



**TESTIMONY OF
JOHN T. SPOTILA**

***THE IMPACT OF PROCUREMENT
REFORM ON SMALL BUSINESS
CONTRACTORS***

**Before the Committee on Small Business
U.S. House of Representatives**

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Chairwoman Velazquez, Ranking Member Chabot, and Members of the Committee:

Thank you for inviting me to testify today on the impact of emerging procurement methods on small business contractors. This is an important subject with significant implications for our nation. For all of us who understand that small business is the engine that drives our economy, finding a way to get federal procurement to support small business development is worthy of attention.

I speak to you today as a small business owner, but am fortunate to bring with me broad knowledge and experience gained in other roles. After graduating from the Yale Law School, I served at the Justice Department and then in a Philadelphia law firm. I then set up my own law firm and spent many years as a small business owner representing other small businesses. From 1993 to 1998, I had the privilege of serving as General Counsel for the U.S. Small Business Administration. I then moved to the Executive Office of the President to take on the Senate confirmed role of Administrator of OIRA, OMB's Office of Information and Regulatory Affairs, with responsibility for the review of significant federal regulations. After leaving the White House, I became Chief Operating Officer and President for a billion dollar, publicly owned federal contractor. Now I own and run a small federal contracting firm.

My experience over the past 15 years has given me a valuable perspective on the topic of this hearing. I understand the good intentions and logic of those who helped create procurement reform. I believe their reform effort has accomplished a great deal of good. Unfortunately, the reforms have not been sensitive enough to their negative impact on small business owners. Nor has the federal government done what it could and should do to improve its procurement system to help small business owners.

For many small business owners, federal procurement is a very difficult environment. Procurement offices do not have enough staff to do the work. The people they have are too often inexperienced and poorly trained. The procedures they follow are complex and not well understood. Decisions take too long and are communicated in documents filled with boilerplate and legalese. The procurement world seems "of the

lawyers, by the lawyers and for the lawyers”. The small business owner feels like an inconvenience at best.

Since most agencies have cut back significantly on their procurement staffing, procurement offices often lack the resources to improve their internal processes. They are fighting off alligators, not draining the swamp. Too often, they don't fix their processes and they don't take steps to communicate with their customers more clearly. Large firms that can assign people to work with the procurement offices full time navigate the maze better than small firms that cannot afford such full time help. In essence, the lack of streamlining and clear communication becomes a competitive advantage for larger firms.

There are other unfortunate results as well. Many procurement offices continue to combine a wide range of minimally related tasks into larger contracts to get more procurement dollars out the door with a single action. Unfortunately, this makes it harder for small contractors to demonstrate broad enough capability to qualify for the large awards. The small firms may have excellent skills and experience in their areas of focus, but they do not have the capability that only a large firm would have. I understand why procurement offices do what they do in this regard. I am just concerned about the unintended consequences.

Here's an example of what I mean. On February 15th of this year, the Army published a “Sources Sought” Notice (Solicitation Number W91WAW-08-R-0028) with a 10 day turnaround. On its face, the Notice suggested that the Army wanted to steer the work to a qualified small business through a “set-aside”. Thus it asked that interested small businesses submit their capabilities statements. But listen to the description of the anticipated tasks:

“The US Army Contracting Agency, Contracting Center of Excellence (CCE) at the Pentagon, on behalf of the Office of the Assistant Secretary of the Army for Installation & Environment (ASA-I&E), intends to procure professional support services in support of policy development, program oversight and coordination of a wide variety of Army activities as a small business set-aside or under full and open procedures. Only small businesses are to submit capability packages. Interested small businesses that are certified and qualified as a small business concern in NAICS code 541618 with a size standard of \$6.5 million are encouraged to submit their capability packages outlining their experience in the following key areas or tasks. (1) Knowledge and Experience in dealing with unexploded ordnance policies, procedures and knowledge of unexploded ordnance detection and removal technologies. (2) Ability to manage an unexploded ordnance test range. (3) Ability to assess the environmental and safety aspects of chemical, biological and conventional munitions. (4) Expert knowledge and experience in dealing with Lean Six Sigma practices, to include the ability to provide a Master Black on a full-time basis. (5) Knowledge and Experience in restoration of contaminated areas, including ranges. (6) Knowledge and Experience in environmental outreach programs throughout the country. (7) Knowledge and Experience in gathering and evaluating state environmental laws and regulations. (8) Knowledge and Experience in the evaluation of and developing solutions to remediate the sea-disposal of chemical and conventional

munitions. (9) Knowledge and Experience in dealing with content management, maintenance and limited design effort of web-based data, information and knowledge management systems. (10) Knowledge and Experience with the development of requirements for environmental technology. (11) Knowledge and Experience with the management of a major technology and the testing and fielding of new technology program. (12) Experience in conducting studies involving world-wide environmental and sustainability issues. (13) Knowledge and Experience with Government/DOD financial and budget processes and related automated systems.”

The Notice went on to add this advisory:

“If at least two responsible small business concerns are determined by the Government to be capable of performing this requirement at a fair market price based on an evaluation of the capability packages (limited to 25 pages, single sided) submitted by Monday 25, February 2008 at 10:00 A.M. (EST), the requirement will be solicited as a 100% set-aside for small business concerns. If capability packages are not received from at least two responsible small business concerns by the response date or if the Government determines that no small businesses are capable of performing this requirement based upon an evaluation of the capability packages submitted this requirement will be solicited under full and open procedures.”

In other words, large businesses should get ready for the competition - unless they were already waiting with small business junior partners eager to claim the benefit of their broad capability through some type of “teaming” arrangement. What is not likely to happen is that a small business with revenue of less than \$6.5 million a year will be able to show that it has experience and capability in 13 areas ranging from unexploded ordnance removal to the safety of chemical and biological munitions to Lean Six Sigma to environmental outreach programs to “web-based data, information and knowledge management systems” to “experience in conducting studies involving world-wide environmental and sustainability issues” to “knowledge and experience with Government/DOD financial and budget processes and related automated systems”. If they could do all that, they probably wouldn’t be small.

But at least “teaming arrangements” sometimes let the small business serve as a prime contractor. Even if the prime is dependent on a large firm on the team, at least the small prime retains some ability to work directly with the client and protect its long term position. Often, the reverse is true. Large firms win the contracts, perhaps with the help of small businesses, and then use their superior size and leverage to squeeze their subcontractors so that most of the profit (and all of the client relationship) goes to the prime.

The trend towards reduced staffing in procurement offices has clearly favored large firms over small ones. Huge sole source awards go to mega contractors, especially in the defense area, in the interest of speed and national security. Unrelated tasks get grouped together in ways that make small businesses less competitive. Large firms are in a better position to win prime contracts than small ones.

Government agencies don't seem to understand this or care about the implications. I can remember attending an Aeronautical Systems Center "Industry Day" Conference at Wright Patterson Air Force Base two years ago where government procurement people were discussing "the realities of tomorrow" and describing their forecast of future contracting opportunities. They showed no particular concern about small business participation. When I asked one small business representative about procurement opportunities for small business, she suggested that I introduce myself to Boeing or one of the other large "primes" because there wasn't likely to be much opportunity there for small business except as a subcontractor. All of the contracts they were planning were going to be very large.

For all of this, small business owners are resilient and entrepreneurial. They continue to work the system, relying on personal relationships and niche skills to carve out a role for their firms. Often they are the source of great energy and creativity. If only they had a more level playing field, think what they could do!

I doubt very much that we can reverse the trend towards aggregated contracts. It's worth trying, but any victories will probably be on the margins. We can do something else, however, that would help small contractors a great deal. We can make a serious effort to turn procurement offices into centers of process improvement and plain language communication. If we can streamline the way procurement offices operate and get them to communicate clearly, small business will benefit tremendously.

Plain language communication is the place to start. It is cost effective, achievable and of particular value to small contractors. In the procurement area, legalese and obscure language are dead weights that drag small firms down. They can't afford expensive advisers to re-interpret unintelligible government communication. They need to be able to understand things the first time they read them.

Last Thursday, the House Small Business Subcommittee on Contracting and Technology held a hearing on a bill introduced by Congressman Braley, H.R. 3548, the *Plain Language in Government Communications Act*. Senator Akaka of Hawaii has introduced a similar bill, S. 2291, in the Senate. These bills would require federal agencies to use plain language in any new or revised documents relating to benefits or services including letters, publications, forms and instructions. If it becomes law, it will help make the procurement world much more understandable to small contractors. Procurement forms will become less obscure, procurement procedures more transparent. This won't fix all that is wrong with our procurement system, but it's not a bad place to start. I commend Congressman Braley for his vision in introducing this bill.

Individual agencies have shown what can be accomplished by emphasizing plain language communication. The FAA has even applied these principles in the procurement area. On at least a partial basis, it converted its guidance on contract writing clauses to plain language as part of its FAA Acquisition System Toolset (FAST). See <http://fast.faa.gov>. This is the right approach and it shows that it can be done.

A word about plain language. Plain language is language the intended reader can understand – and use – on one reading. It is audience-focused. The most important rule in plain language communication, indeed, perhaps the only rule, is to be clear to your intended reader. When I was General Counsel at the SBA in the mid 1990s, I led a 10 month effort in which career employees throughout the agency rewrote all of SBA’s regulations in plain language. It was a tremendous success. At OIRA, I helped implement President Clinton’s Executive Memorandum on Plain Language, making OMB review part of the solution rather than part of the problem. Technical areas are no obstacle to plain language. Indeed, no areas need plain language more so that the intended audience can understand and use the material. Plain language works wherever and whenever we try it. I just hope Congressman Braley’s bill passes so that the government tries it in more places.

Process improvement is the second step we can take. Streamlining the way procurement offices operate would also pay large dividends for small business. In no small measure, small contractors struggle more today because of something the government didn’t do. When the government introduced procurement reform and cut back on its procurement staff, it made no real effort to re-examine how procurement offices should run their operations. Instead of applying best practices in Lean Six Sigma, change management and project management to their procurement offices, agencies largely left those offices to flounder. Now they struggle along with cumbersome processes, useless complexity, poor training, inefficient use of resources and understandably poor morale. No wonder decisions take forever and small businesses fall victim.

It doesn’t have to be this way. Our career government employees are a terrific resource. Time and again they have served the American people with dedication, energy and creativity. They just need leadership and support. We know how to fix sad sack offices. There are a host of examples where the government has improved its processes and delivered better results for less money. We can do the same with procurement offices. If we do, the effort will more than pay for itself and both small contractors and the American taxpayer will benefit tremendously from the result.

Madam Chairwoman, I commend you and the Committee for shining a light on this topic. You are absolutely right that government can do a better job in this area. Perhaps it just needs a little Congressional “push” now and then to get back on track.

Thank you and I would be happy to answer any questions you may have.

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