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DISASTER RECOVERY: EVALUATING THE ROLE OF AMERICA'S SMALL BUSINESS IN REBUILDING THEIR COMMUNITIES

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

SEPTEMBER 15, 2011

Printed for the Committee on Small Business and Entrepreneurship

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DISASTER RECOVERY: EVALUATING THE ROLE OF AMERICA'S SMALL BUSINESS IN REBUILDING THEIR COMMUNITIES

THURSDAY, SEPTEMBER 15, 2011

UNITED STATES SENATE,
COMMITTEE ON SMALL BUSINESS
AND ENTREPRENEURSHIP,
Washington, DC.

The Committee met, pursuant to notice, at 10:07 a.m., in Room 428–A, Russell Senate Office Building, Hon. Mary L. Landrieu, Chair of the Committee, presiding.

Present: Senator Landrieu, Shaheen, Hagan, Snowe, and Brown.

Also Present: Senator McCaskill.

OPENING STATEMENT OF HON. MARY L. LANDRIEU, CHAIR, AND A U.S. SENATOR FROM LOUISIANA

Chair LANDRIEU. Good morning, and welcome to the Small Business Committee room and welcome to our hearing this morning entitled, Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding Their Communities. Welcome to my Ranking Member, Senator Snowe.

Good morning, and thank you for joining us for this timely and important hearing. Today's hearing focuses on the role that small businesses play in helping their communities following disasters, but it is also going to focus on the role of the Federal Government in making sure that small businesses are actually a part of that rebuilding, not only for the benefit of the communities they serve but for their own individual benefit, many of them ravaged by flood waters, high winds, and in some cases, the trembling earth.

For example, right now small business in the states from North Carolina to Maine are trying to rebuild their communities impacted by Hurricane Irene. With that in mind, today we hope to hear about the federal disaster contracting process, more about the details, how is it working to direct this work that can be done so ably, so well, and with such appreciation, I might add, by the small businesses in these communities.

We know there are two sides to this coin. Small businesses often get frustrated trying to navigate the federal procurement process while the Federal Government struggles sometimes to work with these small businesses unfamiliar with these system of procurement for goods and services.

Today we are going to hear from some of our experts at the federal level, and then we are going to hear from some of our experts

from the field, actual small business owners who have had in some cases good experiences, in some cases terrible experiences, in this sphere.

We want to present to you today the good, the bad, and the ugly. Senator Snowe and I are committed to help make this process better, to improve upon it. I believe we have made some improvements since Katrina and Rita, but today we will hear more about exactly how significant, if at all, if there were any improvements in the system and what remains to be done.

This year marks the sixth anniversary of Katrina, the costliest disaster in the State of Louisiana's history with over $81 billion in damage. We are now experiencing the impacts of disasters in all but two states in the United States, federally declared disasters, which is really unprecedented.

This issue is relative not only to the work continuing along the Gulf Coast but most recently along the East Coast which Senator Snowe, I am sure, will share with us today.

According to the GAO who will testify before this committee, Gulf Coast small businesses received almost $2.9 billion in contracts, 14 percent of the total, $20.5 billion in total federal contracts. We are happy to see that, but we hoped the number might be a bit higher. We are going to delve into some of those numbers today.

On May 22nd of this year, winds engulfed Joplin, Missouri leaving large-scale damage on stretches of Main Street. Many businesses were either heavily damaged or destroyed.

In the wake of the disaster, we counted on our entrepreneurs to repair damage to St. John's Regional Medical Center, one of the largest hospitals in the area. The Federal Government reached out to construction companies in Joplin to help pick up debris and remove it so the community could get back to work. We are looking forward to hearing how many small businesses played a part in that effort.

I am personally particularly interested in the U.S. Army Corps of Engineers. They do a tremendous amount of work in my state, important work around the country, and I want to hear from the Corps about the ways that you all are working with small businesses to supply the rock, the sand, the levee construction materials, and other supplies that the Corps needs as we try to improve our levee system nationally.

On our second panel, we will hear from members and small businesses from the Gulf Coast to Missouri to other small business communities. I think we have particularly strong testimony from Mr. Dale Rentrop, the President of Tiger Tugz from Louisiana. I am looking forward to hearing his story. It is not a happy one, but I think it will be informative.

Thank you for your time. I will turn it over to Ranking Member Snowe, and then we will go to opening statements.

OPENING STATEMENT OF HON. OLYMPIA J. SNOWE, RANKING MEMBER, AND A U.S. SENATOR FROM MAINE

Senator SNOWE. Thank you, Chair Landrieu, for your continued and exceptional leadership of this Committee particularly on this timely issue of disaster recovery.

I want to welcome our panelists who have taken valuable time out of your own schedules to be here today to testify.

Our first panel of governmental witnesses will discuss what federal agencies are doing to aid disaster recovery, and our second panel of small businesses and local organizations with boots on the ground will tell us about their experiences working with federal, state, and local governments in ways to improve that process.

Much of the Senate's work this week has been spent with policymakers debating FEMA's funding shortfall which has left the agency unable to support long-term rebuilding and mitigation projects because the depleted disaster relief fund can only cover damage costs immediately afterwards.

As the Chair has pointed out, FEMA has had to stop disaster recovery projects such as rebuilding of roads, hospitals, schools, and public utilities because they have run out of money.

Hurricane Irene has only compounded the problem because FEMA is quickly spending the remaining money in a disaster relief fund on immediate needs for those left without shelter and food in the aftermath of the storm.

Let me be clear. There is simply no excuse for Washington continuing to fund disaster accounts on an emergency and ad hoc basis rather than preparing for them in advance. That is why today I am introducing the Safeguarding Disaster Funding Act with Senator Scott Brown.

This bill would require that the President's annual budget request for disaster programs include funding levels equal to the average amount provided annually for the previous 10 years. Additionally, disaster funding that goes unspent in a given year will carry over to support years where additional funds are required.

This common sense approach would alleviate the political haggling and brinksmanship that has become all too common place in Washington, while ensuring that taxpayer supported disaster funds are properly budgeted and offset moving forward.

I hope my colleagues in this Committee will support this bill and help to secure its passage. Responsible budgeting for disasters is the right thing to do for the victims of devastation as the vivid images from the damage of Hurricane Irene has reminded us.

As one of the Senate Committees responsible for overseeing federal disaster assistance, today we will examine the degree to which one tool, contracting opportunities for local businesses that want to participate in recovery and rebuilding efforts, is being utilized.

Hurricane Irene caused more than 4.5 million homes and businesses along the East Coast to lose power, including 185,000 in my home State of Maine which suffered flooding and washed out bridges in the western portion of the state.

Now that the winds and rains have subsided, our cities and towns must rebuild from the devastation. Our local small businesses stand ready to aid in the rebuilding efforts, and the Federal Government should be partnering with these firms whenever possible in awarding recovery contracts.

In response to the 2005 hurricanes, Gulf Coast small businesses received almost $2.9 billion in federal contracts or just over 13 percent of the $20.5 billion federal agencies directly awarded nationwide for recovery efforts related to Hurricanes Katrina and Rita.

Key questions these statistics raise is, why are not more disaster recovery contracts going to local small businesses and is the Federal Government bundling many of the contracts out of convenience?

This Committee has had a long history in trying to reduce unwarranted contract bundling to provide more opportunities for small businesses. In fact, the Small Business Jobs Act that was enacted last year contained a number of anti-bundling positions that had been passed unanimously out of this Committee.

These provisions require bundled contracts to include small business teams or joint ventures. In certain cases, contracts are too large for many small businesses to compete and their only opportunity to participate in a project is to act as a subcontractor to a large business.

In any construction contract over $1 million, a large business is required to submit a subcontracting plan to the agency before the contract is awarded. Unfortunately, in their report on Hurricanes Katrina and Rita, the GAO describes an alarming trend that federal agencies are not monitoring large business subcontracting plans which threaten small business participation in the rebuilding efforts.

This morning that is one of the issues that I intend to explore in terms of what the federal agencies represented here today and others are doing to correct and to remedy these monitoring failures.

So again, Madam Chair, thank you for your leadership and for this hearing here today.

Chair LANDRIEU. Thank you so much, Senator, for being willing to help us try to solve this funding problem which is immediate. It is severe, and it is going to take our best efforts in the next few days to figure that out.

So, thank you, and Senator Brown.

Senator Brown.

OPENING STATEMENT OF HON. SCOTT P. BROWN, A U.S. SENATOR FROM MASSACHUSETTS

Senator BROWN. Thank you, Madam Chair, and Ranking Member Snowe for scheduling this hearing.

It, unfortunately, has grave importance not only to many parts of the country but, as you know, to my State of Massachusetts. We have had an unusual string of natural disasters, obviously the tornadoes that hit in May in the western part of the state. Then most recently Hurricane Irene.

We have had to rely on SBA, FEMA, and the Army Corps to get back on our feet; and I want to thank you all for what you have done and continue to do. Obviously, we are here to try to learn how to do it even better because over the past several months since the May tornadoes, I have been urging my constituents through videos and newsletters and the like to utilize the resources provided by SBA, FEMA, and the Army Corps so that their homes and businesses can recover quicker.

The issues the Committee is looking into today are not to attack the agency or the representatives but to make them better and more accessible to the citizens that need them most.

I see two main areas of concern. First, the agencies need to do better at monitoring the contracts to ensure that the small businesses are truly getting our businesses to actually get out and do their jobs and have an opportunity to provide services and that the Federal Government is not being duped by the front facade contractors posing as small businesses.

Most recently, speaking with many of the town administrators and mayors, when FEMA and other groups come into the area, they set up shop. They do their thing. They do it well. There is a lack of communication to the actual town administrators or mayors, and there is almost a duplicative chain like two trains going down parallel tracks and they are not really talking or communicating with each other. I think that is critically important. So, that is a suggestion I would certainly make.

The second, in light of the discussions taking place where I know the chair has been very animated about a lot of the things that have been happening in the Senate, we need to take proper steps to budget better.

It is common sense we do not properly budget for these types of disasters. When they happen and the money is gone, we are like, oh my gosh, where is the money? Well, we do not properly plan.

Regarding the Senate's focus on this, I voted both times to move forward with the FEMA disaster relief bill as did other Republicans, because neighbors and constituents in Massachusetts have lost their homes and businesses, and quite frankly we need to do what we can to get them back on their feet so they can be contributing members of their towns and their communities and our state.

Quite frankly, folks, you are Americans first and we need to start working together in these tough fiscal times as well as times when we deal with natural disasters. I, for one, will continue to work in a bipartisan, hopefully bicameral manner, to allow us to do it better.

I am looking forward to cosponsoring a bill this week with Senator Snowe requiring the President's budget to include at a minimum a request for disaster funding based on the 10-year average on spending on disasters.

We should not be getting insufficient budget requests for the disaster relief fund with agencies knowing full well that they can simply ask Congress for emergency supplemental funding or hope to count on a cushion from next year's surplus because we know disasters happen every year in your area especially and most recently in ours.

Look what happened in Vermont, unheard of. Just speaking with our dear friends from Vermont, the senators from Vermont, they are just shocked.

We need to plan. We need to do it better. I want to thank you for the hearing. Thanks for focusing on this issue, and let's get to work.

Chair LANDRIEU. Thank you. I will introduce the panel in just a moment but I would like to respond just a second. I thank you, Senator, for those comments, and animated is a very kind word for these speeches I have been giving on the floor. So, I thank you. You were very careful in your selection of words.

Senator BROWN. That is how I am.

Chair LANDRIEU. Let me say this. We have budgeted for disasters. The average that we budgeted in Homeland Security, and I just became the Chair two years ago, so prior to my becoming the Chair, was about $800 million a year. I can give you the charts to show this, but I do not have them with me.

When I became Chair, I knew that was not sufficient, so I doubled the amount of money up to $1.8 billion out of the Homeland Security budget which is a total budget of $42 billion.

I have been resistant to budget any more out of Homeland Security because if I do that, it takes away grants from your states that help you to protect yourself against future disasters. I have said it is not right for the country to fully fund disasters out of the Homeland Security budget which is only $42 billion.

So, I am looking for a solution. I think the solution that you and Senator Snowe have at least described to me just now in your bill that you intend to introduce might be one requiring the President to do a 10-year average. You take out the high and the low.

The other problem with budgeting, Senator Brown, if I might say, in advance is sometimes events happen that no matter how well you planned just absolutely blow the roof off of any estimates and that is what happened in Katrina.

Even if we had budgeted $10 billion which is going to be about what the average is, it was $43 billion. So, if one side continues to require offsets even when that happens, we are back in the same place we are now.

I am willing to be open but we have got to find a way forward that allows in really extraordinary circumstances for there to be emergency funding because you will never, in my opinion, be as accurate as we need to be about it.

We can prepare better. Absolutely. I think that might be a good approach, but we will see as we go on.

Let's get our panel started.

Mr. Sligh is the Associate Administrator for FEMA. I am looking forward to his comments today. He has more than 28 years of experience in leading acquisition contracting and program management initiatives with the Federal Government.

Next we will hear from Brigadier General Ted Harrison, Director of the Army Corps of Engineers. Previously, he was Deputy Director and also Chief of Staff for the Joint Contracting Command in Afghanistan and Iraq.

And lastly but equally importantly, we have Bill Woods, Director of the Acquisition and Sourcing Management Team for the GAO.

So, why don't we start, I guess, Mr. Sligh, with you? Go right ahead and I think you have five minutes each for opening statements.

STATEMENT OF ALBERT B. SLIGH, JR., ASSOCIATE ADMINISTRATOR, MISSION SUPPORT BUREAU, FEDERAL EMERGENCY MANAGEMENT AGENCY, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. SLIGH. Yes, ma'am. Good morning, Chairwoman Landrieu, Ranking Member Snowe, and Senator Brown.

My name is Al Sligh, and I am the Associate Administrator for Mission Support Bureau at FEMA. I appreciate the opportunity to

appear before this Committee today to discuss FEMA's efforts to increase contracting opportunities for local small businesses, especially in the wake of disasters.

FEMA uses a variety of tactics to increase opportunities for small businesses. For example, we have a full-time small business specialist whose primary responsibility is to increase opportunities for small, minority, and the disadvantaged businesses.

Using lessons learned from Hurricane Katrina, FEMA has implemented a local contracting strategy. With this strategy, prior to issuing a solicitation, FEMA does research to determine whether enough small businesses have the capability to meet program requirements. If they do, then the solicitation is structured either as a local small business set-aside or to provide competitive advantages based on small business status as allowed by the Federal Acquisition Regulation.

I am proud to report that we exceeded the Small Business Administration goals for the Federal Government of 23 percent with 28.7 percent in fiscal year 2009, 26.9 percent in fiscal year 2010 of our procurement dollars going to small businesses. For fiscal year 2011, so far we are slightly above the federal goal.

In the aftermath of a disaster, up to 40 percent of small businesses fail to recover which can significantly hamper the community's recovery efforts. While state and local governments issue the majority of contracts within the disaster environment using FEMA funds, FEMA is dedicated to help communities rebuild by awarding its contracts directly to local small businesses to the maximum extent possible.

To aid local business contracting, local business transition teams are deployed to the field to encourage timely transition of contracts to local small businesses following the initial disaster response. These teams engage with the local business community to identify products and services that can be provided locally.

In addition to the local transition teams, Disaster Acquisition Response Teams or DARTs provide contract administration and oversight to local contractors. The DART members help local small businesses with issues that arise during performance periods and the review and timely submission of invoices to facilitate prompt payment.

These techniques were used with great success in the aftermath of the April 2010 tornadoes in the Southwest. In the eight affected states, FEMA staff worked with State partners before, during, and after the disasters to identify local businesses that can provide needed supplies and services.

In Alabama, Mississippi, Tennessee, Kentucky, and Georgia, over $13 million was awarded to local businesses and 90 percent of the local procurement initiatives went to small businesses.

In Joplin, Missouri, a DART member worked with a small local business to ensure that they would be eligible to compete for FEMA contracts. They did this by answering questions and providing advice such as the importance of central contracting registration. Not only was this an opportunity for this business to contract with FEMA, but it was also a chance for this business to gain skills and approvals needed to successfully compete for government contracts in the future.

In addition to our efforts, it is essential that individual businesses have emergency plans. Having a plan can increase the speed at which a business can continue its operations following a disaster. It is especially important that small businesses have an emergency plan since their size alone make them the most vulnerable private sector entities.

In order to raise awareness to small businesses about the need for emergency planning, DHS and the Ad Council launched the Ready Business Campaign in September 2004. This initiative helps owners and managers of small- and medium-size businesses by providing them with the practical steps and easy-to-use templates that prepare them for emergencies.

FEMA will continue to do its part in the recovery by encouraging local businesses to be prepared prior to disasters and providing contracting opportunities for them as much as possible.

This concludes my statement. I will be happy to answer any questions you may have.

[The summary of Mr. Sligh follows:]

Summary of Testimony – Albert Sligh, Jr.

Increasing Small Business Contracting & Exceeding the National 23% Goal

- FEMA supports recovery by working through local, state, and federal partners to restore needed infrastructure, reopen viable businesses, and ensure essential government services are operating. Contracting with local businesses is critical to a community's recovery from a disaster. Up to 40% of small businesses fail to recover following a disaster, having a crippling effect on the regional economy.

- The Post-Katrina Reform Act enhanced FEMA's ability to provide local small business set-asides for disaster affected areas. FEMA adopted new procedures and strategies to engage local business communities to maximize local contracting:
    - Better market research and working with Central Contractor Registration database for better information about local companies interested in debris removal services.
    - Deploying newly established Local Business Transition Teams (LBTT) to Joint Field Offices (JFO) to coordinate economic resources and contracting, such as Procurement Technical Assistance Centers (PTAC).
    - Providing small and local businesses competitive advantage.
    - The creation of the Industry Liaison Program now provides businesses with the info they need to successfully compete for FEMA contracts.

Private Sector Preparedness

- Ready Business Campaign: first launched in 2004 and expanded in 2006, this campaign encourages business owners and managers to discuss the benefits of emergency preparedness measures and the need to plan ahead to ensure they can stay in business following an emergency. The campaign's messages are delivered through: television, radio, print, outdoor and Internet public service announcements (PSAs).
    - Outreach products include: brochures; web sites in English and Spanish; toll-free phone lines; and partnerships with a variety of public/private sector organizations.
    - This initiative helps owners and managers of small- to medium-sized businesses prepare for emergencies and is designed to assist business and community leaders come together to host and deliver preparedness workshops and training sessions.

- Engaging the Private Sector & FEMA's "Whole Community" Approach: in August of 2011, FEMA's Public Sector Office hosted the first National Public-Private Partnership Conference, which focused on integrating the private sector as part of the Whole Community concept, expanding outreach capability, and increasing private sector emergency management initiatives.
    - The Private Sector Office created a resource website, social media applications, info on training and grants, and a library of model public-private partnerships.

Chair LANDRIEU. Thank you.

General, please.

STATEMENT OF BRIGADIER GENERAL THEODORE HARRISON, DIRECTOR, NATIONAL CONTRACTING ORGANIZATION, U.S. ARMY CORPS OF ENGINEERS

General HARRISON. Madam Chair, members of the Committee, I am Brigadier General Ted Harrison, Director of the U.S. Army Corps of Engineers, National Contracting Organization.

Thank you for the opportunity to testify before you today concerning the role of small businesses in disaster response. The Corps continues to work to support FEMA in carrying out a wide variety of missions in response to the natural disasters throughout the Nation and we strive to maintain transparency in our contracting activities and welcome the oversight of our actions.

I fully recognize the value that small businesses bring to our national economy. I am personally committed to using small businesses in performing our work, both in the normal course of business and in times of major natural disasters.

After a Presidential declaration of disaster, we work to support local communities using local area set-asides permitted by the amended Stafford Act.

First, I would like to address pre-disaster contracting. Under the national response framework, the Corps has been designated the coordinator for emergency response function number three, public works and engineering.

When tasked by FEMA, the Corps is responsible for providing ice, water, debris removal, and temporary power. The Corps is also a support agency for emergency response function number six, mass care and housing, providing temporary roofing in the wake of a disaster.

Due to the necessity to lean forward in time of need, the Corps developed the Advance Contracting Initiative or ACI contracts to quickly respond to major disasters. We used our ACI contracts to support recovery efforts after Hurricanes Katrina, Rita, and Wilma; and we are now using ACI contracts again to respond to tornado recovery missions in both Missouri and Alabama.

Although it is always our plan that our ACI contracts are ready to effectively respond to all natural disasters, we have learned that sometimes the magnitude of disasters requires more contract capacity or geographic coverage than is available under the scope of existing ACI contracts. For example, after Katrina, the Corps needed four additional contracts to remove debris in both Mississippi and Louisiana.

The Corps of Engineers is dedicated to employing small businesses in response to disaster. Small business subcontracting data for the Corps of Engineers response to the Gulf region's recovery through March of 2007 made it very clear how vital small business participation was to the recovery effort with 88 percent of all subcontracted dollars in Louisiana awarded to small businesses and 84 percent of dollars awarded in Mississippi going to small businesses.

In response to the Joplin recovery, the Corps of Engineers has awarded approximately 45 percent of total dollars in support of the recovery directly to small businesses.

With regard to the Corps overall small business performance, as of September 9 the Corps is exceeding all fiscal year 2011 small business goals for prime contracts. And also to date, fiscal year 2011 data reflects the Corps' contractors have awarded 63 percent of subcontracted dollars to small businesses.

In regard to the GAO report, 10–723, overall the Corps successfully ensures that small businesses are provided the best opportunities to participate in the rebuilding of their local communities after disasters occur.

The Corps is in the process of fully implementing the GAO recommendation to provide improved oversight to ensure that our contracting officers are monitoring the extent to which our contractors are meeting subcontracting goals and submitting subcontracting plans.

I will be the first to say, however, that we should have better accountability for tracking subcontracting reports through contract completion but we are on the path to getting this right.

The Corps has undertaken a number of steps to ensure full accountability in subcontract reporting which has been submitted for the record as a part of my testimony.

Looking forward, I am committed to the Corps' continuing partnership with local contractors in moving to local area set-asides under the amended Stafford Act as soon as practicable and to local business contractors when market research indicates we have a viable small business within the local area.

We will negotiate subcontracting plans with our large business contractors to enable small businesses in all social economic categories to support natural disaster response. Our contracting officers and small business specialists will ensure that proposed subcontracting goals from large businesses are both realistic and attainable but also challenge large businesses to reach higher and find great small businesses to assist in disaster response.

The success of the federal small business program is a shared responsibility, and I applaud the efforts of the Senate Committee on Small Business and Entrepreneurship for holding agencies accountable to small business obligations.

To close, I would like to thank you once again, Chairman Landrieu, for allowing the Corps of Engineers the opportunity to appear before this Committee to discuss our consideration of small business and local area small business awards in disaster response.

Our Corps personnel continue to serve by helping response to natural disasters across the nation. We are proud to do so, and I will be happy to answer any questions that members of the Committee may have. Thank you.

[The prepared statement of General Harrison follows:]

U.S. ARMY CORPS OF ENGINEERS

DEPARTMENT OF THE ARMY

COMPLETE STATEMENT OF

BRIGADIER GENERAL THEODORE C. HARRISON
DIRECTOR, NATIONAL CONTRACTING ORGANIZATION

BEFORE THE

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP
UNITED STATES SENATE

ON

DISASTER RECOVERY: EVALUATING THE ROLE OF SMALL BUSINESSES IN REBUILDING THEIR COMMUNITIES

September 15, 2011

Madam Chair and Members of the Committee, I am Brigadier General Theodore C. Harrison, Director of the U.S. Army Corps of Engineers (Corps) National Contracting Organization. Thank you for the opportunity to testify before you today concerning the role of small businesses in responding to disasters.

The Corps continues to work in support of the Federal Emergency Management Agency (FEMA) in carrying out a wide variety of missions in response to disasters throughout the Nation. The Corps strives to maintain transparency in our contracting activities and welcomes oversight of our actions.

I fully recognize the value that small businesses bring to our national economy, and I am personally committed to using small businesses in performing our work, both in the normal course of business, and in times of major natural disaster. We use Small, Small-Disadvantaged, Women-Owned, HUBZone, Veteran-Owned, and Service-Disabled Veteran Owned firms to the maximum extent possible, and typically, each year the Corps of Engineers awards 40 percent or more of its prime contract dollars to small businesses. After a Presidential declaration of disaster, we work to support the local community using local area set-asides permitted by the Amended Stafford Act.

My statement will address four areas; our pre-disaster contracting; our post disaster declaration focus on contract awards to small businesses and local area set-asides, the GAO-10-723 Report, entitled "Hurricanes Katrina and Rita, Federally Funded Programs Have Helped to Address the Needs of Gulf Coast Small Businesses, But Agency Data on Subcontracting Incomplete," and finally lessons learned.

PRE-DISASTER CONTRACTING

In a time of disaster, the Department of Homeland Security, National Response Framework dictates our response. Under the National Response Framework the Corps has been designated the coordinator for Emergency Support Function (ESF) #3, Public Works and Engineering. When tasked by FEMA, the Corps is responsible for providing ice, water, debris removal and temporary power. The Corps is also a support agency to ESF #6, Mass Care and Housing providing temporary roofing in the wake of a disaster.

Due to the necessity to lean forward in time of need, the Corps developed the Advanced Contracting Initiative or ACI to quickly respond to major disasters. The ACI Program consists of suites of competitively awarded contracts that allow immediate response to water, ice, temporary power, temporary roofing and debris removal missions. The ACI program has been in place for over 11 years with lessons learned applied to new solicitations each time we recompete the ACI contracts. We used our ACI contracts to support recovery efforts after Hurricanes Katrina, Rita and Wilma and we are now using ACI contracts again to respond to tornado recovery missions in Missouri and Alabama.

Although it is always our plan that our ACI contracts are ready to effectively respond to all disasters, we have learned that sometimes the magnitude of disasters require more contract capacity or geographic coverage than is available under the scope of existing

ACI contracts. For Katrina, the Corps needed four additional contracts to remove debris in Mississippi and Louisiana. Each contract was valued at $500 million with an option to increase each contract by an additional $500 million. The contracting officer awarded the contracts competitively on a best value basis. At that time we determined that the sheer magnitude of the work involved did not lend itself to a small business set aside. And the focus was placed on small business subcontracting by the prime contractor. The Corps included aggressive small business subcontracting goals in these additional debris removal contracts. The Corps negotiated a small business subcontracting goal of seventy-three (73%) percent with three of the debris removal contractors and sixty (60%) percent with the fourth debris prime contractor. At the time our standard small business subcontracting goal was fifty-two (52%) percent.

After our initial disaster response through our ACI contracts, we use the Stafford Act as amended to move to disaster recovery contracts set-aside for businesses in the local geographic area.

FOCUS ON EMPLOYING SMALL BUSINESSES IN RESPONSE TO DISASTER

Small business subcontracting data for the Corps of Engineers response to the Gulf regions recovery through March 2007 made it very clear how vital small business participation was to the recovery effort, with eighty-eight (88%) percent of all subcontracted dollars in Louisiana awarded to small businesses and eighty-four (84%) of dollars awarded in Mississippi going to small businesses.

As we respond to tornado disaster recovery efforts in Missouri, and Alabama, the Corps is providing opportunities for small businesses to support the rebuilding of their communities.

In response to the Joplin recovery, the Corps of Engineers has awarded approximately 45% of total dollars in support of recovery directly to small businesses of which 70% are small businesses from the local geographic area. The remaining small business contracts were awarded to firms from Kansas, Ohio, and Illinois, all within the same region of the country impacted by the tornados. Debris ACI contracts were not available for use in Missouri and required the immediate response to be awarded against the existing large business Security, Disaster, Infrastructure Contract (SDIC) which offered us a world wide scope and the ability to respond immediately. In June 2011, following our initial disaster response through the SDIC contract, we awarded three debris removal contracts valued between $20 million dollars to $40 million dollars to Missouri businesses: Intelligent Investments, Incorporated, a service disabled veteran owned small business from Neosho, Missouri; Larry Snyder and Company, a small business from Ozark, Missouri and R & R Trucking, Incorporated, a large business from Duenweg, Missouri.

In Alabama, small businesses have proven to be major contributors in the overall success of the debris removal mission being accomplished under our large business

ACI contractor for the region, Phillips and Jordan. This state-wide geographically dispersed debris mission led us to the conclusion that we needed the highly experienced management and oversight abilities of a large business ACI contractor. Over half of the subcontractors hired by Phillips and Jordan are Alabama-based small businesses.

With regard to the Corps' overall small business performance, as of September 9, 2011, the Corps is exceeding all Fiscal Year 2011 Small Business Goals for prime contract awards.

To date, our Fiscal Year 2011 data pulled from the Electronic Subcontracting Reporting System (eSRS) reflects that Corps contractors have awarded 63% of subcontracted dollars to small businesses. Our prime contractors responding to a disaster are required to report their subcontracting efforts weekly for the first 90 days and monthly thereafter vice the normal reporting period of every six months. These reporting requirements continue to improve our visibility of small business subcontracting and allow us to track progress against our subcontracting goals.

GAO REPORT (10-723)

Overall, the Corps successfully ensures that small businesses are provided the best opportunities to participate in the rebuilding of their local communities after disasters occur. Nonetheless, the Corps has continued room for improvement in subcontract reporting and its oversight as illustrated GAO Report 10-723. The Corps is in the process of fully implementing the GAO recommendation to provide improved oversight to ensure that our contracting officers are monitoring the extent to which our contractors are meeting subcontracting goals and submitting subcontracting plans.

I will be the first to say that we should have better accountability for tracking subcontracting reports through contract completion, but we are on the path to getting this right. The Corps has undertaken the following steps to ensure full accountability in subcontract reporting:

The Office of Internal Review, at the direction of the Chief of Engineers has undertaken a comprehensive review of the Corps Subcontracting Program that will validate compliance with program objectives and to determine the extent to which the Corps holds prime contractors accountable for meeting subcontracting goals. The report and any findings will be filed in January of 2012 and immediately acted upon by my staff.

The Corps fully implemented eSRS during Fiscal Year 2009. We now have the ability, through eSRS, to review all subcontracting reports filed, determine if reports have been filed in a timely manner by the prime contractor, and determine if the reports are complete and if they have been reviewed by the contracting officer.

In accordance with Department of Defense policy, the Corps submits a semi-annual eSRS status report to Headquarters, Department of the Army outlining the results of all subcontracting plan reporting activities by contractors and contracting officers for the preceding six month reporting period. Our report includes the number of outstanding reports where no action has been taken by the contracting officer, along with supporting rationale; plans to reduce the number of outstanding reports with a timeline for corrective actions; and barriers preventing acknowledgement of the receipt or rejection of reports. This report is due December 30 and June 30 annually.

I have directed the Corps Principal Assistants Responsible for Contracting to include subcontracting reporting as an area for review during their semi-annual Procurement Management Reviews of each National Contracting Organization field contracting office.

My staff will report out to me quarterly, during the National Contracting Organization Management Review, the status of all aspects of subcontracting reporting data found in eSRS.

While the Department of Defense Office of Small Business Programs has the lead for responding to the recommendations of GAO Report 10-273, the Corps will provide GAO with an implementation timeline for the report recommendations.

LESSONS LEARNED

Small businesses are vital to the Corps disaster response mission as both prime contractors and subcontractors.

Local area set-asides for large and small businesses in response to disasters are successful and put the impacted community back to work.

Tiering of subcontracts continues to be problematic in large scale debris response. Unscrupulous subcontractors often respond to disasters and take advantage of their less experienced subcontractor in regard to payment terms and whether payment is rendered at all. Privity of contract prevents the Corps and all government agencies from reaching down to lower tier subcontractors and enforcing payment bonds.

Subcontracting reporting has been greatly enhanced and improved through the implementation of the Electronic Subcontracting Reporting System.

Independent reviews of the National Contracting Organization are welcomed and provide invaluable insight to the Corps on business processes that work and those that need improvement.

LOOKING FORWARD

I am committed to the Corps' continued partnership with local contractors and moving to local area set-asides under the amended Stafford Act as soon as practicable and to local small business contractors when market research indicates we have viable small business within the local area. We will negotiate subcontracting plans with our large business contractors to enable small businesses in all socio-economic categories to support disaster response. Our contracting officers and small business specialists will ensure that proposed subcontracting goals from large businesses are realistic and attainable, but also challenge the large business to reach higher to find great small businesses to assist in disaster response. Our large business partners who demonstrate their commitment to the small business community will be awarded higher scores during evaluation of their small business participation during best value source selection.

To ensure that the Corps is compliant with subcontracting statutes, I continue to encourage and welcome independent reviews of our small business program. The Corps will continue to always consider small businesses first as we develop our Acquisition Plans.

SUMMARY

The success of the federal small business program is a shared responsibility and I applaud the Senate Committee on Small Business and Entrepreneurship for holding agencies accountable to their small business obligations.

To close, I would like to thank you once again, Madam Chair, for allowing the Corps of Engineers the opportunity to appear before this Committee to discuss our consideration of small business and local area small business awards in disaster response. Our Corps personnel continue to serve by helping in response to natural disasters across the Nation. We are very proud to do so. I would be happy to answer any questions Members of the Committee may have.

Chair LANDRIEU. Thank you, General.

Mr. Woods.

STATEMENT OF BILL WOODS, DIRECTOR, ACQUISITION AND SOURCING MANAGEMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. WOODS. Chair Landrieu, Ranking Member Snowe, Senator Brown, thank you for inviting the Government Accountability Office to be here this morning. I would like to address three areas in the time we have this morning.

First, I would like to address the general statutory and regulatory framework for how the government responds to major disasters and that would, of course, include an important piece of legislation, the Stafford Act.

Second, I would like to update the numbers that we reported on back in July of 2010 on how the obligations were distributed in response to the major hurricanes, and then thirdly, I would like to address the area of subcontract monitoring.

When the President declares a national emergency with respect to a major disaster, that brings in the provisions of the Stafford Act. In the area of contracting in particular, the Stafford Act allows for and, in fact, requires that preferences be used with respect to local area businesses, those businesses that are located within the area of the major disaster.

There are a couple of ways that the Federal Acquisition Regulation provides for those preferences to be implemented. One is through the use of set-asides where the competition for contracts can be restricted to firms that are located within that affected area, and secondly, the Federal Acquisition Regulation allows for evaluation preferences in those contracts that may be awarded competitively.

Importantly, the Stafford Act provides for transition from pre-existing contracts. We encourage the federal agencies to have contracts in place prior to these disasters, but the Stafford Act provides that those contracts should be transitioned to local businesses as quickly as possible. That does not mean canceling contracts, terminating existing contracts, but it does mean looking for opportunities at option periods, for example, or when major portions of a contract are completed to move that work from the pre-existing contractor to local businesses.

It is very important that small businesses register with the central contractor registration system or CCR. That is an important way and, in fact, a required way for any business, and particularly small businesses, to be eligible for any of these contracts.

Let me move now to the numbers. As I mentioned, we issued a report in July of 2010 covering a number of areas. Let me start with $20.5 billion which was the total amount of contracts awarded for disaster relief in the Gulf region.

I should mention that all of these numbers are taken from the federal procurement data system. We updated our numbers through September 1 of this year. Those numbers will always tend to fluctuate.

If we look at any given point in time and we come up with one number, if we look a week or a month or a year later, we are very

likely to come up with a different number. And the reason is that agencies are constantly updating the information in the federal procurement data system.

Agencies may be adding new obligations to existing contracts to cover new work or they may be de-obligating money when they discover that they do not need as much work as originally planned for.

Chair LANDRIEU. So just repeat, for the record, Mr. Woods, that was $20 billion in a snapshot taken in September of this year?

Mr. WOODS. September 1 of this year. That is correct.

Chair LANDRIEU. This year.

Mr. WOODS. That is correct.

Chair LANDRIEU. $20 billion out of? Or what was the reference?

Mr. WOODS. That was the total amount of obligated funds.

Chair LANDRIEU. Currently obligated to small businesses?

Mr. WOODS. Currently obligated funds nationwide to all businesses.

Chair LANDRIEU. Got it.

Chair LANDRIEU. Okay.

Mr. WOODS. When we look just at small businesses, we find that roughly a quarter of that amount has gone to small businesses, and of that quarter, about $2.6 billion has gone to small businesses nationwide, not in the Gulf region. $2.7 billion has gone to small businesses in the Gulf region.

When we break that down a little bit further for state-by-state, for example, we find that Louisiana is the largest recipient, small businesses in Louisiana are the largest recipients of that $2.7 billion. Louisiana businesses received about $1.4 billion of that amount.

When we do further breakdowns, we look at the various socioeconomic categories and we find that small disadvantaged businesses received $800 million of that $2.7 million. HUBZone firms, these are Historically Underutilized Business Zone firms, and they received about $560 million out of that $2.7 million total Gulf region small business contracts.

Women-owned businesses received about $381 million and veteran-owned businesses received about $270 million. There is much more detail in terms of these numbers in our prepared statement which I would like to submit for the record.

Chair LANDRIEU. Thank you.

Mr. WOODS. Moving on to the third category about subcontracts, we looked at four agencies who had a major presence in helping address the disaster in the Gulf. These were the General Services Administration, the Department of Homeland Security including FEMA, the Corps of Engineers, and the rest of the Department of Defense.

We broke out the Corps of Engineers from the rest of DOD primarily because we found at least three specific supplemental appropriations where the Congress provided money directly to the Corps and only for work in the Gulf. So we thought it appropriate to break out the Corps separately from the rest of DOD.

We looked at 57 construction contracts. These were contracts that require subcontracting plans. Not all contracts require plans, but construction contracts that exceed $1.5 million require the con-

tractors to tell the agencies how they plan to address small businesses.

Those large businesses are required to submit reports on a periodic basis to the agencies; and when we looked for those reports, we found that of the 57 contracts that I mentioned, the Corps of Engineers had 29 of those. But they were unable to provide to us those subcontract reports for 11 of those 29 contracts.

When we looked at DOD generally, they had 14 of those 57 contracts and the rest of the department was unable to provide those reports to us for two of those contracts.

We recommended that action needed to be taken to make sure that these agencies could monitor subcontract compliance by their prime contractors; and we understand, based on recent information, that those agencies have taken certain actions to do that.

This concludes my prepared statement. I would be happy to take questions.

[The prepared statement of Mr. Woods follows:]

United States Government Accountability Office

GAO

Testimony
Before the Committee on Small Business and Entrepreneurship, U.S. Senate

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DISASTER RECOVERY

Federal Contracting in the Aftermath of Hurricanes Katrina and Rita

Statement of William T. Woods, Director
Acquisition and Sourcing Management

U.S. Government Accountability Office
GAO 90 YEARS 1921-2011
ACCOUNTABILITY * INTEGRITY * RELIABILITY

GAO-11-942T

Chair Landrieu, Ranking Member Snowe, and Members of the Committee:

I am pleased to be here to discuss small business participation in Gulf Coast rebuilding after Hurricanes Katrina and Rita. Federal agencies directly awarded $20.5 billion in contracts nationwide between fiscal years 2005 and 2011 for recovery efforts related to these hurricanes.[1] These contracts are subject to federal procurement regulations and, in most cases, are generally subject to certain goals to increase participation by small businesses.

My statement today is based on a report we issued in July 2010, which discussed the extent to which Gulf Coast small businesses received federal contract funds for recovery efforts, with data on contract funds updated through fiscal year 2011 where possible.[2] More specifically, I will discuss (1) the amounts that small businesses nationwide and small businesses in four Gulf Coast states received directly from federal agencies through contracts for relief and recovery efforts related to Hurricanes Katrina and Rita; and (2) the extent to which four agencies—the U.S. Army Corps of Engineers (Corps), Department of Homeland Security (DHS), Department of Defense (DOD) excluding the Corps, and General Services Administration (GSA)—monitored subcontracting accomplishment information as required for selected contracts.[3]

[1]In this statement, the obligations data we report for fiscal year 2011 are through September 1, 2011, except for the Department of Defense (DOD) and the Army Corps of Engineers (Corps). Due to a 90-day delay in reporting to the Federal Procurement Data System-Next Generation (FPDS-NG)—the governmentwide contracting database that collects, processes, and disseminates official statistical data on federal contracting activities—data for DOD and the Corps are as of June 1, 2011.

[2]GAO, *Hurricanes Katrina and Rita: Federally Funded Programs Have Helped to Address the Needs of Gulf Coast Small Businesses, but Agency Data on Subcontracting Are Incomplete*, GAO-10-723 (Washington, D.C.: Jul. 29, 2010).

[3]In this statement, unless otherwise noted, we use the acronym DOD to refer to the Department of Defense, excluding the Corps. We are reporting on the Corps and the rest of DOD separately because at least three supplemental appropriations measures for DOD activities relating to Hurricane Katrina relief specifically directed certain funds to the Corps for its disaster relief activities. See Pub. L. No. 109-62, 119 Stat. 1990 (2005); Pub. L. No. 109-148, 119 Stat. 2680 (2005); and Pub. L. No. 109-234, 120 Stat. 418 (2006).

In summary,

- Small businesses located in four Gulf Coast states (Alabama, Florida, Louisiana, and Texas) received about $2.7 billion (13.3 percent) of the $20.5 billion federal agencies directly awarded nationwide in contracts for hurricane recovery between fiscal years 2005 and 2011. Small businesses in the rest of the United States received about $2.6 billion (12.9 percent).

- The Corps and the rest of DOD—two of four agencies that awarded the most in federal contracts for hurricane recovery—could not demonstrate that they consistently were monitoring subcontracting accomplishment data for 13 of the 43 construction contracts for which subcontracting plans were required. We recommended that the Secretary of Defense take steps to ensure that contracting officials with the Corps and other DOD departments consistently comply with requirements to monitor the extent to which contractors were meeting subcontracting plan goals. DOD did not concur with the implication that its contracting personnel did not enforce requirements. We recently received information from both DOD and the Corps that indicates that they have initiated actions to address our recommendation.

For both our July 2010 report and the updates included in this statement, we analyzed data on contracts directly awarded by federal agencies for Katrina- and Rita-related recovery efforts between fiscal years 2005 and 2011.[4] Although we could not independently verify the reliability of these data, we reviewed system documentation, conducted electronic data testing, and compared the data with supporting documentation when available. On the basis of these efforts, we determined the data on the amount of federal contract dollars received directly for Hurricanes Katrina and Rita recovery efforts to be sufficiently reliable for purposes of our review. We identified all construction-related contracts that had subcontracting plans for the four agencies that awarded the greatest amount of Katrina- and Rita-related contract dollars in fiscal years 2005–2009 (Corps, DHS, DOD, and GSA). We interviewed officials from the four agencies to gather additional information on subcontracting award reports. The work on which this statement is based was performed from

[4]Because of a 90 day delay in reporting to the FPDS-NG, data for DOD and the Corps are as of June 1, 2011.

September 2009 to September 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

When the President declares a state of emergency after a natural or other major disaster, the declaration gives the federal government the authority to engage in various emergency response activities, many of which federal agencies provide through contracts with private businesses, including those for debris removal, reconstruction, and the provision of supplies.[5] Federal agencies' contracts with private businesses, whether made in the normal course of agency operations or specifically related to a natural disaster declaration, in most cases, are subject to certain goals to increase participation by various types of small businesses. The Small Business Act requires that the President set a governmentwide goal each fiscal year for small business participation for the total value of all prime contracts awarded directly by an agency.[6] Additionally, the Small Business Act sets annual prime contract dollar goals for participation by five specific types of small businesses: small businesses, small disadvantaged businesses, businesses owned by women, businesses owned by service-disabled veterans, and businesses located in

[5]See Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Pub. L. No. 93-288, as amended, 42 U.S.C. §§ 5121 – 5204c.

[6]15 U.S.C. § 644(g). Under this provision, the President must annually establish governmentwide goals for, among other things, procurement contracts awarded to small business concerns. The governmentwide goal for participation by small business concerns must not be less than 23 percent of the total value of all prime contracts awarded for each fiscal year. As stipulated in the Small Business Act, procurement goals are established as a percentage of the total value of all contracts directly awarded by the federal government in a fiscal year.

historically underutilized business zones (HUBZone).[7] The Stafford Act also requires federal agencies to give contracting preferences, to the extent feasible and practicable, to organizations, firms, and individuals residing in or doing business primarily in the area affected by a major disaster or emergency.[8]

The *Federal Acquisition Regulation* (FAR) implements many federal procurement statutes and provides executive agencies with uniform policies and procedures for acquisition. For example, the FAR generally requires that executive agencies report information about procurements directly to the Federal Procurement Data System-Next Generation (FPDS-NG), a governmentwide contracting database that collects, processes, and disseminates official statistical data on all federal contracting activities that are greater than the micro-purchase threshold (generally $3,000).[9] This system automatically obtains from other systems or online resources additional information that is important to the procurement, such as the contractor's location.

The FAR also requires agencies to measure small business participation in their acquisition programs. A small business may participate via prime contracts—which are contracts awarded directly by a federal agency—or

[7]15 U.S.C. § 644(g). The Small Business Act defines these businesses as follows: (1) Small businesses are those that are independently owned and operated and are not dominant in their field of operations. (2) Small disadvantaged businesses must be owned and controlled by socially and economically disadvantaged individuals—such as African Americans, Hispanic Americans, Asian Pacific Americans, Subcontinent Asian Americans, or Native Americans. These owners must have at least a 51 percent stake in the business. (3) Women-owned small businesses must have at least 51 percent female ownership and the management and daily operations of the concern must be controlled by women. (4) Service-disabled veteran-owned small businesses must be owned—also at least 51 percent—by one or more veterans with a service-related disability. In addition, the management and daily operations of the business must be controlled by one or more veterans with a service-related disability. (5) HUBZone small businesses must have their principal offices physically located in these historically underutilized business zones, which are economically distressed metropolitan or nonmetropolitan areas—that is, areas with low-income levels or high unemployment rates—and must employ some staff who live in these zones. The small business regulations implementing the Small Business Act further define these businesses. 13 C.F.R. §§ 121.401–121.413.

[8]42 U.S.C. § 5150.

[9]FAR 4.603(b). In 2006, the FPDS-NG reporting threshold was raised from $2,500 to $3,000. 71 Fed. Reg. 57364 (Sept. 28, 2006). In 2008, the reporting threshold for FPDS-NG was set at the micro-purchase threshold for most types of contract awards. 73 Fed. Reg. 21773 (Apr. 22, 2008) (interim); and 74 Fed. Reg. 2712 (Jan. 15, 2009) (final).

through subcontracts.[10] Any business receiving a contract directly from a federal executive agency for more than the simplified acquisition threshold[11] must agree in the contract that small businesses will be given the "maximum practicable opportunity" to participate in the contract "consistent with its efficient performance."[12] Additionally, in general, for acquisitions (or modifications to contracts) that (1) are individually expected to exceed $650,000 ($1.5 million for construction contracts) and (2) have subcontracting possibilities, the solicitation shall require the apparently successful offeror in a negotiated acquisition to negotiate a subcontracting plan that is acceptable to the contracting officer, and each invitation for bid shall require the bidder selected for award to submit a subcontracting plan to be eligible for award.[13] The subcontracting plan must include certain information, such as a description of the types of work the prime contractor believes it is likely to award to subcontractors, as well as goals, expressed as a percentage of total planned subcontracting dollars, for the use of small businesses.[14] Generally, contracts that offer subcontracting possibilities and are expected to exceed the monetary thresholds that we have previously mentioned are to include certain clauses.[15] These clauses require that for contracts that have individual subcontracting plans, prime contractors generally must semiannually and at project completion report on their progress toward reaching the goals in their subcontracting plans. Generally, contractors that have individual subcontracting plans are required to report on their subcontracting goals and accomplishments twice a year to the federal government through the Electronic Subcontracting Reporting System (eSRS), which is a governmentwide database for capturing this

[10]FAR 44.101 defines a subcontractor as "any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor."

[11]Effective October 1, 2010, the simplified acquisition threshold for most acquisitions was increased from $100,000 to $150,000. 75 Fed. Reg. 53,128 (Aug. 30, 2010). FAR 2.101.

[12]FAR 19.702, 2.101.

[13]This dollar threshold was changed to $550,000 (and $1 million for construction contracts) on September 28, 2006 and again, effective October 1, 2010, to the current levels. 71 Fed. Reg. 57,363 (Sept. 28, 2006); 75 Fed. Reg. 53,128 (Aug. 30, 2010).

[14]These and other aspects of the small business subcontracting plan requirement are set forth at FAR Subpart 19.7.

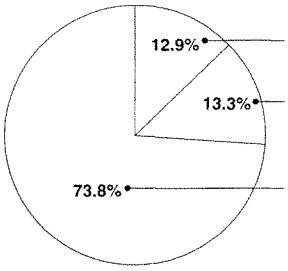
[15]Contracts that are below the simplified acquisition threshold, are personal services contracts, are to be performed entirely outside of the United States, are set aside, or are to be accomplished under the 8(a) program do not require this clause.

information. Furthermore, the agencies' administrative contracting officers are responsible for monitoring the prime contractors' activities and evaluating and documenting contractor performance under any subcontracting plan included in the contract. The contracting officer is tasked with acknowledging receipt of the reports submitted to eSRS.[16]

Federal Agencies Awarded a Significant Amount of Contract Dollars Directly to Small Businesses in Gulf Coast and Other States

Federal agencies directly awarded $20.5 billion in contracts nationwide between fiscal years 2005 and 2011 for recovery efforts related to Hurricanes Katrina and Rita. Of this $20.5 billion, small businesses located in four Gulf Coast states received approximately $2.7 billion (13.3 percent), and small businesses in the rest of the United States received about $2.6 billion (see fig. 1).

Figure 1: Total Amount of Federal Contract Dollars Provided for Hurricanes Katrina- and Rita-Related Recovery Efforts, Fiscal Years 2005-2011



Small businesses in all other states	$2,636,781,681
Gulf Coast small businesses	2,734,075,922
Other than small businesses, nationwide	15,123,015,021
Total	**$20,493,872,624**

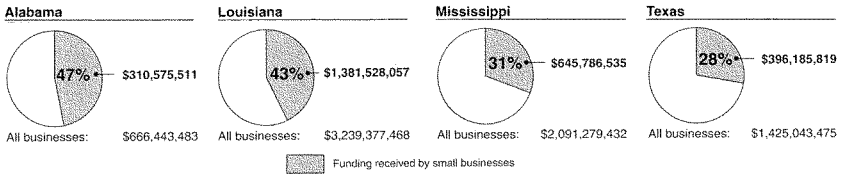
Source: GAO analysis of FPDS-NG data.

Note: The dollars reported are in obligations. The data are as of September 1, 2011, however; because of a 90 day delay in reporting to the FPDS-NG, data for DOD and the Corps are as of June 1, 2011

[16]Effective July 16, 2010, the FAR was updated to include additional guidance on eSRS, including reporting time frames for subcontracting accomplishment reports and clarification of when a contracting officer shall reject a report as not adequately completed. 75 Fed. Reg. 34260 (June 16, 2010); 73 Fed. Reg. 21779 (Apr. 22, 2008).

Among the four Gulf Coast states in our review, Louisiana small businesses directly received the greatest amount of federal contract funds, about $1.4 billion. However, Alabama had the highest proportion (47 percent) of total prime contract dollars awarded to small businesses (see fig. 2).

Figure 2: Contract Dollars Awarded Directly to Gulf Coast Small Businesses and Businesses of All Sizes in States Primarily Affected by Hurricanes Katrina and Rita, Fiscal Years 2005-2011



Source: GAO analysis of FPDS-NG data

Note: The dollars reported are in obligations. The data are as of September 1, 2011, however; because of a 90 day delay in reporting to the FPDS-NG, data for DOD and the Corps are as of June 1, 2011.

In the four states, the amount of federal contract funds directly awarded to specific types of small businesses for Hurricanes Katrina- and Rita-related recovery efforts varied (see fig. 3).

- *Small disadvantaged businesses*: Of the approximately $2.7 billion that went directly to small businesses, about $804 million (29 percent) went to small disadvantaged businesses. Small disadvantaged businesses in Louisiana received the greatest amount of federal contract funds awarded to this category (more than $420 million).
- *HUBZones*: Small businesses in HUBZones directly received about $560 million (20 percent of federal contract funds directly awarded to Gulf Coast small businesses). Small businesses in HUBZones in Louisiana received the greatest amount (about $292 million).
- *Women-owned small businesses*: About $381 million were directly awarded to women-owned small businesses (14 percent of all federal contract funds directly awarded to Gulf Coast small businesses). Women-owned small businesses in Louisiana received the greatest amount (approximately $182 million).

- *Veteran-owned small businesses*: About $270 million (or 10 percent of federal contracts directly awarded to Gulf Coast small businesses) went to this category. Veteran-owned small businesses in Louisiana received about $180 million, the most in the Gulf Coast states.

Figure 3: Contract Dollars Awarded Directly to Various Types of Small Businesses for Hurricanes Katrina- and Rita-Related Recovery Efforts, Fiscal Years 2005-2011

Dollars in millions

	Total awarded to small businesses	Dollars and percentages of small business totals awarded to different types of small businesses							
		Disadvantaged		HUBZone		Women-owned		Veteran-owned	
Alabama	$310.6	24%	$75.1	25%	$76.4	12%	$36.0	2%	$5.4
Louisiana	1,381.5	30%	420.4	21%	291.9	13%	182.2	13%	179.5
Mississippi	645.8	34%	219.2	24%	154.7	19%	120.6	9%	56.9
Texas	396.2	23%	89.3	9%	36.9	11%	42.1	7%	28.6
Total (Gulf Coast)	**$2,734.1**	29%	**$804.0**	20%	**$559.9**	14%	**$380.9**	10%	**$270.4**

Source: GAO analysis of FPDS-NG data

Note: Contracting dollars awarded directly to businesses can be counted in more than one category, so the dollars awarded to various types of small businesses are not mutually exclusive. Therefore, percentages cannot be totaled across columns because under SBA guidelines, contracting dollars awarded to businesses can be counted in more than one category. For example, a small disadvantaged business owned by a woman can be counted as both disadvantaged and women-owned. The dollars reported are in obligations. The data are as of September 1, 2011; however, because of a 90 day delay in reporting to the FPDS-NG, data for DOD and the Corps are as of June 1, 2011.

Corps of Engineers and DOD Could Not Demonstrate Consistent Monitoring of Subcontracting Information for Selected Contracts

The Corps and DOD could not demonstrate that they consistently were monitoring subcontracting accomplishment information as required. As we have previously discussed, subcontracting plans are generally required for construction contracts (or modifications to contracts) that are expected to exceed $1.5 million and that have subcontracting possibilities. The FAR states that subcontracting plans must include assurances that prime contractors will report on their progress toward reaching their subcontracting goals.[17] Generally, contracts that offer subcontracting possibilities and are expected to exceed the monetary thresholds above are to include certain clauses. In general, these clauses require contractors to submit these reports semiannually and at project completion. The Corps and DOD use these reports to monitor contractor performance under subcontracting plans. We reviewed the 57

[17]FAR Subpart 19.704 (a)(10)(iii).

construction contracts that the Corps, DHS, DOD, and GSA awarded directly to large businesses in fiscal years 2005– 2009 for hurricane-related recovery and that were listed in FPDS-NG as having subcontracting plans. The Corps awarded 29 of these contracts but could not provide subcontracting accomplishment report information for 11. DOD awarded 14 contracts and could not provide information for 2 (see table 1). Without these reports, either in eSRS or paper form, contracting officials lacked a key tool for monitoring contractors' performance under subcontracting plans.

Table 1: Status of Subcontracting Accomplishment Information for Hurricanes Katrina- and Rita-Related Construction Contracts Having Subcontracting Plans, as of July 2010

Agency	Number of construction contracts listed in FPDS-NG as having subcontracting plans	Number of construction contracts for which agencies were unable to demonstrate compliance with requirements for monitoring subcontracting accomplishment information	Percentage unable to demonstrate compliance
DHS	5	0	0%
GSA	9	0	0
DOD	14	2	14
Corps	29	11	38
Total	**57**	**13**	**23%**

Source: GAO analysis of agency contracting data.

Note: Two additional construction contracts were listed in FPDS-NG as having subcontracting plans; however, these contracts were miscoded and did not require subcontracting plans and, thus, were eliminated from the universe of contracts we reviewed. Additionally, we eliminated another two contracts because Corps officials told us that they did not contain subcontracting plans because limited or no subcontracting possibilities existed for those contracts.

As of 2005, all contractors with subcontracting reporting requirements related to contracts with civilian agencies were generally required to submit, with some exceptions, summary subcontract reports into eSRS, a Web-based govermentwide subcontracting system that allows contractors to submit and agency officials to review subcontracting accomplishment reports electronically rather than using paper forms. DOD implemented eSRS incrementally and began primarily relying on eSRS for subcontract reporting as of 2009. The development of eSRS was intended to create more visibility and transparency into the process of gathering information on federal subcontracting accomplishments.

In addition to requirements for contractors to submit subcontracting accomplishment information, the FAR requires that agency contracting officers review subcontracting plans for adequacy and take action to enforce the terms of the contract if notified that the contractor is failing to meet its commitments under their subcontracting plan.[18] Agency administrative contracting officials are required to provide information to the contracting officer on the extent to which the contractor is meeting subcontracting plan goals and to notify the contracting officer if the contractor is failing to comply in good faith with the subcontracting plan.[19] In determining whether a contractor failed to make a good-faith effort to comply with its subcontracting plan, a contracting officer must look to the totality of the contractor's actions, consistent with the information and assurances provided in its plan. When considered in the context of the contractor's total effort in accordance with its plan, failure to submit contracting accomplishment reports may be considered an indicator of a failure to make a good-faith effort.[20] These requirements were in place prior to the 2005 hurricanes and have continued in the eSRS environment. New requirements were added to the FAR in April 2008 that additionally require that contracting officers acknowledge receipt of or reject the subcontracting accomplishment reports submitted by contractors in eSRS.[21] In addition, DHS, GSA, DOD, and the Corps have agency guidance that spells out the contract administration duties necessary to monitor contractor compliance with subcontracting plan reporting requirements. Without subcontracting accomplishment information, contracting officials at the Corps and DOD lack a key tool used to monitor contractor performance under subcontracting plans. In the absence of these reports, the Corps and DOD could not demonstrate that they were consistently monitoring contractor performance under the plans.

As we have previously noted, the Corps did not provide subcontracting accomplishment report information for 11 contracts and could not explain why the information was unavailable. DOD did not provide us with subcontracting information on 2 of 14 construction contracts we reviewed.

[18]FAR Subpart 19.705-4 and 19.705-6.

[19]FAR Subpart 19.706.

[20]FAR Subpart 19.705-7.

[21]See footnote 16 of this statement.

DOD officials told us that after searching retained records, they could not find any paper or electronic subcontracting accomplishment reports. We concluded that without monitoring, the Corps and DOD were limited in their ability to determine the extent to which their prime contractors followed subcontracting plans. We recommended that the Secretary of Defense take steps to ensure that contracting officials consistently comply with requirements to monitor the extent to which contractors were meeting subcontracting plan goals, including requirements for contractors with subcontracting plans to submit subcontracting accomplishment reports. Once these reports are submitted, contracting officials should maintain and regularly review them to determine whether contractors have been following subcontracting plans. To ensure consistent compliance, DOD and the Corps small business offices should monitor such actions by contracting officials, as deemed appropriate. DOD did not concur with the implication that its contracting personnel did not enforce requirements. We recently received information from both DOD and the Corps that indicates that they have initiated actions to address our recommendation.

Chair Landrieu, Ranking Member Snowe, this concludes my prepared statement. I would be happy to answer any questions at this time.

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Chair LANDRIEU. Thank you very much. I really appreciate the reports, and I want to call to the Committee's attention, I am sure in preparation for this meeting you know of this, but the GAO has just put out a report of Hurricanes Katrina and Rita, Federally Funded Programs Have Helped To Address The Needs Of The Gulf Coast.

I know we are very focused, as we should be, on the disasters that are occurring as we speak, but the lessons learned and the applications of what we forced or tried to do after Hurricane Katrina and the Gulf Coast can be very, very helpful as we move forward in trying to contract with as many small businesses as possible in North Carolina, New Hampshire, Maine, and Massachusetts.

The lessons learned, that is why I called this hearing because we want to see what we have improved and what gaps still exist. I really hope that the next year or two will result in smoother operations in terms of contracting with small businesses, that they get to work if they deserve it and if they are quality contractors that they get paid, because then if they do not, that just adds insult to injury and pours salt on the wound of a business struggling and not being able to be paid. So, I call your attention to this report.

Let me ask you, Mr. Woods, based on the report that you have submitted and the testimony you have given, would you either state again or state for the first time the one or two areas that you think this Committee, in our oversight posture, should really focus on? Is it looking to see that these contracts are including these subs and that the records are complete or what would you suggest?

Mr. WOODS. We think it is very important that agencies monitor these plans. The agencies are required to exercise oversight of all their contracts and particularly how well contractors adhere to their subcontracting plans.

We do not think that there is any way that the agencies can do that unless they are getting sufficient information from the contractors about how well they are performing, and the mechanism for doing that is to require the contractors to submit those plans on a periodic basis.

If there is no one making sure that those contractors submit those plans, the agencies are not going to be well-positioned to exercise their oversight responsibilities.

Chair LANDRIEU. In your opinion, and I would like you to jump in, General, does the Corps of Engineers have the administrative funding and resources necessary, in your view, Mr. Woods, and then I am going to ask you, General, to do the job we are asking them to do?

Mr. WOODS. I know that their budget has been very tightly stretched, at least in my view, for construction, new construction as well as operations and maintenance. I am not as familiar with their administrative line items.

Chair LANDRIEU. In your review, is there a problem, in your professional opinion, with their lack of administrative capability or do you think that they have it, and they are just not doing it?

Mr. WOODS. We did not specifically address that issue in this report. However, I can tell you that we have constantly been looking at the capacity of agencies to carry out their responsibilities, practical oversight responsibilities in the contracting area. Across the

government we have found that to be a huge challenge for all agencies.

I will point out in particular, we did quite a bit of work looking at the response to Hurricanes Katrina and Rita very early on. In fact, I testified in New Orleans before you at that time and one of the issues we identified then was the lack of adequately trained personnel both in terms of training and numbers to carry out their responsibilities.

We do not know whether that continues. Perhaps the General can address that. Certainly on a government-wide basis, we remain concerned about agencies having the right number of people trained to exercise oversight responsibilities.

Chair LANDRIEU. Well, I think that is very, very important because in this climate of slashing budgets and saying there is a lot of fraud, waste, and abuse everywhere, which there is in some pockets, but you have got to be careful identifying it or you end up cutting the muscle that you need to carry out the work that we are requiring.

General, can you add anything to that? Then I will have one question of Mr. Sligh and turn it over to Senator Snowe.

General HARRISON. Yes, Madam Chairman, in fact, as Mr. Woods pointed out, contract oversight and the resources to carry out that mission within the entire Department of Defense has been something that we have been challenged by over a period of at least 10 years.

I think this was borne out in the Gansler Commission that came out in 2007 that looked at specifically Army contracting. The Department of Defense's "Grow The Acquisition Workforce Initiative" has put us on the road to help rebuild the contract oversight mechanisms within the department.

The Corps of Engineers has been able to take advantage of that initiative to get 110 additional slots to be able to apply to contract oversight. So, I think that has been a factor.

In the particular problem area of the oversight and follow up on subcontracting plans from contractors, you know, that has been part of the story. But we definitely had a problem in the Corps of Engineers. I think we are on the road to fixing that, both through leveraging the new electronic eSRS system that automates the reporting process and also to focus more and put command emphasis on follow-up of these reports.

So, I think we are on the road to getting that fixed.

Chair LANDRIEU. Let me ask you this. How long does a prime have to be in business before they can do work with the Corps of Engineers?

The reason I ask is because right after a disaster I noticed that there are a lot more companies formed to start getting work, you know, from the Federal Government because, of course, they anticipate money being spent. Then companies that have been in business for a long time actually doing the work get passed over.

Do you know if there is a requirement for somebody to be in business even 30 days before the disaster?

General HARRISON. Ma'am, to my knowledge, there is no period of time they have to be registered with the CCR.

Chair LANDRIEU. I think this Committee should look very, very, very carefully at this. I do not know what the other members think, but I have real problems with companies that are not even in the business. I have problems with a furniture company, for instance, that has been in business for 50 years deciding overnight maybe that it can now be a levee-building company and submit bids to the Corps when there are any number of other companies that have been doing levee-building, and I think we should pursue that. So, there is no requirement now. I did not think there was.

And finally, you mentioned that the Corps reporting requirement for prime contractors to report their subs, we talked about that having been improved.

However, we are going to hear from one of our witnesses today that, in their opinion, it is still broken. Is it generally accepted practice to require subprimes to certify that it has paid their subcontractors? And if so, either yes or no or do you even care if these primes pay their subs?

General HARRISON. Ma'am, generally speaking, we focus on our prime contractors with whom we have privity of contract. There are a few occasions where we can enter into the payment of subcontractors where it is a construction contract and they are subject to the provisions of the Miller Act.

However, for service contracts, generally speaking, we cannot get involved in that contractual relationship.

Chair LANDRIEU. Okay. Let me ask you this. Do you have a website where subcontractors who have not been paid by their primes can register objections to further contracts being given to those primes until they get paid, almost like a lien against them?

Mr. WOODS. We do not, no, ma'am.

Chair LANDRIEU. Okay. I think we should pursue that because, like Angie's list, if you want to hire a plumber you go to Angie's list. It is very simple. Technology allows that.

You look to see the people that have used the service of a plumber. They like the service. A lot of people will use the plumber. If the plumber did not do a good job, most people will not use them.

It is a very cost-efficient, effective way to try to separate the wheat from the sheaf, quality from, you know, fraudulent operators.

So, let me turn it over to Senator Snowe. I think we are on the right path, Senator, but I am not sure we are there yet.

Senator SNOWE. I would agree, Chair Landrieu.

Chair LANDRIEU. Thank you.

Senator SNOWE. Mr. Sligh, to follow up on the legislation that Senator Brown and I are introducing today as one way of ensuring predictability and stability as well as consistency in funding on disaster related events.

Now, obviously you cannot always get it on the mark. It is a law of averages, but in this case, to provide a 10-year average. Can you speak to this question because, as I mentioned in my opening statement, obviously you have had to suspend certain efforts, due to the lack of funding, in order to provide for more immediate relief and the greater necessities as a result of a disaster. Also, how important are predictability and consistency when you have, on average, $11 billion set aside for disaster related funds for all the agencies,

as Chair Landrieu indicated, that cannot just be taken out of one agency such as Homeland Security?

There are a variety of agencies that engage in disaster assistance. This would be on average $11 billion. Could you speak to that question and how this could help in some respects?

Mr. SLIGH. To some degree, ma'am. The financial aspects of running the agency is really not my area of responsibility. However, having a steady stream of funding is always helpful in planning and in execution so that, to the extent that we can have a constant stream of funding that can support our efforts with our partners, states, locals, and others, I think it is obviously beneficial and it obviously makes a lot of sense.

Again though, that is really not my area of expertise in terms of the budget.

Senator SNOWE. I understand that. That would obviously be at the other level and certainly OMB and Congress are working on designing a budget as part of the budget process.

Clearly in terms directly affecting your ability to provide the relief, both the immediate relief and then, of course, in tandem, the relief in beginning the rebuilding process.

Mr. SLIGH. Yes, ma'am.

Senator SNOWE. I was Chair of this Committee during the time of Hurricanes Katrina and Rita, so, I certainly understood the magnitude of these events and what was required, which was so much in the way of recovery.

It was a very difficult process and we learned a lot from it, especially from our perspective. I think the issue that is pending on the floor is illustrative of the problems we are facing which is to have some kind of consistency and constancy with respect to funding so that it goes to the heart of what you are attempting to do.

Mr. SLIGH. Yes, ma'am.

Senator SNOWE. That is the issue, to get this all up and running now.

You were mentioning that 40 percent of small businesses fail after a disaster. That is a high figure, almost staggering. Now, what can we do differently to avert that? Is there anything that we can do to mitigate that?

For example, on this contracting issue which is what I want to get back to, this is so frustrating. I do not know how many hearings I have sat through on the issue of contracting, and the failure of agencies to do their due diligence when it comes to fulfilling their contracting responsibilities. It is truly frustrating.

Can any of that help in this instance, particularly in the subcontracting requirements with small businesses? What can we do to change that, to help reduce the number of failures?

Mr. SLIGH. Well, within FEMA one of the things that we have done to help ourselves in that arena of subcontracting, we have established what we call DART teams. They are Disaster Acquisition Response Teams. Their entire focus is post-award. Once a contract is awarded, to make sure that it is administered properly and to make sure that the contractors live up to the terms and conditions of the contract.

Prior to this year, we did not have that focus. Our contracting officers had both pre- and post-award responsibility, meaning they

awarded contracts and they had the responsibility of doing contract administration.

We found that that approach did not get us the result that we needed. So, we took resources from our pre-award pool of people who award contracts, move them over, gave them the sole focus of post-award, and these teams which are comprised of contracting officers who have had training and experience in post-award executing contracts and quality assurance specialist.

They are deployed to the disasters. They take over the large major contract post-award activities. They review the subcontracting plans. They make sure that the contractors are staffing up in accordance with their plans; and when they are not, they are working with the contracting officers in Washington to take appropriate action with the contractor.

They also have a focus which is with our local businesses in that they actually go out and work with the small local businesses to make sure that they are able to, as soon as possible, bid on our contract.

One of the issues that we found is that a lot of the businesses do not plan for disasters. Therefore, when the disaster occurs, they have no strategy or plan for coming back online and being able to provide their services.

So, one of the focuses that we have in the pre-disaster arena is to cause the businesses to start to think about, if I had a disaster, what do I do? How do I get my business back online?

Senator SNOWE. One question on the issue of payments, and I want to get to that in a moment as well with you General Harrison. Why are there such delays in payments to businesses?

I cannot see in this age of technology why we cannot get this underway much more quickly, because obviously that could spell disaster in and of itself to small businesses just hanging on by barely a thread.

We heard this testimony during the time of Hurricane Katrina. We had a series of small businesses come before the Committee, primarily from New Orleans, because that is predominantly a small business city.

Why is it that we cannot get this done much more quickly and promptly?

Mr. SLIGH. One of the areas that we found was an issue for getting contractors paid, especially contractors who have not done business with the government before, and this goes to the heart of our local small businesses, probably have not done business with the Federal Government before.

To a large extent, it is getting the paperwork right. It is submitting the right documentation to allow for payment to be made without having to re-submit that documentation.

Part of the role of these DART teams that we have are to work with those small local businesses to help and educate them so that when they do submit their invoices, they go through the first time and do not get rejected or do not get held up for additional information.

Senator SNOWE. General Harrison, there will be a witness who will be testifying in the second panel, his name is Dale Rentrop with Tiger Tugz. He is a subcontractor to a prime contractor, and

he was designated as a supply contractor; therefore, he was the prime contractor and did not have to have a bond.

He is now out more than $1.4 million. This is a terrible issue because what it really does, as he indicates in his testimony, is give license to prime contractors to go out of business, and these poor small businesses that are doing this in good faith and diligence are now left holding the bag and they cannot even get reimbursed by the Federal Government for legitimate services or materials provided.

General HARRISON. Yes, ma'am. In fact, generally speaking, the contractors we do business with and their first-tier subs are good contractors.

On occasion, you know, we run across those actors; and it is frustrating when we do not have privity of contract with the second or third tier sub. We are not in a position to be able to resolve a dispute between a subcontractor and one of his lower tier subs like the courts would be able to do. So, it puts us in an awkward position.

Senator SNOWE. I think that is a requirement we need to change. I think that anybody doing business with the Federal Government should be responsible; and the prime contractor, they are doing business with the Federal Government. They are responsible for everything. They should have to report, document and have a bond.

This is not right, because these are trying times during these disaster-related issues. To have a contractor go out of business, is going to really deter others from getting involved.

I think that is something we have to really look at very carefully and change.

Thank you.

Chair LANDRIEU. Absolutely. Thank you. Senator Brown.

Senator BROWN. Thank you. General, I find it kind of bewildering just listening to you testify. Some of these small businesses have been in business for generations. They pay their taxes. They are incorporated. They know what they are doing.

Yet they cannot apparently complete paperwork to get paid by the Federal Government. So, what does that tell me? It tells me that there is something wrong with the process of filing a claim with the Federal Government. That it is either archaic or it does not make sense or it needs to be fixed or streamlined or something.

I hear so much that the paperwork was rejected. Really. Why? It is not brain surgery. It just suggests that every government entity that deals in contracting needs to do a top to bottom streamlining review as to simplifying the paperwork so people can, in times of an emergency, have their business, they are flying by the seat of their pants anyway just trying to provide the service, make sure their families are safe, and then we are going to have them spend hours and hours and hours filling out paperwork.

There has got to be an expedited process. That is my first suggestion.

The second thing is that I have been dealing with Senator Carper on a lot of the waste, fraud, and abuse. I just got back from Afghanistan, contracting with the enemy. The biggest problem they are having now is the subs.

You have people who are there from other countries who are now being left because many of the generals who are with U.S. corporations have taken their money. They have left the theater, and they are leaving these subs to fend for themselves.

It seems to be very similar as to what is happening in situations here where you have prime contractors not paying their subs and the subs are left holding the bag.

I would agree with both the Ranking Member and the Chair that we need to either have them all have a bond or have a certifying payment along the way.

When they get paid, they have to have some type of verification or certification that, in fact, their subs have been paid; and if not, they should be barred forever for not doing their jobs and paying people.

Getting specific now, General, new reports say many coastal communities in Massachusetts are having trouble with sea walls, obviously levees, beach scraping, and a whole host of things that the Army Corps has the authority to execute within their discretionary functions.

Yet a lot of it has been frozen because of the backlog at headquarters. There always seems to be a backlog at headquarters. Sometimes when those projects get fixed, they get fixed the same way that they were, and then a big storm comes and they are broken again.

Is there any discussion happening within the Corps that attempts to either remedy the backlog with the discretionary projects or re-evaluates the projects that are there to try to do it better so we do not continue this cycle?

General HARRISON. Senator, honestly, the question of prioritizing engineering projects is not really in my area of expertise. I would be happy to try to get some additional information.

Senator BROWN. Yes, I would like for you to submit it for the record, that would be great.

General HARRISON. Yes, sir.

Chair LANDRIEU. Without objection.

Senator BROWN. Thank you.

Mr. Woods I, like others, have been disturbed by the reported gaps in DOD and the Corps with regard to subcontracts during Katrina as I just mentioned.

As I said, we deal with this stuff as Ranking Member of the Financial Management in HSGAC we deal with it all the time. How much would you say is reasonable to expect an agency to be familiar with the new online system?

I ask this because when Katrina hit, all contractors were required to use the eSRS system, and I do not believe it really happened. Do you think that, given the glaring gaps in monitoring the several millions of dollars of contracts during Katrina, this was too gradual a phase-in or what?

So, let us start with that.

Mr. WOODS. Well, you are right, Senator, there was a phase-in. Agencies across the board were migrating toward the electronic subcontractor reporting system environment and that took some time, probably too long.

One of the reasons we identified for the lack of reports is not enough use of the eSRS system.

The indications that we have received from the Department of Defense and the Corps, however, indicate significant progress in that area.

The Corps is now fully up and running in terms of using the eSRS system and also at the department level we know that they have conducted extensive training sessions on the use of eSRS. So hopefully that situation is getting better.

Senator BROWN. Has the DOD caught up with that technology do you think at this point?

Mr. WOODS. It looks as though they have, sir, yes.

Senator BROWN. Thank you.

Chair LANDRIEU. Senator Brown, thank you.

Senator Hagan.

Senator HAGAN. Thank you, Madam Chairman, and also thanks for holding this hearing especially in light of Hurricane Irene that has just hit the eastern seaboard.

Brigadier General Harrison, as part of the Corps of Engineers, so much of what affects us in North Carolina is dredging, and I was curious as to whether, if this is in your area, concerning the amount of funding that we actually give to the Corps of Engineers on an annual basis, but I also hear over and over again that the number of people who are in the business of dredging is also very small, and the number of dredges, things like that, this is something that is of concern all the time on the coastal areas in North Carolina, and the channels.

General HARRISON. Yes, ma'am. In fact, I was in Wilmington Monday visiting our district contracting office down there.

As you know, we have our own dredging capability in the Corps of Engineers and also there is a commercial capability around the country. Of course, we try to balance what we do internally to the Corps of Engineers with what the commercial vendor base offers.

I do not have specifics. Perhaps on your question, if you would like more information on the role that the Corps plays internally with dredging, I can get you that for the record, ma'am.

Senator HAGAN. How many dredges do you all have?

General HARRISON. Well, I do not know the exact number either.

Senator HAGAN. Well, all I know is I hear over and over again about the need for dredging, and it always seems like there is not enough, the backlog, they are in a different spot of the country, and it is like the roads, the highway system and you cannot operate unless you have deep enough channels and the sand out of the way.

General HARRISON. Yes, ma'am.

Senator HAGAN. And it is really an issue.

Now let me ask another question, Brigadier General Harrison. It appears that about 45 percent of total dollars in support of the recovery and response to the tornadoes in Missouri were awarded to small businesses and that nearly 90 percent of subcontracted dollars after Katrina and Rita were also awarded to small businesses, and I know that with Hurricane Irene the recovery and reconstruction efforts are underway and ongoing. But according to your testimony, prime contractors are required to report weekly for the first 90 days of their subcontracting goals.

Can you estimate how many and how much of the subcontracts awarded to the Army Corps in North Carolina have actually gone to small businesses? And I know it is very soon to report this.

General HARRISON. Ma'am, actually I do not have that information with me. As you said, the information is still coming in. I can get you that information as of this week for the record, if you like.

Senator HAGAN. That would be great. Thank you.

We were just talking about the Electronic Subcontracting Reporting System, and this would be a question for any of you. How is this working now in light of Hurricane Irene as far as the electronic reporting?

Mr. Woods, you were commenting a little bit on it to Senator Brown.

Mr. WOODS. I cannot speak to the recent implementation, but we do know that both the Corps and the Department of Defense generally have made progress since our July 2010 report on getting up and running with eSRS reporting.

Senator HAGAN. Brigadier General Harrison, any update from your respective?

General HARRISON. Yes, ma'am. Not so much particular to the response to Irene but I think eSRS has provided us a tremendous tool because, one, it is more real-time, and two, it provides a capability at headquarters to be able to better monitor how we are following up on our subcontracting plans.

So, I think that is part of the answer. I think the other answer is that we focus on making sure that we follow up on these reports.

Senator HAGAN. Mr. Sligh, in your discussion about the filling out of the reports, are they updated? Have they been updated recently? I hear too that people are concerned about the depth, the amount of information. A lot of these businesses have been in business and I know that there are seminars on how to deal with the Federal Government. But are they that complicated? And what can we do about it?

Mr. SLIGH. A lot of information, ma'am, is required and it can be, in particular for someone who has not dealt with the Federal Government before, a little bit overwhelming.

I mean, that is one of the reasons why we established the teams that we did to actually go out during disasters to help people understand what it is they need to be able to provide so that we get it right the first time and we do not get this back and forth in terms of invoices and those types of things.

So, it is not necessarily the easiest thing in the world for somebody who has not dealt with the Federal Government——

Senator HAGAN. The problem with small businesses, they do not have a back room of all the staffers that have the time and are being paid to fill out that form. Typically, it is the owner who is also managing the project and staying up all night to be sure it gets done.

It seems like maybe we need to look at revising the paperwork. And can it be done online?

Mr. SLIGH. Our registration, yes, ma'am.

Senator HAGAN. The paperwork can all be done online?

Mr. SLIGH. Yes, ma'am. And we do run into a problem sometimes that the small businesses do not have that capability in which we

extend our capability to them. They can come in, fill out the paperwork and submit it online at our joint field offices as opposed to going somewhere else during generally a hectic period of time to be able to submit the paperwork.

Senator HAGAN. One of the problems, especially in rural areas, they have is a very, very slow dial-up, and that is something we obviously are working on, especially with the layout of broadband in the lot of our rural areas. But that is also a problem.

It seems to me that we should be looking strictly for contracts that are dealing with small businesses and that we ought to figure out a way to revise the paperwork so it is at least readily understandable without having a bevy of staffers working on that.

Mr. SLIGH. Yes, ma'am.

Chair LANDRIEU. Thank you, Senator.

Senator Shaheen, and we are going to try to move to our second panel in about five or seven minutes, if we can.

Senator SHAHEEN. Thank you, Senator Landrieu and Ranking Member Snowe. Thank you both for organizing the hearing today.

New Hampshire, like so many states in the Northeast, was affected by Hurricane Irene. We had roads and bridges washed out. We had people lose their businesses and their homes; and so, we very much appreciate the effort that is going on through the various federal agencies to help the folks who have been affected. Thank you all very much for the work that you do.

Mr. Woods, I came in in the middle of your testimony and so I missed part of it, and I just want to make sure I understood accurately what you had to say. You were talking about the requirement for contractors to submit plans if they had a project over $1.5 million. Is that correct?

Mr. WOODS. That is correct.

Senator SHAHEEN. Do their plans have to encompass all of these subcontractors who are working for them or are these subs required to also submit plans?

Mr. WOODS. No. The subcontractors are not required to submit plans. This is just at the prime contract level. The threshold that I mentioned, the $1.5 million, that is just for construction contracts. There is a lower threshold generally. But for construction, it is a $1.5 million threshold.

These plans basically will tell the agency how the contractors plan to engage with small businesses, and they are required to make their best efforts to comply with those plans, and that is why it is so important that they provide the reports to the agencies and that the agencies review those plans so that they can determine for themselves whether the contractors are, in fact, making good-faith efforts to fulfill those plans.

Senator SHAHEEN. Well, and again, you may have addressed this in your testimony before I arrived, but how do we track the progress toward ensuring that small businesses get their required percentage of the work?

Mr. WOODS. Well, on a government-wide basis, the small business administration does that. On a contract by contract basis, it is these subcontract reporting reports from the prime contractors that are the mechanism for tracking that.

Senator SHAHEEN. And so, under the Stafford Act do each of, the Army Corps for example, FEMA, Homeland Security, whoever is involved in a disaster, do you also track how many small businesses get those awards?

Mr. WOODS. That is tracked, yes. My colleagues are shaking their heads as confirmation of that.

Senator SHAHEEN. Is that information available publicly anywhere?

Mr. WOODS. Do you know if eSRS is publicly available?

General HARRISON. I do not know if it is publicly available but it is certainly available within the government I would imagine. I do not know if it is public access. I would have to find out for you, ma'am.

Senator SHAHEEN. That would be helpful. I am sure it is available to us as members of Congress. As we are trying to help communicate with people who are affected by the disaster, are there ways that we can let people know about contracting opportunities in local communities?

General HARRISON. I can answer that. With regard to the Corps of Engineers, we work closely with a lot of our PTACs as one way that we make sure that they help us advertise the fact that we have requirements, particularly after a natural disaster.

We also have a website in the Corps of Engineers that is particularly focused on debris contractors where they can sign up and make themselves known to us so that after a natural disaster, you know, we can more expeditiously do market research and determine the capability within a general area.

Senator SHAHEEN. Do you maintain a database of various small businesses that are able to do certain work?

General HARRISON. Yes, ma'am. They are able to sign up and list their capabilities and we maintain that database. Yes, ma'am.

Senator SHAHEEN. And again, is that database available to the public?

General HARRISON. It is available to the public.

Senator SHAHEEN. Thank you.

Thank you, Madam Chair.

Chair LANDRIEU. Thank you. Senator McCaskill, we are going to move to the second panel.

Senator MCCASKILL. That is great.

Chair LANDRIEU. Okay, because I understand you want to question the second panel.

Senator MCCASKILL. Say a few things.

Chair LANDRIEU. Say a few things. Okay.

Thank you all very much. We are going to follow up, and I wish that you all could stay as long as you can to hear some of the testimony from the second panel. I think it would be very instructive as you seek to do your jobs even better.

Senator Snowe and I are going to meet in the next couple of days to talk about what we have learned, because we really have these disasters under way right now in places like Missouri, flooding through the Midwest, and now most recently on the East Coast.

We want the very best practices put forward for these communities, and we have even learned this morning that there poten-

tially could still be some gaps. We are going to work very, very diligently and as quickly as we can and we ask you to do the same.

For instance, and the last thing I will say, General, to you as you are giving out Corps contracts along the East Coast, although it is not a requirement yet from us, you might not want to give contracts to people who have never been in business and you might want to require some kind of bonding provision, just by rule to make sure that these subs are going to get paid so we do not see some of the same heartache that we have seen down in the Gulf Coast.

Thank you, and I appreciate your attention.

If we could move to the second panel and to save time as they are coming forward, I would like to go ahead and start the introductions. First, Mrs. Terri Bennett is Program Manager of the Heartland Procurement Technical Assistance Center (PTAC) in Joplin, Missouri. The PTAC currently assists businesses in 21 counties in southwest Missouri and is the statewide program in Kansas. It is the only PTAC in the nation to cross a state line other than Native American PTACs. We are looking forward to hearing from you, Mrs. Bennett.

Sid Davis is President and Owner of Big John's Heavy Equipment, Inc. Big John's was started in 1955 by his spotter, and Sid has run the family business since 1986. He is a former Marine officer. I would also note he is a certified Kansas City Barbecue Society judge. Thank you. I wish you would have brought us some barbecue today, Mr. Davis.

Next, of course, is Dale Rentrop, Junior, Founder and Owner of Tiger Towing, Inc. and Tiger Tugz. He is from Berwick, Louisiana, and a second generation tug boat operator. I am very, very pleased, Dale, that you could be with us today.

Finally, Mrs. Mindy Nunez Airhart, Marketing Director of Southern Services and Equipment. Her company is in a heavy construction, metal fabrication contractor in St. Bernard. She is a graduate of Tulane University and has a lot of interesting observations and information for us from her experience as her parish was completely destroyed after Hurricane Katrina.

So, Senator McCaskill, do you want to ask the first question? We will open the panel.

Senator MCCASKILL. I am so proud of the folks that are here from Missouri, and I thank you so much, Madam Chair, for giving me the opportunity to come in and sit with you today on your Committee and the important work you are doing.

I have to leave at 11:45. So, I just wanted to ask if I could put a quick statement on the record right now.

Chair LANDRIEU. That would be great, and then that way you can leave.

Senator MCCASKILL. Then if I have to leave. Hopefully, I will not have to and we will get there but if we do.

Let me just say that the people that you are going to hear from today are really important to your work. Particularly, the Manager of the Heartland Procurement Technical Assistance Center.

Many people are not familiar with it, I am sure that the Chairman and the Ranking Member are, but back in the 1980s there was a bill passed in the defense authorization that creates these

technical assistance centers to help people contract with the Federal Government.

Primarily, this has been in the defense arena because that is where there are so many contracting opportunities. But it applies across the board in terms of the Federal Government. I think you will hear some very powerful testimony from two of our many heroes that we have in Joplin, from Teresa Bennett and from Sid Davis, both of whom can tell you how it worked in there with the technical assistance of the procurement centers coming into the area immediately and immediately beginning reaching out to FEMA.

I think Teresa will tell you that FEMA did not reach out to her. She reached out to FEMA, but it allowed that capability of hooking up contractors that had worked with the Federal Government that are locally based that had navigated the very difficult terrain that has been referenced already in the hearing about how you work with the Federal Government.

The other thing I want to say on the record is that this is a time of great discontent in our country about our government, and I think we are naive if we do not acknowledge and talk about it.

I understand there are many reasons why people are cynical about the Federal Government and about our work here. But it was interesting to me in Joplin that on the heels of the most unbelievable tragedy, one that I am sure you can relate to, Madam Chairman, but unless you were there in the hours after it happened I think it is hard to describe the devastation that occurred in this community.

The loss of life. When you have an entire one third of the entire community wiped out and all of the sudden when I go back to Joplin, and I will tell you candidly, Joplin is a place where I heard a lot of complaints about the Federal Government during my time in public office, going back there now and listening to the community leaders talk about the value of FEMA, the value of SBA, the value of CDBG, the value of EDA, the value of the procurement center that is also another federal program, it does reassure, I think, people at any moment they really need it, and this is not just a bunch of payrolls without a purpose.

There are thousands and thousands of people who work for the Federal Government that care very deeply, like Teresa, about doing their job well in terms of being there at a time of disaster.

I have been proud of what has been done in Joplin. Most of the credit, and I do not want to stop this statement without saying, goes to the people of Joplin. The citizens of Joplin that came together.

They got a good assistance from the federal agencies, and I think it is a moment that we need to reflect on especially at this time of really heightened, heated rhetoric against the Federal Government on so many fronts.

So, thank you for giving me the opportunity to speak. I know you will learn from the people from Joplin. I always learn from the people of Joplin when I take an opportunity to go to Joplin and listen, and I have been proud to try to assist in any way I can and we continue to be here for you guys.

As the Chairman will tell you, the hardest part about any recovery is not in the weeks right after, the hardest part is making those commitments be real months and months after the tragedy has occurred, long after the cameras have cleared.

So, I am here for the long haul as I know the community of Joplin is and thank you, Madam Chairman, very much for giving me the opportunity to speak.

Chair LANDRIEU. Thank you, Senator McCaskill, I appreciate it and your very appropriate remarks.

Ms. Bennett, why don't we go ahead and start with you?

STATEMENT OF TERRI BENNETT, PROGRAM MANAGER, HEARTLAND PTAC

Ms. BENNETT. Okay.

Chair LANDRIEU. If you could try to limit it to four minutes each, I know we gave you five, but let's see what you can do and we will try to be generous here as much as we can. We do want to get to a time of questions before 12 o'clock. Thank you.

Ms. BENNETT. I will read as fast as I can. Chairman Landrieu, Senator Snowe, distinguished Senators, thank you for the opportunity to testify today——

Chair LANDRIEU. If you could pull the mike a little closer. All of you have to pull this mike a little closer and kind of lean into it.

Ms. BENNETT. Is that better?

Chair LANDRIEU. Better.

Ms. BENNETT. I am honored to speak on behalf of the Procurement Technical Assistance Center at Missouri Southern State University in Joplin, Missouri along with my colleagues in 93 PTACs across the country and the small businesses that we serve.

First of all, I would like to express my gratitude and appreciation for your leadership and efforts on the half of the businesses across the nation.

Again, I am Terri Bennett and I am Program Manager for Heartland PTAC. Our sole purpose, and we are passionate about it, is to help businesses become capable government contractors to provide the highest quality and best value for the taxpayer and create a strong and vibrant economic base for our communities.

Sid Davis with Big John's Heavy Equipment, Incorporated, who is also testifying today, happens to be one of our clients. We assist small businesses every day, offering training events, bid matching, and one-on-one counseling.

We help them understand government contract and procedures and requirements. We guide them through the federal contracting registration process and much more.

We assist the government agencies by locating and educating contractors which can provide the products and services that they need. As you might imagine, we have been intensely involved with the small business participation and disaster recovery over the last few months.

Following such a disaster, awarding the right contracts to the right businesses can be daunting for the agency and the vendors. Time is short. Requirements are large and diverse. The lack of electricity and the phone service make it difficult for agencies to con-

tact potential bidders and for the bidders to access and respond to solicitations.

I would like to take just a minute to explain some of our activities and illustrate the challenges and some of the avenues for addressing them. We helped locate and contact appropriate vendors often upon short notice.

Many of our clients records included cell phone numbers which are not accessible to FEMA and the Corps. So we helped them reach them. In one instance, we were notified by the Army Corps at noon one day about a contract that had to be awarded that day to begin work by that evening or the very next morning. We were able to contact a number of clients, one of whom was awarded a $492,000 contract that afternoon.

We help businesses secure and expedite registrations. I know the first panel talked a lot about CCR. That is exactly what we do. We help them with that and we can expedite it for them.

We helped access records for one client whose office, including his business records, were destroyed, and we had information to help him get his registration up and running again.

We offered our resources, e-mail lists, and community forums to advertise solicitations. We provided computer access to businesses as they needed it.

I applaud the Corps and FEMA for their efforts to contract with local firms and I am gratified by their willingness to work with us to that end.

Our knowledge of local contractors coupled with the ability to assist additional businesses in quickly becoming contract ready resulted in significantly more local contract awards than would have otherwise been made.

To date, our clients have reported to us almost $52 million in contracts for the disaster recovery. That being said, the situation is still far from perfect. As I mentioned earlier, many of these solicitations are far too large, diverse, and complex for small businesses to address alone.

The very short turnaround time makes teaming almost impossible. In addition, a few major contracts that were awarded were canceled after a short time which can be very detrimental to small businesses.

Accurate and timely information on upcoming solicitations can still be hard to come by. We would certainly welcome the opportunity to work with the agencies to explore how the process might be improved further.

Having lived through the tornado and its aftermath, I have a greater appreciation for how difficult it is to make local awards after a disaster. But that realization simply strengthens my conviction that the PTACs can be a critical partner in disaster recovery efforts.

We are pleased that FEMA and other agencies recognize this and hope the future collaborations will be even more comprehensive to truly maximize small business participation.

Our position as established contracting assistance resources with deep roots in local communities makes PTACs ideal as a central clearinghouse for disaster contracting information.

Particularly in the chaos following a national disaster, minimizing confusion and maximizing the flow of accurate information is paramount to success.

Thank you for your time this morning, for your strong support of PTACs over the years, but most of all, thank you for your unceasing commitment to support our Nation's small businesses.

[The prepared statement of Ms. Bennett follows:]

Testimony of

Terri Bennett
Program Manager of the Heartland Procurement Technical Assistance Center
at Missouri Southern State University in Joplin, Missouri,
and Past-President of the Association of Procurement Technical Assistance Centers

to the United States Senate
Committee on Small Business and Entrepreneurship
September 15, 2011

Chairwoman Landrieu, Ranking Member Snowe, distinguished senators, thank you for the opportunity to testify here today. I am honored to speak before you on behalf of the Heartland Procurement Technical Assistance Center (PTAC) at Missouri Southern State University in Joplin, Missouri; my colleagues at the other PTACs across the country; and the thousands of small businesses that we assist each year.

First, I would like to express my gratitude and appreciation for your leadership and efforts on behalf of small businesses in Louisiana, Maine, Kansas, Missouri, and all across the nation.

My name is Terri Bennett. I am Program Manager of the Heartland PTAC, headquartered at Missouri Southern State University within the School of Business Administration in Joplin. We serve businesses in southwestern Missouri and the entire state of Kansas. I am also a past-president of the Association of Procurement Technical Assistance Centers – APTAC – which is the professional organization of PTACs nationwide.

Background

As most of you know, the Department of Defense (DoD) Procurement Technical Assistance Program (PTAP) was established by Congress in 1985 to provide specialized and professional technical assistance to individuals and businesses that are seeking to pursue and successfully perform under contracting and subcontracting opportunities with the DoD, other federal agencies and state or local governments. Chapter 142 of Title 10 U.S.C. authorizes the Secretary of Defense to enter into cost sharing cooperative agreements with state and local governments, non-profit organizations, and Native American Economic Enterprises and Tribal Organizations to provide procurement technical assistance. This authority has been delegated to the Defense Logistics Agency (DLA). Currently there are 93 PTACs of which almost half are statewide PTACs, and the rest of them are regional PTACs and Native American PTACs.

Our sole purpose – and we are passionate about it - is to help local businesses become capable government contractors, on the belief that a broad base of small business suppliers provides the highest quality and best value to our government agencies and at

the same time creates a strong and vibrant economic base for our communities. Sid Davis with Big John's Heavy Equipment, Inc., who is also testifying here today, happens to be one of our clients.

We assist small businesses by offering training events, bid-matching services which notify businesses electronically about upcoming bid opportunities, one-on-one sessions with a procurement counselor, notification of important contracting changes, help with understanding government contracting procedures and requirements, guidance in registering with the federal government, and much more. We assist government agencies by locating and educating the contractors and potential contractors which can provide the products and services they need.

Heartland PTAC and Disaster Recovery Efforts

As you might imagine, we have been intensely involved with small business participation in disaster recovery over the past few months. On Sunday, May 22, a deadly EF-5 tornado struck Joplin and tracked over 22 miles, killing 159 people and destroying thousands of homes and businesses. Total damage has been estimated at over $2 billion. Recovery work began almost immediately after the storm. Actual reconstruction is just beginning and will continue for the foresee-able future.

In the Stafford Act, Congress rightly recognized the importance of local business participation in disaster response and recovery by requiring that federal contracts for disaster assistance activities be given, whenever feasible, to those residing or doing business primarily in the area affected. Local firms have the greatest knowledge of – and stake in – their communities, thereby positioning them to be efficient and effective vendors. Just as important, the impact of federal disaster funds is multiplied when awarded to local firms; important recovery work is accomplished and the local economy, which is often devastated by the disaster, is supported at the same time. Although the Stafford Act does not refer to small businesses per se, in Joplin – as in many localities – the majority of local contractors are small businesses.

I have observed that such contract awards can be daunting for both the agency and the vendors. Time is very short. Requirements within a single contract can be very large and diverse. The lack of electrical power and intermittent phone service make it difficult for agencies to contact potential bidders and bidders to access and respond to solicitations.

In Joplin, the United States Army Corps of Engineers (the Army Corps) and the Federal Emergency Management Agency (FEMA) were issuing solicitations in the days and weeks after the tornado. The Heartland PTAC reached out to both agencies by locating and contacting the pertinent personnel to ensure that they were aware of us and our readiness to assist them and potential contractors. We provided them a staff cell phone number and – especially in the first few weeks - worked with them through evenings and weekends to support their efforts to connect with local companies. I would like to share with you just a few examples of our activities, which I believe illustrate both the challenges and some avenues for addressing them.

- We assisted in locating and contacting appropriate vendors – often on very short notice. Because many of our clients' records included alternate (cell) phone numbers, we were able to reach business owners when the federal government was not able to reach them due to phone service issues and the volume of phone calls being made because of the tornado. In one instance we were notified by the Army Corps at noon about a contract that had to be awarded that day – with work to begin by that evening or the following morning. We were able to contact a number of clients, one of whom was awarded a $492,000 contract later that afternoon.

- We helped businesses secure necessary registrations. There were multiple instances in which FEMA or the Army Corps wished to contract with specific companies that were new to contracting and not yet registered with Central Contractor Registration (CCR). Thanks to the close working relationship that PTACs have with the Defense Logistics Information Service (DLIS), which administers the CCR, we were able to have those registrations expedited. In another case, we were able to access registration records for a client whose office – including the business records – was destroyed.

- We made our resources, including website, e-mail lists and community forums, available to advertise solicitations, and provided computer access to businesses as needed.

- We worked with other PTACs around the country to develop detailed information to distribute to businesses to guide their efforts to identify and pursue disaster recovery contract opportunities.

I applaud the Army Corps and FEMA for their efforts to contract with local firms and am gratified by their willingness to work with us to that end. I believe that our knowledge of local contractors coupled with our ability to assist additional businesses in quickly becoming "contract-ready" resulted in significantly more local awards than would otherwise have been made. To date, our clients have reported to us almost $52 million in government contract awards for disaster recovery.

That being said, the situation is still far from perfect. As I mentioned earlier, many of the solicitations are far too large, diverse and complex for small businesses to address alone, and the very short turn-around time makes teaming all but impossible. In addition, a few major contracts were awarded only to be cancelled a short time later, which can be very detrimental to the businesses involved. Accurate and timely information about upcoming solicitations can still be hard to come by. We would certainly welcome the opportunity to work with the agencies to explore how the process might be improved further.

PTACs and Disaster Recovery in Other Regions

I am encouraged to note that FEMA is increasingly reaching out to PTACs for help in connecting with vendors in disaster areas. I'll offer just a few examples. After a string of

tornados struck their state in April, the North Carolina PTAC helped FEMA contracting officers by:

- identifying and connecting local small businesses for a range of contract opportunities,
- helping FEMA to coordinate a vendor outreach session for a Housing Mission, and
- serving as an advisory service for local vendors interested in recovery contract opportunities. Vendors contacting the FEMA Joint Field Office were referred to the North Carolina PTAC hotline, where they were connected to a counselor within their region to assist them.

The PTAC is now working with FEMA in a similar fashion in response to damage from Hurricane Irene.

The Georgia PTAC reports that FEMA Region IV has been working with them for quite some time now. In June 2010, they hosted a major conference at FEMA's request at which hundreds of local businesses had the opportunity to meet one-on-one with officials from FEMA, the Army Corps, GSA (General Services Administration) and other agencies. This past May, in the wake of tornados in the southeast, FEMA Region IV contacted PTACs in Georgia and other states requesting lists of vendors in a number of broad categories related to clean-up and repair.

Conclusion

Having lived through the Joplin tornado and its aftermath, I have a much greater appreciation of just how difficult it is to make local awards after a disaster. But that realization simply strengthens my conviction that the PTACs can be a critical partner in disaster recovery efforts. We are pleased that FEMA and other agencies are beginning to recognize this, and hope that future collaborations will be more comprehensive – even systematic – to allow us to truly maximize local small business participation.

Our position as an established contracting assistance resource – with deep roots in local communities – makes us an ideal central hub or clearinghouse for disaster contracting information. While this would not address every challenge, providing a well-known, central source for information would maximize the ability of local small businesses to easily identify appropriate opportunities and at the same time access the support they need to pursue them. Likewise, contracting agencies would have a centralized partner capable of broadcasting their opportunities and connecting them with suitable vendors. Particularly in the chaos following a natural disaster, minimizing confusion and maximizing the flow of accurate information are paramount to success.

Thank you for your time this morning, for your attention to this very important issue, and for your strong support you've shown for the PTACs over many years. Most of all, thank you for your unceasing commitment to supporting our nation's small businesses.

Chair LANDRIEU. Thank you, Ms. Bennett.
Mr. Davis.

STATEMENT OF SID DAVIS, PRESIDENT, BIG JOHN'S HEAVY EQUIPMENT, INC.

Mr. DAVIS. Thank you, Chairwoman Landrieu, and Committee. Responding to emergencies in southwest Missouri is nothing new for us. One city always reinforces and helps another city, people, business. So, what happened on May 22 was just normal business down in our part of the country.

Within minutes after the tornado hit, we immediately went out there and started doing recovery, opening roads, looking for victims, finding housing, shelter, reinforcing law enforcement, getting roads, communications open.

So, with that as our basic framework, within the first week a group of us were selected as the cleanup contractors for the city of Joplin, and that is where Terri was making recommendations and how we came into the picture.

The city of Joplin was divided into six areas, and I was fortunate and given the opportunity to cleanup the hardest hit area. Then, when we get to questions, I could sure add to some good stories about how the Federal Government interrelated and how they made that work and why we were successful.

But within that two-month period that we did the cleanup, we moved the most product per day just simply because we made a commitment to excellence and quality control and work with all the federal agencies.

The best aspect of small business in times of crisis are that we can bring our past experiences where we had help and support where we did for others as well as ourselves.

Specifically, everyone who I worked with are just top-quality people of character. What gave my area some credibility was the fact is I relied very heavily upon my experience as a Marine officer where I was trained to organize, direct, and control, just get in, get it done in the environment.

We could easily work with FEMA. We could easily work with the Army Corps of Engineers. And, as the situation changed, we could respond to what their needs are.

The second reason I think we were successful in southwest Missouri was because of our family values that we brought back in. I am a second generation in Big John's Heavy Equipment. The old-timers who trained us in character and integrity and in responsibility, we just stepped up and lived those out and not shrank back.

But because small business has to be profitable every day to survive, that is why we are the best to be called on during emergencies. This entrepreneurial spirit cannot be duplicated by anyone who actually does not have skin in the game.

And in fact, the folks that come in from out of town, they are not as dedicated as we were seeing to that our community was put back on its feet.

Just as I take my responsibility as a Marine offers seriously, I took my responsibility as a small business serious and we placed our values along with the community's needs and that is why we were able to recover and do what we did.

What the Federal Government provides us small businesses is an opportunity to use our existing talents for our community, and we have a lot of statistics and when you get to questions is that over 50 percent of our schools were destroyed, damaged but yet our schools opened up on time.

We took a major hit in our medical facilities but yet our hospitals and medical facilities are open and going. We lost over 500 businesses. Within 60 days, over 70 percent of those businesses are re-established and we will have an additional 20 some percent back on its feet within an additional 30 days.

So, it is things like this that we brought in in working with FEMA, the Army Corps of Engineers, the City of Joplin, and the Federal Government as well.

[The prepared statement of Mr. Davis follows:]

UNITED STATES SENATE
COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

"Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding Their Communities"

TESTIMONY OF SID F. DAVIS

OWNER – BIG JOHN'S HEAVY EQUIPMENT

Thursday, September 15th, 2011

Thank you, Chairwoman Landrieu, Ranking Member Snowe, and members of the committee, for inviting me to testify today on issues pertaining to evaluating the role of small businesses, as we rebuild our community after the EF-5 tornado disaster in Joplin, Missouri.

Responding to emergencies is not new to us. On May 4th, 2003, many stepped forward with men and equipment, and along with other contractors like myself, helped clean up debris from another EF-3 tornado that touched down in a small town just north of Joplin.

On May 22nd of this year, we were out again, just hours after the Joplin tornado, assisting to clear debris, rescue survivors, retrieve bodies of victims, and to open streets and roadways, volunteering for many days. We worked until the National Guard and outside law enforcement organizations relieved us, and took over.

Within the week when the work was assigned for Expedited Debris Removal, I was one of five local contractors selected. The Army Corps of Engineers divided the Destruction Zone into six sectors, and I was entrusted with the hardest hit area.

Over the two months we worked in the tornado zone, we removed the most tonnage of debris, in the shortest amount of time, using the highest number of local and minority subcontractors, of any team. Because of the progress we made, our area was the first to receive permits, so that homes and businesses could start to rebuild.

The best aspects of small businesses in times of crisis are that we can bring our past experience to any situation to meet the greatest need very quickly. Specifically, I was able to use my experience as a Marine officer to organize, direct, and control the dangerous environment of the storm damage area without having any additional casualties. My experience of working with foreign governments while I was with 3rd Marine Division allowed me to easily work with FEMA and the Army Corps of Engineers to meet their ever-changing requirements, while accomplishing the mission.

Since 1986, I have run the family business, Big John's Heavy Equipment, based on the same principles that Big John and the Corps instilled in me: character, integrity, and responsibility. He never shrank back when called on, and I have taken his business forward. Hopefully my son will be the third generation, and be a man of character, integrity and responsibility.

Because small business has to be profitable every day to survive, is why they are best to respond to any emergency. The entrepreneurial spirit cannot be duplicated by anyone who does not have skin in the game. Just as I took my time in the service seriously, I take my responsibilities as a small business owner just as seriously. And I think that the values that small business owners bring to the table create an atmosphere for successful rebuilding after emergencies and devastation. These principles are what will allow Joplin to recover quickly, and can work in any community, in any disaster.

What the Federal government provides small business is an opportunity to use their existing talents for our communities to recover quickly. Over fifty percent of the school buildings were destroyed. But our schools opened on time, because small business, in the face of disaster, was able to bring its best forward. We lost fifty percent of our medical facilities, and they have all reopened in some capacity, because of character and integrity and responsibility for our community.

In conclusion, your first response to any situation is based on what is inside you and a community. Out of our tornado disaster was brought forward what Joplin is truly made of: A collection of people and small businesses that can not only recover, but together build a better community, a better state, and a better country.

Thank you for your time today. I will be happy to answer any questions the Committee might have.

Chair LANDRIEU. Thank you, Mr. Davis, and I am interested, very interested in hearing how FEMA worked with you on some of the things that they expedited and streamlined for that debris removal, et cetera.

Dale.

STATEMENT OF DALE RENTROP, JR., PRESIDENT, TIGER TUGZ, LLC

Mr. RENTROP. Thank you for allowing me to be here today and speak with you all. I really appreciate it.

I am here today to describe my experiences in working with the Corps of Engineers two times. First was in 2006. I chartered a tugboat to go to work on a Corps project in New Orleans.

And the way we do business in the private sector is if Sid wants to hire me he will call me and hire me and I will go to work. If I do a bad job, he will fire me.

But in any case, I have put a tug to work over there and I got paid for the first month's worth of work but then the second month's worth of work I did not get paid, $120,000.

Now, this was not my boat. This was Sid's boat. I paid Sid for his boat. I took the hit. The job disappeared. The corporation disappeared. I found out later the corporation was formed 30 days prior to the letting of the contract and now they are gone.

Somewhat of a similar situation is happening now where we have a contractor who is not a contractor but is made a contractor and he got a $68 million contract from the Corps.

This contract was fatally flawed from the start. It should never have been allowed to proceed. But I was just so proud to put my tug boats to work rebuilding the levees around New Orleans. It meant so much to me that I would probably have went in there blindly, and I guess I did in retrospect.

But in any case, I will tell you a little bit about it, and this is a 15-minute informational package that I am going to try to squeeze into four.

We mobilized the project on January 4 of 2010. Our equipment sat there on payroll for approximately 90 days before we were instructed to begin the project.

Now, we were called there for inspection purposes only. We sat there truly crewed, full barges, everything ready to go. We did not get paid $439,000 and a change.

We started moving clay on March 6 and we moved all the way from March 6 to June 4. I have invoiced a total of $557,000 to my contractor. I have been paid $195 and change; the total outstanding $311,000.

The project barges, I do not own barges. I chartered them from some people in New Orleans. I currently still owe them $38,000. These barges at the end of this project had to be cleaned, surveyed, repaired, and return to their owner.

I was not contractually responsible for that, but as I was the charterer of the barges, the responsibility was left to me. I still owe those people that clean these barges $133,000, and they are from New Orleans.

I also chartered to inland deck barges in which to put the excavators on top of for offloading. We started the operation. During

the offload operation, the barges were basically damage to a point of—anyway they were damaged $214,000 in which the owner of the barges looks to me to pay. Excuse me.

My contractor was terminated on June 3. The prime approached me to continue the project. I agreed to continue the project and went on a day-rate basis only. You paying me for my equipment on a per-day basis.

At the end of nine days, I requested to get paid because I could not pay my captains and deckhands anymore. He refused to pay me. I left the job. That cost $149,000.

The Corps terminated the marine portion of the project on or about August 5 of 2010. The project owes Tiger Tugz to date $1,400,000. There are also a first-tier sub and a second-tier sub that are about at the same level of debt.

The Corps classified this contract as a supply contract, and this is not a supply contract. A supply contract is the provision of paper clips or glasses, from my point of view.

All civil projects and construction projects are bonded. So if we do not get paid, we go lien the bond and we have an avenue to get paid. There is no bond here. I do not know why it was classified as a supply contract. Obviously, they were not supplying paper clips. This was a major, major construction project. It was worth $68 million. That is what the contract was let for.

The prime contract in this case, like we spoke of earlier, is an attorney from North Louisiana. He has never been a contractor, does not own a piece of equipment. How could you manage a $68 million contract?

There is a settlement proposal that we put together according to Federal Acquisition Regulations, we put it together. In fact, my other second-tier subcontractor with me, the offloader, submitted a settlement proposal directly to the Corps last week and they summarily rejected it.

So, we are going through the proper procedures but still the Corps, and I can go back and talk about it. We have begged and pleaded and knocked on doors, and we even had meetings and it is a stone wall act. It is a complete stonewall.

There are procedures that can be followed. But General Davis's statement, no, they cannot get involved, they cannot get involved. But they can get involved.

The difference between what the General said and my case is that this case involves a termination for the government's convenience. It is not a normal circumstance; and under FAR 49.108–7, it says that the contracting officer may get involved to settle problems between the prime and the sub.

So, it is in writing. It is prefaced by case law. I have it here.

There are not specific regulatory procedures allowing the Corps of Engineers to come in and get involved in settling these things. And so far to date, the Corps is refusing to do so.

Last in closing, I am way over and I apologize. I thank you all for providing me this forum and this opportunity to voice what happens to small business and this happens in south Louisiana a lot, and I do not know why.

Perhaps this testimony can be a catalyst that can lead to more small business contracting opportunities with our government and

bring about a change in the Corps practices regarding the contracting of small businesses.

Just right quick before I end, when I took this project, I had four tugs and employed about 32 people. I had my fifth tug, brand-new tug being built. I was going to employ six to eight more people. That would have brought me up to 38 people.

At present, and in large part due to this contract, I have three tugs and I work 16 people because I am having to liquidate my assets just to stay in business and to pay the people I owe. Like I mentioned earlier, I owe from this project and it is a total of $693,000 that I owe in the process of executing my work for the government.

And I brought along two examples of what happens when you cannot pay. Two lawsuits. I am being sued professionally and personally. And I thank you all very much.

[The prepared statement of Mr. Rentrop follows:]

UNITED STATES SENATE
COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

Testimony of
Dale P. Rentrop, Jr., President of Tiger Tugz, LLC

Thursday, September 15, 2011

Thank you, Chairwoman Landrieu and members of the Committee on Small Business for inviting me to testify today on issues pertaining to the impact of government and it's contractual relations with small business entities.

I am here today to describe my experiences with regards to working my tugboats on USACE contracted projects.

We are here today to gain understanding on how small business can help rebuild their own community post disasters.

I have had two (2) experiences working on USACE (Corps.) projects. The first of which, on or about 2006, involved a Tiger Tugz chartered tug who was working for a contractor to the Corps. This business was not on a contractual basis. My tug worked to gather barges prior to commencement of the project. Very little of the project details were communicated to Tiger Tugz by the contractor. Tiger Tugz was paid for the 1st months work but not paid on the final invoice which totaled $120,000.00. Upon further investigation I found that the contractor's corporation was recently set up and was formed to take advantage of this contract. The "contractor" is no longer in business and cannot be reached.

The second project working for the Corps, New Orleans District involved the transportation of earthen clay from Port Bienville, MS to Michoud Slip, New Orleans. The transported clay was to be used to rebuild the levee protection system around New Orleans East area.

Contractual entities: Prime Contractor
1st Tier Subcontractor (Project Management)
Tiger Tugz, LLC, 2nd Tier Subcontractor (Marine Transporter)
2nd Tier Subcontractor (Offloader)

Project Mobilization

On or around January 4, 2010, Tiger Tugz was instructed to mobilize project equipment to the project loading site in Port Bienville, MS for inspection of equipment and to begin the work. Our equipment remained on site and ready for operation until the beginning of the project on March 6, 2010. I have invoiced for a total of $439,717.70 and to this date have received $0.00 in payment.

Movement of Earthen Clay

Tiger Tugz hauled clay from March 6, 2010 until June 4, 2010. I have invoiced a total of $557,110.38 in project tonnage plus fuel costs and have been paid $195,343.20, leaving a total of $311,897.81 outstanding. The prime contractor was paid by the Corps. Tiger Tugz was not paid for delivered tonnage.

Project Barges

Tiger Tugz supplied twenty (20) inland hopper barges for the project with which to transport the clay. I don't own the barges, they were chartered from a barge vendor to which I still owe some

$38,000.00. Upon the return of these barges they must be cleaned and surveyed to determine damages if any. The barges were stored (fleeted), cleaned, repaired and returned to their owner. I was not contractually responsible for these charges, but as the 1st tier contractor was not paid either, the responsibility fell to my company. I owe approximately $133,303.80 in project barge related charges to my vendor.

Tiger Tugz also chartered to the project two (2) inland deck barges. The deck barges were used as platforms for the excavators to offload the barges as dockside offloading not an option. The barges sustained approximately $214,000.00 in damages. Tiger Tugz is being made responsible for this barge damage although we did nothing to damage the barges.

Terminations

The 1st tier subcontractor was terminated by the prime contractor on or about June 3, 2010. The prime contractor then approached Tiger Tugz to remain on the project on a day rate basisbillable directly to the prime contractor. Our invoices total $149,879.28 of which not a single cent has been paid.

Tiger Tugz departed the project on June 13, 2010 due to non payment of invoices. Small businesses cannot continue to operate without under this contract without being paid.

The Corps terminated the marine portion of the project for convenience on or about August 5, 2010.

Amounts Due

The project owes Tiger Tugz, $1,469,763.47.

Classification of Corp Contract

The Corp elected to classify my portion of the levee building contract as a supply contract and not a construction or civil contract. The project involved excavating earthen clay, transporting the clay to the loading dock with dump trucks, loading the barges with excavators, transporting the clay with tug and barge to the offload site, offloading the barges with excavators into dump trucks, dumping the clay into a "stockpile" area.

Does this explanation describe and fit into the profile of a typical governmental supply contract?

As I understand, governmental supply contracts do not require the prime contractor to submit a bond. Tiered subcontractors have no recourse or bond to lien in the event of non-payment. As a 2nd tier subcontractor, I was not made privy to such contractual information.

Prime Contractor

The prime contractor is a company that was started following Hurricane Katrina. It is my belief that was formed to acquire government contracts to supply clay to the levee re-building effort. The prime contractor has little, if any, contracting experience and owns no equipment.

Settlement Proposal

Tiger Tugz has and is submitting a Standard Form 1436 Settlement Proposal through 1st tier and prime contractor to the Corps. The Settlement Proposal deadline was initially July 15, 2010. the prime contractor arbitrarily got an extension from the Corps until December 15, 2010. Lower tier subs had no correspondence prior to this request.

The 2nd tier subcontractor (Offloader), had recently submitted a Settlement Proposal directly to the Corps. The Corps summarily dismissed the application. The Corps either does not or refuses to recognize 1st or 2nd tier subcontractors as contractors on this project.

Settlement

The Corps refuses to recognize 1st and 2nd tier subcontractors that worked on this project. The Corps will not assist us in requiring the prime contractor to pay what is owed. The prime contractor has been paid and is keeping the money. There are no discussion between prime contractor and subs.

Subcontractors have written and submitted Settlement Proposals to the prime contractor which should be included in their submission to the Corps. What assurance do we have that our Settlement Proposals will even be submitted to the Corps? NONE.

If and / or when a settlement is reached, how will be know? Will the Corps report to the subs? NO, as proven, in writing, by their lack of consideration in recognizing our existence.

If the Corps pays the prime contractor any settlement amounts, will the prime pay the subs? I doubt it....as proven by their current business conduct and lack of payment.

Will the Corps require the prime contractor to pay the subs before getting their own settlement? No. The Corps has continued to pay the prime contractor with full knowledge of the fact that the prime is not paying subs and the refusal to be involved in prime to subcontractor relations.

What hope do we have that we will ever be paid for work that we provided to rebuilding the levees around New Orleans, LA? Only the hope I have is that our US Government, Senate, or the USACE intervene in this process to make sure that the settlement payments be channeled to their proper destination. Without your intervention in this matter, more of the same will, no doubt, prevail.

For your information, the Corps currently has a similar Settlement Proposal in consideration that is reported to be eight (8) years in waiting.

Contacting of Governmental Officials

In efforts to bring attention to this situation, I have written letters and received responses back from Sen. Melancon's office, Sen. Vitter's office, Rep. Joseph Cao's office, United States Army Corps. of Engineers- Carrie Wakumoto and Commander Fleming, and the Inspector General of USACE.

I thank the committee and it's members for providing this forum and for the opportunity to testify regarding my experiences in dealing with the USACE.

Perhaps my testimony can be a catalyst which leads to more small business contracting opportunities with our government and bring about a change in USACE practices regarding the contracting of small businesses.

Pre-Project and Post Project Employment

At the beginning of the project Tiger Tugz owned and operated four (4) inland tug boats and the fifth new build tug was due to be completed. Tiger Tugz employed approximately thirty two people and planned to employ six (6) additional persons upon the completion of the new tug. On this day, Tiger Tugz operates three (3) tugs and employs 16 people and is on the verge of filing for bankruptcy protection.

Impact on my Small Business

Downsizing of my small business is due, in large part, to my participation in this government contract and the fact that we cannot get paid. I have had to liquidate assets and lay off employees in efforts to remain in business. My company is being forced to absorb these contract related losses but still pay the expenses incurred in the execution of this project.

As a result of doing business with the Army Corps of Engineers and it's chosen prime contractor, my business has an outstanding debt of $652,582.00, owed to 13 companies, in project related expenses. This amount does not take into consideration amounts I have paid during the past year.

Summary

When choosing to contract myself to a prime contractor on a government project I had no idea at how little protection and oversight is provided by the Corps and government. I had faith that under the scrutiny of the government that fairness would prevail.

Small businesses need to count on the fact that when they work on a government contract that they will be paid for their work. All small businesses have employee payroll to meet on a weekly basis. Employees count on us to provide pay with which they provide for their families.

This evolution has had a profound impact not only on my business but to all of the vendors that counted on Tiger Tugz to pay what is owed. The damage caused by non-payment on a government contract is not narrow of focus but spreads out like a spider's web and effect the entire supply chain.

Closing Remarks

My ability to supply marine transportation services to the government will not survive past today if you don't help me resolve this issue now.

I thank you for the opportunity to describe my experience in dealing with the corps. I understand that many small businesses may have had similar experiences. Damage has been done to small businesses, but it is not too late to reverse that damage. We are damaged by disasters and fight on towards recovery. We do not expect to be damaged by our own government while working on re-building project like the New Orleans levees.

I ask that you contact the USACE and require that they accept our settlement proposals in a reasonable amount of time, and to follow the payments through the prime contractor to see that they get into the hands of the companies and hard working people that earned that pay.

When the US Federal government and it's operating arms knowingly allows a prime contractor, which is operating under a government contract, to fail to pay their subcontractors is basically issuing a "permission slip" to all other prime contractors in the future to conduct business in this same manner.

President Obama in his Job Creation speech the other night said, and I quote, "We will see that government contracts get paid a lot faster."

Let not the governments working relationship with small businesses in the community be financially destructive to employers of the people.

Thank you for you time this morning. I will be happy to answer any questions the Committee might have.

Chair LANDRIEU. Mr. Rentrop, we are so sorry for what has happened here, and Senator Snowe and I are going to do everything we can to not only fix your situation as quickly as we can do but to make sure this never happens again to legitimate contractors such as yourself doing more than an honest days work, having legitimately been in business doing work that is desperately needed.

It is a shame and a tragedy, and I personally am going to get involved to help you with your situation and any others similarly situated. I am aware of a few others, actually a dozen or more contractors, while the Corps is listening, and while FEMA is listening, out of Livingston Parish that do not have the amount of money on the line that you do, were engaged in different kind of work.

It was a debris removal contract as opposed to a construction, levee construction contract. But I bet in my office alone I have a half a dozen sort of similar situations. We are going to work through each one, and we are going to see what the law allows and what the agency will do and absolutely see why legal actions can be brought against a prime contractor that has obviously not operated in good faith.

Go ahead, Ms. Nunez Airhart.

STATEMENT OF MINDY NUNEZ AIRHART, MARKETING DIRECTOR AND ASSISTANT TO THE PRESIDENT, SOUTHERN SERVICES AND EQUIPMENT, INC.

Ms. NUNEZ AIRHART. Good morning, Chairwoman Landrieu, Ranking Member Snowe, and distinguished members of the Committee.

My story is different but I still think it is important as well. My family owns a heavy construction and metal fabrication company in St. Bernard Parish. In 2005 our parish was decimated in the waters caused by Hurricane Katrina and the resulting failure of the federal levee protection system.

My parents, myself, and every single one of our employees lost their homes. Our offices and our workshop were destroyed, and we lost about $1 million in machinery.

Since then, our family has persevered and has rebuilt our entire business with help from the Federal Government.

Making the decision to reopen our business in devastated St. Bernard Parish was not an easy one but it was the only option that we felt that we had. We did not know that the government would become our biggest customers in the years to come.

Before the flood, our company was certified in the SBA's 8(a) program for disadvantaged companies. After Katrina's landfall, the Corps of Engineers was able to sole-source emergency construction contracts to our company for the rebuilding effort. As the Corps personnel learned that our company performed tasks on time and on budget, we began to get a larger share of the hurricane recovery contracts.

Although the 8(a) program is not designed to funnel work to small businesses in disasters, it certainly had its advantages for both our company and the Corps. They were able to quickly sole-source these contracts to capable small businesses without the delay of putting them up for competitive bid. This was especially

important for the type of emergency projects crucial to New Orleans after the flood.

However, federal regulations need to be re-examined regarding the SBA guidelines for 8(a) businesses in the event of a disaster. After catastrophes like Hurricane Katrina, government contracts are often the only work available to open and functioning 8(a) businesses.

In our case out of over 100 clients, only one was open after the storm. Therefore, the majority of our revenue was earned from emergency government contracts. The unintended result of this was that we found ourselves with a disproportionate mix of revenue from the government which is prohibited by the SBA in that program. We were penalized for this by being deemed ineligible for sole-source contracts.

We would like to propose that 8(a) companies located in devastated areas whose employees are also victims of the disaster be given a waiver for the revenue mix requirement for the remainder of their 8(a) term. This would ensure these businesses could continue fulfilling an important role in rebuilding their own communities and employing their own local workers who are also affected by that disaster.

Furthermore, the most important thing the U.S. Government can do to spur the economy in these communities is to forgive commercial SBA loans. In our case, we used our loan to buy new machinery, new equipment, office furniture, computers. This loan must be repaid, and to have to make a loan to repurchase everything that was already paid for before the storm, is financially devastating.

The $6000 monthly note on our SBA loan is a huge factor in the financial health of our company. On top of the astronomical taxes small businesses already pay, these loan payments are an incredible burden that we did not factor into our business plan. To forgive commercial SBA loans relating to the failure of the Federal levee system would not only be an ethical deed, but a smart economic move as well. It would spur business and job growth in those areas.

In summary, it is important to note that while the government is vital to helping communities recover after disasters, the American small business owner will use their own blood, sweat, and tears to rebuild.

Our story is not unique. It unfolded thousands of times throughout the Gulf Coast region and continues today. It was through hard work, persistence, and dedication of the people of southeast Louisiana, people like our family, that small businesses were able to return after the storm and become stronger and more successful.

We only ask that the government be considerate and fair in realizing that small business owners carry a heavy burden under normal circumstances and deserve a helping hand while rebuilding their communities after a disaster. Thank you.

[The prepared statement of Ms. Nunez Airhart follows:]

CONGRESSIONAL TESTIMONY DELIVERED TO

U.S. SENATE COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

CONGRESSIONAL TESTIMONY FROM

MINDY NUNEZ AIRHART

MARKETING DIRECTOR

SOUTHERN SERVICES & EQUIPMENT, INC.

TESTIMONY DATE: THURSDAY, SEPTEMBER 15, 2011

Chairwoman Landrieu, Ranking Member Snowe and distinguished members of the U. S. Senate Committee on Small Business and Entrepreneurship Committee. Thank you for the opportunity to testify today on the topic of "Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding Their Communities".

My name is Mindy Nunez Airhart, and my family owns a small business right outside of New Orleans, Louisiana, in St. Bernard Parish. Our company, Southern Services & Equipment, Inc., is involved in the heavy construction and metal fabrication industry. In 2005, our parish was decimated in the floodwaters caused by Hurricane Katrina and the resulting failure of the federal levee protection system. No building was spared in St. Bernard Parish. My parents, myself, and every single one of our employees lost their home. Our offices and workshop were destroyed. We lost $1 million in uninsured machinery, as well as priceless data and files. Since then, our family has persevered and has rebuilt our entire business from the bottom up, with much help from the federal government. I would like to present our

testimony to you, this esteemed committee, so that you may have a clearer picture of what happens to small businesses after a disaster.

In the weeks after the flood, my father, Marc Nunez, commuted daily from Baton Rouge, LA, where we were living in a hotel, to our devastated workshop, cleaning and salvaging what machinery he could. Much of his days were spent helping neighbors and friends attempt to open their businesses and salvage what they could of their property. Since there were no utilities, my father hauled water in 55-gallon drums, and used a generator for electricity. In November of 2005, my parents purchased a small travel trailer, on credit, and moved it back to St. Bernard Parish. We hooked up the water, electric and sewerage connections ourselves. Our family both lived and operated our business out of this trailer.

Making the decision to reopen our business in devastated St. Bernard Parish was not an easy one, but it was the only option we felt that we had. We did not know that the Government would turn out to be our biggest customer in the impending years. First, some background on our company: In 2000, our company was certified in the SBA's 8(a) program for socially and economically disadvantaged small businesses. Our first sole source contract for the Corps of Engineers was a small one, fabricating a wire wheel in August of 2000. This led to progressively larger projects, and within one year, we grew out of our first office. We purchased our current land and building in May 2001. For the next four years, we continued to do business with the Corps of Engineers and other government agencies, and cultivated a portfolio of private clients in Southeast Louisiana. After the 2005 flood, because we were certified as an 8(a) company, the USACE was able to sole-source emergency construction contracts to our company for the vital rebuilding effort. As Corps personnel learned that our

company performed tasks on time and on budget, we earned their trust and began to get a larger share of the hurricane recovery contracts. We competed with other 8(a) heavy construction companies to be included in a Multiple Award Task Order Contract (also known as a MATOC) for levee reconstruction contracts, and later that same year we also won inclusion in a MATOC for pump station reconstruction. Although the 8(a) program is not designed to funnel work to small businesses in disaster situations, it certainly had its advantages for both our company and the USACE. The Corps of Engineers benefited from the ability to quickly sole-source contracts to capable small businesses, without the delay of putting them out for competitive bid. This was especially important for the type of emergency projects crucial to rebuilding New Orleans after the flood. Our company benefited from the opportunity to make a good name with USACE contracting officers and government personnel. It was a win-win situation. Also, the USACE was quick with payment, often paying invoices in less than 14 days after presentation. This is an important detail for small businesses who often to not have the cash flow to wait 30 to 60 days for payment.

However, federal regulations need to be reexamined regarding the SBA 8(a) guidelines for disaster-impacted businesses in their own community's recovery. FAR regulations state that any firm that does not meet its "applicable competitive business mix target" for the program year will be ineligible for sole source contracts. In the event of a disaster of this magnitude, government contracts are often the only work available to open and functioning 8(a) businesses. In our case, out of over 100 clients, only ONE was in operation in the months after the storm. The majority of our revenue was earned from emergency government contracts. Nonetheless, the SBA penalized us for this by deeming us ineligible for sole source government contracts on July 17, 2007. This was because our competitive business

mix target was too heavily weighted with revenue from federal contracts. We were not the only 8(a) company affected by this regulation, and we felt unjustly punished by the SBA. We would like to propose that 8(a) companies located in devastated areas be given a waiver for the business mix requirement for the remainder of their 8(a) term. This would ensure that these businesses could continue fulfilling an important role in rebuilding their own communities, employing local people who were also affected by the disaster.

Regarding the FEMA trailers: they were absolutely vital to the recovery of small businesses after the flood. Although they were aesthetically unpleasant, they allowed residents to live nearby while working on their homes and businesses, thus avoiding costly and time-consuming commutes. Determining how to get them in the early days after the storm, however, was often a case of "the squeaky wheel gets the grease". In late October 2005, my mother and I attended a business recovery seminar in New Orleans. At this conference, we spotted Senator David Vitter and resolved that we would do what we could to talk to him. My mother, Cheryl Nunez, a brave, intrepid woman, marched over to Senator Vitter and introduced us. She explained that our business had work and employees, but no place to house them. "We need trailers, please, Senator," she said. Senator Vitter, with the assistance of Louisiana State Rep. Mike Futrell, contacted the Louisiana Dept. of Economic Development on our behalf and in two weeks, we received four FEMA travel trailers. I'd like to take this opportunity to personally thank Senator Vitter for helping us that day. It probably meant more for the future of our company than he realizes. We eventually lined up eight FEMA trailers on the long, narrow swath of land on which our business is located, creating a community for our employees to live and work. We fondly referred to it as "The Compound".

Looking back on 2005 and 2006, insurance proceeds, loan payments and SBA loans were hot topics of conversation among residents of our area. In our case, we had flood insurance on our homes, but not on our business. We applied to the Louisiana Association of Business Industry for disaster grant money for property losses and employee housing, but were denied. We applied for an SBA Disaster Business Loan on November 28, 2005. Coincidentally, SBA Administrator Hector V. Barreto made a promotional tour of the devastated areas of Louisiana on December 8. He visited our business with top Louisiana SBA executives, and asked my parents, "What has the SBA done for you?" My mother, anxious to demand answers from a top government official, quickly answered, "Nothing!" Mr. Barreto was shocked, but listened intently as my parents explained that two months after the flood, they still had not received any business assistance from the SBA. Mr. Barreto promised that someone from his office would be in contact with us. Two days later, a loss verifier contacted us and we began the loan process. We believe that if Mr. Barreto had not visited our business, we would have waited even longer for our application to be processed. 121 days after our SBA loan application, we received a $10,000 advance on our loan proceeds of $1,191,800.00. It was another three weeks before we received any significant money ($200,000 on April 20, 2006). We did not receive the remainder of the loan proceeds until October 11, 2006. In the meantime, we had to make other arrangements to finance the business and ensure cash flow. In January of 2006, with our SBA loan still pending, we borrowed $100,000 from a line of credit secured by both our personal and business properties. This ensured that we were able to make payroll for ourselves and the 12 employees determined to rebuild our community.

I would be remiss if I did not mention the appreciation we have for the Louisiana Procurement Technical Assistance Center, and especially the efforts of Ms. Sherrie Mullins and Mr. Robert "Bob" Dempsey, for their role in our success as a small business. They have been invaluable resources for us by providing advice on procurement, federal contracting regulations, and marketing. They also have provided free training to us and thousands of other Louisiana businesses on the topic of doing business with the federal government.

While our company owes a debt of gratitude to the government for the opportunities they have provided, of course there is always room for improvement. The most important thing the U.S. Government can do to spur the economy in disaster-ravaged communities is to forgive commercial SBA loans. In our case, we used our SBA business loan to buy new machinery and equipment, office furniture and computers to replace those ruined by floodwaters. However, this loan must be repaid, and to have to make a loan to repurchase everything you have already paid for is financially devastating. It is a significant drain on company resources that was not there before the storm. The monthly payment on a loan of this magnitude is $6,182 per month, which is a huge factor in our financial security and the financial health of our company. On top of the astronomical taxes small businesses already pay, these loan payments are a huge burden that we did not factor into our initial business plans. To forgive commercial SBA loans relating to the failure of the federal levee system of 2005 would be not only an ethical deed, but a smart economic move as well. It would spur business growth in the decimated areas, where it is needed the most. We also fully support Senator Landrieu's Gulf Coast Disadvantaged Business Relief Act of 2011 bill, which would extend 8(a) eligibility to firms in Katrina- and Rita-impacted areas. This would greatly assist businesses in our region who are still struggling, six years later.

In summary, it is important to note that while the Government is vital to helping communities recover after disasters, the American small business owner will use sweat, tears, and cold, hard cash to rebuild their own companies. Our story is not unique: it unfolded thousands of times throughout the Gulf Coast region, and continues today. It was through the hard work, persistence and dedication of the people in Southeast Louisiana and Mississippi, people like our family, that companies were able to return after the storm and become stronger and more successful. We only ask that the Government be considerate and fair in realizing that small business owners carry a heavy burden in normal circumstances, and deserve a helping hand while rebuilding their communities after a disaster.

Madame Chairwoman, thank you for the opportunity to deliver my testimony to this panel. I would be pleased to answer any questions you may have.

Chair LANDRIEU. Thank you. Your testimony, all four of you, has been terrific, very specific and clear, and I think we are going to be able to use a lot of what you said to beef up our efforts.

So, let me just ask you each and then I will turn it over to Senator Snowe. Is there anything else that each of you would like to say for a minute to just either reemphasize a specific suggestion that you have that you think would go a long way in making sure that small businesses in areas that have been affected by disasters are included in that recovery effort under the contracting provisions with the Federal Government and is there anything else that you just would like to underline or emphasize, starting with you, Mrs. Bennett?

Ms. BENNETT. Thank you. I would like to emphasize, of course, what I do know that PTACs could help in a disaster. We are right there. We know the small businesses and the local businesses that can help in such a disaster, and that is what we did.

We would like to work more with the Federal Government agencies in trying to help them find those businesses even more than what we do. I did some research, and I wanted to find the right person at FEMA who knew who to contact that was going to be in Joplin doing the work that needed to be done. I knew it is much better than to just leave a message with someone who does not know anything because we did not have time to wait.

Chair LANDRIEU. But you reached out to FEMA. They did not try to find you?

Ms. BENNETT. Not that I know of.

Chair LANDRIEU. That is something that we need to do.

Ms. BENNETT. I did reach out and found them. And then it was the next day, though, that they did return my phone call and we started working together.

Chair LANDRIEU. Mr. Davis.

Mr. DAVIS. In the questions you asked the preceding panel, a lot of the things I physically observed and lived through. For example, most of 8(a)s, WBAs, and DBAs were not qualified. When they would contact me for work in my strong period, they were just a name and one individual. They did not have companies. They would go to work for us.

Chair LANDRIEU. Were they local 8(a)s that contacted you or people from all over the country?

Mr. DAVIS. Both.

Chair LANDRIEU. And you did not find that they were qualified? That is not what Mindy testified. She was obviously a qualified 8(a) and did good work, and I did not want you to misinterpret what I said.

I said there are contractors out there that are not qualified. I did not say they were 8(a) or not 8(a). I am not trying to make a judgment about that. I just said there are obviously contractors that get work that are not qualified, whether they are large, in this case they had to be relatively—well, I do not know. The $68 million contract is not a small contract. It is not $1.5 million. It is not $5 million. It is $68 million.

But nonetheless, you were contacted by some companies that were 8(a)s or women-owned businesses that you thought were not qualified, and so, you did not include them in your bids.

Mr. DAVIS. Well, in order to meet the requirement, I sort of knew a lot of folks and I found a lot of folks that were just simply titles.

Chair LANDRIEU. Oh, that were trying, just newly formed or et cetera, et cetera, and they were not really in the business. Right. That is what I said.

Mr. DAVIS. Right, that is what you were talking about earlier, and that is something I had to sort through very diligently in order to accomplish and put together a group that could actually to the work.

The other thing I would like to emphasize is what Dale here was talking about on his side is that we have got to be very careful, as small businesses, who we go to work for as prime contractors because some of them just have a history of poor character and financial things that are not correct.

And one of the clauses that those—and I do not know if you call them predatory prime contractors is that they put clauses in their contract that says that if you do not finish your work assigned, they do not have to pay you.

So, what they will do is they will move, they will get you started, and then they will move something or they will take work away from you and just force you to move away, and then they say I do not have to pay you.

Chair LANDRIEU. The predatory primes we need to be focused on. Dale?

Mr. RENTROP. Yeah, just to add on to what he said. That is exactly what goes on because they move on from your subcontract and they find somebody else which is what happened in my instance. They moved on from me to the next one. They kept in the contract, and they just keep the Ponzi going.

Just by way of point, the tug company that took my place lasted two weeks and it sank four barges full of earth and clay. That is just the way it goes.

But just to further that, you know, I mean, that is what we have been given is the same, we cannot get involved, we cannot get involved in, we cannot get involved in, we cannot get involved in.

And the more we look, and I am a tug boat operator. Last week, I was in an engine room changing out a main engine. So, we do not get involved in this. But there are ways they can get involved, and the more I look in the FAR and the CFRs it is right here.

You can get involved in. So that the act of saying no, we cannot and just stopping it right there, I mean, we have been doing this, we have been going after this for a year.

Chair LANDRIEU. We promise you, we are involved today, and we will help you. And I thank you and I would love to see you right after the hearing if we could for a minute.

Ms. Airhart, is there anything else you want to add?

Ms. NUNEZ AIRHART. I do. In addition to my specific recommendations in my testimony, I want to state for the record that we have had nothing but good experiences with the Corps and good experiences with getting paid, and getting paid on time.

They usually, in most instances, pay us within 14 business days because we are a small business. Now, we do know how to complete the paperwork so I guess that is a part of it.

I also want to state for the record that we have had nothing but praise for the Louisiana PTAC which has helped us tremendously, Mr. Bob Dempsey specifically.

In the earlier panel, you mentioned that maybe we should have more requirements for bonding. While I certainly agree with that, I just want to let you know that it is very hard for a small business to get bonding. You have to have money to get bonding. So, if you do not have any money, you cannot get a bond.

It is sort of a Catch-22. We were lucky in our experiences right after the storm, we did not have bonding experience capability before the storm. After the storm, we found a large construction company that acted as a mentor. They introduced us to their bonding company, and eventually we did get bonding, and that is how we grew. But it is really hard for a small company to get bonding, especially if you do not have money in the bank.

I agree with your thoughts that the government needs to maybe do some regulations to where you can get involved in the second and third tier subcontracts because currently exactly they cannot get involved in but I think that is because of the way the law is written.

I have one third-tier contractor right now who is not getting paid by his second-tier contractor on my contract, and there is nothing I can do about it, not one thing. And I feel very bad for this man because he did the work, and it is not fair.

But I paid the second the guy. The second guy did not pay the third guy. There is nothing I can do about it.

I also agree that there should be a requirement that businesses have to be in business for a certain period of time before they can be awarded disaster contracts.

That is it.

Chair LANDRIEU. Senator Snowe.

Senator SNOWE. Thank you, Chair Landrieu, and I want to thank each and every one of you. I know you all have shared some extraordinary stories of perseverance and persistence and courage in the face of tremendous adversity and physical destruction in your respective communities and triumphed over tragedy.

So, I thank each and every one of you for your contributions and the role that you have played. I am sorry, and I regret the hardships that you have endured. Mr. Rentrop, and I will certainly work with the Chair to see what we can do to resolve this terrible situation for you that should never have occurred.

We have learned a lot from it. In the mean time, to resolve your specific situation which I know has to be an exceptional burden, we want to help you out in that regard.

Ms. Bennett, you were mentioning, and I think the Procurement Technical Assistance Centers, the PTACs, do great work and obviously they did in this case in Joplin, Missouri, that we all saw the horrendous devastation that unfolded in Missouri and specifically in Joplin.

I think it is absolutely remarkable that 50 percent of the schools were destroyed and yet that they opened on time. That is just an amazing story.

You suggested that PTAC should be a disaster contracting clearinghouse for information. Are you making that recommendation?

Ms. BENNETT. I think that the PTACs could be very helpful in helping businesses understand what is needed by the Federal Government, and also helping the Federal Government get the message out to the small businesses.

You know, we do counsel them one-on-one and we can help them understand information. We also have a network throughout the country of PTACs where we are all connected. We can talk to other PTACs. And Maine and Louisiana have very good PTACs as well, and I think it could be beneficial for all involved to have the PTACs in there a little more tighter and helping make sure that the disasters are taken care of the best we can with small businesses.

Senator SNOWE. Yes. I think that is an excellent idea, because it is basically a clearinghouse for all of that information. You can go to one location, one resource for all of that information that is required, especially during a disaster.

Even having a data bank of, you know, registered vendors in communities in the event that there is a disaster. Again, getting back to some of the issues that Mr. Rentrop has confronted.

And, Mr. Davis, you recognized, I gather, that some of these contractors just would not cut the mustard, as we would say in Maine. But you recognized that at the outset from their applications which makes me wonder why the Federal Government did not, in this case with Mr. Rentrop and a prime contractor, because you recognized that some just would not work. Obviously they had not been in the business. It was obviously temporary.

Mr. DAVIS. Well, Senator, I have got an opinion and that is it is all based on money. In our case, we were doing a good job. We had carried 80 percent of the load of the cleanup and then they decided that what we were doing needed to be rebid. So, they set us off to the side for another set of contractors who would go to work. So, it is all based on money.

Chair LANDRIEU. But you were local in Joplin?

Mr. DAVIS. Yes, ma'am.

Chair LANDRIEU. They set you aside because you were either too big or they wanted to give other people an opportunity or what was it?

Mr. DAVIS. No. They said we were in violation of the Stafford Act, that we were an emergency response appointed to get in and get it done through Phillips Jordan, which was my prime contractor. And then, the Army Corps of Engineers came in and said that, because of the Stafford Act, they were required to rebid our project.

So, our portion of it came to a close and they brought new contractors in.

Chair LANDRIEU. I think I can understand that the Stafford Act may say in the early 30 or 60 days in an emergency you can issue contracts without bids, but at a certain point you have to bid the work.

You would understand that for protection of the taxpayer that the taxpayers do not want to over pay. They might have to initially but I think the idea is that you would have to bid the work. So when you rebid the work, you were not awarded the contract. Is that what you are saying?

Mr. DAVIS. Well, the type of contractor that Dale is talking about here were the people that were courting us, and it did not take very long after going on line and finding out their history to realize that I did not want anything to do with them.

I would not bid with them. I just quietly went off to the side.

Chair LANDRIEU. Okay. Dale, do you want to add anything?

Mr. RENTROP. Nothing I can think of. I think Sid covers it pretty well. You see that there is a climate of disaster chasers. Mr. Sid operates a business, and so do you. A lot of times we just do not have the time or even the wherewithal. The first time I had ever heard of a CCR was yesterday, and it kind of shocked somebody.

It is kind of hard because we are out there bidding projects and running tugs all over the southern United States and they are complicated just like yours is, and we do not know the opportunities are even there and even after.

But we really have to be careful who we work for. You know, there are a lot of predatory primes out there. This is my second one in two tries.

Senator SNOWE. Thank you.

Chair LANDRIEU. Thank you all so much. The meeting is adjourned and we appreciate it. The record will stay open for two weeks if anybody wants to submit any additional information. Thank you.

[Whereupon, at 12:05 p.m., the Committee was adjourned.]

APPENDIX MATERIAL SUBMITTED

United States Senate Committee on Small Business and Entrepreneurship
Hearing on September 15, 2011

"Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding Their Communities"

Questions for Albert B. Sligh, Jr., Associate Administrator
Mission Support Bureau, Federal Emergency Management Agency
U.S. Department of Homeland Security

Submitted by Chair Mary L. Landrieu

Question: In your testimony, you mention that FEMA often exceeds the 23 percent Federal contracting goal for small businesses. You also mention that FEMA has gotten better at working with local small businesses than it was following the 2005 hurricanes.

Please share some of the key actions your agency has taken to improve local small business contracting.

Which of these steps will most benefit small businesses looking to contract with FEMA after the 2011 disasters?

If small businesses in areas impacted by Irene are watching today, who should they contact to get involved in recovery in their communities?

Response: FEMA established its Industry Liaison Program (ILP) as one point of entry for those vendors interested in doing business with FEMA. This program was established following the 2005 hurricanes to engage with vendors on a daily basis, build strategic relationships with vendor-supporting industry partners and stakeholders, and connect vendors with FEMA programs as capabilities align with FEMA's mission. Since the ILP's inception, more than 35,000 industry inquires have been fielded spanning over 75 declared disasters. In the first two weeks of the 2011 Super Tornado Outbreak alone, the ILP fielded over 1,500 vendor inquiries. It is this resource that vendors can inquire about working with FEMA, meet with FEMA programs, and receive information and resources to assist vendors in preparing for Federal contracts.

Following Hurricane Katrina, Congress passed new legislation mandating the maximum use of local vendors following disasters, the Robert T. Stafford Disaster and Emergency Assistance Act (Stafford Act), Section 307 "Use of Local Firms and Individuals." In response to this new legislation that has the potential to greatly benefit small businesses, FEMA's Office of the Chief Procurement Officer established the Local Business Transition Team (LBTT) in 2008 to assist FEMA in achieving compliance with the Stafford Act. The LBTT's primary role in support of contracting efforts is to locate local vendors in the affected major disaster areas to facilitate the transition of FEMA national pre-positioned contracts, fulfill new requirements, and coordinate local business outreach

Question#:	1
Topic:	contracting goals
Hearing:	Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding their Communities
Primary:	The Honorable Mary L. Landrieu
Committee:	SMALL BUSINESS (SENATE)

activities and educational seminars that prepare vendors for contracting opportunities with FEMA. The LBTT staffing varies from a five to a 13-person team depending on the size and complexity of the major declared disasters. The LBTT can also be divided into two five-person teams in support of two or more concurrent major catastrophic events. This team also provides support virtually when team deployment is not warranted. In accordance with Federal Acquisition Regulation (FAR) 26.202-1(c) the contracting officer determines whether a local area set-aside should be further restricted to small business concerns in the set-aside area. FEMA will continue to maximize the use of small business set-asides in local set-aside areas. Efforts are in progress to strengthen the LBTT capabilities by hiring disaster assistance employees (DAEs) to increase outreach and local sourcing capabilities.

More efforts are being made to partner with state purchasing entities and the Procurement Technical Assistance Centers for local business sourcing and to aggressively pursue business outreach opportunities in an effort to strengthen the capabilities of small businesses. Policies have been developed that promote the use of local businesses in both the response and recovery phases where feasible and practicable. In every instance, small businesses and vendors of other socio-economic classifications within or surrounding the declared areas are given preference. FEMA will continue to improve its use of local small businesses in all disasters. Small businesses may contact the Industry Liaison Support Center at (202) 646-1895 or via email at FEMA-Industry@dhs.gov.

Question#:	2
Topic:	Stafford Act requirements
Hearing:	Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding their Communities
Primary:	The Honorable Mary L. Landrieu
Committee:	SMALL BUSINESS (SENATE)

Question: The Stafford Act requires Federal agencies to give contracting preferences to organizations, firms, and individuals doing business primarily in the area affected by a major disaster. I understand that there have been major reforms: both administrative and legislative to improve FEMA's disaster contracting with local small businesses.

Overall, the Federal government awarded 13 percent ($2.7 billion) of the total $20.5 billion in 2005 recovery contracts to Gulf Coast small businesses. How would you rate your agency's efforts in the Gulf Coast to contract with local small businesses for the 2005 hurricanes?

How has FEMA improved contracting efforts since the 2005 hurricanes? Can we see those reforms making a difference in Joplin and Alabama today?

Response: In 2007, FEMA established its Industry Liaison Program (ILP), within the Office of the Chief Procurement Officer, as one point of entry for those vendors interested in doing business with FEMA. The purpose of this program is to engage with vendors, build strategic relationships with vendor-supporting industry partners and stakeholders, and connect vendors with FEMA programs as capabilities align with FEMA's mission. Since the ILP's inception, more than 35,000 industry inquires have been fielded spanning over 75 declared disasters. In the first two weeks of the 2011 Super Tornado Outbreak, the ILP fielded over 1,500 vendor inquiries.

In 2008, the Local Business Transition Team (LBTT), the deployable component of ILP, was established in response to Section 307 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act with the primary responsibility of locating local vendors in the affected major disaster areas in an effort to facilitate the transition of FEMA national pre-positioned contracts, fulfill new requirements, and coordinate local business outreach activities and educational seminars. The LBTT staffing varies from a five to a 13-person team depending on the size and complexity of major declared disasters. The LBTT can also divide into two five-person teams in support of two or more concurrent major catastrophic events. This team also provides support virtually when team deployment is not warranted. In accordance with Federal Acquisition Regulation (FAR) 26.202-1(c) the contracting officer determines whether a local area set-aside should be further restricted to small business concerns in the set-aside area. FEMA will continue to maximize the use of small business set-asides in local set-aside areas.

Question#:	2
Topic:	Stafford Act requirements
Hearing:	Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding their Communities
Primary:	The Honorable Mary L. Landrieu
Committee:	SMALL BUSINESS (SENATE)

Contracting efforts have significantly improved since the 2005 hurricanes, and more remains to be done.
Examples of our contracting efforts since the 2005 hurricanes have been:

In response to Hurricanes Ike and Gustav:

1. Developed local business stakeholder networks with businesses, city and local government officials/entities and community organizations to identify local vendors.
2. Led, organized, and assisted in numerous educational seminars that crisscrossed over approximately 800 square miles of the state of Texas and 31 disaster declared counties.
3. Prepared local businesses to compete for solicitations by conducting *How to do Business with FEMA* and *How to Write Strong Proposals* seminars with local support and coordination to city councils, business councils, and the Procurement Technical Assistance Centers (PTACs), more than 919 attended FEMA-hosted business outreach educational seminars.
4. Assisted the JFO contracting staff in transitioning **$15 million** dollars to local Texas vendors.

FEMA's contracting efforts in AL and the entire southeast U.S. corridor were considerable, and success largely attributed to a "whole community approach".

- Awarded **$24.9 million** to 200 local small businesses covering six states (AL, GA, MS, NC, TN, and KY), representing 26.8 percent of disaster funding, a significant increase from the 2005 Gulf Coast effort.
- Awarded contracts within two hours of Presidential declarations to move life sustaining commodities to 20 million survivors who were geographically and regionally positioned through multiple states and counties.
- Established different business outreach concepts to progressively locate small businesses to assist FEMA in its efforts to help rebuild communities in the southeast.
- Conducted teleconference and town hall outreach meetings with local municipalities, non-profits, supplier minority development councils and state purchasing, small business administration, FEMA strategic partners distributors, commerce hubs by state and at the county level, private sector, PTACs, governor council on economic development, and academia institutions as part of the whole community approach to rebuilding communities. Partnering with the private

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Hearing:	Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding their Communities
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sector, state and federal entities helped FEMA solve the challenges of awarding contracts to local firms for disaster relief activities.

- Established strategic business partnerships with the state, federal and local government. Each state's purchasing director, private sector liaison and federal agency identified local resources and personnel to assist FEMA in locating small businesses by North American Industrial Classification Code (NAIC), Product Service Code (PSC) and geographic locations consistent with the disaster affected counties.
- Ensured that our federal partners under the National Response Framework (NRF) solicited and sourced major contracts to local small businesses within each state.
- Recognized efficiencies and coordinated resources allocation needs by vendor, counties, municipalities and state as part of a collaboration effort between all federal, state and local procurement professionals which resulted in a decrease in duplicate purchase requirements, estimated at $5.2 million of cost avoidance buys. FEMA's contracting team led the multi state-federal procurement team effort that consisted of over 20 acquisition professionals.

Local Small Business Award Initiative by State - 2011 Declarations

Disaster Number	State	Total Award Dollars	Local Small Business Awards Dollars	% of dollars to Local SB
1969	NC	$2,351,652	$1,399,086	59.5%
4019	NC	$16,371,403	$5,580,908	34.1%
1971	AL	$51,834,575	$11,485,366	22.2%
1972	MS	$6,851,590	$1,839,586	26.8%
1983	MS	$2,966,342	$1,886,377	63.6%
1974	TN	$1,954,645	$798,200	40.8%
1976	KY	$1,474,884	$575,437	39.0%
1979	KY	$516,487	$60,728	11.8%
1973	GA	$3,887,894	$587,597	15.1%
3327EM	NC	$4,088,907	$535,853	13.1%
4008	KY	$223,230	$26,466	11.9%
3319EM	AL	$431,532	$164,894	38.2%
Total		$92,953,141	$24,940,498	26.8%

Question#:	3
Topic:	Livingston Parish
Hearing:	Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding their Communities
Primary:	The Honorable Mary L. Landrieu
Committee:	SMALL BUSINESS (SENATE)

Question: Livingston Parish, a local government in Louisiana, claims that after Hurricane Gustav it removed millions of dollars of debris from its waterways. The parish claims that this work was done at FEMA's urging, under FEMA's supervision, and with FEMA's advance assurances that the work was eligible for Public Assistance. Now FEMA has said that the Parish never should have removed any of the debris – it was not a threat to anyone.

Is FEMA currently working with the parish to resolve this issue?

This parish also claims that it was not reimbursed by FEMA for removing millions of dollars worth of hazardous hanging limbs and trees after Gustav. FEMA has said it will not reimburse the parish for this work because there are not sufficient photos (before/after) of the limbs. For example, photos of the limbs in the tree before they were cut and on the ground afterwards next to a tape measure.

The parish is concerned that this requirement – which is not in the Stafford Act, FEMA's regulations, nor FEMA's guidance documents – came up after the fact as a condition of the reimbursement. Can you provide information if this requirement was established before or after work began on Gustav recovery in Livingston Parish?

I am concerned that the parish's administrative appeal has been pending at FEMA since February of this year. Will your agency report back to the committee with a status report on this appeal?

Please comment on the current administrative appeal process for FEMA Public Assistance and if consideration should be given to a similar arbitration alternative as was instituted for Katrina/Rita appeals.

Response: After Hurricane Gustav, Livingston Parish has received over ten million dollars for debris removal and management costs. This includes $2.7 million for the removal of 253 hazardous trees (leaners) and 17,653 hazardous limbs (hangers). The Applicant requested an additional $13,891,333 for the cost of removing 1,349 hazardous trees and 88,892 hazardous limbs. Based on a review of all of the documentation provided by the Applicant's contractor and the Applicant's debris monitor, FEMA found that the Applicant's contractor performed ineligible work to remove leaners and hangers, such as work on private property, the removal of dead trees, and the removal of unbroken

Question#:	3
Topic:	Livingston Parish
Hearing:	Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding their Communities
Primary:	The Honorable Mary L. Landrieu
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limbs. FEMA subsequently determined the work to be ineligible and denied the request for additional funding.

To determine eligibility, FEMA relied upon: photos, load tickets, monitors' daily notes, and two different validations. The Applicant's monitoring firm required and took photographs as a standard practice. The Applicant supplied approximately 120,000 photographs to FEMA with its initial documentation submittal (many of which depicted ineligible work). The monitoring firm's notes also documented ineligible work. The approved funding of $2.7 million was based on a sample validation conducted on the work. The first sample was conducted by FEMA and was based on a 20% sampling of documentation provided by the Applicant's debris monitoring contractor, as well as site verification by FEMA staff. FEMA determined that only 34% of the leaners and 16% of the hangers that the Applicant claimed were eligible. A second sample generated by the State resulted in a lower eligibility rate; however funding was based on the first (higher) validation, as it included the best information. Based on a thorough review of the Public Assistance Project Worksheet and all documentation, the additional $13,891,333 for removal of hazardous trees and limbs was denied on first and second appeal. The second appeal decision of January 6, 2012, is the Agency's final determination in this matter.

Livingston Parish has also submitted a second appeal for funding in the amount of $46 million for waterway debris removal. The first appeal determination denied this funding request because it was found that debris was removed from unimproved property where there was not a threat posed to public health and safety, environmental and historic preservation reviews were not conducted, and necessary permits for the work were not obtained from the U.S. Army Corps of Engineers. The second appeal for these projects is currently pending. The Applicant submitted a Freedom of Information Act (FOIA) request to FEMA asking for information it believes is pertinent to its appeal. FEMA is currently processing the request. The Applicant has indicated it may submit additional information to FEMA once it receives the requested documentation from FEMA.

Under FEMA regulations, all applicants have the ability to file two appeals on determinations made by FEMA as part of the Public Assistance Program. The first appeal is determined by the FEMA Regional Administrator, and the second by the Assistant Administrator for Recovery at FEMA Headquarters. At the request of the Parish, FEMA met with representatives of the Parish on the second appeal concerning hazardous trees and limbs. The Applicant has also requested such a meeting with FEMA regarding the waterways debris removal appeal. At the request of the Applicant, this meeting will take place after they submit any additional information once the request for

Question#:	3
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Hearing:	Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding their Communities
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additional documentation from FEMA is completed. The arbitration process was the result of Congressional action and applies only to Hurricanes Katrina and Rita.

Question#:	4
Topic:	Small Business Recovery
Hearing:	Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding their Communities
Primary:	The Honorable Mary L. Landrieu
Committee:	SMALL BUSINESS (SENATE)

Question: In your testimony, up to 40% of small businesses often fail to recover following a disaster. You indicate that this multiplies the disaster's crippling effect on the regional economy as businesses may miss out on local recovery contracts.

You mention the Ready Business Campaign in your testimony. Does this campaign have a specific focus on small business outreach?

Response: Yes, *Ready Business* targets small business: the goal of *Ready Business* is to raise the business community's awareness of the need for emergency planning and motivate businesses to take action. The campaign encourages business owners and managers to plan to stay in business, talk to their employees, and protect their investment.

The U.S. Department of Homeland Security and the Advertising Council launched the *Ready Business* campaign on September 23, 2004. This extension of Homeland Security's successful *Ready* campaign, which has helped millions of individuals and families prepare for emergencies, focuses on business preparedness. *Ready Business* helps owners and managers of small businesses prepare their employees, operations and assets in the event of an emergency.

- The terrorist attacks of 9-11 and more recently hurricanes Charley, Frances, and Ivan showed that disastrous events can paralyze business operations. Small to medium-sized businesses in particular are most vulnerable following a disaster. Having an emergency plan can help protect a company and maximize its potential for survival.

- Too few businesses are taking the necessary steps to prepare for emergencies. One of the key findings of the 9-11 Commission report was the need for the private sector to prepare for potential disasters. The report stated, "Private-sector preparedness is not a luxury; it is a cost of doing business in the post-9-11 world. It is ignored at a tremendous potential cost in lives, money, and national security."

Question#:	5
Topic:	alternative contracting methods
Hearing:	Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding their Communities
Primary:	The Honorable Mary L. Landrieu
Committee:	SMALL BUSINESS (SENATE)

Question: As I understand it, contracts for emergency work are executed directly by the agency responsible for the relevant Emergency Support Function as defined by the Stafford Act. The Army Corps, for example, is responsible for debris removal. The Corps will execute contracts with operators, justify expenses to FEMA, and then receive reimbursement for all eligible incurred expenses.

While I understand that the agencies have a good amount of discretion with how to bid out the contract (i.e. fixed, cubic yards, time and materials, etc.) my constituents report that some agencies, the Army Corps in particular, are inclined to structure top-heavy proposals that rely on the prime contractors to survey the damage, define the response, and allocate the work.

The Marine Debris Removal Program that removed storm debris and hazards to navigation in Louisiana waterways after the 2005 hurricanes offers a different model. This mission assignment was executed via Inter-Agency Agreement between FEMA and the Coast Guard. Once immediate threats were removed but before any long-term contracts were let, a joint team of FEMA, USCG, State and local officials surveyed the waterways and tagged eligible targets. The Coast Guard then broke the targets into small, medium and large categories and bid them out accordingly. Such an approach allowed more small businesses to compete, while dramatically reducing the total price tag. In August 2009, the Corps put out a solicitation for bids to clear a section of the Tangipahoa River. The estimated value of the work was $1-5 million. I understand the Coast Guard is currently awaiting FEMA funding for the final round of contracts, but they estimate it will cost just under $40,000 to clear this stretch of river.

Does FEMA evaluate or otherwise review the different contracting methods used by other Federal agencies and search for efficiencies?

Has FEMA evaluated the cost benefit ratio of a Federally-led survey before the awarding of non-imminent threat contracts?

How would you explain the significant cost difference between the Army Corps and Coast Guard estimates?

Response: In accordance with FAR Part 17.5, FEMA evaluates whether to use a contract or an Inter-Agency Agreement in fulfilling its requirements. However, FEMA also has

Question#:	5
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Primary:	The Honorable Mary L. Landrieu
Committee:	SMALL BUSINESS (SENATE)

authority under the Robert T. Stafford Disaster Relief and Emergency Assistance Act to issue Mission Assignments to other agencies. Under this authority, FEMA's Office of Response and Recovery assigns actions to specific Agencies, e.g., the U.S. Army Corps of Engineers or the Coast Guard. FEMA leaves it to each agency's discretion how to perform a mission assignment.

Question#:	6
Topic:	contract bundling
Hearing:	Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding their Communities
Primary:	The Honorable Mary L. Landrieu
Committee:	SMALL BUSINESS (SENATE)

Question: The Small Business Jobs Act of 2010 amends the Federal Acquisition Regulation (FAR) to establish a new Government-wide policy that limits contracting bundling to no more than $2 million unless consolidation is necessary and justified.

Has the definition contained in the law helped Federal agencies clearly identify bundling?

Has this provision resulted in agency justification or discouraged contract bundling (as intended)?

Are disaster recovery contracts likely to be exempted from this policy?

Response: Yes, the definition contained in the law has helped Federal agencies clearly identify bundling. FEMA, at the direction of the Department of Homeland Security (DHS), identifies contract bundling through the use of DHS Form 700-22 Small Business Review Form. For all open market procurements of $2.5 million or more (including those planned under a pre-existing contract vehicle – FSS, MAS, GSA etc.) DHS components must determine if the procurement meets the definition of a Bundled Contract in accordance with FAR Part 7.107 and 13 Code of Federal Regulations Part 125. 2(d)(1)(i). An analysis of FEMA contracts from FY2010 to FY 2012 to date revealed that none of FEMA contracts have met the definition of a bundled contract.

This provision has resulted in DHS components to either justify or discourage contract bundling. The DHS Form 700-22 compels contracting personnel to review procurements to determine whether a small business has the capability to perform a contract that might otherwise be bundled in an effort to support the agency's mission. If it is determined that procurements will be bundled, the DHS component contracting personnel must coordinate with the component Small Business Specialist and the Small Business Administration (SBA) Procurement Center Representative (PCR) to ensure that the bundled requirement satisfies the benefits analysis described in FAR 7.107(b).

United States Senate Committee on Small Business and Entrepreneurship
Hearing on September 15, 2011

"Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding Their Communities"

Questions for BG Theodore Harrison, Director, National Contractor Organization
U.S. Army Corp of Engineers

Submitted by Chair Mary L. Landrieu

CHARRTS No.: SSB-01-001
Hearing Date: September 15, 2011
Committee: SSB
Member: Senator Landrieu
Witness: BRIG GEN Harrison
Question: #1

GAO Findings

Question: As indicated today, GAO reported in July 2010 that the Corps was unable to demonstrate compliance with monitoring subcontracting plans for 11 of 29 (38 percent) Corps construction contracts having subcontracting plans. I am concerned about this finding as we consistently hear complaints from subcontractors regarding different actions of prime contractors: non-payment, late payment, and changing terms of contracts after the fact. You indicated in your testimony that the Corps should have done a better job on holding prime contractors accountable for meeting subcontracting goals. I understand the agency, under your direction, is now working to address this recommendation.
- When do you expect this recommendation to be fully addressed?

Answer: USACE will continue to improve in the area of subcontracting compliance. The USACE Commander recently directed an Internal Management Review of our compliance and improvements in this area. The Internal Review report is expected to be released Summer 2012. In addition, we appointed a Subcontracting Program Manager to provide command-wide oversight. With the appointment of a Subcontracting Program Manager and increased focus on eSRS, we look to address any issues that are identified in the Internal Review report and through our own Procurement Management Reviews to ensure excellence in subcontracting oversight and management. Processes are currently in place to address all issues.

CHARRTS No.: SSB-01-002
Hearing Date: September 15, 2011
Committee: SSB
Member: Senator Landrieu
Witness: BRIG GEN Harrison
Question: #2

Subcontracting

Question: In your testimony, you mention that the Corps' reporting requirements for prime contractors to report their subcontracting efforts have greatly improved since the implementation of the Electronic Subcontracting Reporting System. However, we will hear from witnesses on our second panel that many subcontractors still feel like the process is broken.

- Is it a generally accepted practice to require prime contractors to certify that it has paid its subcontractors?
  * If not, please explain why not.

Answer: Generally, the U.S. Army Corps of Engineer contracts are construction contracts which do customarily require certifications from a prime that it has paid its subcontractors. Construction contracts awarded under the Federal Acquisition Regulations include clauses 52.232-5, Payments under Fixed Price Construction Contracts and 52.232-37, Prompt Payment for Construction Contracts. These clauses require the contractor to list the amounts of all of its subcontracts and how much each subcontractor performed during the payment interval. They also require the contractor to document if any amount was withheld from a subcontractor.

Furthermore, FAR clause 52.232-5, also requires the contractor to certify that all subcontractors have been fully paid or shall be timely paid as in accordance with their subcontracts, or that prime contractor will not be paid that applicable amount by the U.S. government. These clauses also require similar provisions be included as flow down to all subcontracting tiers.

CHARRTS No.: SSB-01-003
Hearing Date: September 15, 2011
Committee: SSB
Member: Senator Landrieu
Witness: BRIG GEN Harrison
Question: #3

Subcontracting

Question: You mention that 'privity of contract' prevents the Corps from monitoring lower-tiered 'unscrupulous subcontractors.' As I have indicated, small businesses report difficulties receiving timely payment on Federal disaster work and then are unable to discuss the matter directly with the contracting agency.

- What safeguards are in place to protect small businesses from being the casualty of a

dispute between the prime contractor and a Federal agency?

* What protections are in place or could be established (within existing authority) to ensure small business owners are paid for the work they do on disaster contracts?

- Can you provide the Committee with any feedback on how Congress or the Corps may cut down on incidents of primes not paying their subcontractors?

Answer: The Government's privity of contract is with the prime contractor. In general, any dispute between a prime contractor and subcontractor is handled privately and in accordance with the terms and conditions of that subcontract. However, there are some limited measures and provisions provided within the Federal Acquisition Regulation to assist in subcontractors being properly paid by the prime contractor. Some of these provisions are the following: Prime construction contractors are required to certify that they have paid subcontractors in order to be paid themselves for that effort per FAR clause 52.232-5. Prime contract clauses also require various provisions to be included in and as flowdown to subcontracts at all tiers. For example, the clause 52.232-27 -- Prompt Payment for Construction Contracts, requires a prime contractor to insert in all subcontracts a payment and interest penalty provision for non-payment that is substantially similar to the provisions in this clause. Thus, any delay in payment to a subcontractor requires it to pay that subcontractor an interest penalty.

Subcontractors may be provided any information on whether a prime contractor has submitted a pay request or received final payment, when requested of the Contracting Officer. Contracting Officers can, in a few limited cases, withhold progress payments to a prime if a subcontractor notifies the Contracting Officer that they are not being paid, this allegation is verified, and the payment clause in the contract permits the withholding of progress payments. The Contracting Officer is also required to refer the matter to proper authorities, for example, the suspension and debarment authorities. With construction contracts awarded within the United States, the Davis Bacon Act and FAR Part 22 implementing that statute, permit the Contracting Officer and/or Department of Labor to investigate whether there are any labor violations, such as non-payment or underpayment of workers. If the Contracting Officer or the Department of Labor suspect a violation exists, such that contractor workers are not properly paid, the Contracting Officer is required to withhold payment under the contract and shall also assess and collect liquidated damages. Similarly, under the Service Contract Act and FAR Part 22, the Contracting Officer may also withhold payments from the prime contractor for any unpaid or underpaid workers and place the funds in an account for the Department of Labor to distribute to the workers. Finally, one of the primary tools used to incentivize prime contractors to follow accepted practices and pay their subcontractors in a timely manner is with the contractor performance assessments. Management of subcontractors is a major factor evaluated and prime contractors may receive a lower to unsatisfactory rating for overall management practices which can affect future contract awards.

These are a few examples of some of the FAR provisions available to assist subcontractors in receiving proper and timely payment, however these provisions are limited and it must be emphasized that, in general, disputes between the prime and

subcontractors must be privately handled in accordance with their own contract terms and conditions.

CHARRTS No.: SSB-01-004
Hearing Date: September 15, 2011
Committee: SSB
Member: Senator Landrieu
Witness: BRIG GEN Harrison
Question: #4

DoD Memorandum

Question: On August 24, 2011, Secretary Panetta issued a memorandum emphasizing the importance of contracting with small businesses.

- How has the issuance of Secretary Panetta's memorandum affected the Corps' disaster contracting activities?

Answer: Secretary Panetta's August 24, 2011 memo had a positive affect on the Corps. His memo was an excellent reminder to consider small businesses for the remainder of fiscal year 2011 to achieve the DoD goal of 22.3 percent of contact awards to small businesses. USACE achieved 42 percent, awarding contracts to small businesses for disaster contracting activities and other critical missions throughout the year.

CHARRTS No.: SSB-01-005
Hearing Date: September 15, 2011
Committee: SSB
Member: Senator Landrieu
Witness: BRIG GEN Harrison
Question: #5

DoD Memorandum

Question: On August 24, 2011, Secretary Panetta issued a memorandum emphasizing the importance of contracting with small businesses.

- What impacts would you anticipate going forward?

Answer: Secretary Panetta's August 24, 2011 memo will have a significant impact as we move forward with considering small businesses for contract opportunities in the coming years. The increased focus from the Secretary of Defense regarding the value and importance of small businesses, and their role in leading the Nation in innovation will encourage DoD decision makers to identify opportunities to increase contracting with small businesses.

CHARRTS No.: SSB-01-006
Hearing Date: September 15, 2011
Committee: SSB
Member: Senator Landrieu
Witness: BRIG GEN Harrison
Question: #6

Alabama Contracting

Question: In your testimony, you mention that the Corps has been unable to replicate its impressive Joplin, Missouri contracting numbers in Alabama (after recent tornadoes). You attribute this scenario to the "state-wide geographically dispersed" wreckage.

- Since Hurricane Irene ploughed through states from North Carolina to Vermont, should we expect a similar situation: large prime contractors coordinating through a group of local small businesses?

Answer: For widespread geographically dispersed disaster situations, it is often determined that the most timely response can be best managed most effectively by a large business USACE Advanced Contracting Initiative (ACI) contractor. Each large business ACI contractor has contractual requirements to utilize small businesses to the maximum extent practicable and they are required to submit a Subcontracting Plan for Contracting Officer approval. Large business ACI contractors Subcontracting Plans are reviewed at least semi-annually to verify actual performance with their planned performance. This administration effort with review of the Subcontracting Plan is enforced by each Contracting Officer.

CHARRTS No.: SSB-01-007
Hearing Date: September 15, 2011
Committee: SSB
Member: Senator Landrieu
Witness: BRIG GEN Harrison
Question: #7

Corps Contracting Goals

Question: In your testimony, you mention that the Corps has exceeded the 23 percent Federal requirement for small business contracting in Joplin, Missouri. For this disaster, 45 percent of total recovery dollars went directly to small businesses - 70 percent of which are local small businesses.

- Is this success something that we can expect to see after Hurricane Irene or future disasters?

Answer: Yes, the Corps will continue to include small businesses to the maximum extent practicable and will strive to reach the same level of success.

CHARRTS No.: SSB-01-008
Hearing Date: September 15, 2011
Committee: SSB
Member: Senator Landrieu
Witness: BRIG GEN Harrison
Question: #8

Corps Contracting Goals

Question: In your testimony, you mention that the Corps has exceeded the 23 percent Federal requirement for small business contracting in Joplin, Missouri. For this disaster, 45 percent of total recovery dollars went directly to small businesses - 70 percent of which are local small businesses.

- Do you have information on how the Corps did after the 2005 hurricanes? If not, please submit for the Record.

Answer: Data the Corps compiled of small business subcontracting during the period of September 2005 through March 2007 shows that small businesses have played an important role in the Corps' Gulf region recovery efforts. As of March 28, 2007, 88 percent of all subcontracted dollars went to approximately 781 small businesses in Louisiana and 84 percent to 909 small businesses in Mississippi. Small businesses performed extensive debris removal work, roofing, un-watering, and quality assurance tasks, as well as reestablishment, construction or repair of critical public facilities.

CHARRTS No.: SSB-01-009
Hearing Date: September 15, 2011
Committee: SSB
Member: Senator Landrieu
Witness: BRIG GEN Harrison
Question: #9

Corps Contracting Goals

Question: In your testimony, you mention that the Corps has exceeded the 23 percent Federal requirement for small business contracting in Joplin, Missouri. For this disaster, 45 percent of total recovery dollars went directly to small businesses - 70 percent of which are local small businesses.

- Are higher ratios generally easier to attain in rural or urban areas?

Answer: Small businesses are located throughout both rural and urban areas and location does not have any particular bearing on the ability for the U.S. Army Corps of Engineers (USACE) contracting offices to exceed small business goals. Contract requirements vary with regards to the region or area. For each procurement market research is conducted, which when analyzed, can allow for small business to participate to the maximum extent practicable.

CHARRTS No.: SSB-01-010
Hearing Date: September 15, 2011
Committee: SSB
Member: Senator Landrieu
Witness: BRIG GEN Harrison
Question: #10

Alabama Debris Removal

Question: I understand from recent reports that the 60 tornadoes that hit Alabama on April 27th left rubble across the state, that if piled up, would be the size of 10 million washing machines. This is expected to be the biggest expense in cleanup down there and the rates charged by the Corps of Engineers (handling half of the debris work in the state) will be a significant factor in the cost. According to news reports, the Corps has averaged $46 a cubic yard in Alabama. Local governments that hired private contractors paid significantly less - Calhoun County for example paid less than $11 per cubic yard even though it hired three contractors to do the work or monitor and manage it. The options presented to local governments after a disaster are either: 1) Go with the Corps and likely face higher rates (but just pay their share after work is complete) or 2) Hire private contractors and likely get lower rates (but pay full costs upfront and grapple with FEMA to get reimbursed).

- What are the Corps' rates for debris removal in each of the states declared a disaster by Hurricane Irene?

Answer: Each disaster recovery mission is unique and will require varying services by the U.S. Army Corps of Engineers as tasked by the Federal Emergency Management Agency. To date the U.S. Army Corps of Engineers has not been tasked to provide Debris Removal support to areas impacted by Hurricane Irene.

CHARRTS No.: SSB-01-011
Hearing Date: September 15, 2011
Committee: SSB
Member: Senator Landrieu
Witness: BRIG GEN Harrison
Question: #11

Alabama Debris Removal

Question: I understand from recent reports that the 60 tornadoes that hit Alabama on April 27th left rubble across the state, that if piled up, would be the size of 10 million washing machines. This is expected to be the biggest expense in cleanup down there and the rates charged by the Corps of Engineers (handling half of the debris work in the state) will be a significant factor in the cost. According to news reports, the Corps has averaged $46 a cubic yard in Alabama. Local governments that hired private contractors paid significantly less - Calhoun County for example paid less than $11 per cubic yard even though it hired three contractors to do the work or monitor and manage it. The options presented to local governments after a disaster are either: 1) Go with the Corps and likely face higher rates (but just pay their share after work is complete)

or 2) Hire private contractors and likely get lower rates (but pay full costs upfront and grapple with FEMA to get reimbursed).

- Can you outline why the rates for the Corps are significantly higher than those for local governments hiring private contractors?

Answer: The U.S. Army Corps of Engineers rate for disaster debris removal and recovery efforts can vary depending on the degree of the disaster. The final cost for debris removal is affected by a number of factors, including the quantity and types of debris, difficulty in getting to and removing the debris, distance to landfills, and other factors. The USACE disaster debris removal and recovery rate is best described as follows: when FEMA tasks USACE as its federal agent for debris removal following a disaster, USACE serves as a one-stop-shop debris service in support of FEMA, the affected state, and eligible localities. The services provided by USACE that I will outline are figured into USACE's rates, to the benefit of allowing state and local governments to not include those costs in their rates.

The cost per-cubic-yard for USACE disaster debris removal and recovery consists of a comprehensive service package that includes no upfront cost to localities as FEMA funds USACE to pay contractors for debris mission execution and any cost-share requirements are billed back to the state and localities by FEMA after final accounting. USACE's services provide state and local governments the following seven benefits; first, contractors that are fully bonded and insured to government standards; second, contractors with USACE approved debris operations plan and safety management plans; third, trained contractor Quality Control personnel required at each work site; fourth daily oversight and management of contractor performance to confirm quality, enforce safety standards, ensure environmental regulations such as NEPA are followed; fifth, debris segregation to ensure debris is properly handled, treated, transported to appropriate landfills, and fees for debris pick up, hauling, and landfill tipping; sixth, USACE debris reduction site operation and assurance that any interim debris staging sites will be cleared of debris, cleaned of any hazardous materials, and returned to the pre-staging state; and, seventh, electronic automated ticketing to track and verify every load of debris from point-of-collection to point-of-disposal, which significantly reduces the time and number of personnel required compared to a manual ticketing process. Finally, the USACE rate also incorporates the requirement for contractor's to pay federal wage rates.

In addition to the comprehensive package of services required to execute the debris mission that are included in the final per-cubic-yard costs that USACE provides to FEMA upon mission completion, USACE also performs a number of other management and oversight functions that are not included in the debris mission cost. These services include providing technical expertise and experience in responding to major disasters, mission management, debris contract development, advertising, award and administration, accounting management which includes receipt of FEMA funds, interim and final tracking and reconciliation, disbursement of contract payments, and required travel payments, outreach to affected localities, and internal review audit services to protect against fraud, waste and abuse.

CHARRTS No.: SSB-01-012
Hearing Date: September 15, 2011
Committee: SSB
Member: Senator Landrieu
Witness: BRIG GEN Harrison
Question: #12

Electronic Subcontracting Reporting System

Question: Since the 2005 hurricanes, your agency has continued to transition to the Electronic Subcontracting Reporting System (eSRS) for reporting of subcontracting accomplishments by prime contractors. - How is your agency using this tool to improve oversight of subcontracting requirements?

Answer: The USACE Chief of Small Business Programs appointed a Program Manager for Subcontracting Compliance and Reporting. The duties include review and management of eSRS reporting, and oversight on whether or not prime contractors report and achieve the subcontracting goals identified for their contracts. Our increased focus and management of eSRS has resulted in reducing overdue subcontracting report acceptance by 98 percent.

CHARRTS No.: SSB-01-013
Hearing Date: September 15, 2011
Committee: SSB
Member: Senator Landrieu
Witness: BRIG GEN Harrison
Question: #13

Contract Bundling

Question: The Small Business Jobs Act of 2010 amends the Federal Acquisition Regulation (FAR) to establish a new Government-wide policy that limits contracting bundling to no more than $2 million unless consolidation is necessary and justified.

- Has the definition contained in the law helped Federal agencies clearly identify bundling?
- Has this provision resulted in agency justification or discouraged contract bundling (as intended)?
- Are disaster recovery contracts likely to be exempted from this policy?

Answer: Yes, the definition for 'consolidation of contract requirements' contained in the law could lead Federal agencies to more clearly identify bundling. However, 'bundling' is not specifically defined in the law. The US Army Corps of Engineers (USACE) has consistently justified contract consolidations, and discourages bundling of procurements. USACE awards disaster recovery contracts in advance of disasters through normal contracting procedures, and these contract are not likely to be exempted from the policy. However, urgent and compelling requirements for disaster recovery (procured under FAR Part 6) are likely to be exempt.

United States Senate Committee on Small Business and Entrepreneurship
Hearing on September 15, 2011

"Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding Their Communities"

Questions for Bill Woods, U.S. Government Accountability Office
Submitted by Chair Mary L. Landrieu

Question #1 – GAO Findings

As indicated today, GAO reported in July 2010 that the Corps was unable to demonstrate compliance with monitoring subcontracting plans for 11 of 29 (38 percent) Corps construction contracts having subcontracting plans. I am concerned about this finding as we consistently hear complaints from subcontractors regarding different actions of prime contractors: non-payment, late payment, and changing terms of contracts after the fact. Brigadier General Ted Harrison testified before my Committee with you on September 15, 2011 and indicated that the Corps should have done a better job on holding prime contractors accountable for meeting subcontracting goals. I understand the agency is now working to address this recommendation.

- When do you expect the GAO's recommendation to be fully addressed?

Response: According to the Corps, the agency's Office of Internal Review has undertaken a comprehensive review of the Corps Subcontracting Program to validate compliance with program objectives and determine the extent to which the Corps holds prime contractors accountable for meeting subcontracting goals. The report including any related findings was to be completed by January 2012. We plan to assess the Corps' progress in addressing our recommendation based on our review of the report findings.

- These 11 contracts were 38 percent of the 29 Corps contracts you reviewed. Do you have specific dollar amounts on how much these 11 contracts were worth?

Response: Between fiscal years 2005 and 2009, the Corps obligated about $228.5 million under the 11 contracts.

- Please also elaborate on the actions that the Corps is undertaking to address GAO's recommendation.

Response: According to the Corps, the agency's Office of Internal Review has undertaken a comprehensive review of the Corps Subcontracting Program to validate compliance with program objectives and determine the extent to which the Corps holds prime contractors accountable for meeting subcontracting goals. The report including any related findings was to be completed by January 2012. We plan to assess the Corps' progress in addressing our recommendation based on our review of the report findings.

Question #2 – Breakdown of 2010 Hurricane Data

Your testimony indicates that Federal agencies awarded a total of $20.5 billion in prime contracts for hurricane recovery.

- How does that break down for the four agencies that you reviewed in the 2010 report?

Response: DHS-$9.5 billion, Corps-$4.5 billion, DOD (excluding Corps)-$4.1 billion, GSA-$1.0 billion, all other agencies-$1.4 billion.

Question #3 – Contract Bundling

The Small Business Jobs Act of 2010 amends the Federal Acquisition Regulation (FAR) to establish a new Government-wide policy that limits contracting bundling to no more than $2 million unless consolidation is necessary and justified.

- Has the definition contained in the law helped Federal agencies clearly identify bundling?
- Has this provision resulted in agency justification or discouraged contract bundling (as intended)?
- Are disaster recovery contracts likely to be exempted from this policy?

Response: With respect to the questions on bundling, the Government Accountability Office has not reviewed the issue of bundling since the enactment of the Small Business Jobs Act on September 27, 2010. We therefore are not in a position to address the effectiveness of any actions taken to implement the provisions of the legislation. Recently, however, the conference report on the National Defense Authorization Act for Fiscal Year 2012, House Rep. No. 112-329, directed GAO to review compliance by the Department of Defense, the federal government's largest contracting agency, with provisions of law addressing contract consolidation and bundling. The conference report specifically mentions the Small Business Jobs Act as one of the relevant laws in this area. We anticipate that our review will focus on the definitions, justifications, and coverage of the Act and the implementing regulations and guidance. We will ensure that the Committee receives a copy of our report as soon as it is available.

United States Senate Committee on Small Business and Entrepreneurship
Hearing on September 15, 2011

"Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding Their Communities"

Questions for Dale Rentrop, Tiger Tugz, LLC
Submitted by Chair Mary L. Landrieu

Question #1 – Subcontracting Issues
We had a good mix of subcontractors, a prime contractor, and a Procurement Technical Assistance Center (PTAC) manager participate in our second panel at our hearing on September 15, 2011. The Small Business Committee appreciated hearing your troubling story as a small business owner with several years experience in obtaining subcontracts with Federal prime contractors since Hurricane Katrina.

- Can you each briefly outline the top issue you see for businesses subcontracting with the Federal government and how it might be addressed?

Answer: The top issue for subcontractors with the Federal Government is the "fact" that the Federal Government contracts only with a "Prime Contractor". The prime contractor then hires various subcontractors who then may or may not hire other tier contractors. The Federal Government does not provide oversight regarding the dealing of the prime. The primes that the Govt. contracts with are not properly vetted and they, in some cases, do not pay the lower tiered subs. The Govt. contractually removes their responsibility from the payment process regarding payment of other subs.

The issue can simply be address by requiring a "double signature" payment arrangement or the prime will only be paid when they provide proof of payment to tiered subcontactors.

Question #2 – Subcontracting Issues
In your testimony, you mention that you have had two really difficult experiences as a subcontractor for the Corps of Engineers. I understand that you have had trouble receiving payment from prime contractors.

- What have you learned from your troubling contracting experiences that would better prepare you in the future when considering work with prime contractors?

  Answer: I have learned not to trust any prime contractor while on government contracts. I will require prepayment for all work provided to primes working for the govt. I will also elevate my pricing structure to allow for payment of all of the attorneys I will have to hire subsequent to performing on a govt. contract. The prior statement means basically that I can never participate in government contracting again because all of the aforementioned requirements will not be acceptable to any prime.

- What sort of advice would you offer small businesses on the subcontracting process?

Answer: Run far away. There is not enough due diligence a small business owner can perform to protect itself from the contracting process and from the attorneys paid by the prime. The government subcontracting process will destroy your company and bankrupt you personally. GO USA!!

Question #3 – Family Businesses

You are a second generation tug boat operator. You are working in the family industry. As a business owner that has longstanding ties to the community and is responsible for employees in disaster impacted areas, you have an added incentive to assist in disaster recovery efforts.

- What are some issues that family-owned businesses face after a disaster that might be different from other local small businesses?

  Answer: All people and business' face the same type of recovery process. It hurts but the south Louisiana people are resilient. Family and friends take care of each other during times of crisis.

  The main crisis for small businesses is when they decide to help "the people" by contracting with the federal government to repair or restore infrastructure and don't get paid for services.....by our own government because of contractual noncense and crooks and cheats.

Question # 4 – Federal Agencies

I am interested to get your feedback on which agency has been the best to work with and which, unfortunately, has been the worst agency to contact with as a small business.

- Which agency has been the best agency to work with? Don't know....haven't found one yet.

- Which agency has been the most problematic to work with?

Answer: UNITED STATES ARMY CORPS OF ENGINEERS, NEW ORLEANS GROUP AND THEIR CONTRACTING OFFICERS AND THE PRIME CONTRACTORS THEY CHOOSE TO DO BUSINESS WITH. I'VE WORKED WITH TWO (2) SEPARATE PRIMES ON TWO (2) DIFFERENT PROJECTS AND HAVEN'T GOTTEN PAID BY EITHER ONE.

- Please explain the pros and cons of the best and worst agencies.

Answer: I cannot provide pros for any agency as I haven't realized one yet. I believe that I have briefly provided the cons in my answers above.

PS. Please help me and my company get paid. All we are getting from the Corps is delays and excuses. The prime is not responding the Corps requests for settlement discussions. The settlement process is a laughable joke disguised as professional due diligence. Thank you

Senator Landrieu for helping fight the good fight. We wouldn't be where we are now without your kind assistance. God Bless.

United States Senate Committee on Small Business and Entrepreneurship
Hearing on September 15, 2011

"Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding Their Communities"

Questions for Terri Bennett, Heartland Procurement Technical Assistance Center
Submitted by Chair Mary L. Landrieu

Question #1 – Subcontracting Issues
We had a good mix of both subcontractors and a prime contractor our second panel at our hearing on September 15, 2011. In your position as the program manager of the Heartland Procurement Technical Assistance Center (PTAC) in Joplin, Missouri, you regularly assist both types of businesses with Federal contracts.

- Can you each briefly outline the top issue you see for businesses subcontracting with the Federal Government and how it might be addressed?

Response: The issues encountered by PTAC clients are as diverse as our clientele. However, one recent change has negatively impacted the HUBZone small business program which in turn has had a dramatic effect on nearly 3,400 small business contractors. This change will also impact many prime contractors who have been using these companies to meet the requirements of their subcontracting plans. The solution to this problem seems simple enough but inaction in Congress has prevented the solution from being realized.

Background
The Historically Underutilized Business Zones (HUBZone) Empowerment Contracting program was enacted into law as part of the Small Business Reauthorization Act of 1997. This program encourages economic development in historically underutilized business zones by providing preferences in government contracting to small businesses located within the areas designated as a HUBZone and employing personnel who reside within the HUBZone areas. Congress established a Federal Government-wide contracting goal requiring 3% of all contracts to be issued to HUBZone certified small businesses.

The determination that an area is a HUBZone is made through information gathered during the Census. An area can be designated as a HUBZone in several ways. The two traditional categories are Metropolitan Area Census Tracts and Non-Metropolitan Counties. In order for a Metropolitan Area Census Tract to be designated as a HUBZone it must be a Qualified Census Tract that meets the test for Low Income Housing Tax Credit (HUD). For a Non-Metropolitan County to be designated as a HUBZone it requires that the median household income for that county is less than 80% of the non-metropolitan state level AND the county must have an unemployment rate that is at least 140% of the state-wide unemployment rate or the U.S. average unemployment rate, whichever is less.

Numerous areas which had been designated as HUBZone in 1997 when the program began were no longer qualified as HUBZone based on the 2000 Census Data. In 2001, legislation was passed to provide an automatic extension "for a 3 year period following the date on which the

census tract or non-metropolitan county ceases to be qualified". These areas were called "re-designated areas".

In 2004 and 2007, additional legislation was passed to extend the eligibility of the re-designated areas for 3 years or the first public release of the 2010 Census Data, whichever is later, which was the first public release of 2010 Census Data.

On October 1, 2011, the first public release of 2010 census data was released. Within this release was the Non-Metropolitan County designations for the HUBZone determination. However, this first release did not include the HUBZone Determination for Metropolitan Area Census Tracts.

Current Issue

Any small business that has been HUBZone certified in a re-designated area must now decertify. This decertification is expected to impact approximately 3,400 of the 8,400 HUBZone certified small businesses. On a dollar basis these companies account for 32% of all new FY2010 HUBZone set aside contract dollars and held nearly $1 Billion in Federal contracts. This could potentially cause a tremendous financial impact to these companies in lost contracting opportunities. It will also greatly impact the Federal Government's ability to meet its HUBZone contracting goal of 3%, a goal that the Federal Government has never been able to meet.

Equally frustrating to many of the small businesses is that they could potentially still be eligible for HUBZone certification. Many of these areas that were "re-designated" in 2001 have since been determined as Metropolitan Areas per the definition in the 2010 Census. However, the 2010 Census release which will include the HUBZone designations for Metropolitan Area Qualified Census Tracts is not expected to be released for another 12 months. In the meantime, these small businesses are being required to decertify and are told that upon release of the qualified census tract information next year they can then reapply for certification. This seems to be a large waste of both industry and governmental resources.

Solution

Legislation has been introduced in both the House and Senate that would virtually accomplish the same thing. These Bills are aimed at extending the "re-designated" areas eligibility until the release of the qualified census tract information expected in January of 2013.

We thank Chair Landrieu and Ranking Member Snowe for introducing their Bill in the Senate which was passed unanimously. Unfortunately, the Bill appears to have been stalled in House where it has yet to be discussed in the Committee on Small Business. The House Bill H.R. 2131 also appears to have stalled in committee as well, even though it currently has 58 cosponsors.

In these trying economic times we need Washington to understand the impact that this piece of legislation has on thousands of small businesses and their communities across the country. We recently heard from an economic development leader in Linn County Kansas. Linn County was a "re-designated area" that has since been incorporated in the Kansas City Metropolitan Area by the 2010 Census Data. They have lost their HUBZone designation, but in reviewing the current area statistics anticipate being a HUBZone area again when the qualified census tract data is

released next year. They are struggling to continue to attract new companies to their area because they can no longer market their community as a HUBZone. This is costing their community potential new jobs and may possibly cause them to lose jobs they already have as the HUBZone companies in that community can no longer participate in HUBZone set-aside procurements.

We thank you and your fellow Senators for their action to correct this issue. But it remains vitally important for you to continue to persuade your counterparts in the House to take similar action.

Question #2 – Contracting Issues

While you cite numerous examples of good coordination and success stories, you do note that there are areas in need of further improvement. For example, you reference that many Federal disaster solicitations are far too large, diverse and complex for small businesses to address alone. You also mention the very short turn-around time which makes teaming of businesses all but impossible. Lastly, some major contracts are awarded only to be cancelled a short time later. I agree with you that all of these issues are significant barriers to small businesses seeking Federal disaster contracts.

- Are there any specific recommendations that you can provide that may help Federal agencies address some of these issues?

Response: The Stafford Act's local preference is a great start in getting local businesses involved in Federal disaster contracts. However, in many disaster scenarios the necessity for a quick action (which results in contract bundling) will take precedence over the use of small business contractors. When it is deemed necessary to award large complex contracts the local preference is usually dictated by the Stafford Act and implemented into procurements by the use of FAR 52.226-3, 52.266-4, or 52.226-6. However, this local preference should also be a requirement in the prime contractor's subcontracting plan. This could be accomplished in one of several ways. It could be done by creating a "goal" for the prime to subcontract x% of the contract to local subcontractors as is similarly done for WOSB, SDVOSB, and HUBZone certified subcontractors. Or it could be handled by simply requiring the prime contractor to follow the Stafford Acts preference for local contracting when awarding subcontracts under their prime contract. By flowing down the Stafford Act requirements to the prime contractors the Federal Government can still award the large complex contracts quickly to avoid unnecessary delays in action but still make the success of local small businesses a priority. The requirement for subcontracting is already addressed in FAR Clause 52.219-8 and 52.219-9. By adding additional Alternate Sections to these two clauses which would be applicable to Federal disaster contracts only, the local preference could be made part of the subcontract plan requirements for prime contractors.

Question # 3 – Federal-Local Coordination

I was particularly impressed by the story in your testimony in which the Corps called you at noon, you contacted a number of clients, and one was awarded a $492,000 contract that afternoon. That seems to be a great example of how Federal agencies can work through local resources to more quickly get contracts to local firms.

- You have been with your PTAC since 1994. Has this level of coordination always existed between Federal agencies and PTACs or has it improved, in your view, in recent years?

Response: No, I don't believe it has always been in existence (and still isn't in some cases). Therefore, I feel it has improved. However, this depends partially on the relationship between a PTAC and the contracting officers, which can simply mean that the contracting officer is aware of the PTAC. PTACs do everything they can to make the various Federal procurement offices and personnel aware of their existence and what they are capable of providing to them in terms of the Federal Government finding and working with small businesses within the local areas. But many times the contracting officers are not aware of the local PTAC, especially when the agencies must increase personnel by bringing in contracting officers from other areas to handle disasters. Although PTACs across the nation have made great strides in getting the word out concerning their existence and capabilities, there are still times when Federal personnel are not aware of the PTACs and how the PTACs can assist them by assisting businesses.

- Can you recommend additional ways to further improve coordination between groups such as PTACs and Federal agencies on disaster contracting?

Response: I would recommend the government procurement offices/agencies develop a policy, a guideline or a requirement of contacting the local PTAC as part of their market research when they attempt to locate and contract with businesses in a disaster area, in particular. As I previously stated a PTAC knows the businesses within its own service area and the Federal Government should take advantage of it.

In addition, if the PTAC is unaware of a business in which the Federal Government wants to contract, the PTAC is the perfect resource to train the business and get them up to speed as quickly as possible to contract with the government. For instance, contracting officers should not have to spend their time getting a business into the Central Contractor Registration (CCR) when that is exactly one of the many services a PTAC provides to businesses.

Question # 4 – Federal Agencies

You have worked with many Federal agencies – both on disaster and other contracts. I am interested to get your feedback on which agency has been the best to work with and which, unfortunately, has been the worst agency to contact with as a small business.

- Which agency has been the best agency to work with?

- Which agency has been the most problematic to work with?

- Please explain the pros and cons of the best and worst agencies.

Response: It is really difficult to determine a best and worst agency as we believe that all agencies, overall, have the policies and procedures in place necessary to successfully develop and maintain great working relationships with small businesses. However, we do see a major difference within an agency as far as each individual's willingness and efforts to work with small

businesses, especially small businesses that are new to Federal contracting or even new to contracting with that particular agency.

There are many great examples of Federal employees who do a fantastic job of working with and welcoming small businesses and their participation in the contracting process. One of these many examples would be McConnell AFB located in Wichita, Kansas. Dennis Fry, Director of Contracting for the 22nd Refueling Wing, will personally meet with small businesses interested in pursuing contract opportunities at McConnell. During these meetings he listens intently as the small business presents information on their capabilities. He goes on to explain the contracting process at McConnell and the various ways the company could become involved. He will also refer any small business that is new to government contracting back to the PTAC for further assistance. These meetings are educational to both parties and truly appreciated by the small businesses.

I would like to be able to say that all Federal contracting personnel are as thoughtful and diligent in their approach to small business contracting as Dennis Fry and McConnell AFB. Unfortunately, that is not the case. There are numerous other good examples but just as many that leave room for improvement. The Federal Government would be well served to adopt a more customer service friendly approach to working with and meeting with small businesses. In this time of fiscal responsibility we realize that not every agency will have the resources necessary to meet with each and every small business who is exploring possibilities of doing business with the Federal Government. But we do believe that through coordinated efforts the PTACs could be used to help prepare the small businesses for these meetings in order to facilitate and ensure a productive and mutually beneficial meeting for both parties.

Small Business Committee Hearing on September 15, 2011
"Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding Their Communities"

Questions for Mindy Nunez Airhart, Southern Services & Equipment, Inc.
Submitted by Chair Mary L. Landrieu

Question #1 – Subcontracting Issues
We had a good mix of subcontractors, a prime contractor, and a Procurement Technical Assistance Center (PTAC) manager participate in our second panel at our hearing on September 15, 2011. The Small Business Committee appreciated hearing your perspective as a small business with extensive experience in obtaining Federal contracts.

- Can you each briefly outline the top issue you see for businesses subcontracting with the Federal government and how it might be addressed?
  The top issue for businesses who perform work as subcontractors on Federal projects is getting paid from the prime contractor. Currently, there is no system in place for the subcontractor to make a claim with the Federal Government if they are not paid by a prime contractor.

Question #2 – Subcontracting Issues
During the hearing, you mentioned that you have heard from a tiered subcontractor that has had trouble receiving payment from one of your subcontractors.

- As the prime contractor, what sort of advice would you offer small businesses on the subcontracting process?
  Subcontractors should always make sure that they have an ironclad subcontract agreement in place before work is started. If there is a problem getting payment from the prime contractor, the subcontractor should contact the bonding company of the prime contractor.

Question #3 – Family Businesses
You work for the company that your father created. You are working in the family industry. As a business that has longstanding ties to the community and is responsible for employees in disaster impacted areas, you have an added incentive to assist in disaster recovery efforts.

- What are some issues that family-owned businesses face after a disaster that might be different from other local small businesses?
  One of the issues that family businesses face is that usually more than one person's income in that family is dependent on the business – therefore if the business does not have any income, then more than one person in the family will not have income as well. This makes the entire families dependent on that income, whereas in traditional non-family businesses, only one person in a family with two working parents would be dependent on that income.

Question #4 – 8(a) Program Issues
In your testimony, you mention that you were penalized by SBA because a majority of your revenue was earned from emergency contracts. In particular, you mention that your competitive

business mix target was too heavily weighted with revenue from Federal contracts. For this reason, you were deemed ineligible for sole source contracts although these recovery contracts were the only work available to you after the storms.

- You mention that you were not the only 8(a) company impacted by this regulation. Can you outline the impact on your business in terms of employment and revenue?
  Please see the following chart. SSE was accepted into the 8(a) program in 2003. In summer 2007 we were deemed ineligible for 8(a) contracts. Fortunately, we were accepted into two competitive 8(a) MATOCs in early 2007 and thus, grandfathered in after the eligibility ruling (for those MATOC task orders only). The chart below chronicles non-8(a) revenue, 8(a) revenue, and 8(a) MATOC revenue, as well as the number of employees each year. As you can see, the 8(a) revenue dropped off considerably from 2007-2008, but the MATOC revenue made up for the lost 8(a) revenue on our balance sheets.

Year	Non 8(a)	8(a)	8(a) Competitive (MATOC)	Employees		
				Full Time	Part Time	Total
2003	$100,911.00	$384,552.00		9	4	13
2004	$164,385.00	$598,479.00		10	15	25
2005	$386,716.00	$1,312,445.00		16	35	51
2006	$2,348,561.00	$12,501,276.00		25	28	53
2007	$940,489.00	$10,187,365.00	$2,603,352.00	25	8	33
2008	$1,114,224.00	$848,998.00	$8,236,346.00	14	10	24
2009	$3,560,134.00	$236,673.00	$5,892,391.00	14	50	64
2010	$1,817,359.00	$69,211.00	$11,555,103.00	23	20	43

Question # 5 – Federal Agencies

I am interested to get your feedback on which agency has been the best to work with and which, unfortunately, has been the worst agency to contact with as a small business.

- Which agency has been the best agency to work with?
- Which agency has been the most problematic to work with?
- Please explain the pros and cons of the best and worst agencies.

Unfortunately, we may not be the best people to ask this question, because we do almost 100% of our government contracts with the U.S. Army Corps of Engineers. We believe that the USACE is committed to using small businesses, and taking the time to make sure that all small business set-asides are financially competitive with a larger business, and fiscally responsible to the taxpayer. We have had a wonderful experience doing business with the USACE, especially the New Orleans district. We have tried, without much success, to do business with FEMA and the US Air Force in the New Orleans area, but we would not say that the agencies are "problematic," we just did not have success getting business from them.

Question # 6 – Disaster Loan Interest Relief

In your testimony, you mentioned that the "most important thing the U.S. Government can do to spur the economy in disaster-ravaged communities is to forgive commercial SBA loans." As you may know, I have introduced legislation (S. 653) with Senators Thad Cochran and Roger Wicker to allow SBA to waive up to $15,000 in interest payments over as long as three years. These waivers would apply to disaster business loans made after the 2005 and 2008 hurricanes. This proposal has received support from such groups as the U.S. Chamber of Commerce, the *New York Times*, Gulf Coast chambers of commerce, and local Small Business Development Centers.

- Please outline for the Committee how this proposal would help your individual business.
  Since Katrina, we have paid $254,637.00 in interest on our SBA loan, so the $15,000 waiver would be welcome, but unfortunately, not terribly significant.

- You also mentioned in your testimony that your monthly loan payment is very high. As an example of how interest relief will help, would you mind sharing with the Committee how much of your annual payments are interest-only payments?

LOAN TIMELINE:

Hurricane Katrina		August 2005
Applied for SBA loan		November 2005
Site Visit		January 2006
Loan Approved		March 2006
FUNDS RELEASED:		
March-06		$10,000.00
April-06		$200,000.00
September-06		$240,000.00
October-06		$741,800.00
TOTAL LOAN		$1,191,800.00

Monthly SBA Loan Payment: $6,182.00

year	Principle	Interest

2007	$17,653.00	$62,713.00
2008	$20,798.00	$53,386.00
2009	$31,286.00	$42,898.00
2010	$23,028.00	$51,156.00
2011	$29,698.00	$44,484.00
TOTAL	$122,463.00	$254,637.00

- Can you outline the difference between this interest relief and simply deferring payment of principal or interest for six months or a year?
  The $15,000 waiver would be preferable to simply deferring the payments for our company, since the deferment would just add to the length of the loan.

United States Senate
Committee on Small Business and Entrepreneurship

Hearing on September 15, 2011

"Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding Their Communities"

Requests for Information from Members
Responses from BG Theodore Harrison

SEN Brown (Massachusetts):

1. What is the status of, and reason for, the CW project backlog at HQ?

Answer: The "backlog" of civil works construction projects is not "at" Corps headquarters. Rather, it is a reflection of the relative ease of authorizing a project for construction compared to funding it for construction. For example, aside from the issue of earmarks, the standards that apply when considering whether to authorize a project for construction are generally easier to meet – or much easier – than those that apply when deciding whether to fund its construction.

The size of the backlog depends upon how you define it. For example, the cost to complete all of the projects that have already started physical construction is smaller than the cost to complete all of the projects that the Congress has authorized for construction, since some of the authorized projects have not yet stated construction and others may never start construction. Also, while all projects that are now under construction have some remaining work by definition, this does not necessarily amount to a backlog.

In any event, the construction backlog is large. If one were to include all of the projects that the Congress has authorized for construction and on which the Corps has conducted at least some preconstruction engineering and design (PED) and/or construction, the cost of completing the remaining work is many tens of billions of dollars. It would take decades to complete all of these projects at current or foreseeable funding levels. However, viewed from a national perspective, many of these projects are not a priority. Others are outdated. The Budget focuses on those that are a priority, in order to produce the greatest overall value to the Nation at any given level of funding.

SEN Hagan (North Carolina):

2. How many dredges does USACE own?

Answer: The Corps now owns 11 dredges, consisting of four hopper dredges, three dustpan dredges, one cutterhead dredge, two sidecaster dredges, and one special purpose dredge. We plan to retire one of the sidecasters, and are constructing a second special purpose dredge.

3. Is the amount of money appropriated for dredging adequate?

Answer: In developing an annual budget, we allocate the available funding to produce as much value as possible for the Nation from the Civil Works program as a whole. The Corps conducts studies, constructs projects, and operates and maintains a variety of existing projects across the country. In establishing funding priorities within the operation and maintenance (O&M) program, we use objective performance standards and make risk informed decisions. We also allocate the funding in a manner that will enable the Corps to use it effectively. Dredging is just one of the activities that we consider in the process of developing an overall budget.

For example, our focus in allocating O&M funds for coastal navigation projects is on the harbors and channels that support high volumes of commerce. This approach enables commercial goods to reach the market, contributes to the economic well-being of the Nation, and makes good use of the available resources. Priority is given to the top 59 coastal projects, which carry over 10 million tons of cargo each year and account for 90 percent by tonnage of the cargo moving through our nation's ports.

4. Is the commercial dredging community large enough?

Answer: The private dredging industry generally is able to handle the work in most cases, though some of the jobs that we solicit result in no response, only one bid, or too high a bid. In the past, some companies temporarily took dredges out of service or sent them overseas because there was not enough dredging work in their opinion to justify keeping the equipment here. Some companies did purchase additional equipment and others brought equipment back from overseas to handle the increased workload in FY 2009 provided by the American Recovery and Reinvestment Act and supplemental appropriations.

SEN Hagan (North Carolina):

5. How many and how much of the subcontracts awarded to the Army Corps in North Carolina have actually gone to small businesses.

Answer: A total of 22 subcontract awards have been made to firms in North Carolina and these awards totaled approximately $61 million. Twenty awards were made by the Corps' Prime contractors and two awards were made by our Primes' subcontractors. Of these subcontract awards, awards to small businesses total approximately $40 million, or 66% of the total.

SEN Shaheen (New Hampshire):

6. Is "eSRS" available to the public?

Answer: The Electronic Subcontract Reporting System (eSRS) is not accessible to the general public. Government contracting personnel responsible for contracts and government contractors

submitting subcontracting reports for contracts have access to the system to submit and review subcontracting reports.

As part of the President's Management Agenda for Electronic Government, the Small Business Administration (SBA), developed eSRS as tool to collect subcontracting accomplishments. eSRS is a government-wide tools used by all Federal Agencies. eSRS is an Internet-based tool that is used by contractors to submit subcontracting plan accomplishment data and allows agencies access to analytical data on subcontracting performance. Specifically, the eSRS eliminates the need for paper submissions and processing of the SF 294's, Individual Subcontracting Reports, and SF 295's, Summary Subcontracting Reports, and replaces the paper with an electronic process to collect subcontracting data.

Senator Mary Landrieu
Chairman of Small Business and Entrepreneurship Committee

SENT BY EMAIL:

My name is David W. Orr and I am writing to augment the record of the hearing held September 15, 2011 on **"Disaster Recovery: Evaluating the Role of America's Small Business in Rebuilding Their Communities"**. One of our subcontractors, Tiger Tugz, LLC represented by Dale Rentrop Jr., testified at your hearing on September 15th, 2011.

The name of our company is Midwest Environmental Resources, LLC (MER) and we worked on the rebuilding of the levees in and around New Orleans, post-Katrina. In 2010, we were a subcontractor to Chapel Hill, LLC, who was the prime supply contractor on this project, which was one of the largest levee construction jobs in the aftermath of Hurricane Katrina to date.

In our role as a subcontractor, we performed our work (transportation and storage of clay) and submitted our invoices to Chapel Hill. Chapel Hill, in turn, used those invoices to bill the Army Corps of Engineers (USACE) as well as invoicing for the earthen clay they supplied. Here is where things started to go awry for us as subcontractors on this project. The USACE chose to classify this project as "supply" and not "construction" despite the fact that it was in reality, a massive construction project conceived to shore up the levees around Lake Pontchartrain and New Orleans. As a result, the USACE's "choice" has left us in a terrible position.

To the best of our knowledge, Chapel Hill was paid by USACE for the invoices we gave them. MER, however, never received full compensation for its invoices to Chapel Hill. The upshot was this: Chapel Hill misrepresented to the USACE the monies actually paid to MER which in turn caused us to default on invoices owed to subcontractors including Tiger Tugz. As subcontractors, we have been at the mercy of Chapel Hill with little or no recourse. Basically, we did the work and Chapel Hill collected the money.

Similar problems occurred elsewhere around New Orleans post-Katrina with other subcontractors who did not get paid by their prime contractors. Despite discussion by the government that steps would be taken to avoid this situation, it has happened again, six years after the fact.

The unfortunate reality is this: there are virtually no safeguards in place which allow subcontractors in these situations (i.e. owed monies by primes who refuse to pay) to collect from USACE. Mechanic Liens and collecting against posted bonds have both been suggested as ways to avoid this from happening again in the future.

At this juncture, more than a year later, Chapel Hill still owes us upwards of $2 million. Needless to say, the lack of payment has had a domino affect, and our subs have suffered from our fallout as well.

We would very much like to get this issue resolved as it has impacted not only our livelihoods, but those of a handful of small business people and their families to whom we owe money.

Over the course of the last year, we have also written to a number of congressmen in an attempt to shine some light on this situation. Please find attached a copy of a letter sent.

For further clarification and information on our case, please contact our attorney at the address listed below. You may also contact me directly at 208.720.4041.

T. Justin Simpson
Larzelere Picou Wells Simpson Lonero, LLC
Two Lakeway Center - Suite 1100
3850 N. Causeway Boulevard
Metairie, LA 70002
Telephone: 504-834-6500
Facsimile: 504-834-6565
E-mail: jsimpson@lpwsl.com

We greatly appreciate any assistance you may offer at this time.

Sincerely,

David Orr
Managing Member, Midwest Environmental Resources, LLC
2933 Hillway Drive
Boise, ID 83702
208.720.4041

December 2, 2010

Representative Edward Whitfield

Re: Midwest Environmental Resources, LLC
Overdue contract payments for supply of equipment to US Army Corps of engineers Hurricane and Storm Damage Risk Reduction System in Southern Louisiana, Orleans Parish
Contract No.

Dear Representative Whitfield:

This letter is an attempt to enlist your support in a most pressing matter regarding lack of payment by the US Army Corps of Engineers (USACE) to our company, Midwest Environmental Resources, LLC, (MER) based out of Fulton, KY.

In (month of 2008) the USACE chose Chapel Hill, LLC, a Louisiana firm as its prime contractor to provide clay which would be used to reinforce a number of levees which had failed as a result of Hurricane Katrina. Chapel Hill subsequently engaged MER as subcontractors on the job to provide barging and transport of the clay to offloading sites near the levees. The job was scheduled to begin in January of 2010; it did not actually commence until March of 2010. MER subcontracted Tiger Tugz, a Louisiana tugboat and barging company to move the clay. In June of 2010, the USACE elected to conclude the barging of the clay and transport it to the levees via trucks. Evidently this was a more convenient arrangement for the USACE.

Hold the Corps Accountable

It has become increasingly evident that the USACE needs to be held accountable for its negligence when it comes to the levees and how they've been neglected and poorly maintained. The USACE played an overwhelming role in the massive destruction which arose out of Hurricane Katrina. The damage continues to be visited upon the people of south Louisiana in the haphazard way the USACE administers its post Katrina mandates. The USACE limitations become more obvious when faced with massive construction projects involving huge sums of money. And while they sought to balance the need for expertise while including small businesses as potential prime contractors, problems arose. Despite District Commander Colonel Fleming of the USACE assertions that, "Under this evaluation method, offerors who submitted timely proposals were evaluated against stringent technical criteria," newspaper coverage of irregular bidding procedures illustrated that perhaps all was not fair or stringent for that matter when it came to jobs overseen by the USACE.

Chapel Hill Springs to LIfe

Rebuilding the levees in New Orleans is one of many large post-Katrina projects being handled by the USACE. The USACE sought to balance the need for expertise, but include small businesses as potential prime contractors. The company selected by the Corps as the prime contractor, Chapel Hill, LLC, first came into existence in February of 2006. The principal member is Johnny E. Dollar, a practicing north Louisiana attorney. From that genesis sprang Chapel Hill Marine, LLC (May 18, 2006), Chapel Hill Port Bienville, LLC (June 15, 2006), Chapel Hill Construction, LLC (February 2, 2007), and Chapel Hill Sand & Gravel, LLC (February 16, 2007). Most of these companies are domiciled at 3139 Mercedes Drive, Monroe, Louisiana, which the same address for the Dollar Laird Law firm. The obvious question is what stringent technical criteria was used to determine the expertise or experience of this new company to supply clay to one of the largest civil projects in Orleans Parish. What was its track record? How many employees? What financials for the last three years? Was the company capable of providing a bond?

Support for Small Businesses Include Paying Them (Doesn't it?)

Colonel Fleming seems has blamed Congress for its failure to provide a bond because it requested the involvement of small businesses. We salute the USACE's attempts to utilize small businesses in its projects, however it would be more appropriate for established smaller contractors with proven track records. Certainly, Midwest Environmental Resources, a small independent cleanup company from Kentucky would fall under that category. (See www.mer-llc.com). Apparently, Col. Fleming feels that the failure of MER to be paid for: a) the delay and demurrage caused by the hurry up and wait process at the beginning of the project, b) the delivered tonnage, and c) the damages to the barges is a "private matter." This attitude causes significant damage to small businesses involved in the project and pushes them to the brink of financial ruin, all in the name of supporting small business advancement by dispensing with bonding requirements for a federal project.

Startup Delay Caused by USACE

This is anything but "a private matter." The fingerprints of the USACE on this project are unmistakable. In December of 2009, the USACE asked the various parties to move quickly in order to promptly supply the clay for the levees. As requested MER, hired Tiger Tugz who then secured the barges and made them available for inspection by a Corps mandated marine surveyor in early January. The USACE however, was unable to decide on a suitable location for receipt of the stockpiled material in Orleans Parish until late March of 2010. All of the equipment mobilized for the project sat idle for two months because of the USACE 's apparent lack of decision-making ability.

Demurrage and Tonnage Claims

The various contracts stipulated that payment was to be made on the basis of tonnage delivered. Clearly, MER and the other contractors involved, who had mobilized on an expedited basis, but were unable to provide material through no fault of their own, suffered significant damages. That portion of the outstanding claim totals ($$$) and involves dollars and costs that were incurred in January through March of 2010, yet remain unpaid as of the date of this letter. MER has undisputed invoices for tonnage delivered of $$$, which remain unpaid.

Subcontractors in the Dark

The subcontractors who worked on this project were kept in the dark. Until receipt of Col. Fleming's letter, MER had no idea that Chapel Hill had been paid in full. We also know that MER's claim for demurrage was submitted in March, but we are unaware of whether or not that has been approved, disapproved, subject to further negotiation or settled. Our attempts to discuss this with USACE (Carrie Wakumoto) were rebuffed with the statement that USACE only contractor is Chapel Hill and our disputes are a "private matter." Given the level of USACE involvement, this is not even remotely a "private matter."

Resolution

When MER was hired by Chapel Hill to handle transport of the clay via barge, it never anticipated that its own federal government, in the prosecution of one of the largest civil projects in the history of the United States, would put it in a position where it would not get paid. We ask that the government step forward and call a meeting of the prime contractor and all the subcontractors to work out a prompt, fair, and equitable resolution so that we can avoid any further financial damage to the small businesses involved. In addition to your office, we are working with the office of Senator Bunning, Senator McConnell, Congressman Blah, Blah, Blah, etc etc. It is our sincere hope that Congress will exercise its oversight to intercede and ask for the USACE's involvement in a global resolution so that all parties affected may move forward. The amounts of money in relation to the overall project are relatively small, but extremely significant to the individual small contractors.

We appreciate your time and assistance and look forward to working with you to put this matter behind us.

Sincerely,

David W. Orr
Managing Member, Midwest Environmental Resources, LLC

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