world that you do not realize how  
6 nuts it is and that nobody is willing to tackle it because  
7 it just seems overwhelming.

8 Am I off the mark here?

9 Mr. Jordan. I do not think so. I think that Dr.  
10 Connolly appropriately raises the challenge, which is how do  
11 we separate--where do you draw the line between the various  
12 industries for which you are setting individual standards.  
13 The Office of Size Standards that sends these reports up to  
14 me--and I can assure you not being a Ph.D. economist that  
15 learning about the Gini coefficient and the Four-Firm  
16 concentration ratios and those types of things, that we do  
17 to set the one line--and that is the other challenge. There  
18 is one line. There is no small and medium businesses. You  
19 are small or other than small. Where below that you could  
20 be--you know, you have special preference access and above  
21 which you are, you know, out competing with everybody else.  
22 Those two things, you know, present a pretty big challenge,  
23 and so we go in and look at all the data to say: Where is  
24 the right place to draw that where we allow small businesses  
25 to grow up to that point and then through that point, and

1 they will successfully be able to compete full and open  
2 after that, but we are not making it so high we are stifling  
3 entrepreneurship and new business starts and that sort of  
4 thing. And it is one of the most challenging things we do.  
5 Every one of the size standards that we are advising now  
6 goes out for public comment and those types of things.

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

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

22       Senator McCaskill. Well, and I know how much work  
23 there is to do. We have got real problems with the data.  
24 We have got real problems with training in terms of  
25 contracting officials. We have got, obviously, challenges

1 with the acquisition workforce. You know, taking some of  
2 the complexity off their plate seems to me--you know, if you  
3 are--I mean, I think probably I could get some small  
4 businesses in this room that would tell you--that would  
5 argue with you that it is simple. But if you are trying to  
6 simplify for the companies, then all of these complex  
7 formulas and so forth, it just seems to me that we could  
8 clear that out. And I bet you we could save some money if  
9 we did that.

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

12 Senator Portman. Thank you, Madam Chair. I should  
13 probably stop here, but I have got more.

14 Again, at the risk of boring the audience, as you said,  
15 with the technical questions, one thing I found that was  
16 interesting is that the SBA Inspector General in the 2010  
17 annual report called a GSA multiple award schedule provision  
18 a "loophole." The report said that in the GSA multiple  
19 award schedule contracts that contain multiple industrial  
20 codes creates a loophole. His quote was, "Currently a  
21 company awarded such a contract can identify itself as  
22 'small' on individual task orders, even though it does not  
23 meet the size criteria for the applicable task. Thus, the  
24 agencies may obtain small business credit for using a firm  
25 classified as small when the firm is not small for the

1 specific orders under the contract."

2 Ms. Connolly and Mr. Jordan, can you provide the  
3 Committee with an update on GSA's response to that finding  
4 and any action GSA has taken or plans to take in response to  
5 that?

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

18 We have a system now--and if everybody is--people can  
19 be doing the right thing to apply the predominant NAICS code  
20 to the schedule, which covers a broad range of usually  
21 supplies and services. The contracting officer can be doing  
22 the right thing to code that according to current policy and  
23 regulations, and the awarding task order or delivery order  
24 contracting officer can be following appropriate  
25 instructions and recognizing that that NAICS code has

1 already been assigned, and they cannot change that in the  
2 system. And to the best of my understanding, I believe that  
3 is what the SBA IG is calling a "loophole." And I know in--  
4 it does happen, and that is what GSA and SBA are working on  
5 to resolve.

6 Senator Portman. Anything further, Mr. Jordan?

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

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

23 This multiple award contracts issue is the latest in  
24 the complexity that is around the set-aside program. We  
25 have talked about, as Senator Tester said, large businesses

1 elbowing out small businesses. And the Chair has probed  
2 that, as I have, on why are large businesses securing some  
3 of these contracts that should be for small businesses.  
4 And, frankly, in a system like this, with less competition,  
5 it encouraged gaming of the system. And there is some  
6 gaming of the system we have talked about. The complexity  
7 we have talked about that makes it very difficult for a lot  
8 of small businesses to even access this opportunity. And,  
9 again, what I hear from small businesses is: It is supposed  
10 to be an opportunity for us because of the complexity of  
11 Federal contracting, we are small businesses, we do not have  
12 the sophistication, and yet we are finding that the  
13 complexity of this program is too much for us; we are trying  
14 to grow our businesses and not be focused on Government  
15 complexity.

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

21 All this leads to a fundamental question that I want to  
22 get on the record and get your response to, with the  
23 incredible fiscal challenges that we face, with this ongoing  
24 discussion that we are having about how to be sure that  
25 everything in Government is as cost effective as possible.

1 And I think knowing--I think it is fair to say, we can  
2 stipulate that anytime you limit competition for Federal  
3 contracting, there is going to be a cost to the taxpayer,  
4 and whether it is this set-aside or others, if you restrict  
5 competition, it tends to increase the contract price.

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

12       So I guess I would ask you this question: Is it fair  
13 to say that the major small business contracting programs  
14 come at a premium to the taxpayers? Is this an unbudgeted  
15 cost that follows from the competition? And are you aware  
16 of any effort to try to estimate what that is? Do you have  
17 any cost--what is the cost to the taxpayer of having this  
18 restricted competition? Mr. Jordan?

19       Mr. Jordan. I do not have a quantified cost, and I do  
20 not have a quantified benefit, but I can unequivocally that  
21 small business contracting is a win-win. It is a win for  
22 the small businesses; it is a win for the Government. And,  
23 you know, it is a third win for the taxpayers as well.

24       I have been doing this for 2-1/2 years, and there are  
25 certainly complexities. You know, we have tried to

1 streamline and will do more. There are rules that we did  
2 not think made sense, and we have changed many of those and  
3 will change more. But if there is one thing that I have  
4 seen and have no question about is that these small business  
5 set-aside programs are good. They are good for the economy.  
6 They are good for the growth of small business. This  
7 revenue is important oxygen these firms need to grow and  
8 create jobs, and I have no questions about that.

9 Senator Portman. Good answer, but has there been any  
10 evaluation? Are you aware of any evaluation of what the  
11 cost--

12 Mr. Jordan. I am not aware of any.

13 Senator Portman. Ms. Connolly?

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

18 Senator Portman. I think it is just a number saying  
19 that it is not an open competition. The general rule, of  
20 course, in Government contracting is it should be open and,  
21 you know, that is--open and full competition is what the  
22 Competition Contracting Act says, full and open competition.  
23 So when it is not full and open competition, it is more  
24 restricted. I think that is where their number comes from.

25 Ms. Connolly. Yes, full and open competition. We also

1 have other requirements which require us to set aside--

2 Senator Portman. No, I know. That is--

3 Ms. Connolly. --awards under the simplified  
4 acquisition threshold for small businesses. So I guess we  
5 have competing--

6 Senator Portman. Exactly. My question is: Has  
7 anybody ever evaluated what the cost is of that?

8 Ms. Connolly. I am not aware of that type of  
9 evaluation.

10 Senator Portman. Do you think SBA would be able to  
11 evaluate those costs?

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

20 Senator Portman. I do not think anybody is talking  
21 about a monopoly, just--

22 Mr. Jordan. It is restricting--

23 Senator Portman. --open and fair competition.

24 Mr. Jordan. Well, I think where the calculation would  
25 be a factor is the fairness, because a large business may be

1 able to eat a lower price now, putting those small  
2 businesses out of business. Then there are no small  
3 businesses to provide those goods or services, and large  
4 businesses say we are going to recoup all those losses, and  
5 then some, Government, because you have nobody else to  
6 procure from. And that is what I would need to look at if a  
7 study like that would be done, and I think it would be  
8 pretty--well, it would certainly be pretty complex. I do  
9 not know if we would have all the data available to do it.

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

24 Mr. Vera?

25 Mr. Vera. If I may, Senator Portman, while I do not

1 have any of the quantifiable data that you are seeking, I  
2 would just say that small businesses absolutely do benefit  
3 from the set-aside programs. We as advocates would argue in  
4 most cases--after doing the appropriate market research that  
5 the FAR requires, we would argue for a set-aside if it makes  
6 sense, and the reason being that small businesses have  
7 limited resources to market to the agencies. So if it is a  
8 full and open scenario, they may not want to compete against  
9 the huge firms, you know, in a set-side--that they have more  
10 ability to pursue the contracts, and that is why we advocate  
11 for that.

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

25         Thank you, Madam Chair.

1           Senator McCaskill. Thank you, Senator.

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

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

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

24           Mr. Jordan. Well, on this issue--I do not know the  
25 specifics of this case, but on the issue overall I actually

1 think that we will have a tremendous amount of common ground  
2 because I hate NAICS code shopping. I think that  
3 contracting officers need to select the most appropriate  
4 NAICS code for that procurement. Now, that is different  
5 from the wholesale/retail issue that we spoke about before,  
6 but what you are implying--and this is not the only case  
7 where that is raised to me--is that a contracting officer is  
8 choosing a NAICS code because they want the higher size  
9 standard, not because it is the most appropriate for that  
10 solicitation. That is something that my procurement center  
11 representatives that work with the buying activities, when  
12 they see that happen, they push back strongly. I have had  
13 protests and other issues come to me on that issue, and it  
14 is something we work on the training on the front end and  
15 the accountability on the back end to try to make sure does  
16 not happen, because I agree, it is very inappropriate to  
17 NAICS shop because you are looking for a certain size  
18 standard, and even worse, if it is because you want a  
19 certain firm or firms to be part of that competition.

20 Senator McCaskill. So can you pull this thread and go  
21 back to the contracting officer that shopped for this code  
22 and clearly used the wrong code that allowed this huge  
23 contract to be part of the small business calculation now  
24 since 2008? And does something happen to that contracting  
25 officer that clearly decided they wanted this company to be

1 able to qualify for the set-aside when they really should  
2 not have? What happens?

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

15 Senator McCaskill. I do not think this is a mistake.

16 Mr. Jordan. But there are other issues as well,  
17 exactly, and we want to make sure that, you know, all the  
18 folks--chief acquisition officer, senior procurement  
19 executives, heads of contracting activities, all the way  
20 down--have skin in the game in making sure the right thing  
21 is done, and the right thing is getting small business  
22 contracts to small businesses.

23 Senator McCaskill. Well, you know, I would love to get  
24 a room of contracting officers--and maybe you can comment on  
25 this, Mc. Connolly or Mr. Vera. I would love to get a bunch

1 of contracting officers in the room with truth serum and  
2 say, "Do you have any fear that if you shopped the code to  
3 be able to include a company in a small business set-aside,  
4 do you have any fear that there will be any accountability  
5 if clearly you have shopped the code and put the wrong code  
6 on a company?" What do you think? Anybody afraid of that  
7 in the acquisition personnel world?

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

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

25 Ms. Connolly. Yes.

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

10           Ms. Connolly. That seems entirely clear-cut.

11           Senator McCaskill. Yes.

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

1           Senator McCaskill. Well, and I agree that there are  
2 going to be places where there is gray and it will be hard  
3 for the contracting officer and hard for the vendor, and I  
4 get that. But maybe I am somewhat jaundiced by my  
5 experience into looking into defense contracting. I think  
6 that sometimes there is a tendency in the defense world that  
7 I want what I want from who I want it from when I want it,  
8 and I am going to use the contracting rules and regulations  
9 in a way that will allow that result. And, by the way, if  
10 we are talking about shooting fish in a barrel, it probably  
11 is the Department of Defense, because I think we all know  
12 that they are the big gorilla when it comes to contracting  
13 in the Federal Government.

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

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

23           Mr. Jordan. I can say yes. SBA handles size protests,  
24 so while your size status is a self-certifying thing, an  
25 interested party--be that another bidder, the contracting

1 officer, whomever--can protest that. And last year, I think  
2 SBA handled just over 700 of these size protests, and I  
3 think just under 200 of them were sustained. So we do see  
4 that frequently, and I have a team of folks who handle those  
5 protests very quickly so as not to slow down the process but  
6 to make sure that that business who said they are small in  
7 fact is.

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

11 Mr. Jordan. We have a range of enforcement actions,  
12 and not just that we have them, we are actually using them.  
13 So there are suspensions--

14 Senator McCaskill. This is not like debarring, you are  
15 actually using it?

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

23 Senator McCaskill. Good.

24 Mr. Jordan. In addition, the Small Business Jobs Act  
25 gave us another really important arrow in our quiver around

1 presumption of loss, which says if you misrepresent your  
2 size or status to win an award, then the Government can sue  
3 you civilly for the full value of that contract. So we will  
4 keep the building you built, we are going to debar you, and  
5 we are going to sue you and get our 50 million bucks back.

6 Senator McCaskill. Have we done that yet?

7 Mr. Jordan. We have not implemented them. They are in  
8 the process of being implemented, but I am very excited  
9 about, you know, not just the retributive, punishing the bad  
10 actors, but disincentivize anybody from trying.

11 Senator McCaskill. You know, it is a sad day when I  
12 have to admit that excites me, too.

13 [Laughter.]

14 Senator McCaskill. That just shows you how wonky this  
15 stuff gets and how important I think it is. I think that  
16 would be terrific. And I really do think one of the things  
17 that Government does not do well is deter. I think we put  
18 up with sloppiness because we are overwhelmed by the  
19 workload, and many times when there are bad actors, we do  
20 not react swiftly enough or strongly enough, and that is  
21 something that does deter. As an old prosecutor, there are  
22 crimes you can deter and there are crimes you cannot deter.  
23 You all are in an area where you can deter a lot of bad  
24 activity by the way you handle the code shopping, by the way  
25 you handle misrepresentation of size, by the way you handle

1 some of the twisting and turning that goes on in order to  
2 try to shoehorn businesses into a small business category.  
3 And some of this is the pressure that we are putting on  
4 these agencies to do more business with small business and  
5 them trying to react to that. So we have got to be careful  
6 that we do not incentivize to the point that we are forcing  
7 people to try to miscode in order to "make a number." And I  
8 think that is the other danger we have here.

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

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

25       So thank you for being here, and I will look forward to

1 maybe an answer as to why--especially I am anxious to know  
2 why we cannot change that manufacturing classification.

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

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