

**Oral Testimony to the Subcommittee on Contracting and Technology
March 12, 2009**

“Ensuring Stimulus Contracts for Small and Veteran-Owned Businesses”

Good morning Chairman Glen Nye, Ranking Member Aaron Schock and members of this Subcommittee. Thank you for inviting me to testify before your subcommittee and discuss “Ensuring Stimulus Contracts for Small and Veteran-Owned Businesses” My name is Janice Cavolt and I am representing JBC Corp, presenting testimony for Brian Cavolt, my husband and business partner.

My name is Brian Cavolt and I am a 100% rated Service Disabled Veteran. I retired as a Master Chief after 29 years of active duty in the U.S. Navy. Since 2006, I have owned and operated JBC Corp, a Service Disabled Veteran Owned Small Business.

JBC Corp is a provider of medical trauma kits for the military. Our kits are custom designed and packed to order as specified by the government.

My company is located and I reside in the City Virginia Beach, Virginia. My military service and experience as an operator and hospital corpsman with Special Forces inspired and enabled me to continue to serve the active duty warfighter by providing medical kits designed specifically for administering Trauma Casualty Care Under Fire. As a business owner and veteran, I have regular and continuing contact with other veteran owned small businesses.

As small business owners, we face many of the same challenges and share the same concerns. Currently the economy is our greatest concern; we are aware that the economic climate could have a tremendous affect on our businesses. We recognize that it is important that we position ourselves and not be vulnerable to the unfair business practice of not being able to bid on contracts that are automatically assigned to Prime Vendors.

The government has a variety of ways to purchase the items required for its many agencies and departments to conduct business. Although the requirements and methods vary, it seems the common objective for the government is to obtain quality products, at reasonable prices with reliable availability while providing an opportunity for U.S. businesses to progress and become an integral component in the economy. One method of procurement the government employs is the Prime Vendor Contractor. The Prime Vendor was created to enable the government to purchase products from manufacturers who do not have contracts of their own with the government. Prime Vendors are frequently used to obtain and deliver the best equipment to our troops at war in an expeditious manner. Prime Vendors can be used to bypass contracting personnel to expedite orders and eliminate the requirement of justification for purchasing a superior, reliable product over a less expensive, inferior model with unknown reliability.

While the reasons stated here seemingly justify the use of Prime Vendors, it is my belief that the very system created to improve the procurement of products for our military does not work in a way that promotes or ensures economic growth and stability for the small business. Further, the system does not protect the government from excess wasteful spending and in many cases does not adequately serve the end users of those purchased products.

The Prime Vendor is a giant in the government procurement system. As such, they exercise great power over the small business who is trying for the opportunity to get their product to market. Sometimes that power becomes abusive. A small business may take years to develop a product, show it to an interested party, and then find that their only recourse to sell in any large volume requires a Prime Vendor be involved. Refusal to accept the terms of business from a Prime Vendor is a no win option, as to do so puts your product at risk as it is not uncommon for

the Prime Vendor to take your product and actively pursue manufacturers that will produce it for them.

The tactics used by many Prime Vendors to take advantage of the small business are coercive and frequently test the ethical standards of business. We were "invited" to do business with different Prime Vendors on two separate occasions when our product was being sought for purchase. In both instances, we were pressured to get an agreement in place quickly so that orders could be received. The main issues addressed in both agreements were the price, payment terms and consequences for default. Both PV's wanted a preferred price, going so far as to say they needed room to get additional points in their markup. As manufacturers, we calculate our sell price by taking the actual cost of the items, adding our labor, other overhead costs and factoring a conservative markup. We have found that in most cases, the Prime Vendor's markup often matches our profit. The idea that both entities make the same profit when the work for each is considerably different does not seem equitable.

It is the attitude of the Prime Vendors we have done business with that makes us reluctant to want to keep doing business through such a vehicle. In two separate instances, the Prime Vendor jumped on board once they realized we had a commodity that was in demand. They assured us that by working with them, they would be able to bring the orders to us. In one case, a Prime Vendor was not able to independently process an order because they were not a "Medical" Prime Vendor. They wanted us to be their subcontractor while they looked for another vehicle to receive the order. When a Medical Prime Vendor was identified and the two Prime Vendors began to try and work out their respective profits, the combined markup of the items to be ordered became so exorbitant that the commodity buyer refused to purchase. Ultimately, we agreed to go straight to the Medical Prime Vendor and the order was finally submitted. While we awaited the purchase orders, the "non Medical Prime Vendor" attempted to force us to use them as our distributor to the Medical Prime Vendor by threatening to not do further business with us and by withholding final payment on an order we had recently completed.

Since then, that same Prime Vendor has taken the proprietary information we had provided to them while working together, and given it to another manufacturer so that they could try to duplicate our product. They are currently marketing their manufactured copy to customers who purchased our products in the past as a "like item" at a lower price.

Currently we are fulfilling an order through a Medical Prime Vendor who is withholding payment, citing reasons based on non-existent terms of our written agreement. It is easy to say that we should have stood stronger when we first engaged, but in retrospect we didn't foresee their integrity getting in the way of doing business. We couldn't imagine that when we sought to rely on our agreement, they would turn a blind eye on issues that do not favor their position. In our agreement, there is a requirement that a deposit be paid to our company before we start work. The deposit is more than earnest money; it is the capital we use to help fund the first phase of work. Once that first phase has completed, and we are paid in accordance with the terms of our agreement, we are able to self fund the next purchase of materials. Once the process is set in motion, there is a steady flow of goods coming in and of orders shipping out until the order is complete. Everyone can win using this process; the end user receives a custom built product expediently, our suppliers can rely on steady payment, the Prime Vendor can bill the government as each component of the larger order is completed, and the small business can keep employees working steady. It is a process we have used successfully in the past for large orders.

However, the process begins with the Medical Prime Vendor honoring an agreement. We did not receive the full deposit, but we agreed on a lesser amount and ended up with one half of that amount. The deposit we received was withheld for nearly three weeks after we received purchase orders and paid only after we agreed to let the Prime Vendor purchase many of our core products. Their reason was that they felt they could get better prices than we could, and therefore increase their profit. In the end, there were products they couldn't get and prices they couldn't match. We became responsible for a significant amount of products that would not be

covered by the deposit they had provided and complicating matters, they were not able to deliver all of the products they committed to in a timely manner. Since the start of work, we have not been able to get our planned steady flow of production. We receive products sporadically and are not able to build complete kits until missing items are received. Our vendors who pushed to meet the deadlines we requested are not being paid. Our bag maker, dedicated 40% of their production line to meet our deadlines and now, because we are unable to fulfill our commitment, they are turning to the banks for funding. We have borrowed money to keep our operation moving forward. Over the past 2-1/2 months, we have attempted to work with the Prime Vendor to receive payment for completed and shipped products. They claim they cannot extend additional funding until certain conditions are met. Initially we were told that we must ship orders that are at least two times the amount of the partial deposit already paid. At another time we were told that we must ship an amount that exceeds the combined amount of the deposit we have received and the amount of products that they will provide. We were sent a cure notice letter and were threatened that the order would be cancelled. We were asked to come to Florida, from Virginia on 3 day notice to meet with the President of the Company to discuss different options but in the end, the only option available required that we sign a new agreement that allowed a lien to be put against all assets of our business along with the assets of any other enterprise we may have interest in, and sign personal guarantees. Even then, the terms of payment changed and there would be no payment until after the order was 100% completed, and even then 10% would be withheld for 60 days. When we pleaded and asked for consideration for our vendors and the reserves we exhausted purchasing materials they were unable to obtain, we were told to tell the vendors to wait and that basically we should figure out how we would manage the cash flow of our company. Needless to say, we did not sign the agreement they presented. We are now approaching six weeks since that meeting. Three weeks after the Florida meeting we met with representatives from their company in our offices and they wanted to know about future business. We told them we needed to get through the current order first and would get back with them regarding the future orders. Two weeks ago I sent an email asking that we meet with our attorneys present so that we may reach an agreement that will allow us to finish the business at hand. We have had no response but continue to produce and ship our products.

This Medical Prime Vendor is a powerful giant with resources that we cannot match. It is suggested that government procurement regulations be reviewed, modernized and streamlined, to give equal opportunity to multiple American businesses. In addition, it is an opportunity to renovate a system that has become inefficient, and that places cost containment and the ability to provide items in a timely manner secondary to finding the easiest way to push an order through. There are procurement methods in place and available that with modification could significantly elevate the opportunity for small businesses to compete.

Many of the buyers who could reduce load on contract officers have a credit card limit of \$3000 per purchase; but above that amount it needs to be handled by a contracting officer. Why can't the threshold be raised to allow for ease and expedition of procuring certain items?

When a specific item is required (sole source) – why can't the contracting officer go directly to the manufacturer or distributor and see if the product can be purchased directly using MILSTRIP or credit card.

Most of the larger contracts are only available to bid on by select companies. Competition should be open to all businesses.

Government policies of payment on delivery do not favor small companies with little capital to expend; particularly with larger orders. Yet providing a product or service through a larger entity does not ensure expedient delivery and fails to protect the subcontractor as the government does not interact with the small business.

When the Prime Vendor must be used, they should be held to a higher standard of service. That higher standard should include accountability for the reasonable treatment of subcontractors; that

is, working with the subcontractor in a manner that serves to promote expedience in order fulfillment, ensure timely payment to subcontractors, and generally commit to upholding ethical business practices. Currently subcontractors are not asked to give a review of their experience with a given Prime Vendor; nor are there protocol for subcontractors to ask for relief or be heard when they are treated unfairly by the Prime Vendor.

Prime Vendors should be required to be transparent in disclosing their subsidiaries and affiliates so that all opportunities do not end up funneling exclusively to one source.

Contracting officers need to stay current and know the regulations regarding the applicable percentages that apply to subcontracting to certain small business.

Finding ways to Ensure Stimulus Contracts for Small and Veteran-Owned Businesses is not an insurmountable task. I am of the opinion that with modification and adherence to established regulations, the Small Business Owners right to fair competition can be achieved.

Respectfully submitted,

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