

**TESTIMONY OF MARK J. LUMER
REPRESENTING CIRRUS TECHNOLOGY INC.
BEFORE THE SUBCOMMITTEE ON CONTRACTING OVERSIGHT
JULY 16, 2009**

I am Mark J. Lumer. I'm here representing Cirrus Technology Inc., a small business located in Huntsville, Alabama. Cirrus Technology is a HUBZONE and SDVOSB company, and a recent graduate of the 8A program.

Before I went to private industry I served as a contracting official with the Department of the Army for almost 33 years. My last assignment was as the Contracting Executive for the US Army Space and Missile Defense Command (SMDC), an SES position, and a post I was in for almost 13 years. Prior to that I was on the Army staff in the Pentagon where I helped write the FAR and DFARS for 4 years. Part 19 of the FAR and 219 of the DFARS were two of my areas of responsibility. I've been told I am the most decorated civilian contracting official in the history of the Army, but due to a fire about 35 years ago in a records storage area that statement cannot be currently verified.

The first observation I want to make is that as a contracting officer for 25 years, the unlimited sole source authority for ANCs was a very useful tool to get contracts awarded quickly under the Competition In Contracting Act. I authorized its use myself about 6 times in my 13 years at SMDC, for hundreds of millions of dollars.. I received very good performance from the ANCs and the prices proposed were audited, negotiated and ultimately determined to be fair and reasonable. I am not in favor of having that tool completely eliminated.

Representing a small business which was an 8A and is still a HUBZONE and SDVOSB, I have to state that it is incredibly difficult to compete with ANCs under the current rules. Cirrus has lost contracts that were bundled and awarded to ANCs, and lost opportunities to compete because a contract was awarded to an ANC non-competitively. As a general rule, Cirrus Technology will not compete for any procurement if there is a history of ANC involvement or where there is the likelihood that an ANC will go after the opportunity directly. I cannot provide you with any concrete evidence, but anecdotally, I firmly believe that many small businesses will routinely bypass procurements where ANCs are involved, because the chances of winning are so small, even if they are allowed to compete in the first place.

It is my firm belief that the extraordinary growth in sole source awards to ANCs is a direct byproduct of the extreme shortage of government contracting officers and specialists, a situation that will only get worse with the addition of billions of dollars in stimulus money. I have seen and heard estimates that most government contracting offices are short staffed by an average of 35%. I believe that figure may be low. Procurement officials are in the constant process of performing what I call "contracting triage"- they are looking to see what requirements can be legally awarded in the shortest amount of time using the least amount of resources... and that inevitably leads them to using ANCs because of the unique unlimited sole source authority that exists, the fact

that they get small business credit for the award, and the guarantee that there will be no protests sustained by the GAO.

Here are several areas where the playing field is currently uneven;

- a. The sole source limits on non-competitive awards to 8A (non-ANCs), HUBZONE and SDVOSBs, which are \$3.5 million services and \$5.5 equipment versus the unlimited sole source threshold for ANCs.
- b. The size standards for most small businesses are determined by the number of employees (typically 500, 1000 or 1,500) or by income; as opposed to no employee limits on ANCs. This can create an extreme disparity in the ability to compete when some ANCs have thousands of employees, and yet are always counted as a small business.
- c. ANCs may have multiple 8A subordinate companies, while other firms are typically limited to one each. The ANCs unique authority to do this gives them an extraordinary ability to adjust overhead rates and general and administrative cost factors, thereby giving them cost advantages when there are actual competitions.
- d. The inability of companies to protest a contracting officer's decision to award a particular procurement to an ANC, especially where there may be a bundling issue.
- e. To obtain a HUBZONE designation from the SBA, one requirement is that 35% of the employees live in any designated HUBZONE track; yet there are no minimum requirements for ANCs to employ tribal members or Alaskans; in fact there is no requirement that they even have offices in Alaska, though most do.
- f. Even in the subcontracting arena, there are special incentives (up to a 5% payment) for prime contractors to award subcontracts to ANCs or other Indian Tribal companies. There are no incentives for subcontracts to HUBZONE, Women-owned or Service Disabled Veteran Owned Small Businesses.

I believe there are many legitimate reasons to provide procurement assistance to ANCs. I don't believe many companies would object to allowing ANCs to have some type of procurement preference in competing for government contracts. The current situation is out of balance, and it may be time to swing the pendulum back the other way.

I look forward to answering any questions the Committee may have.