

AN OVERVIEW OF THE DYNAMIC BETWEEN THE  
DEFENSE PRODUCTION ACT AND SMALL  
CONTRACTORS

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON CONTRACTING AND  
INFRASTRUCTURE  
OF THE  
COMMITTEE ON SMALL BUSINESS  
UNITED STATES  
HOUSE OF REPRESENTATIVES  
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#### Questions for the Record:

None.

#### Answers for the Record:

None.

#### Additional Material for the Record:

None.



## **AN OVERVIEW OF THE DYNAMIC BETWEEN THE DEFENSE PRODUCTION ACT AND SMALL CONTRACTORS**

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**WEDNESDAY, JUNE 24, 2020**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
SUBCOMMITTEE ON CONTRACTING AND INFRASTRUCTURE,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 1:00 p.m., via Webex, Hon. Jared Golden [chairman of the Subcommittee] presiding.

Present: Representatives Golden, Crow, Davids, Stauber, and Balderson.

Chairman GOLDEN. So let's get started.

I call this hearing to order. Without objection, the Chair is authorized to declare a recess at any time.

I want to thank everyone, especially our witnesses, for joining us today for our Subcommittee's remote hearing. I want to make sure to note some important requirements.

Let me begin by saying that standing House and Committee rules and practice will continue to apply during remote proceedings. All Members are reminded that they are expected to adhere to these standing rules, including decorum, when they are participating in any remote event.

With that said, the technology we are utilizing requires us to make small modifications to ensure that the Members can fully participate in these proceedings.

During the covered period as designated by the Speaker, the Committee will operate in accordance with H. Res. 965 and subsequent guidance from the Rules Committee in a manner that respects the rights of all Members to participate.

House regulations require Members to be visible through a video connection throughout the proceeding, so please keep your cameras on. Also, if you have to participate in another proceeding, please exit this one and log back in later as soon as you can.

In the event a Member encounters technical issues that prevent them from being recognized for their questioning, I will move to the next available Member of the same party, and I will recognize that Member at the next appropriate time slot, provided they have returned.

Should a Member's time be interrupted by technical issues, I will recognize that Member at the next appropriate spot for the remainder of their time once their issues have been resolved.

In the event a witness loses connectivity during testimony or questioning, I will preserve their time as staff work to address the technical issue. I may need to recess the proceedings to provide time for the witness to reconnect.

And, finally, remember to remain muted until you are recognized to minimize background noise. Having said that, I will also give everyone a friendly reminder because everyone who has done one has probably made the mistake of beginning to speak, without unmuting themselves. So keep that in mind.

In accordance with the rules established under H. Res. 965, staff have been advised to mute participants only in the event there is inadvertent background noise. Should a Member wish to be recognized, they must unmute themselves and seek recognition at the appropriate time.

I will now give a brief opening statement.

The Defense Production Act, or DPA, was enacted 70 years ago, after the outbreak of the Korean War, in an effort to spur industrial production to meet wartime needs. At that time, the Nation was ill prepared for another war following World War II. To bolster our country's defense infrastructure, the President requested authorities to mobilize our domestic industry to increase production of military equipment and much needed supplies.

Since then, its authorities have been expanded to include a number of purposes, including emergency preparedness and response.

With that said, our country has faced an unprecedented threat to the life and well-being of its citizens: The COVID-19 pandemic.

In response to the pandemic, and at the urging of congressional leaders, the President invoked the DPA on multiple occasions to compel companies to meet the shortfall of medical equipment and supplies.

And while it has been used mostly as a tool to meet the skyrocketing demand for personal protective equipment and ventilators, one thing is clear: There are still more opportunities to leverage its authorities as part of a coordinated response to the evolving threat to our Nation.

And with that, we must look for ways to use the DPA and its authorities to advance our small businesses, an opportunity other members of this Committee and I have previously highlighted for the Executive.

Small businesses have been hit especially hard by the pandemic. From cash flow concerns to availability of materials, the economic devastation cannot be underestimated.

In particular, DPA Title III authorities provide a series of economic incentives that seek to maintain, restore, and expand domestic industrial capabilities. The CARES Act provided \$1 billion to carry out the responsibilities of Title III of the DPA, specifically to prevent, prepare, and respond to the COVID-19 pandemic.

It is not only our responsibility but our duty to ensure that small businesses engaged in the manufacture of medical supplies, as well as those in the defense industrial base, have the maximum opportunity to participate in Title III programs.

Access and participation in these programs will supplant lost revenues due to COVID-19 and guarantee the livelihood of small businesses.

Moreover, recognizing the ingenuity and nimbleness of our small businesses, this investment will translate into innovation and the acquisition of much needed resources for the Federal Government.

And so today's hearing will serve as an opportunity to examine the DPA and its main authorities, including those provisions in the law that establish a preference for small firms.

Additionally, we hope to discuss potential legislative measures to strengthen the DPA for small businesses.

Finally, we wish to hear more about the challenges that small businesses are facing due to COVID-19 and how leveraging Title III authorities could provide substantial relief.

I look forward to hearing from our distinguished witnesses today about the DPA, its application to the COVID-19 relief and response efforts, and the dynamics between the DPA and small business contractors.

Again, I want to thank the witnesses for joining us here today, and I now yield to the Ranking Member, Mr. Stauber, for his opening statement.

Mr. STAUBER. Thank you, Chairman Golden.

You know, the events of this year have underscored the fragility of our medical preparedness as a Nation. In times of unprecedented disasters, it is critical that we come together to leverage the immense power and capability of the American workforce to help pull our country through crisis.

Indeed, we have already seen an aggressive ground flow of volunteer and voluntary activity from businesses, particularly small businesses leaping at the opportunity to help their neighbors and frontline healthcare workers during this COVID-19 pandemic.

And while the efforts of these businesses are commendable, sometimes the needs of the country are so urgent and so great that it becomes necessary to rapidly mobilize the full power of the United States industrial base to ensure supplies for our national defense are produced and distributed appropriately.

This is where the Defense Production Act takes center stage. Invoking the DPA is not a step to take lightly. Its authorities upend some of the essential tenets of Federal contracting principles, such as full and fair competition. Furthermore, the authorities provided under the DPA can compel a company to do business with the Federal Government even if it does not wish to do so and impact its ability to manage its priorities as it sees fit.

Once the DPA is invoked and a business is tapped, it must prioritize DPA ordered contracts above all others it may have in the queue, and it has limited choice but to comply. While these are significant departures from the typical Federal contracting framework, Congress has decided time and again, through dozens of re-authorizations of the DPA, that these drastic measures can become necessary in times of significant national strife, times such as now.

When the DPA is activated, businesses tasked with DPA orders must reshuffle existing priorities and work with their suppliers and subcontractors to ensure the government's needs are met first and foremost. DPA orders, therefore, impact an entire chain of businesses, from the large prime down to the small subcontractor supplier.

The role small businesses play cannot be overstated. Without these companies, we would not be able to produce the ventilators, the masks, and the essential PPE and other medical equipment necessary to protect healthcare workers at the levels needed to stifle this pandemic.

The critical role small businesses play applies across the board to all DPA invocations, whether it be for military preparedness, natural hazard response, or domestic preparedness. Indeed, the DPA even contains a special preference for issuing contracts to small businesses under its authorities, directing the President to, in quotation marks, accord a strong preference for small business concerns which are subcontractors or suppliers.

Regardless of whether the disruption caused by DPA orders are welcome or not, it is clear that we depend on a vast network of small business contractors and suppliers to generate the essential items needed for national defense.

I hope through the insights of our esteemed panelists here, we will be able to understand how the DPA interacts with small businesses, learn more about what the actual operation impacts of the DPA on our small businesses, and understand what Congress can do to ensure small businesses have the opportunity to participate and contribute to the national defense through the DPA.

Mr. Chair, I yield back.

Chairman GOLDEN. Thank you very much, Mr. Stauber.

So I am going to do my best to move on. I understand that my microphone is muffled, so I am going to quickly make the introductions for the first panelist, and then I will be calling in from my phoneline while you are making your first presentation. I think that is probably the easiest way to move forward for the time being.

So with that, I am going to introduce our witnesses. Our first witness is Mr. Ian Patterson.

Mr. Patterson is a senior associate with the law firm Koprince Law, LLC. He has a wide range of experience with Federal procurement topics and is a seasoned bid protest litigator. In this role he has closely followed and written about procurement issues related to COVID-19 pandemic.

Mr. Patterson, I am going to go ahead and recognize you right now for 5 minutes while we work on my microphone issues.

**STATEMENTS OF IAN PATTERSON, ATTORNEY-SENIOR ASSOCIATE KOPRINCE LAW, LLC, LAWRENCE, KS; DAVID BLACK, ATTORNEY-PARTNER, HOLLAND & KNIGHT, LLP, TYSONS, VA; MARY LOCKHART, PRESIDENT & CEO, PEMDAS TECHNOLOGIES & INNOVATIONS, ALEXANDRIA, VA, TESTIFYING AS THE CHAIR OF THE SMALL BUSINESS DIVISION FOR THE NATIONAL DEFENSE INDUSTRIAL ASSOCIATION (NDIA); AND TRACI TAPANI, CO-PRESIDENT, WYOMING MACHINE, INC., STACY, MN**

#### **STATEMENT OF IAN PATTERSON**

Mr. PATTERSON. Thank you, Mr. Chairman, Rank Member Stauber, and members of the Subcommittee.



Thank you for the opportunity to speak to you today regarding the use of the Defense Production Act to combat COVID-19 and the inclusion of small businesses in that fight.

As currently enacted, the Defense Production Act includes three titles that provide the President and his designees with various authorities to mobilize and augment America's industrial resources.

The current Defense Production Act titles include Title I, Title III, and Title VII. The remaining titles have been struck through various renewals of the Act.

With respect to Title I, it grants the President the authority to compel private businesses to accept orders and to prioritize those orders. This so-called prioritization authority is implemented through rated orders, which is a mechanism by which agencies can prioritize their orders ahead of both government procurements and that business's private interests as well.

Title III, on the other hand, allows the President to invest in industries that are essential for national defense. Under Title III authority, the President may issue loans to businesses. He may guarantee business loans from private lenders, make purchase commitments, and also sponsor research and development efforts.

Now, Titles I and III are designed to work together to address different mobilization needs.

Title I provides immediate contracting authority to be able to combat instant needs based on whatever the crisis facing the United States is.

Title III, on the other hand, allows the President to develop America's industrial resources so that, when necessary, they are there and available to be mobilized.

Finally, Title VII contains a wide array of provisions that address a variety of topics, including jurisdiction, enforcement, things of that nature.

But of particular import to this Committee, that is also where the small business provision is found within the Act. I know it has been quoted before, but I will quote it again. Under this section, small businesses are to be given maximum practicable opportunity to participate as contractors, as subcontractors at various tiers, and participate in all programs to maintain and strengthen the Nation's industrial base and technology base undertaken pursuant to this Act.

Despite the desire to include these small businesses, the Defense Production Act does not provide any further instruction for how small business participation should be accomplished.

Indeed, there are no small business contracting goals that are stated within the Act. There is no process for including small businesses in consideration for priority contracts. There is no cross-reference to other legislation, including the Small Business Act, to provide direction for how to ensure that small businesses are able to participate.

Consequently, the [inaudible] Defense Production Act, small business initiatives are left undefined by the Act itself. And, indeed, in terms of regulation, they also are not well defined.

With respect to utilization, the Department of Defense has regularly used the prioritization authorities under Title I. It antici-

pates, in at least 2018, that roughly 300,000 orders were issued using the priority initiatives under Title I.

Title III authorities however, are used with less frequency. Indeed, it has been nearly three decades since any of the loan guarantee or loan provisions have been utilized. Additionally, the Department of Defense indicates it has used roughly 20 orders in 2018 to leverage Title I authorities. These have typically been used to try and invest in metallurgy and things of that nature.

Despite these examples, one of the immediate challenges with evaluating the Defense Production Act is the absence of available data. As the Congressional Research Service noted, as recently as April of this year, quote, Public reporting and congressional oversight of Defense Production Act activities is fragmented and irregular.

Now, this is likely due in part to the various delegations of authority that have been provided to agency secretaries by the President. As it currently stands, data, or the lack thereof, represents one of the greatest challenges to evaluating the use of small business in the Defense Production Act.

Ultimately, the Defense Production Act establishes a series of tools to mobilize America's industrial resources, as well as investment and development of those resources. Unfortunately, however, it is very possible that small businesses are getting left behind.

Without data, it is impossible to know, with any degree of certainty, the extent to which small businesses are or are not participating.

Accordingly, I encourage this Committee to work to develop a better reporting system for Defense Production Act procurements. This will provide the data necessary to guide policymaking and ensure that small businesses are not being left behind in this fight.

Thank you, Mr. Chairman, and I look forward to your questions. Chairman GOLDEN. Thank you.

And how is this audio working for you all? Is this better?

I see some heads nodding. All right. Great.

Steve, how are you doing on time?

Mr. STAUBER. We are good, Jared. I think we are good right now.

Chairman GOLDEN. All right.

So our second witness is Mr. David Black. He is a partner with the law firm of Holland & Knight, LLP, in Tysons, Virginia, and Co-Chair of Holland & Knight's National Government Contracts Group.

Mr. Black's practice involves serving as a trusted advisor, problem-solver, and advocate for Federal contractors, awardees, and subcontractors in every stage of growth. He provides legal advice and representation to help his clients secure opportunities, enhance performance, mitigate risk, and respond to threats.

Mr. Black serves contractors and awardees in a broad array of industries, with an emphasis on innovative technology, cutting edge products, professional services, healthcare, and research and development.

Welcome, Mr. Black.

Before I have you go, I am going to quickly move to our third witness introduction, Ms. Mary Lockhart. She is the founder of

PEMDAS Technologies & Innovations, a woman-owned, service-disabled veteran-owned small business, that develops high technology hardware and software environmental intelligence products and services for the Department of Defense.

Through her extensive career in the public and private sector, Ms. Lockhart has held vital research in leadership positions across multiple Federal agencies, to include the Department of Defense and NASA.

In 2013, she retired from a 30-year career as a colonel in the United States Air Force Reserves. Ms. Lockhart has served as the President for Women-in-Defense Washington, DC, Chapter and is currently the Small Business Chair for the National Defense Industrial Association.

Welcome, Ms. Lockhart.

And I will now yield to our Ranking Member, Mr. Stauber, to introduce our final witness.

Mr. STAUBER. Thank you, Chairman Golden.

And I would like to welcome our final witness. It is a pleasure for me to do so. She is from my district, Ms. Traci Tapani.

Ms. Tapani is the co-president of Wyoming Machine, Incorporated, a precision sheet metal fabrication company located in Stacy, Minnesota. Wyoming Machine is a woman business enterprise, National Council certified women-owned family manufacturing business, run by sisters Traci and Lori Tapani. Under their leadership spanning 25 years, Wyoming Machine has become a thriving, successful small business in a brutally competitive industry.

Ms. Tapani's considerable expertise led her to serve a 3-year term as an appointee to the Minnesota Governor's Work Force Development Board and a 6-year term on the Board of the Minnesota Chamber of Commerce. She serves as Board Chair of the Minnesota Initiative Foundation and is a member of the United States Chamber of Commerce Small Business Policy Council.

She has won numerous accolades and awards, including in 2014, the STEP Award for demonstrating excellence in leadership and manufacturing and the Minnesota National Association of Women Business Owners Lifetime Achievement Award.

In addition to being a savvy small business owner and a public servant, Ms. Tapani actively volunteers in our local community focusing on issues such as workforce development and narrowing the skills gap and helping women gain access to nontraditional careers such as in manufacturing.

Thank you for all that you do for our district and for your participation today, and I look forward to your testimony and I yield back.

Chairman GOLDEN. Thank you, Mr. Stauber. And I have gone a little bit out of order. I apologize, that is unusual but I had to fix the audio issue there. It is the adapt and overcome approach. So having heard from Mr. Patterson. We are now going to recognize Mr. Black for 5 minutes.

#### **STATEMENT OF DAVID BLACK**

Mr. BLACK. Thank you, Chairman Golden, Ranking Member Stauber, members of the Subcommittee.

I think we are all doing things a little unusually these days, so we are all adjusting. I really appreciate the opportunity to be here today to help the Subcommittee understand and address the dynamic between the DPA and small business contractors.

As Mr. Patterson said the purpose of the DPA is to mobilize domestic industry and the service of the National Defense and emergency preparedness, and there are provisions in the DPA that show it has long been Congress' intention to include domestic small businesses in that effort. But when you look at them, there is an underutilization of what exists and it is probably time for some reforms to help those pieces move together.

So just to build on what Mr. Patterson did, I want to focus on really five provisions in the DPA that address small business. Under 50 USC 4518, that is where there is the strong preference for small businesses, for consideration of small businesses when making awards under Title III of the DPA.

Under Section 4551(a), that is where there is a maximum—agencies are supposed to give. The President is supposed to give maximum practicable opportunity to small businesses to participate as contractors and subcontractors. So, again, that is the one-two punch of making DPA investments in small business and then providing opportunities as primes and subs to meet the government's needs.

Also under 4551 subsection (c), there is authority to include small businesses in advisory committees established under the DPA. Under 4551 subsection (d), agencies are supposed to provide information about DPA activities to small business.

And then Congress has created the DPA Committee, which makes an annual report and annual policy recommendations to Congress. And what you see, and if you look at the current use, these pieces exist, but they are either not being utilized, they are being underutilized, the DPA committee is not, you know, taking—making the most of these authorities, and things really are not working to the extent that they could to bring in small businesses into DPA investment and DPA opportunities.

When you look under this strong preference under Title III, as Mr. Patterson noted, there really are no procedures in place other than the statute about how are agencies, when they are considering making a Title III award, a Title III investment, how are they supposed to consider small business, how are they given the preference. There is really nothing in the books in terms of procedure and operation.

There is no data currently being collected and reported to Congress about Title III awards. It is sort of a mishmash. You could probably find it through FOIA, but it is not being centralized and recorded, and Congress would probably benefit from that information for both small business awards and March business awards under Title III.

Regarding the maximum practicable opportunity, this is where I think the whole community is missing a big opportunity. There is an information system called the Federal Procurement Data System, FPDS, that collects a tremendous amount of data about procurement actions, and it has dozens of fields that contracting specialists have to fill in to report contracting actions. And Congress

initiated this to help determine is the government meeting small business goals.

Right now there is no field for whether an order or a contract is priority rated, and simply adding that information to see when agencies are using priority rating for both large and small would really lift the veil and let Congress and agencies see how that priority rating authority is being used for small business.

Currently there is authority to have a Small Business Advisory Committee, but in my research, I am not aware of one that exists. And then for the DPA Committee, the Small Business Administration is not currently designated as a member.

Regarding the information provided to—by DPA activities, the Congress wants provided to small business and that is in the statute, but there is a lot of information, you know, on the websites of government agencies about the DPA, but nothing is really geared towards small business. Nothing has really indicated, hey, this is how we are meeting Congress' requirement to provide small business specific information about the DPA.

So, you know, when you look at what could be done, this is really, I think, belt-and-suspenders fixes. This is about taking the existing provisions and making them work together, and it is, you know, just basic stuff, the basic work of the government of collecting better information, making that information accessible to agencies and Congress.

Requiring that procedures be established so that these small business authorities and responsibilities are considered, are addressed by agencies exercising DPA authority and then connecting the decisionmakers to small business stakeholders really through the DPA Committee.

So things that I think Congress could do that I think would be low impact but high value for the strong preferences is to have the DPA Committee—

Chairman GOLDEN. Mr. Black, if I could jump in, I apologize. We have gone through 5 minutes here, and in the interests of preserving a little time, I am going to cut you off there.

Thank you for your opening statement, and we will certainly be able to work through the rest of your recommendations through the Q and A, I have no doubt, and I will be sure to give you more opportunities to continue.

With that, I am now going to give 5 minutes to Ms. Lockhart.

#### **STATEMENT OF MARY LOCKHART**

Ms. LOCKHART. Chairman Golden, Ranking Member Stauber, and the members of the Subcommittee. Thank you for the opportunity to testify here this afternoon and for your consistent efforts in supporting America's small business community.

First of all, Chairman Golden, thank you very much for the introductions. My small business, PEMDAS, provides high-value engineering services and innovative hardware and software products to the Department of Defense.

But today I am honored to be representing the Small Business Division of the National Defense Industrial Association, NDIA, the Nation's oldest and largest defense industry association, comprised of over 1,650 corporate and over 70,000 individual members. My

testimony this afternoon will focus on leveraging Title III authorities to support the small business preference in the Defense Production Act. This will help to preserve America's small business industrial base during this very challenging pandemic.

My small business colleagues and I support all efforts to make government procurement more efficient, streamlined, and cost effective. Unfortunately, COVID-19 has created unforeseen challenges to small businesses that are eclipsing the recent beneficial changes to the defense procurement systems.

An NDIA survey that was published 2 months ago in April, consisting of over 750 members from the small business industrial base, found that 60 percent of the respondents experienced a serious cash flow disruption due to the crisis. 51 percent reported that shelter-in-place orders negatively impacted their ability to execute contracts. Sixty percent expected to have long-term financial and cash flow issues resulting from COVID-19.

The underlying reasons cited were cuts to billable hours, delays in payments due to government shutdown and telework requirements for both prime contractors and the government, and a lack of telework options or contract schedule flexibility. Now, granted this survey went out in March. We have a second survey that has gone out, and those results will be available next month.

Unsurprisingly, the brunt of these impacts fall hardest on those small businesses with fewer than 50 employees because of their limited resources. These businesses are often new to the defense industrial base and represent a vulnerable, but vital, part of the national security procurement apparatus.

Congress recently appropriated the \$1 billion for DPA Title III in the CARES Act. This Act, as has been discussed, provides provisions relevant to small businesses that support our national security. It is important that these provisions and the investments reach small businesses as they are proven innovators of technology to strengthen military readiness.

Small business also generates thousands of local jobs. Ensuring the vitality of small businesses will help America's preparedness, response, and recovery from this pandemic.

It is important, therefore, to strongly emphasize the small business preference and to maximize opportunities to the extent possible, especially in areas of high unemployment and ones that demonstrate a continuing pattern of economic decline.

In closing, I offer, on behalf of NDIA, the following suggestions: Use DPA Title III to maximize small business participation; accelerate, and streamline the acquisition process for small businesses; establish a centralized office for DPA implementation reporting and coordination; ensure DPA has ample funding for small business; use supplemental appropriations if DPA fund is exhausted; and allow small and medium size manufacturing enterprises to use Title III funds that are intended by DPA.

This Act provides for guaranteeing the purchase or lease of advance manufacturing equipment and, subject to meeting certain requirements, to replace key equipment that supports the defense industrial base.

Chairman Golden, Ranking Member Stauber, and the members of this Subcommittee, thank you very much for the opportunity to

speaking this afternoon, and I would be pleased to respond to any of your questions.

Chairman GOLDEN. Thank you, Ms. Lockhart.

And we would now recognize Ms. Tapani for 5 minutes.

#### STATEMENT OF TRACI TAPANI

Ms. TAPANI. Thank you.

Chairman Golden and Ranking Member Stauber, thank you for the opportunity to be here today. I want to thank all the members of the Subcommittee for your service in support of small business.

As you have already heard, I am Traci Tapani, an owner of Wyoming Machine in Stacy, Minnesota. Our company was founded by my father, Thomas Tapani, in 1974, and I have owned and operated the company with my sister for the past 26 years. Small business ownership and strong leadership by women are part of our family DNA.

Many of you may have been working remotely due to the COVID-19 pandemic. At Wyoming Machine we are part of America's critical manufacturing sector, and as an essential business, we have been reporting to work since the start of the pandemic, and I am joining you today from my office at Wyoming Machine. My apologies if you hear any unexpected noise. Sometimes it can be difficult to do manufacturing quietly.

We are proud of our workforce for continuing to report to work even when most workers have been urged to stay at home. I am happy to share that so far everyone in our company has remained healthy and safe.

Our purpose today is to discuss the interaction between the Defense Production Act and small contractors. It will be helpful for you to know that over time my company has participated in fulfilling defense contracts and other government orders. While I would not describe myself as an expert in the DPA, I hope to share useful information, and I look forward to answering any questions.

The DPA is undoubtedly a valuable tool in times of emergency, but that doesn't mean that the DPA is the driving force that compels small contractors to act. Following the attack on Pearl Harbor, my great aunt, Magdalene Hallady, left her office job in Chicago and headed for shipbuilding yards in Sturgeon Bay, Wisconsin. When she arrived, she asked, "What can I do to help?" She soon joined many others who stepped up to ensure that the necessary goods were produced for our military.

Magdalene stepped up not because she was ordered to do so or because she was paid a lot of money. She did so—or she was only paid 25 cents an hour, but she would have worked for free because it was the right thing to do.

Magdalene's story illustrates my belief that small contractors and small businesses mobilize and act during times of crisis out of necessity and desire to support and provide for our Nation, our communities, and our employees.

In March 2020, Wyoming Machine received an order to produce a part for a medical ventilator. We have been producing this part for about 15 years, but until just recently, we did not even know the part went into a medical ventilator. Over a 2-month period, we

produced a quantity of almost 60,000 parts or 12 times our normal annual volume.

You might be surprised to hear that the DPA was not part of the contract under which we produced these parts. When the production orders were released to our shop floor, they were accompanied by a note that told our employees three things: These parts are used in the production of a medical ventilator, you are an essential worker, and your work during the COVID-19 pandemic has the potential to save lives, and we are proud of you and thankful for the work that you are doing at Wyoming Machine.

Our workforce organized and mobilized among themselves to ensure that parts were produced quickly and accurately. When we were asked to deliver at a faster pace, our workers made it happen.

So if it wasn't the DPA that compelled us, why did we mobilize and respond to the need for medical ventilator parts as quickly as we did? Wyoming Machine and many other small contractors operate under a business model that allows them to respond quickly to change in demand. We can produce many types of products and serve a wide array of industries simultaneously.

The COVID-19 pandemic is both an economic crisis and a health crisis. Small businesses in the United States employ nearly half of all workers. As an employer, I feel a personal responsibility to ensure that my employees continue to have a place to work and that they can support themselves and their families. During the crisis our ability to be flexible in responding to demand for production of essential parts and products is just part of what we do. Author Simon Sinek wrote that working hard for something we don't care about is called stress; working hard for something we love is called passion.

Wyoming Machine employees were told about the opportunity to help during the pandemic, and they were inspired and motivated. Our company passion for manufacturing, combined with our desire to help in a time of need, made our work feel almost effortless.

My testimony before this Committee is not to argue for or against the merits of the DPA but rather to share a small business perspective during a time when the DPA has been used to direct private sector business to produce medical ventilators and other supplies needed during the pandemic. There will always be American businesses ready and willing to respond in a time of need, and I believe that the small businesses have a special role to play due to their agility and ability to quickly mobilize.

Thank you.

Chairman GOLDEN. Thank you, ma'am. I appreciate that testimony.

And thank you to all of you for your opening remarks. I look forward to continuing the conversation through the question-and-answer phase of the hearing.

Understanding that Mr. Stauber needs to testify with the Rules Committee shortly, I am going to begin by recognizing the Ranking Member for 5 minutes.

Mr. STAUBER. Thank you very much, Chair Golden.

And, Traci, as you are reading your story, if there is nobody that didn't get a lump in your throat, I want to check your pulse. That was very inspiring.



But I do want to start out with you. You know, the job shop model exercised by Wyoming Machine that you describe in your testimony seems to be perfectly positioned in responding quickly in times of national emergency, you know, such as this pandemic.

Can you tell us more about this model, like, is there something only small manufacturing or business practice as opposed to a large manufacturing facility?

Ms. TAPANI. So thank you for your question, Representative Stauber.

I believe that the job shop model is most common among smaller businesses. Part of the reason for that is that we ultimately supply larger businesses. So throughout Minnesota, we are supplying many different companies that are producing equipment. We need to bulk buy parts and assemblies in order to complete final pieces of equipment.

So it is pretty common to the small business model to work in that type of environment and allows us to be successful by [inaudible] and that diversity is what helps us stay in business and keep people employed.

Mr. STAUBER. Thank you.

And then I appreciate you sharing your story about your great aunt.

I want to know what it is like and I would like to hear more from you about some comments or concerns, if any, that your employees had during this time, obviously, helping the country in making the ventilators, keeping us safe. Can you describe to us the sentiment of your employees coming to work during the pandemic, being essential?

Ms. TAPANI. Yes. Thank you for that question.

You know, I think that when we knew that the State of Minnesota was likely to be ordering a stay-at-home order from our Governor, you know, many people's initial concern was what are we going to do and how are we going to get paid, and I think that would be a common concern among employees.

We were happy to find out that we were considered an essential business and that we would be allowed to continue to report to Wyoming Machine and do our jobs every day.

I think the most difficult part of this for people has been that early on in the pandemic, the information was changing rapidly, new information kept coming out, and trying to develop those plans and protocols to keep our workforce safe was probably the most difficult thing and I think the thing that people were most alarmed about.

As time has gone on, and no one here has become ill at this point, and as we continue to improve the protocols that we have in place, I think people's comfort level has increased. But, honestly, they are very happy that they have been allowed to continue to come to work.

And I tell people I think the reason for that is for people to maintain their well-being during a crisis like this, staying attached to your employer is critically important. They know that as of right now, no matter what happens, they are still working and they have an employer. Once they are released from their employer, it creates a whole other level of anxiety for them.

Mr. STAUBER. I really appreciate those comments.

And we are so proud of you. You are leading our State, and I can't say enough about Wyoming Machine, and it is a privilege and a pleasure to have you here.

Thank you for those comments.

Mr. Chair, I have one more comment for—one more question for Mr. Patterson. And that is, Ian, given the DPA's strong preference for small businesses, what role, if any, do you think that SBA should have in DPA-related efforts?

Mr. PATTERSON. Thank you, Representative.

I think that is a very good question. The SBA plays a very large role, and it is a little outside the scope of this; but they have a very large responsibility with respect to administering small business preferences in the traditional Federal acquisition regulation style of procurement. There is a lot of regulations that I deal with on a daily basis that are designed to try and provide opportunities for a wide variety of small businesses and then socioeconomic groups as well.

These are well developed, and the SBA has a large background of experience to be able to implement these things. I think that leveraging that experience makes total sense, particularly given the DPA's stated desire to include small businesses.

Mr. STAUBER. Thank you very much.

And, Mr. Chair, I yield back. I do have to leave to get up to Rules.

I appreciate all of the expert testimony. Thank you.

Chairman GOLDEN. Thank you very much, Mr. Stauber, for yielding back. Thanks for your participation and enjoy the Rules Committee.

So I will now recognize myself for 5 minutes, and I may end up asking a second round of questions.

So, Mr. Black, having cut you off a little bit right in the middle of some of your recommendations, I wanted to come back to you first.

Having read through your opening statement in advance, I know that one of your recommendations was to direct DPAC to establish a small business participation advisory subcommittee to provide annual recommendations on how to increase small business participation in DPA authorities and funding.

I wanted to know, do you think that Congress would need to broaden DPA's scope so that the Subcommittee could provide those recommendations on how to include small business participation given what we know right now about their current scope and, you know, how effective they are under Title I authorities? But, please, in answering that question, feel free to use the remainder of the time if you have it to continue with your other recommendations.

Mr. BLACK. Thank you, Chairman, I appreciate that. I appreciate your courtesy.

Yeah, there is a—in the statute 4567 that establishes the DPAC, there is a list of things that are supposed to report on, and adding one section to ask it—because it already is supposed to make policy recommendations about how to improve the DPA. Arguably, it already could encompass a small business, but it hasn't been doing it. So showing that is important to Congress and adding a provision

to ask it to report would certainly give a purpose and meaning to an advisory committee and potentially adding someone from SBA to the DPA Committee, which is something Mr. Patterson was talking about.

You know, and the other provision, the DPA Committee really is the focal point for what Congress could do to strengthen this. Just starting to talk about how they could report annually on Title III awards, that could be the mechanism.

The DPA Committee has representation from everyone who has been delegated Title I authority by the President, those are the agencies that are interested in building up capacity, so it has access to the information. It has got the people on its committee. It could probably easily collect that information and provide it to Congress.

It could ask its members to establish procedures to have you consider small business in making Title III decisions. That would at least make the consideration happen. Right now there is nothing on the books. That would be an improvement, and you would see agencies having to at least have to wrestle with that.

I was talking a little bit about the FPDS, the Federal Procurement Data System, adding simple fields to understand not only the total small business spend and large business spend, but run our DPA rated orders would provide amazing transparency.

I think Congress would find that small businesses already participate and that to the extent there is concern about small businesses being able to respond to rated orders, you could probably bust that myth. And it would also help with identifying small business resources to help provide the maximum practicable opportunity to participate in the future; who are the small businesses already performing DPA rated orders.

We talked about the Small Business Advisory Committee, and then having the DPA Committee—you know, there is this provision to consolidate information for small businesses about DPA activities. There ought to be a clearinghouse somewhere. No one is doing it at this time. It is sort of scattered. Congress wanted it done. And maybe making that the responsibility, appointing the DPA Committee to put up a website, consolidate that information would be helpful.

Thank you.

Chairman GOLDEN. Thank you very much, Mr. Black.

And I had lined up another question, but you pretty much answered it in your testimony discussing some of the lack of data that is out there and what could be gained by getting our hands on it, in particular or perhaps even feeling reassured that small businesses are, in fact, already participating as you have suggested; but the problem being right now, we have an oversight responsibility, but a lack of data and information.

So you and Mr. Patterson have shared some ideas already about how we could address that. And so rather than try and squeeze in like a quick last-minute question and knowing that I will have more time to come back to people, I wanted to go ahead and yield and recognize Congresswoman Sharice Davids for 5 minutes.

Ms. DAVIDS. Thank you, Chairman Golden. And I know Ranking Member Stauber had to head out, but I definitely appreciate

the two of you holding this hearing on what is an incredible important topic.

And it is definitely good to see a fellow Kansan on the panel today, Mr. Patterson.

And so I want to—you know, I think that we have seen this since the beginning of this pandemic, our frontline workers haven't had enough of the personal protective equipment and testing supplies that they need to fight the virus, keep themselves safe and depending on which types of frontline workers we are talking about, keep the folks that they are helping safe.

And I think that, you know, seeing that our national stockpile ran out of supplies so quickly and the global supply just could not keep up with the demand and then the interruptions we saw in supply chain, you know, we really need to be forward thinking on all of this and make sure that we don't allow our supply of PPE and testing materials to run so low again. And I think that most of us are in agreement that this is definitely a matter of national security and certainly one of public safety.

You know, I was one of the folks who early on urged the administration to fully utilize the Defense Production Act to ramp up the domestic manufacturing of PPE and testing supplies. And then, of course, that is not the only thing that we need to be thinking about, but it is certainly a key tool in our toolbox, you know.

And part of the reason that I became so familiar with this is because Dentec which is a local manufacturing company here in the 3rd District in Lenexa, Kansas, had previously produced N95 masks, and then they were forced out of the market or priced out of the market, you know, with overseas competitors.

And so, you know, right now they make other types of masks; but Dentec attempted to get into contact with the CDC, with HHS about contracting to produce N95 masks for this current crisis, and they registered with the system for award management, and they just never heard back from anybody.

And, you know, I think we have companies like Dentec out there, and not just Dentec but other companies, and that is why I introduced the Supplies Act. It is a bill that would provide capital for small businesses to help them shift manufacturing to produce some of the critical PPE that we are seeing needs for.

And, you know, I think it also will help promote American manufacturing, domestic manufacturing here, and eliminate some of the price gouging that we have seen.

So, you know, Ms. Tapani, I really appreciate you sharing your family's story about your manufacturing company, and I would love to start with you.

I am curious, from your perspective—I know you mentioned that you had been producing a piece that was useful for ventilators. Hearing about Dentec and other companies that might not already—that might be able to maybe retool and get to that place, what do you think about how we can, you know, better utilize small businesses, better utilize manufacturers that are able to quickly get up and going?

Ms. TAPANI. Thank you for your question.

You know, I think that one of the things, as a manufacturer, it is hard for me not to think about the root cause of a problem, so

what caused the problem that we are experiencing right now with the shortness of PPE and difficulty getting businesses up and running to produce something different. And I don't fully understand what the causes are.

What I can tell you is that in Minnesota, I have heard from a number of people in the industry that businesses were working on ramping up to produce ventilators starting as early as December and certainly in early 2020.

So it wasn't the Defense Production Act that caused necessarily that to happen, but I think a better understanding of how supply chains work for people that are in decisionmaking positions would also be beneficial because they are far more complex, and they are global, global in nature, and so it is more complicated than just ordering someone to do something.

Even I had to look at—you know, for example, I saw stories of Ford Motor Company and General Motors ramping up to do ventilators, which I think is wonderful and I am so happy that they did that, but as a manufacturer, I had to look at that and say, how are they securing the supplies that they need because typically there are lead times for those.

So I think finding out more about what the root cause of the current situation was will help us understand what we need to do differently.

Ms. DAVIDS. Yeah. And that is an interesting point. I also think that one of the things that we need to be cognizant of is for the manufacturers who are able to produce but, you know, might end up having to push their customers down the list, they might run into contract issues without use of the Defense Production Act.

But if I am here for the second set of questions, I might get into that with Mr. Patterson.

Chairman GOLDEN. Thank you.

We will now go to Congressman Troy Balderson from Ohio.

Mr. BALDERSON. Mr. Chairman, good afternoon, and thank you, and bear with me one second. Don't start my timer yet. My thing went away there.

There we go.

Ms. Tapani, thank you again for testifying. My question for you would be, what can we do to leverage the ability and capability of small business companies like yours to meet the country's needs in time of crisis? And do you think we can or should use the DPA to achieve this?

Ms. TAPANI. Thank you for your question.

I think that one of the opportunities that we have with small businesses is, with or without the DPA, I think that there is a willingness to mobilize and volunteer to step in when times are difficult. Oftentimes when DPA needs to be used, we are also in an economic crisis, and small businesses feel that, I think, in a different way than large businesses. While certainly everyone in the economy feels a downturn, small businesses have shallower pockets and less resources to get funding during down times.

So I think that we are standing at the ready and ready to jump in and do whenever we can to help, simply to keep our people employed and our businesses running, and, again, that is a little bit different than what we see with larger companies.

But recognizing and finding a way to involve more small businesses on an ongoing basis so that there is more knowledge in the market amongst small businesses and through small business organizations for how we can be connected, how we can raise our hand and say that we have the capability and we are ready to help, often you hear from larger businesses when they are looking for smaller suppliers to work with that there is no one out there who could do the work.

My personal experience is that that is not true; it is just that there is still a lot of difficulty in the marketplace for our larger suppliers, like our primes, to identify small businesses that have the capabilities that they are looking for.

Mr. BALDERSON. Okay. Thank you for that answer.

And I do want to say we talked about the PPE. I, along with a couple of other members of this Small Business Committee, introduced legislation last week for a tax credit up to \$25,000 for PPP—or PPE, excuse me, I am all PPP—PPE, so I hope that you will take time to look at that and hopefully that is something that can work for you.

Mr. BLACK, my question to you, given that the SBA does not issue many DPA rated orders itself, what can the SBA currently do to further the statutory goal of providing small business opportunities under the DPA?

Mr. BLACK. I think they can share techniques for other agencies. Agencies already have offices of small business utilization. The DPA—or sorry, the SBA has process and procedures for what we will call normal procurements for the research, market research, collecting information about sources that contracting officers can easily consult.

You know, we all—I think many of us know about the Rule of Two, which is basically market research to look for small businesses. And so, you know, they are experts in those procedures. They develop the procedures that end up being in the Federal acquisition regulation.

And so having that insight into the DPA process for rated orders I think could add value. And so even though they are not the ones issuing the orders, they would be teaching, funding best practices for the agencies that are.

Mr. BALDERSON. [Inaudible] Are you aware of—a small business preference for Title III awards?

Mr. BLACK. I am sorry, I didn't hear the question.

Mr. BALDERSON. Excuse me. Are you aware of any Federal agency that has—I had to look and make sure I wasn't muted.

Are you aware of any Federal agency that has issued any regulation pertaining to a small business preference for Title III awards?

Mr. BLACK. I am not. The agency that is most active—and this really probably ties to the national defense purpose of the DPA going back many decades—is DOD. They have an Office of Industrial Policy that has a DPA Title III program, and they pose solicitations for companies to respond to.

So they have kind of an active ongoing solicitation and award of Title III investments. But I am not aware of any regulations. They are sort of run on a full and open basis, the ones I have looked at, and I am not aware of any regulation or process or practice that

that office has, which seems to be the most active one in the Executive Branch, to give life to the small business preference.

Mr. BALDERSON. Okay. Thank you very much.

Mr. Chairman, thank you very much, and I yield back my remaining time.

Chairman GOLDEN. Thank you, Congressman.

We are going to do a second round. I know I have still got plenty of questions and, you know, I don't know who else will be sticking with it, but I will certainly recognize them as well if they do have more questions.

Ms. Tapani, could you just quickly confirm for me so I understand, were you, prior to the coronavirus pandemic, already—you had a preexisting relationship with the company you are making a part for.

Were you also already a government contractor?

Ms. TAPANI. So, yes, we are not directly supplying the U.S. Government, but we are a supplier to a number of prime contractors and have done work in support of those. We are also an ITAR registered company doing work in that realm as well.

And the company that we were making the ventilator part for, we were already doing business with them, and we had about a 15-year history of making that particular part already.

Chairman GOLDEN. Thank you. And, you know, I think that possibly that might be something that we can learn from is that where we have companies that have preexisting conditions who are already experienced in working with the Federal Government in the midst of a crisis where there is a need, they might be well suited to more quickly transition if necessary.

Congresswoman Davids shared kind of a different example with a company that had previous experience, but the relationship was no longer there and they probably would have needed some help in order to, you know, step in and start doing that work that they wanted to be a part of making N95 masks.

I was going to ask Mr. Patterson, DPA authorities enabled the small business in my congressional district up in Maine, Puritan Medical Products in Guilford to respond to the COVID-19 pandemic and this was a company that was already making a product swabs, which we need more of in the United States, but they needed help in order to achieve ramping up production.

And, you know, the unique thing that took place there is, the government helped connect them with another employer in Maine, Bath Iron Works and working together Bath Iron Works was able to make machines that could then be used to stand up a whole new second production site for Puritan Medical Products so that they could essentially triple or more their production capacity of swabs.

It is a great example. The President of the United States came to my congressional district to highlight this very thing. I think it is a good example of how the DPA can work with a small business to help them meet the needs of the United States in the midst of a crisis, and so I wanted to ask, you present other examples from the last few months, such as this and how can we find out how many small businesses have been participating in these efforts?

Mr. PATTERSON. Mr. Chairman, those are both excellent questions. You know, the first one is kind of a theme that myself and

Mr. Black have hit on and it is that the data reporting when it comes to the Defense Production Act is spotty.

And so finding discreet instances of small business participation really depends on whether or not there was a published press release, or press report, or something that that I could find because much of this is not readily reported and that is not to say there aren't ways to find certain information, but in terms of a holistic way to do it, it just isn't there.

I certainly think that also there is ways to—like you mentioned—to definitely utilize the small business base to get involved, but to my knowledge, I am unaware of anyone—of any other small business who have had that and the other point I wanted to get to also was that, the prime level is one thing, but we also need to think about the supply chains. I know that a couple of my fellow witnesses talked about this as well.

Getting small businesses involved in supply chains is a very important consideration and that is even harder to get data on. I know that Mr. Black had mentioned FPDS. That is a great tool. I also know that the Ranking Member had mentioned SBA involvement.

One of the things that the SBA requires is for large businesses to enact a small business subcontracting plan. That is a tool that is pretty well accepted in other procurements and could also be utilized to try and get additional data about what is the depth of small business penetration on some of these Defense Production Act procurements.

Chairman GOLDEN. Thank you. I only see 20 seconds left. I do have other questions but first I have to be polite in thinking about Congressman Balderson's time.

Do you have more questions that you would like to ask, Congressman?

Mr. BALDERSON. No Mr. Chairman, I am fine, thank you.

Chairman GOLDEN. All right. Thank you.

I am going to go ahead then and, you know, we have had Ms. Lockhart join us. We haven't had any more additional time to hear from you. And I thought I would ask, Congress appropriated a billion dollars for DPA Title 3 authorities in response to the pandemic. A spend report said that DOD intends to invest quite a substantial amount into the defense industrial base addressing impacts caused by the COVID-19 pandemic.

Are you aware, has DOD shared anything about how it intends to apply the small business preference when spending of all of these funds? And in addition, why would it be of particular importance, in your opinion, to ensure small business preference is applied?

Ms. LOCKHART. Chairman, thank you very much for that question. I am not aware of a formal document or anything at all. I am not sure there is such a document that states what defense is planning to do. However, what I will say is that, on the onset of this crisis, the Office of Small Business under the direction of Amy Murray has been phenomenal.

NDIA and the other industrial associations have been meeting weekly and the lines of communication are there. The website for the small business has been updated and it is extremely valuable.



Now, combine that with an increase of communications and then the ability to leverage DPA Title 3 to maximize opportunities for our small businesses is a win-win.

We have seen an increase in communications. Ms. Murray has been phenomenal. She has been reactive, and then combine that. There was discussion about SBA. Well, I think the Office of Small Business is also a very important agency to be involved in this when it comes to the small business participation as well.

So I hope that helps answer your question, but for right now cash flow is critical. Cash flow is and when you—to be able to do that, it is going to really make a difference.

Chairman GOLDEN. Yeah. That is great. You just led me right into my other question for you. You talked about your small business survey and one of the biggest problems was cash flow issues.

I happen to also serve on the House Armed Services Committee and I know this is something that we were hearing about down the supply chain was concerns that we were hearing from, let's say, a business like Bath Iron Works about problems that were occurring with their subcontractors, with the supply chain where cash flow was a concern for them.

They didn't have reserves to float them through this pandemic and the loss of revenue coming in. And there were discussions about what DOD could do to help keep them afloat.

I wanted to give you an opportunity to continue down this vein how Title 3 authorities might be used to help important small firms in the supply chain to make sure that we are not losing important assets.

Ms. LOCKHART. Thank you, Chairman. Again, another excellent question. There has been some changes that were done for progress payments, so increases for the small business supply chain to increase up to the 90 percent, which has been a help.

Also for those small businesses that are primed, there had been a big disruption. It was turbulent, right with the transition from the Government working, and telecommuting, so obviously cash flow became a problem because you were transitioning into a home office environment, so there were delays in payments. The accelerated payment is crucial for small businesses. That is absolutely essential because we need the cash.

Small businesses as Ms. Tapani very eloquently answered, we do not carry the reserves like other businesses do because what we do is we invest right back into the company. And we also have to carry our very talented workforce, our cleared workforce that also is very important. We don't want to lose that expertise.

So DPA Title 3 will be able to give more opportunities for small businesses to continue to maintain our warfighter readiness.

Chairman GOLDEN. Well, thank you for that feedback. And interestingly, the Ranking Member, Mr. Stauber, is the sponsor of legislation that comes out of the work that we have had in previous hearings where we were seeing government change order, you know, in packages that was ultimately delaying payment to primes and, just as importantly, to subprimes in ways—you know, these small businesses sometimes getting paid, you know, quickly enough for their work is critical.

And he is actually—I am working with him right now not only as the Chair of this Subcommittee, but as a member of the House Armed Services Committee to try and help him successfully get his legislation into the National Defense Authorization Act this year.

Which would ensure that when the government makes a change, that small businesses are not negatively impacted by ensuring that, at least, a portion of the payment is sped up on the front end of that change and they could receive the rest when they deliver the work.

And now I am hopeful that I will be able to help Mr. Stauber in successfully getting that through.

Just to close things up here with a final question. Ms. Tapani, I think it is always a good opportunity to hear from a small business owner who has experience working with the Federal Government.

What is the biggest obstacle that you had to overcome in order to enter into the Federal procurement marketplace and what advice do you have out there for other small businesses who haven't had that experience yet, but would like the opportunity?

Ms. TAPANI. Thank you. That is a great question. You know, I think that just understanding the rules and the regulations and the jargon that goes along with working in this space is a challenge, but I would tell other small businesses that if you take the time to try to read the information that you are given or read the contracts or read the codes that you have—

You know, I am a business person with a degree in business, not a manufacturing expert, but I have been able to successfully learn to read the technical nature of a welding code, for example, and understand it so that I can lead my business down the right paths so that we are successful in doing that business.

So don't give up and just try to be patient and teach yourself what you can. I think the importance for this Committee and others to consider is that often times as a small business, when you talk about cash flow issues and what not. If you are not the prime and you are somewhere farther down the supply chain still playing a critical role in whatever needs to be manufactured or delivered, you often don't have the full set of information and so you might not be getting paid but you don't know why.

An order may be delayed, but you don't know why. An order may be canceled and you don't know why. And so I think doing a better job from a Federal standpoint of being able to flow information through the entire supply chain would be really helpful because, you know, sometimes you are in the dark and you don't know. Is it something that I did or is there some other forces at play here that I don't fully understand?

But, you know, if I get to say nothing else today, just know that from my perspective as a small business person who knows lots of small businesses, we want to help and we want to participate and we are here to do whatever we can to step up and do what is needed.

So if nothing else, remember that.

Chairman GOLDEN. Thank you very much. That is great feedback. I know my office has heard from businesses in that situation of just not knowing and needing clarity and this is what every

business needs is certainty in information to make the best decision with that they can.

Congressman Balderson, give me a thumbs up if you are all set. If you want to ask, you are good.

All right. Thank you all very much. This has been a good hearing, informative, and helpful to the members of the Committee and the staff of the Small Business Committee.

So I will quickly close things off by stating what you all know. Small businesses play an important role in the economy in the creation of jobs. Haven't we seen that demonstrated in the last several months as so many small businesses have been put in tough positions and jobs have been lost.

Far too many. And thankfully through the work of this committee, in the House, and in the United States Senate, we had things like the Paycheck Protection Program to step in and keep as many people connected to their employer as we could and keep those paychecks flowing.

Small businesses are an important part of the innovation that is going to lead the country forward into a better future. Now more than ever, ensuring that we do everything we can to preserve these businesses in these trying times should be a priority.

I would like to thank all the witnesses for taking time out of your schedules to be with us today and for providing expertise and insight relative to this conversation about the DPA, the challenges faced by small businesses, and the actions that Congress can consider taking to preserve and guarantee the vitality of our small business industrial base.

I would now ask unanimous consent that members have 5 legislative days to submit statements, supporting materials for the record.

Without objection, so ordered.

And if there is no further business to come before the Committee, we are adjourned.

Thank you all very much for joining us.

[Whereupon, at 2:13 p.m., the subcommittee was adjourned.]

## APPENDIX

**TESTIMONY OF IAN P. PATTERSON**  
**SENIOR ASSOCIATE, KOPRINCE LAW LLC**  
**SUBCOMMITTEE ON CONTRACTING AND INFRASTRUCTURE**  
**HOUSE COMMITTEE ON SMALL BUSINESS**

June 24, 2020

**“An Overview of the Dynamic Between the  
 Defense Production Act and Small Contractors.”**

Good afternoon, Mr. Chairman, Representative Golden, Ranking Member Stauber, and members of the Subcommittee. I am Ian Patterson, and I am a Senior Associate Attorney at Koprince Law LLC. My practice focuses exclusively on federal government contracting, with an emphasis on small businesses matters.

Thank you for the opportunity to appear before you to discuss the utilization of small businesses under Defense Production Act procurements to support COVID-19 response efforts. To support the Subcommittee’s investigation into small business utilization, I have been called to testify on the general structure of the Defense Production Act, as well as the considerations it contains for small businesses.

**General Structure of the Act**

The Defense Production Act of 1950 (the “DPA”) was enacted to prepare America’s private sector should it need to mobilize for national defense. For purposes of the DPA, “national defense” is broadly defined to include both direct military threats, as well as emergency preparedness actions.<sup>1</sup>

Since its enactment, the DPA has been regularly reauthorized by Congress. Over time, however, some provisions have been repealed. In its current iteration, the DPA contains three distinct subchapters, Title I, Title III, and Title VII. These have been codified at 50 U.S.C. § 4501 *et seq.*

Title I endows the president with authority to compel private businesses to accept contracts and prioritize projects to support national defense.<sup>2</sup> Concurrently, this Title also provides the president with authority to allocate resources to support national defense.<sup>3</sup>

Title III allows the president to make investments to support national defense. This can take the form of providing loan guarantees to private institutions to develop industrial capabilities

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<sup>1</sup> 50 U.S.C. § 4552(14); DPA § 702(14). Concurrent citations to both the United States Code, and the Defense Production Act of 1950, Pub. L. No. 81-774, 64 Stat. 798 (hereinafter “DPA”) have been provided for clarity.

<sup>2</sup> 50 U.S.C § 4511(a); DPA § 101(a).

<sup>3</sup> *Id.*

to purchasing critical components for future use.<sup>4</sup>

Title VII compiles miscellaneous provisions, including investigative authorities, rulemaking power, and jurisdictional considerations.<sup>5</sup> This Title also contains the DPA's small business section.<sup>6</sup>

### The DPA in Operation

With respect to business participation, the DPA provides two general methods for rallying the private sector to benefit to national defense: project prioritization under Title I and production infrastructure investment under Title III.

#### *Title I*

Title I of the DPA provides the president with the extraordinary ability to compel private entities to accept contracts and orders, as well as prioritize those contracts and orders.<sup>7</sup> To facilitate project prioritization, the DPA also authorizes the president to allocate materials, services, and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.<sup>8</sup> In practice, prioritization is accomplished through the use of priority rated-orders, which prioritize DPA procurements.<sup>9</sup>

The so-called "priority performance" authorization in Title I is best understood as a tool to quickly react to challenges facing the United States. It gives the president the authority to direct performance to meet immediate needs. It also allows for the president to prioritize resources. In a crisis, such as the COVID-19 pandemic, this authority allows the president to muster America's industrial capability to meet the needs of the nation.

A crisis, however, is not a precondition for invoking Title I authorities. According to the Defense Production Act Committee, priority authorities authorized under Title I of the DPA are used extensively by the Department of Defense.<sup>10</sup> As of 2018, the Department of Defense estimated that it placed roughly 300,000 priority orders annually.<sup>11</sup> Civilian agencies, however—principally the Department of Homeland Security—placed less than 2,000 priority orders during the same period.<sup>12</sup> The majority of these civilian orders were placed by FEMA to support natural disaster relief efforts.

<sup>4</sup> 50 U.S.C. §§ 4531(a)(1), 4533(a)(1); DPA §§ 301(a)(1), 303(a)(1).

<sup>5</sup> 50 U.S.C. §§ 4551 *et seq.*; DPA Title VII.

<sup>6</sup> 50 U.S.C. § 4551; DPA § 701.

<sup>7</sup> 50 U.S.C. § 4511(a); DPA § 101(a).

<sup>8</sup> *Id.*

<sup>9</sup> 7 C.F.R. § 789.11(a); 10 C.F.R. § 217.31(a); 15 C.F.R. § 700.3; 45 C.F.R. § 101.31(a); 49 C.F.R. §

33.31(a).

<sup>10</sup> THE DEFENSE PRODUCTION ACT COMMITTEE, CALENDAR YEAR 2018 REPORT TO CONGRESS 9 (2019), available at [https://www.fema.gov/media-library-data/1582898704576dc44bbe61cce3cf763cc8a6b92617188/2018\\_DPAC\\_Report\\_to\\_Congress.pdf](https://www.fema.gov/media-library-data/1582898704576dc44bbe61cce3cf763cc8a6b92617188/2018_DPAC_Report_to_Congress.pdf) at 9.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

*Title III*

Title III of the DPA allows the president to invest in private infrastructure to “reduce current or projected shortfalls of industrial resources, critical technology items, or essential materials needed for national defense purposes[.]”<sup>13</sup> To this end, the president can authorize loans to private businesses to “reduce current or projected shortfalls of industrial resources, critical technology items, or materials essential for the national defense[.]”<sup>14</sup> Similarly, the president may authorize federal agencies to guarantee loans to private institutions to allow manufacturers and suppliers to develop component and material manufacturing capabilities.<sup>15</sup> The president may also make purchases or purchase commitments to “create, maintain, protect, expand, or restore domestic industrial base capabilities[.]”<sup>16</sup>

Unlike Title I, the authorities granted under Title III are intended to provide proactive tools to develop the industrial base ahead of a crisis. Specifically, the goal is for spending under Title III to develop industrial resources that could meet national defense demands in the event of a crisis. If necessary, these resources could be leveraged under Title I. Whereas Title I allows for immediate mobilization, Title III provides for the buildup of capabilities.

With respect to utilization, the loan authorities provided under Title III are used infrequently, if at all.<sup>17</sup> According to a 2011 report, it had been more than three decades since Title III loan authorities had been leveraged.<sup>18</sup>

The purchase authorities provided under Title III, however, are used with some frequency. For example, in Fiscal Year 2017 the Department of Defense reported it had managed 22 projects under Title III.<sup>19</sup> Many of these projects were for military applications, such as bio-fuel and metallurgy development.<sup>20</sup>

**Small Business Participation**

Under the Small Business Act, “[i]t is the declared policy of the Congress that the Government should . . . insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small business enterprises[.]”<sup>21</sup> Given this policy, the DPA allows small business participation, though the mechanisms for driving inclusion are left largely undefined.

<sup>13</sup> 50 U.S.C. § 4531(a)(1); DPA § 301(a)(1).

<sup>14</sup> 50 U.S.C. § 4532(a); DPA § 302(a).

<sup>15</sup> 50 U.S.C. § 4531(a)(1); DPA § 301(a)(1).

<sup>16</sup> 50 U.S.C. § 4533(a)(1); DPA § 303(a)(1).

<sup>17</sup> MICHAEL H. CECIRE & HEIDI M. PETERS, CONG. RESEARCH SERV., R43767, THE DEFENSE PRODUCTION ACT OF 1950: HISTORY, AUTHORITIES, AND CONSIDERATIONS FOR CONGRESS 14 (2020), *available at* <https://fas.org/sgp/crs/natsec/R43767.pdf>

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> 15 U.S.C. § 631(a).

The DPA's consideration of small businesses begins with a finding that "the inability of industries in the United States, *especially smaller subcontractors and suppliers*, to provide vital parts and components and other materials would impair the ability to sustain the Armed Forces of the United States in combat for longer than a short period."<sup>22</sup> While not expressly stated within the DPA, Congress's finding suggests that the Title III investment authorities were designed, at least in part, to strengthen small business capabilities.

Congress's desire for small business participation is made clearer in other provisions. Title VII contains an entire section on small business involvement. Specifically, "[s]mall business concerns shall be given the maximum practicable opportunity to participate as contractors, and subcontractors at various tiers, in all programs to maintain and strengthen the Nation's industrial base and technology base undertaken pursuant to this chapter."<sup>23</sup> To facilitate involvement, small businesses were to be "afforded the maximum opportunity to participate in such advisory committees" and "small business concerns shall be accorded, to the extent practicable, a fair share of such material" whenever the president exercises material allocation authority under Title I.<sup>24</sup>

Title I further identifies the modernization of small businesses as an objective of the DPA itself.<sup>25</sup> "In providing any assistance under this chapter," the Act states, "the President shall accord a strong preference for small business concerns which are subcontractors or suppliers, and, to the maximum extent practicable, to such small business concerns located in areas of high unemployment or areas that have demonstrated a continuing pattern of economic decline, as identified by the Secretary of Labor."<sup>26</sup>

Despite the stated desire to include small businesses in procurements, and the Act's encouragement that the president grant small businesses a "strong preference" for inclusion in actions undertaken, the DPA leaves the methods for small business inclusion largely undefined. Unlike, for example, the Small Business Act, which encourages small business participation through set-aside awards and other contracting benefits, there is no statutory apparatus to facilitate small business participation under the DPA. Neither does the DPA cross reference to any procurement assistance provisions of the Small Business Act or associated regulations. Thus, as a practical matter, the DPA's small business involvement is largely aspirational without any direct mechanisms to ensure small business participation.

The challenge DPA authority presents to small businesses is readily apparent considering Title I's prioritization authorities. Priority performance is an extraordinary power that greatly modifies the traditional contracting landscape. Federal contracts are typically publicized and open for competition among offerors.<sup>27</sup> Consequently, private businesses may self-select whether they would like to participate in a federal procurement. This also allows otherwise unknown small

<sup>22</sup> 50 U.S.C. § 4502(a)(8) (emphasis added); DPA § 2(a)(8).

<sup>23</sup> 50 U.S.C. § 4551(a); DPA § 701(a).

<sup>24</sup> 50 U.S.C. § 4551(c), (e); DPA § 701(c), (e).

<sup>25</sup> 50 U.S.C. § 4518; DPA § 108.

<sup>26</sup> 50 U.S.C. § 4518(a); DPA § 108(a).

<sup>27</sup> FAR 5.002 (requiring the publication of contract actions); FAR 6.101 (requiring the use of "full and open" competition).

businesses to enter the federal marketplace.

Procurements conducted under Title I authorities, however, reverse this dynamic. In turn, this defeats other federal procurement schemes that are designed to encourage small business participation. For example, the Federal Acquisition Regulations (the “FAR”) require contract publication to “[b]roaden industry participation in meeting Government requirements” and “[a]ssist small business concerns . . . in obtaining contracts and subcontracts.”<sup>28</sup> This latter objective is particularly important since the government may be unaware of otherwise capable small businesses. Procurements conducted under Title I, however, do not provide the same participation opportunities, as there is no publication requirement.

Consequently, the DPA’s prioritization authorities upset some of the traditional methods employed to increase small business participation. In some ways, DPA prioritization authority can stifle the ability of small businesses to perform at the prime contract level.

While it is clear the DPA desires to include small businesses to the greatest extent feasible in DPA procurements, the DPA lacks the necessary mechanisms to truly facilitate small business participation on a practical level. This is also true of the regulations that support the DPA. By way of example, the president has delegated Title I authority to the Department of Health and Human Services for medical items; however, the regulatory authority published to facilitate these purchases does not even contain the phrase “small business.”<sup>29</sup>

#### **Administration of the DPA**

In an effort to aid administration of the DPA, the president has delegated DPA authority to the Secretaries of Agriculture, Energy, Health and Human Services, Transportation, Defense, and Commerce.<sup>30</sup> Each secretary is responsible for overseeing DPA procurements that impact their agency’s mission. For example, the Secretary of Health and Human Services is responsible for health resource DPA procurements.

Additionally, the president has also named at least 17 Secretaries, Directors, and other Administrators to the Defense Production Act Committee. This statutorily-required committee is responsible for planning and coordinating “the effective use of the priorities and allocations authorities under this chapter by the departments, agencies, and independent establishments of the Federal Government to which the president has delegated authority under this chapter.”<sup>31</sup>

#### **Utilization of the DPA to Combat COVID-19**

Prior to the COVID-19 pandemic, the DPA was largely used as a tactical tool to prioritize specific projects, typically for the Department of Defense. The response to COVID-19 is the first time the DPA is being called on to provide comprehensive acquisition solutions to address

<sup>28</sup> FAR 5.002(b)–(c).

<sup>29</sup> 45 C.F.R. § 101.1 *et seq.*

<sup>30</sup> Exec. Order No. 13603 § 201(a), 77 Fed. Reg. 16,651 (Mar. 16, 2012).

<sup>31</sup> 50 U.S.C. § 4567; DPA § 722.



concurrent shortages.

Since March of this year, the Government primarily used the DPA to acquire resources and make investments to battle COVID-19. On March 18, the president issued an executive order authorizing the Secretary of the Department of Health and Human Services to use Title I authorities to obtain medical supplies to address COVID-19.<sup>32</sup> Subsequent executive orders delegated authority to combat resource hoarding,<sup>33</sup> as well as providing for the utilization of Title III authorities.<sup>34</sup>

Congress subsequently allocated \$1 billion under the CARES Act for DPA purchases to respond to COVID-19.<sup>35</sup> With the delegations of authority and appropriations, both Title I and Title III authorities have been exercised to respond to the COVID-19 pandemic.

Under Title I authority, General Motors has been contracted to produce 30,000 ventilators by the end of August 2020 for \$489.4 million.<sup>36</sup> An additional Title I procurement for ventilators was issued to Philips for \$646.7 million.<sup>37</sup> More Title I prioritized contracts for ventilators were subsequently issued to General Electric, Hill-Rom, Medtronic, ResMed, and Vyaire.<sup>38</sup> The value of these awards ranged from \$9.1 million to \$552 million.<sup>39</sup>

With respect to Title III, the Department of Defense invested \$133 billion to increase N95 mask production.<sup>40</sup> The recipients of these investments included 3M, Honeywell, and O&M Halyard.<sup>41</sup> In another example, the Department of Defense and Department of Health and Human Services jointly awarded a contract under Title III to ApiJect Systems America to increase the production of syringes.<sup>42</sup> The value of this contract totaled \$138 million.<sup>43</sup>

<sup>32</sup> Exec. Order No. 13909 § 2(a), 85 Fed. Reg. 16,227 (Mar. 18, 2020).

<sup>33</sup> Exec. Order No. 13910 § 2, 85 Fed. Reg. 17,001 (Mar. 23, 2020).

<sup>34</sup> Exec. Order No. 13911 § 2, 85 Fed. Reg. 18,403 (Mar. 27, 2020).

<sup>35</sup> CARES Act, Pub. L. No. 116-136, Division B, Defense Production Act Purchases, 134 Stat. 281 (2020).

<sup>36</sup> Press Release, Dep't Health & Human Servs., HHS Announces Ventilator Contract with GM under Defense Production Act (Apr. 8, 2020), *available at* <https://www.hhs.gov/about/news/2020/04/08/hhs-announces-ventilator-contract-with-gm-under-defense-production-act.html>.

<sup>37</sup> Press Release, Dep't Health & Human Servs., HHS Announces Ventilator Contract with Philips under Defense Production Act (Apr. 8, 2020), *available at* <https://www.hhs.gov/about/news/2020/04/08/hhs-announces-ventilator-contract-with-philips-under-defense-production-act.html>.

<sup>38</sup> Press Release, Dep't Health & Human Servs., HHS Announces New Ventilator Contracts, Orders Now Totaling Over 130,000 Ventilators (Apr. 13, 2020), *available at* <https://www.hhs.gov/about/news/2020/04/13/hhs-announces-new-ventilator-contracts-orders-now-totaling-over-130000-ventilators.html>.

<sup>39</sup> *Id.*

<sup>40</sup> Press Release, Dep't Def., First DOD Defense Production Act Title 3 COVID-19 Project (Apr. 11, 2020), *available at* <https://www.defense.gov/Newsroom/Releases/Release/Article/2146692/first-dod-defense-production-act-title-3-covid-19-project/>.

<sup>41</sup> David F. Dowd & Marcia G. Madsen, Use of the Defense Production Act: Expanding Capacity, MAYER BROWN (Apr. 22, 2020), *available at* <https://www.mayerbrown.com/en/perspectives-events/publications/2020/04/use-of-the-defense-production-act-expanding-capacity>.

<sup>42</sup> Press Release, Dep't Def., DOD Awards \$138 Million Contract, Enabling Prefilled Syringes for Future COVID-19 Vaccine (May 12, 2020), *available at* <https://www.defense.gov/Newsroom/Releases/Release/Article/2184808/dod-awards-138-million-contract-enabling-prefilled-syringes-for-future-covid-19/>.

<sup>43</sup> *Id.*

Unfortunately, the examples identified above may provide an incomplete picture of the Act's utilization in response to COVID-19. As the Congressional Research Service noted in April 2020, "[p]ublic reporting and congressional oversight of DPA activities is fragmented and irregular."<sup>44</sup>

As relevant to the Committee, inconsistencies in the data make it difficult to assess how involved small businesses are in DPA procurements. This is particularly true with respect to information about suppliers and subcontractors. Nevertheless, based on the publicized awards, it is evident that the majority of DPA prime contracts are being made to large businesses. The extent to which small businesses are involved at the subcontract or supplier level is unknown.

### **Conclusions**

COVID-19 represents the first time the DPA has been called upon to achieve its intended purpose—a large scale mobilization of America's resources to address a national defense threat. As American industry mobilizes to address the challenges COVID-19 presents, it appears small businesses are not frequently engaged at the prime contract level for DPA procurements. Additionally, given the scarcity of data, it is difficult to know the extent small businesses are involved as subcontractors and suppliers under the DPA.

It is clear that the DPA provides powerful tools for the president to support and advance business, including small businesses. While prioritization has been at the forefront of recent conversations regarding COVID-19, the DPA also provides substantial investment opportunities that could be leveraged to provide small businesses the tools and resources they need to play their part in producing for America's defense against COVID-19. I encourage Congress to utilize the tools present in the DPA to invest in America's small businesses, as well as provide further assistance for small businesses to gain access to DPA procurements.

I hope the above information has provided insight into the operation of the DPA, as well as its utilization to combat the COVID-19 pandemic. I appreciate the opportunity to appear before this subcommittee. I look forward to answering your questions.

### **Acknowledgements**

I wish to acknowledge comments and assistance provided to me in preparing this testimony from Steven Koprince, Matthew Schoonover, Matthew Moriarty, Haley Claxton, and Abigail Case. Despite listing their names here, none of those individuals necessarily agrees with, or endorses any of my comments or opinions.

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<sup>44</sup> MICHAEL H. CECIRE & HEIDI M. PETERS, CONG. RESEARCH SERV., IN11337, THE DEFENSE PRODUCTION ACT (DPA) AND THE COVID-19 PANDEMIC: RECENT DEVELOPMENTS AND POLICY CONSIDERATIONS 3 (2020), available at <https://crsreports.congress.gov/product/pdf/IN/IN11337/>

**Mr. David S. Black**  
**Government Contracts Attorney, Holland & Knight LLP**

**At the Hearing Entitled**

**"An Overview of the Dynamic Between the Defense Production Act  
and Small Contractors"**

**June 24, 2020**  
**1:00 p.m.**

**Before the**  
**House Committee on Small Business,**  
**Subcommittee on Contracting and Infrastructure**

Thank you Chairman Golden, Ranking Member Stauber and Members of the Subcommittee for the opportunity to submit written testimony regarding the An Overview of the Dynamic Between the Defense Production Act and Small Contractors.

I am a government contracts attorney in the law firm of Holland & Knight LLP, where I have worked since 1998. I am Co-Chair of the Firm's National Government Contracts Team. I work in the Firm's Tysons, Virginia, office. In my practice, I provide advice and representation on a full range of issues, matters, and disputes encountered by small and mid-tier Federal contractors and subcontractors through every stage of growth. I serve contractors in a broad array of industries, with an emphasis on innovative technology, cutting-edge products, professional services, healthcare, and research and development. Many of my clients participate in small business contracting programs as either a prime contractor or subcontractor. I also advise clients regarding participation in various authorities and programs under the Defense Production Act, including priority rated orders under Title I and Federal investments to build production capacity under Title III. It is a privilege to provide some perspective today from this part of the small business contracting community.

**I. Executive Summary**

We are here today because the coronavirus pandemic has highlighted the importance of ensuring that the authorities under the Defense Production Act of 1950 (the DPA),

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effectively promote the participation of small businesses in the broader effort to ensure necessary capacity and production of materials critical to national defense.

In seeking to engage small businesses under the DPA, the authorities that are the subject of my testimony include small business preferences and other direction to maximize small business opportunities under DPA activities. However, in some cases the statutory requirements lack direction on implementation. The effectiveness of these small business authorities is also hindered by a lack of organized data collection and reporting. The result is that the authorities of the DPA intended to assist small businesses are largely underutilized.

To enhance the effectiveness of the existing small businesses authorities under the DPA, the following changes are recommend:

**1. Information Regarding Implementation of the “Strong Preference” for Small Businesses in Providing Assistance Under Title III**

Congress should expand the scope of the DPA Committee activities under 50 U.S.C. § 4567 to include reporting on information concerning efforts to provide the “strong preference” for small businesses under Title III awards, as required under section 4518(a). In its annual report, the DPA Committee should report all Title III awards, including awards to small businesses. The DPA Committee should report on the status of procedures implemented by agencies to provide the “strong preference” for small business in providing Title III assistance.

**2. Establishment of Procedures to Apply the Title III Small Business Preference**

Congress should require agencies to issue regulations relative to how they will apply Title III's strong preference for small businesses, required under section 4518(a), for purposes of Title III assistance.

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**3. Establish a Small Business Advisory Subcommittee that Includes Small Business Concerns under 50 U.S.C. 4551(c)**

Congress should direct the DPA Committee to establish a “Small Business Participation Advisory Subcommittee” to provide annual recommendations on how to increase small business participation in DPA orders and promote the strong preference for small businesses under Title III funding.

**4. Require Information on How Agencies are Making Information About DPA Activities Available to Small Businesses under 50 U.S.C. 4551(d)**

Congress should require the DPA Committee to address how the information required under 50 U.S.C. § 4551(d), concerning the DPA and activities undertaken in accordance with the DPA, is made available to small business concerns.

**5. Require Data Collection Under the Federal Procurement Data System (FPDS) Regarding the Use of DPA Title I Priority Rated Orders**

When entering data into the Federal Procurement Data System (FPDS), Congress should direct federal agencies to list the priority rating (DX or DO) and the program identification symbol for all rated orders placed under the DPA, including awards placed with small and other-than-small businesses. Congress should direct that such information be publicly available through a computer-based FPDS for collecting, developing, and disseminating procurement data to the Congress, Executive Branch, and private sector, currently the Federal Procurement Data System-Next Generation.

**II. Introduction**

The DPA confers broad authorities upon the President over the means of production in the United States economy when deemed necessary to promote the national defense. In its current form, the DPA statute retains three of its original seven titles, Titles I, III, and VII. Titles I and III include a number of key provisions relevant to small businesses. Title I allows for the President to prioritize certain orders over others, to allocate certain materials, services, and facilities, and prevent the hoarding of certain goods. Most commonly, Title I is utilized to place priority orders, which are called rated orders. DPA Committee annual reports note that the Department of Defense utilizes the authorities

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under Title I approximately 300,000 times annually. Title III authorizes the President to arrange for loan guarantees, direct loans, purchase commitments, and other financial mechanisms to encourage increased production including the purchase of manufacturing equipment.

Congress has long recognized the importance of small businesses to support production for national defense, particularly when mobilizing capacity in times of war. During World War II the need for goods and services critical to the war mobilization effort led Congress to create the Smaller War Plants Corporation (SWPC) "to mobilize the productive facilities of small business in the interests of successful prosecution of the war, and for other purposes".<sup>1</sup> The SWPC was authorized to enter into contracts with the federal government and subcontract the performance of those contracts to small businesses for the manufacture, supply, or assembly of articles, equipment, supplies or materials.<sup>2</sup> The authority of SWPC expired in 1946.

During the Korean War, Congress amended the DPA to create the Small Defense Plants Administration (SDPA). In establishing the SDPA Congress recognized that the government's "mobilization program must extend down into the small plants, since they are a major source of our productive strength."<sup>3</sup> Among the SDPA's powers was the authority to certify the capacity and credit of small businesses, a predecessor to the Small Business Administration's (SBA's) Certificate of Competency Program. Contracting officers were required to accept SDPA's certifications and Congress believed this authority would "give small businesses definitive assurance of a fair share of prime contracts."<sup>4</sup> The SDPA also had authority for extensive data collection to promote the award of prime and subcontracts to small businesses. The SDPA's other powers included the ability to make studies and recommendations to ensure small businesses could provide a fair and equitable share of materials, supplies and equipment for defense programs and essential civilian production. In addition, the

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<sup>1</sup> Act of June 11, 1942, Pub. L. No. 77-603, 56 Stat. 351.

<sup>2</sup> *Id.* § 4(f)(4).

<sup>3</sup> H.R.Rep.No.639, 82d Cong., 1st Sess. 31, reprinted in (1951) U.S.Code Cong. & Ad.News 1626, 1645-46.

<sup>4</sup> *Id.*

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SDPA was authorized to establish advisory boards and committees wholly representative of small businesses as needed to achieve the purposes of the statute.

Both the SWPC and the SDPA were seen by Congress as temporary emergency agencies to promote small business participation during war mobilization efforts. After the Korean War, Congress sought a permanent, independent agency that would continue many of the functions of the SDPA, which led to the creation of the SBA under the Small Business Act of 1953.

While SBA was granted authority to assist small businesses and promote small business participation in federal procurements on a government-wide basis, the DPA retains separate authorities related to small business participation in capacity and production activities related to national defense. However, as noted, in the absence of clear direction and more detailed guidance from the statutory provisions, the authorities of the DPA intended to assist small businesses are largely underutilized.

### **III. Potential Points of Reform For The DPA's Small Business Authorities**

A review of the current provisions of the DPA intended to assist small businesses identifies opportunities for additional direction and guidance from Congress to enable agencies, Congress and the public to have better information related to small business activities under the DPA and provide for more effective implementation of these small business authorities. The opportunities for reform are discussed in more detail below.

The discussion below identifies each of the current DPA authorities and related practices regarding small businesses that appear ripe for reform. After discussing the current practices, the potential areas of reform are presented. The proposed reforms will enable more effective implementation of the small business preferences and efforts to engage small businesses under the DPA.

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**A. Information Regarding Small Business Preference Procedures and Awards Under Title III**

**i. Current Practices – Information Regarding Small Business Preference Procedures and Awards Under Title III**

50 U.S.C. § 4518 of the DPA, addresses the effort to modernize small business suppliers under Title III. Under section 4518(a) “the President shall accord a strong preference for small businesses subcontractors and suppliers, and, to the maximum extent practicable, to such small business concerns located in areas of high unemployment or areas that have demonstrated a continuing pattern of economic decline, as identified by the Secretary of Labor.” Section 4518(b)(2) further provides that for small businesses seeking financial assistance under section 4518, the President must give a strong preference to proposals that: 1) have the support of the agency providing the guarantee; 2) indicate that the small business has arrangements to obtain qualified outside to support the use of the advanced manufacturing equipment being proposed for installation; and 3) meets the requirements of sections 4531, 4532, and 4533 of the DPA, which, as detailed below, address loan guarantees, direct loans other presidential actions, such as purchase commitments.

Section 4518 does not include any provisions on the collection and reporting of information related to the strong preference that must be given to small business suppliers and subcontractors.

50 U.S.C. § 4567 of the DPA, establishes the DPA Committee, which is required to coordinate and plan for on the effective use of the priorities and allocations authorities under Title I. The Committee’s members include the head of each federal agency with delegated authority under the DPA and the Chairperson of the Council of Economic Advisors. Under section 4567(d), the DPA Committee must issue an annual report to the House Committee on Financial Services. The information required in the annual report addresses only activity related to priorities and allocations authorities under Title I and does not require information on Title III awards made to small businesses in the preceding year. Given its exclusive focus on priorities and allocations activity under Title I, the report is not required to address how the “strong preference for small



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business concerns" under 50 U.S.C. 4518(a) was applied in the Title III award process. Therefore, there are currently no data collection and reporting efforts with regard to the requirement to provide a "strong preference to small businesses" under Title III awards.

**ii. Potential Reforms – Information Regarding Small Business Preference Procedures and Awards Under Title III**

As noted above, section 4518 of the DPA does not direct the collection or reporting of data on application of the strong preference given to small businesses under Title III awards. In addition, although the DPA Committee's annual report includes information on priorities and allocations activity, it does not address information on Title III awards, nor is it required to explain agency application of the "strong preference for small businesses" under such awards. This lack of information on Title III small business awards hinders the ability to assess the effectiveness of this small business preference requirement. Given that under section 4567, the DPA Committee annual report addresses only priorities and allocations activity under Title I, Congress should expand the scope of the DPA Committee activities to cover Title III activity. With this expanded scope, Congress should require that the annual report to address Title III actions, including information on an efforts to provide a strong preference for small businesses under Title III awards. Expanding the scope of the DPA Committee report would increase transparency while raising the profile of small business issues under the DPA. An expended DPA Committee report would also provide useful information for policy-makers in determining the extent to which the small business preferences under Title III are being met.

**B. Procedures to Apply the Title III Small Business Preference**

**i. Current Practices – Procedures to Apply the Title III Small Business Preference**

As noted above, section 4518(a) of the DPA, provides that under Title III awards, a strong preference shall be given to small businesses subcontractors and suppliers, and, to the maximum extent practicable, to such small business concerns located in areas of high unemployment or areas that have demonstrated a continuing pattern of economic decline, as identified by the Secretary of Labor. Although section 4518 directs agencies

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to provide a strong preference to small businesses under Title III awards, it does not direct them to issue regulations to implement this statutory requirement.

**ii. Potential Areas of Reform – Procedures to Apply the Title III Small Business Preference**

The absence of direction from Congress with regard to how agencies are to provide a strong preference for small businesses under Title III has resulted in a lack of information and awareness of this statutory requirement. Therefore, the desire of Congress to promote small business participation in Title III awards is not being fulfilled. Therefore, Congress should require agencies to issue regulations relative to how they will apply the strong business preference for purposes of Title III. Establishing a regulatory framework for the small business preference under Title III, in conjunction with effective data collection and reporting, will assist agencies meeting this statutory requirement and thus further the small business goals of section 4518.

**C. Small Business Advisory Committee**

**i. Current Practices – Small Business Advisory Committee**

50 U.S.C. § 4551(c) provides that representatives of small business concerns shall be afforded the maximum opportunity to participate in "such advisory committee as may be established pursuant to this chapter." 50 U.S.C. § 4567, establishes the Defense Production Act Committee which is directed to coordinate and plan for on the effective use of the priorities and allocations authorities under the DPA by the departments, agencies, and independent establishments of the Federal Government to which the President has delegated authority. Committee members include the head of each Federal agency to which the President has delegated authority under the DPA and the Chairperson of the Council of Economic Advisors. The Committee currently does not include any representative from SBA. Thus, to the extent the DPA Committee is considered such an "advisory committee," small businesses are not presently afforded any opportunity to participate.

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**ii. Potential Areas of Reform – Small Business Advisory Committee**

The absence of a small business presence on the DPA Committee means that concerns of small businesses are not given consideration by the Committee, which is evident from the lack of small business issues addressed in the Committee's annual report. As small businesses do not presently have representation in the DPA Committee, Congress might consider directing the DPA Committee to establish a "Small Business Participation Advisory Subcommittee" to provide annual recommendations on how to increase small business participation in DPA orders and promote the strong preference for small businesses under Title III funding. Small business participation in the DPA Committee would serve to raise the profile of small business issues, provide more information on small business activity, thus furthering the statutory goal of promoting small business opportunities under the DPA.

**D. Providing Information on DPA Activities to Small Businesses**

**i. Current Practices - Providing Information on DPA Activities to Small Businesses**

50 U.S.C. § 4551(d) provides that information about the DPA and activities undertaken in accordance with the DPA "shall be made available to small business concerns." Section 4551(d) does not direct agencies to issue regulations implementing this provision and therefore it is unclear how any agency to whom the President has delegated DPA authority is complying with this provision.

**ii. Potential Areas of Reform - Providing Information on DPA Activities to Small Businesses**

The lack of clear direction in the DPA statute concerning the requirement to provide small businesses information about the DPA and activities undertaken in accordance with the DPA, has resulted in uncertainty regarding agency compliance with the requirement to provide information on DPA activities to small businesses. In addition to the need to assess agency compliance with the requirement under section 4551(d), greater transparency regarding the DPA program, particularly transparency directed at small businesses, would result in a more information for small business community with

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regard to DPA activities. Other small business programs, such as those administered by SBA, include extensive information directed at small businesses for such programs. Such efforts inform small businesses and promote their participation in such programs. Therefore, Congress should require the DPA Committee to address how such information is being made available to small businesses in its annual report under section 4567.

**E. Small Business Data Collection under the Federal Priorities and Allocations System**

**i. Current Practices – Data Collection Under the Federal Priorities and Allocations System**

Despite the existence of a robust information system for collecting data about Federal contract awards, Federal agencies are not currently required to include information about the use of the Title I priority rating order. As a result, Congress lacks any visibility into the extent of small business participation in priority rated contracts and orders. Collecting such data would not be difficult and would provide information to Congress about how agencies utilize priority rating authority for both large and small businesses, which would aid future decisions about DPA policy.

The President's priorities and allocations authority under Title I, at 50 U.S.C. § 4511, allows the President to require contractors to prioritize and accept contracts for materials and services as necessary to promote the national defense. This Title I authority is delegated to certain agencies<sup>5</sup> who are required to issue regulations establishing standards and procedures for a consistent and unified federal priorities and allocations system.

The regulations issued by the agencies with delegated authority are known collectively as the Federal Priorities and Allocations System (FPAS). Under the FPAS regulations rated orders are identified by a priority rating and a program identification symbol. Rated

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<sup>5</sup> Section 201 of Executive Order 13603, National Defense Resources Preparedness, designates the following agencies with priorities and allocations authority under the DPA: Agriculture, Energy, Health and Human Services, Transportation and Commerce, which has delegated authority to place priority ratings on contracts or orders to the Department of Defense.

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orders take precedence over all unrated orders as necessary to meet required delivery dates. Among rated orders, DX rated orders take precedence over DO rated orders. Persons receiving rated orders must give them preferential treatment and must in turn place rated orders with their suppliers for the items they need to fill the orders. This provision ensures that suppliers will give priority treatment to rated orders from contractor to subcontractor to suppliers throughout the procurement chain. Although regulations provide for mandatory acceptance of rated orders, a rated order must not be accepted for delivery on a specific date if the contractor is unable to fill the order by that date.

Under 50 U.S.C. § 4551(a), small businesses be given "maximum practicable opportunity to participate as contractors, and subcontractors at various tiers, in all programs to maintain and strengthen the Nation's industrial base and technology base undertaken pursuant to the [DPA]." Further, 50 U.S.C. § 4551(d) provides that when making priority allocations of material under section 4511 "small business concerns shall be accorded, to the extent practicable, a fair share of such material, in proportion to the share received by such business concerns under normal conditions, giving such special consideration as may be possible to emerging small business concerns."

The Office of Federal Procurement Policy Act, as amended, 41 USC § 401 et seq., requires the Administrator for Federal Procurement Policy to establish a computer-based Federal Procurement Data System for collecting, developing, and disseminating procurement data to the Congress, Executive Branch, and private sector. The Federal Procurement Data Center, run by the General Services Administration, oversees the operation of the Federal Procurement Data System - Next Generation (FPDS-NG). FAR 4.602 requires executive departments and agencies to collect and report procurement data to FPDS-NG. FAR 4.606 identifies the contract actions that agencies must report to FPDS-NG, including for example, definitive contracts, task and delivery order contracts, multi-agency contracts and basic ordering agreements. However, information on rated orders, including rated orders issued to small businesses, is not required to be submitted to FPDS-NG under FAR 4.606.

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**ii. Potential Areas of Reform – Data Collection Under the Federal Priorities and Allocations System**

The absence of data collection and reporting on rated orders, including those awarded to small businesses, means that there is no information available on the percentage of rated orders awarded to small businesses. As a result, although the Department of Defense (DoD) reported that it had made more than 300,000 priority awards in a recent fiscal year (prior to the pandemic), Congress has no information regarding the extent of small business participation and the effectiveness of the section 4551(a) requirement that they be given the “maximum practicable opportunity to participate as contractors, and subcontractors at various tiers.” 50 U.S.C. § 4551(a). Furthermore, agencies other than DoD are not reporting the number of priority orders and contracts for either large or small businesses. Thus it is impossible to determine the extent to which the mandate to maximize small business participation in the priorities and allocations system is being met. Given that the FPDS-NG does not currently collect and report information about priority-rated orders, Congress should direct agencies to list the rating (DX or DO) and the program identification symbol for all rated orders placed under the DPA, including awards placed with small and other-than-small businesses. Congress should direct that such information be publicly available through FPDS-NG. Collecting this data would impose minimal burden, as it involves adding another field to dozens of data fields that already exist for procurement actions reported in FPDS-NG.

The collection and publication of information on rated orders would assist agencies, policy-makers and the public in monitoring small business participation in the rated order process. Such information would also enable future changes in the law, as needed to promote small business participation under Title I of the DPA.

**“An Overview of the Dynamics Between the Defense Production Act and Small Contractors”  
Testimony before the House Small Business Subcommittee on Contracting and Infrastructure  
United States House of Representatives  
116th Congress**

**Mary Lockhart  
President, CEO, & Founder  
PEMDAS Technologies & Innovations  
Chair, Small Business Division  
National Defense Industrial Association (NDIA)**

**1:00 pm  
Wednesday, June 24, 2020  
Virtual Hearing**

**Introduction**

Chairman Golden, Ranking Member Stauber, and Members of the Subcommittee, thank you for the opportunity to testify here today and for your consistent efforts in supporting America’s small business community.

My name is Mary Lockhart and I am the President, CEO, and Founder of PEMDAS Technologies & Innovations, a woman-owned, service-disabled veteran-owned small business located in Alexandria, VA. PEMDAS is an established expert in the integration of environmental intelligence (EI) into C4I systems (command, control, communications, computers, and intelligence systems), essentially the “weather impacts” for the platforms and weapon systems. The company provides high-value engineering services and hardware and software products to the Department of Defense (DoD). Today I am representing the Small Business Division of the National Defense Industrial Association (NDIA), the nation’s oldest and largest defense industry association, comprised of 1,650 corporate and over 70,000 individual members. My testimony this afternoon will focus on leveraging Title III authorities to support the small business preference in the Defense Production Act (DPA). This will help to preserve America’s small business industrial base during this challenging pandemic.

My small business colleagues and I support all efforts to make government procurement more efficient, streamlined, and cost effective. Unfortunately, COVID-19 has created unforeseen challenges to small businesses that are eclipsing the recent beneficial changes to defense procurement systems. An April 23, 2020 published NDIA survey of 750+ members from the small business industrial base found that 60% of the respondents experienced a serious cash flow disruption due to this crisis. Concurrently, 51% reported that shelter-in-place orders negatively impacted their ability to execute contracts. Most alarming is 60% expected to have long-term financial and operational issues resulting from COVID-19. Cuts to billable hours, delayed prime contractor and/or government payments due to shut down or telework requirements, and a lack of telework options or contract schedule flexibility were cited as the underlying reasons. Unsurprisingly, the brunt of these impacts fall hardest on those small businesses with fewer than 50 employees because of their limited resources. These businesses are often new to the defense industrial base and represent a vulnerable but vital part of our national security procurement apparatus.

Congress recently appropriated \$1 billion for DPA Title III in the CARES Act for actions to expand production of medical equipment and invest in the defense industrial base. This Act contains provisions relevant to small businesses that support our national security. It is important these provisions and their investments reach small businesses as they are the proven innovators of technology to strengthen military readiness. Small businesses also generate thousands of local jobs. Ensuring the vitality of small businesses will help America's preparedness, response, and recovery from this pandemic. It is important, therefore, to emphasize that the special preference for small businesses in DPA is followed—especially in areas of high unemployment or ones that have demonstrated a continuing pattern of economic decline.

Clearly, the DPA Title III is vital to the support of small businesses. However, this 70-year-old Act demands a re-structure to optimally support the small businesses described. I offer the following suggestions:

- Accelerate and streamline the acquisition process; use DPA Title III to maximize small business participation.
- Establish a centralized office for DPA implementation, reporting, and coordination.
- Ensure DPA has ample funding for small businesses, using supplemental appropriations if the DPA fund is exhausted.
- Allow small and medium-sized manufacturing enterprises (SMEs) to use Title III funds as intended by the DPA. This act provides for "guaranteeing the purchase or lease of advance manufacturing equipment" under Title III, subject to meeting certain requirements to replace key equipment that supports the defense industrial base.

#### **Conclusion**

Chairman Golden, Ranking Member Stauber, and Members of the Subcommittee, thank you for the opportunity to appear before you this afternoon and thank you for your continued efforts in support of the small business community. I would be pleased to respond to any of your questions.



Testimony of  
Traci Tapani, Co-President  
Wyoming Machine, Inc.



Submitted to  
The Committee on Small Business  
Subcommittee on Contracting and Infrastructure

Hearing titled  
An Overview of the Dynamic Between the Defense Production Act  
and Small Contractors

June 22, 2020

My name is Traci Tapani and I am Co-President and owner of Wyoming Machine, Inc., a family owned precision sheet metal fabrication company located in Stacy, Minnesota. Wyoming Machine was founded by my father, Thomas Tapani, in 1972, and I have owned and operated the company in partnership with my sister, Lori Tapani, for the past 26 years. I come from a long line of small business owners and women in manufacturing. We pride ourselves on our perseverance and our ability to get the job done.

While the Defense Production Act (DPA) is a valuable tool in times of emergency and it can direct the efforts of industries towards necessary products, the DPA is not always the driving force behind the mobilization of America's small businesses. In the years following the attack on Pearl Harbor, a young woman left her office job in Chicago and headed for Sturgeon Bay, Wisconsin. When she arrived at the shipyards, she asked, "What can I do to help?" and she soon joined hundreds of other women welding ships in support of WWII. The woman I've just described is Magdalene Halladay, my great aunt. If she were telling this story, she'd want you to know that she was paid \$0.25 per hour, but she would have worked for free. The Defense Production Act (DPA) did not become law until 1950, but its roots stem back to WWII and the mass mobilization and refocusing of businesses and citizens to the production of goods needed for national defense.

Nearly 70 years after the DPA became law, it was our time to join a mass mobilization of industry and people in response to the global COVID-19 pandemic. Our opportunity came when we received an order for a part that we have made many times before. Different from any other time we manufactured the part, this time we knew it was a component of a medical ventilator. Over a period of two months, we manufactured 60,000 parts. Twelve times the volume we produced in 2019. Members of this committee may be surprised to learn that the DPA was not part of the contract under which we manufactured these medical ventilator parts.

If not the Defense Production Act, then what drives small businesses to produce essential products with little or no notice?

Like Wyoming Machine, many small manufacturing businesses operate as job shops and responding to uncertainty and building unique parts is vital to our business model. A key characteristic of a job shop is that parts being manufactured change frequently. Job shops can quickly adapt to changes in customer product demand and job shops can simultaneously manufacture a wide variety of parts across a broad range of industries. Our ability to adapt to changing needs allows us to make ventilator parts one day and playground parts the next. The job shop model, in part, allowed Wyoming Machine to implement a rapid response to the unexpected increase in demand for medical ventilator parts.

Despite its importance, the use of the DPA to compel private businesses to accept and prioritize government contracts creates a vastly different feeling than the forces that compelled my Great Aunt to leave her office job for a welding job during WWII or the forces that motivated the owners or employees of Wyoming Machine to ramp up production of medical ventilator parts. Author Simon Sinek wrote that, "Working hard for something we don't care about is called stress; working hard for something we love is called passion." Wyoming Machine employees were told about the opportunity to help during the COVID-19 pandemic, and they were inspired and motivated. When asked to produce more parts at a faster rate, our employees worked out their own plans to get the job done. Our company passion for

manufacturing, combined with our desire to help in a time of need, made our work feel almost effortless.

My testimony before this committee is not to argue for or against the merits of the DPA, but rather to share a small business perspective during a time when the DPA has been used to direct private sector businesses to produce medical ventilators and other supplies needed during the COVID-19 pandemic. There will always be American businesses ready and willing to respond in a time of need and I believe that small businesses have a special role to play due to their agility and ability to quickly mobilize.

