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UTILIZATION OF SMALL CONTRACTORS IN THE INFRASTRUCTURE PLAN

HEARING

BEFORE THE

SUBCOMMITTEE ON CONTRACTING AND INFRASTRUCTURE

OF THE

COMMITTEE ON SMALL BUSINESS UNITED STATES HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTEENTH CONGRESS

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UTILIZATION OF SMALL CONTRACTORS IN THE INFRASTRUCTURE PLAN

THURSDAY, JUNE 10, 2021

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

The Subcommittee met, pursuant to call, at 1:01 p.m., via Zoom, Hon. Kweisi Mfume [chairman of the Subcommittee] presiding.

Present: Representatives Mfume, Newman, Andy Kim, Hagedorn, Stauber, Meuser, Salazar, and Fitzgerald.

Chairman MFUME. Good afternoon, everyone. I would like to call to order this hearing today of the Subcommittee on Infrastructure and Contracting.

And I would like to thank, first of all, all of the Members on both sides of the aisle who thought it important enough to be with us. There is a lot going on today, and I can appreciate that.

Without objection, the Chair is authorized, as most of you know, to declare a recess at any time.

And let me begin by saying that standing House committee rules and practices will continue to apply during the remote proceedings. All Members are reminded that they are expected to adhere to those standing rules, including decorum, when they are participating in any remote event such as this.

With that said, the technology that we are using today requires us to make small changes and modifications from time to time to ensure that Members can fully participate in these proceedings.

House regulations require Members to be visible through a video connection throughout the proceeding, so I would respectfully ask that everyone keep their cameras on. If you have to participate in another proceeding, please exit and then log back in later at a time convenient for you.

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

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 the issues have, in fact, been resolved.

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

And, finally, please remember to remain muted until you are recognized in order to minimize the amount of background noise that oftentimes accompanies these Zoom meetings.

In accordance with rules, staff has been advised to mute participants only in the event if there is inadequate background noise—or overwhelming background noise, I should say. And should a Member wish to be recognized, they then just should unmute themselves and seek recognition at, of course, the appropriate time.

At this time, the Chair would like to recognize himself for an opening statement.

Infrastructure helps to form the foundation of our nation. Every day, Americans across the country rely on infrastructure to commute to work, to access clean water, and to communicate with one another. But despite infrastructure's fundamental importance to our country, it has become an afterthought in many respects over the past several decades.

The U.S., as we all know, is the wealthiest country globally, but we are ranked 13th worldwide when it comes to the quality of our infrastructure. Fortunately, there is a wide consensus, which is bipartisan, that the current state of American infrastructure is, in fact, unsustainable.

That is why in April, President Biden introduced the American Jobs Plan. The plan would revitalize the American infrastructure through major investments and federal funding over the next decade.

The job plan would fix highways, repair bridges, improve airports, water ports, expand transit and rail into new communities. It would also eliminate lead water pipes and improve high-speed broadband, upgrade our schools and federal buildings, and so much, much more.

By all accounts, this plan, we believe, truly represents a new vision for America, one through which by rebuilding with purpose we take care of the environment, further enhance equity, and create the basis for a stronger economic future.

In this respect, an investment in infrastructure would be a significant benefit to small firms. Small businesses, as we all know, rely on infrastructure systems daily to increase their access to consumers and suppliers, to boost business operations, and create new demand for their goods and for their many services.

Infrastructure investment would also be a boon for the millions of small businesses that directly and indirectly support the development, modernization, and the maintenance of many facets of infrastructure.

In the construction industry alone, it is estimated that there are 3 million small businesses employing over 82 percent of all U.S. employees in that one sector. Put simply, an investment in infrastructure is indeed an investment in small business.

Currently, there are an array of federal measures in place to ensure small businesses can participate in the procurement process and receive their fair share of contracting dollars. For instance, a governmentwide goal requires that 23 percent of all eligible contracting—or prime contracting dollars be spent with small businesses, while other goals exist for specific subsets of small contractors at the prime and at the subcontracting level.

Other policies include the creation of contracting programs administered by the SBA that reserve contracts for underserved small businesses through set-aside and sole-source opportunities.

And, finally, there are contracting programs implemented at the State and local level whenever federal assistance is involved, such as the case in the Department of Transportation's Disadvantaged Business Enterprise Program.

The DBE Program is designed to enable women and minority small firms to compete for federal contracts led by State and local agencies. It is the Department of Transportation's most important tool for remedying many of the effects of discrimination and leveling the playing field for transportation-related projects.

All of these programs are the well-being of the small business community and help, obviously, guarantee that small businesses will have a seat at the table when it comes to contracting.

And so in light of the American Jobs Plan and the thousands of contracting opportunities it will create, I hope that today's hearing gives us a chance to look closer at these programs which I believe are crucial to maximize small business participation and contracting at the local, state, and federal level.

I am also looking forward to hearing from our expert witnesses on ways that Congress can leverage infrastructure investment to meet the needs of small businesses across our country.

I would like now, if I might, to yield respectfully to the Ranking Member of this Subcommittee, Ms. Salazar, the gentlewoman from the State of Florida, for her opening statement.

Ms. Salazar, you are recognized.

Ms. SALAZAR. Thank you, Mr. Chairman. Wonderful to see you and the rest of my colleagues. And holding this hearing is extremely important because we are at a critical time of economic recovery from the pandemic and our small business should be driving this recovery.

Infrastructure is the vehicle. In south Florida, we understand this dynamic, that our economy is linked to miles of coastline. One of America's largest ports is in District No. 27. We have major U.S. highways and an international airport in my district.

Infrastructure is fundamental to our daily lives. We rely on it to go to work and to provide for our families. We spend valuable time going from place to place, from here to there. When it works, it improves our lives and it makes it a lot more enjoyable. But when highways are congested or public transit is delayed, it is not only frustrating, as I am sure you know, but it hurts our productivity and our economic growth.

I think we can all agree that our aging infrastructure needs a major upgrade, and we must maintain our focus on improving the nation's core infrastructure system. I urge my colleagues across the aisle to work with us towards this goal.

Where we disagree, I believe, is on the definition of infrastructure. Unfortunately, President Biden's plan is not about infrastructure at all, or very little. For example, the plan the President has proposed expands Medicaid coverage for home care. Medicare is fantastic for my constituents, but it has nothing to do with infrastructure.

It puts billions and billions into social justice and violence prevention programs. That is fantastic, but it has nothing to do with infrastructure.

It provides $12 billion to college infrastructure. I think education is key—the more you learn, the more you earn—but it has nothing to do with infrastructure.

$180 billion for research and development. For what? I don't think research has anything to do with infrastructure.

With only a fraction of those moneys related to infrastructure, it makes it really hard for us to understand and to agree with this bill the way it has been presented.

These issues may be fine for Congress to consider at another time, but we need to be honest with the American people, with your constituents and mine. The administration is trying to fool us into believing that this wish list, which we agree with but has nothing to do with infrastructure, should be part of this bill.

Now, to small business and contracting. If the goal of today's hearing is to discuss the utilization of small contractors in the President's package, we must understand the barriers that are imposed on small business owners.

Small business operates best when the government does not stand in the way. Most things work best when government does not interfere. However, unfortunately, this package subjects the small business to an extended new set of rules, restrictions, restrictive labor rules, like the PRO Act, and other regulatory requirements that would end independent contracting, the franchise industry, and sharing the economy the way we know it now.

In addition to these job-killing regulations, the President has proposed to pay for this multi-trillion dollar plan on the backs of the small businesses through tax increases. At least 1 million small businesses will get a tax increase through this proposal.

The foundation of any infrastructure project is the construction business—and we have a lot down here in Miami—and the majority of the builders and the contractors or people that build buildings are small businesses.

In the construction industry, we have a labor shortage, as you know, and there are already difficulties hiring workers, not only in construction, but in welding and electricians, all types of manufacturing-related jobs.

According to the Associated General Contractors of America, 81 percent of construction firms are having trouble finding people. There are more jobs than hands. And 72 percent anticipate labor shortages to be the big hurdle this coming year.

I think, Mr. Chairman, that I look forward to hearing the testimonies of the witnesses today, and I would love to work across the aisle and make this a reality for all Americans.

I yield back.

Chairman MFUME. Thank you very much, Ms. Salazar.

The Ranking Member yields back. We appreciate your comments, and as I said before, obviously, appreciate your participation in this hearing.

I would like to take a moment, if I might, to do a couple things. All Committee Members have opening statements, I assume, and if they are prepared, we would ask that they be submitted, without objection, for the formal record. Obviously, those statements take longer than 5 minutes, and so the revise and extend provision would apply here.

I would also like to take a moment to explain how this remote hearing will proceed. Each witness will have 5 minutes to provide a statement, and each committee Member will receive 5 minutes for questions. Please ensure that your microphone is on, not like mine a moment ago, and that when you begin speaking, and after you finish, you return to the mute option.

I would like to now introduce our witnesses, as they are prepared to give their testimony. And, again, on behalf of all Members of this Committee, we appreciate your willingness to be here today.

Our first witness is Ms. Sheila Ohrenberg, the president of Women Construction Owners and Executives. She is also president of Sorella Group, Incorporated, a specialty contractor offering full carpentry service and product supply and installation nationwide.

Under Ms. Ohrenberg's leadership, Sorella Group has earned multiple awards, including the American Subcontractor 2012 Associated Member Award, and Kansas City American Subcontractor 2013 Subcontractor of the Year Award.

Welcome to you, Ms. Sheila Ohrenberg. Thank you for being a witness, and thank you for being here.

Our second witness is Mr. Ralph Thomas III, who is the executive director emeritus of the National Association of Minority Contractors. He is also a contracts litigator, who focuses his practice on legal issues affecting small businesses. And for more than a decade, Mr. Thomas has served as the associate administrator for the Office of Small and Disadvantaged Business Utilization at the National Aeronautics and Space Administration in Washington.

He received his JD from Harvard Law School and his bachelor's of arts degree with honors from the University of California at Berkeley.

Mr. Thomas, we welcome you as well, and we will get to you in just a moment.

Our third witness today is Mr. Josh Bone. Mr. Bone is the executive director of ELECTRI International, a foundation established by the National Electrical Contractors Association in 1989, dedicated to conducting research and educating electrical contracting industry workers and businesses.

Mr. Bone also served as the director of industry and innovation for NECA. He holds a bachelor's degree in industrial engineering from Southern Poly Tech State University.

Welcome, of course, Mr. Bone, to you as well.

And now, I would like to yield back to our Ranking Member, Ms. Salazar of Florida, to introduce our final witness.

Ms. Salazar.

Ms. SALAZAR. Thank you, Mr. Chairman.

I would like to welcome our final witness, who is also from south Florida, my district, Mrs. Annie Mecias-Murphy. Mrs. Mecias-Murphy is the co-owner and president of JA&M, a developing corporation. This is a family-owned operation, started by Mrs. Mecias' father over 45 years ago.

Under her leadership, the company has grown into a very well-established and dependable company, earning the trust of many clients in the private and in the public sector.

Her government clients extend over several departments and communities, like the Broward County Aviation Department, Miami-Dade County, the Florida Division of Highway Safety and Motor Vehicles, and the City of Miami.

As a testament of her outstanding leadership, her company has won the Excellence in Construction Award given by the Associated Builders and Contractors of East Coast Chapter in 2017.

Mrs. Mecias herself was honored as one of the top 50 women business leaders in Florida, and in 2014, she was named VIP Woman of the Year for her outstanding dedication to her profession. She has also been selected this year as one of the top 100 leaders in construction by the World Real Estate and Construction Forum.

Giving back to her community and investing in the lives of young people in my district, having taught in high school and university for more than 20 years, she also serves on the board of Boys and Girls Club of Broward County.

In addition to her many professional and personal achievements, Mrs. Mecias serves as a treasurer and board member of the South Florida Chapter of Associated Builders and Contractors, or ABC, whose on behalf she is testifying today. ABC is a national construction industry trade association representing over 20,000 members.

Mrs. Mecias, thank you for being here with us, for your participation, and we look forward to hearing your testimony.

I yield back now, Mr. Chairman.

Chairman MFUME. Thank you, Ms. Salazar.

And, Mrs. Mecias, welcome again to you, and thank you, like the others, for being here with us today.

We will begin now our testimony from the witnesses, and the Chair will recognize Ms. Ohrenberg for 5 minutes. Please feel free to proceed.

STATEMENTS OF MS. SHEILA OHRENBERG, NATIONAL PRESIDENT, WOMEN CONSTRUCTION OWNERS AND EXECUTIVES (WCOE), PRESIDENT, SORELLA GROUP, KANSAS CITY, KS; MR. RALPH THOMAS III, EXECUTIVE DIRECTOR EMERITUS, NATIONAL ASSOCIATION OF MINORITY CONTRACTORS (NAMC), ATTORNEY, LAW OFFICES OF RALPH C. THOMAS III PLLC, WASHINGTON, DC; MR. JOSH BONE, EXECUTIVE DIRECTOR, ELECTRI INTERNATIONAL, WASHINGTON, DC, TESTIFYING ON BEHALF OF THE NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION (NECA); AND DR. ANNIE MECIAS-MURPHY, CO-OWNER & PRESIDENT, JA&M DEVELOPING CORP., PEMBROKE PINES, FL, TESTIFYING ON BEHALF OF THE ASSOCIATED BUILDERS AND CONTRACTORS IN HER ROLE AS THE TREASURER AND BOARD MEMBER OF THE FLORIDA FIRST COAST CHAPTER

STATEMENT OF SHEILA OHRENBERG

Ms. OHRENBERG. Good afternoon, Mr. Chairman, Ranking Member, and Members of the Subcommittee. Thank you for holding this hearing today.

As a small business owner and the president of Women Construction Owners and Executives, I appreciate your commitment to ensuring that all categories of small business owners will benefit from the major infrastructure package being debated.

I am Sheila Ohrenberg, the president of Sorella Group. I founded the company in 2006 in my hometown of Kansas City, Kansas. It has grown considerably over the past 15 years to a full service, merit shop, carpentry company, performing private and public work in 23 States, including 5 significant new airports and additions.

I am pleased to be representing WCOE, one of the only national associations representing women owners in the construction industry.

Eleven women started WCOE in 1983 with a goal to help our members grow and prosper. We are dedicated to creating a level playing field for women-owned firms in the construction industry.

Our membership is comprised of nonunion, union, small- and medium-sized companies that perform work and provide supplies in every aspect of construction. We are all eager to assist, maintain, modernize our crumbling infrastructure.

This plan is essential to every business. The past 16 months have been challenging for everyone, especially small businesses. An infusion of federal infrastructure projects would generate contracting opportunities for small businesses that would create backlog, jobs, company growth, thus improving our communities.

We anticipate direct federal contracts as well as grants and federally assisted programs that go to State and local governments. These programs make up many of the set-aside and DBE contracts that are vital to WCOE members.

Small businesses are absolutely necessary to our economy, but women-owned small businesses, minority, and veteran-owned businesses continue to face barriers to success. This is true in federal and private marketplace.

The federal contracting programs Congress has put in place to provide greater opportunities for small business are still necessary today.

The cost of financing, bonding, and insuring projects is disproportionately high for small businesses, especially women business owners. WCOE members share stories of many of the same barriers faced by women that started our organization almost 40 years ago.

The WOSB program 5 percent goal was implemented in 1996. This goal has only been met in 2015 and 2019. That is twice in 25 years, despite the fact that approximately 13 percent of construction companies are women-owned.

The 2021 CSR report details the WOSB program usage has increased, but the WOSB set-asides and sole-source awards are still not meeting the goals. I think we can do better.

We can create incentives to meet the goals and consequences for never meeting them. We can make up for the 23 years that we missed the goals by increasing the statutory goals above 5 percent for WOSBs.

We can require more transparency through the SBA Procurement Scorecard by including how many WOSB programs are awarded, along with the value of the contracts by each agency, better coordination of agency resources for women business owners. And this can be done by including the bill being introduced next week by Representative Meng. This will ensure the Interagency Committee on Women's Business Enterprises meets regularly.

A bold infrastructure package will be a great vehicle to increase contracting opportunities for disadvantaged businesses for whom the playing field is not yet level. The robust funding and the current programs alone are just not enough. We need to protect the stability of our small businesses.

WCOE works alongside other construction industry coalitions for legislation contracting reform. We need to ensure payment protections for all construction projects by requiring payment and performance bonds, including private-public partnerships.

We need to pass House bill 2949, the legislation would exclude the threshold for construction contracts that must be bonded under the Miller Act.

Change order reform is necessary. Did you know that change orders do not typically get paid till the completion of the project? It is costly and can be detrimental to small businesses.

These programs should not be viewed as the cost of doing business. They should not be viewed as a burden. And the program should be designed to educate, train, and advance women that were willing to take the leap into business ownership and the American Dream.

WCOE hopes to continue to work with you to support future generations of women business owners.

I appreciate your time.

Chairman MFUME. Thank you very much, Ms. Ohrenberg. We appreciate your time, and we will obviously be getting back to you with questions, comments, and observations in just a moment.

The Chair would like to recognize Mr. Thomas now for 5 minutes.

Mr. Thomas, feel free to proceed.

STATEMENT OF RALPH THOMAS III

Mr. THOMAS. All right. Thank you, Mr. Chair, and other ladies and gentleman of the Committee.

And, Mr. Chair, it is nice to see you again. It seems like decades ago I testified before other Committees and Subcommittees that you Chaired, so welcome back.

Chairman MFUME. [Inaudible.]

Mr. THOMAS. My name is—and my name is still Ralph C. Thomas III, and I am testifying today on behalf of the National Association of Minority Contractors. We are a group that was formed in 1969, and that makes us 52 years old and the oldest trade association representing minority contractors in the U.S. We have chapters and affiliates all over the country, and we represent the interests of, not only our members, but the 100,000 minority contractors across the United States right now.

Now, the inclusion of minority contractors or DBEs, disadvantaged business enterprises, in the rebuilding of America's infrastructure is particularly important to ensuring that America is operating at the full, productive capacity of its citizenry. Needless to say, NAMC and minority contractors look very much forward to playing a significant role in the upgrading of this nation's infrastructure.

Now, my full testimony is already in the record, so I am not going to repeat that, but I will summarize very quickly some of the topics that we are interested in and why we are interested in it.

First of all, we really are interested in this new plan because of the benefits that it offers minority contractors. The federal infusion of funds—of new funds to build roads, bridges, highways, airways, et cetera, minority contractors are already involved in that. That is what we do, but we need more of it. We need to build our capital base so that we can do more.

We have a vehicle right now through the U.S. Department of Transportation, the DBE Program, the Disadvantaged Business Enterprise Program, which requires 10 percent of the transportation project funds to be expended with disadvantaged business enterprises.

In order to make this new capital infusion work, we have got to do better in the program. Right now, 23 of the 50 States are not meeting the 10 percent floor, and we need—but we are very encouraged by the comments of Secretary Buttigieg.

In a recent hearing that he testified in, he said he is going to make this a much more robust program, that he is going to make it a priority, and he is going to ensure that contractors, disadvantaged businesses, can do a wider range of contracts.

Now, we are also interested in the workforce part of this infrastructure plan. The DOT had a workforce element in it in 2017, but for 2018, it doesn't. And that has hurt us. It is said that for every billion dollars that DOT spends on workforce development, that 13,000 jobs are created. So we are interested in that.

We think that the impact of a successful program—a successful DBE program that will get us more capital, will be good for expanding, first of all, doing better—we can hire better people. We can make more investments on technology and equipment. We can hire better people, and that has so much of a social impact in terms of a happier group of people. You know, we can hire more people.

So we look forward to working closely with, not only the DOT and the Secretary, but also with this Committee to hammer out any kinks that we see in implementing DBE inclusion in this new infrastructure plan.

Thank you.

Chairman MFUME. Thank you very much, Mr. Thomas. And we appreciate your testimony, and we recognize that there is a fuller set of that in the remarks that you submitted, to be revised and extended.

But let me just say, it is good to see you also. It has been many, many years. And when you say it seems like decades, it is because it was decades. It was the late eighties and the early nineties that you would come before this Committee and others and give testimony, and I was happy to be one of the Chairpersons and happy always to receive it. Thank you, sir, very much for your remarks.

I would like to now turn and yield to Mr. Bone, who has been patiently waiting.

Mr. Bone, you are recognized for 5 minutes, and you may feel free to proceed.

STATEMENT OF JOSH BONE

Mr. BONE. Thank you, Chairman Mfume and Ranking Member Salazar, the Members of the Subcommittee, for inviting me to testify on behalf of ELECTRI International and the Electrical Contractors Association, NECA. We greatly appreciate the opportunity to submit a statement for the record to the Subcommittee on Contracting and Infrastructure.

My name is Josh Bone. I am the executive director of ELECTRI International. ELECTRI is a 501(c)(3) charitable organization established with support from NECA. Our mission is to help electrical contractors, large and small, meet today's demands and tomorrow's challenges by transforming our commission research into useful education, talent-initiative programs, as well as practical publications.

The work for ELECTRI is simplified by NECA's network of 4,000 contractor members consisting of nearly 3,200 small businesses. NECA is the voice of a $170 billion electrical construction industry that brings power, light, and communication technologies to buildings and communities across the U.S.

ELECTRI, along with NECA, recognizes the key role small businesses will play in any infrastructure package. It cannot be stated strongly enough, the infrastructure of this country is deteriorating. Thankfully, Congress and the current administration have shown a clear and urgent understanding of this need.

To that end, we view the American Jobs Plan as a culmination of generations' worth of conversations on how to address our aging and lacking infrastructure. That said, this plan is the first step of many in moving the country forward.

There is no question, after the volatility created by COVID-19 pandemic, small businesses must be prioritized by any infrastructure package. Across the construction industry, we have witnessed small contractors building their businesses around niche markets to be more competitive, whether it be in areas like the creation of microgrids, electrical vehicle charging stations, low-voltage technologies, or otherwise.

Small contractors need to stay at the forefront of advancing technologies in order to remain competitive. Although this has yielded positive growth for small businesses, many still face what seems to be an insurmountable challenge: access to capital. The risks posed by lack of capital is compounded with negative factors, such as delayed payment practices and fluctuating material costs.

First and foremost, delays in payment are rampant in the construction industry, especially to subcontractors. This has the capability of crippling small businesses that are unable to balance their books and anticipate exposure for upcoming projects. Small contractors need prompt payment support and enforcement when it comes to working on larger projects like those identified by the American Jobs Plan.

In addition, the risk assumed by small business contractors cannot be understated, with many subcontractors recounting stories of offering their homes as collateral for various loans or bonding.

The recent fluctuation in material costs has presented new challenges. The main concern for electrical contractors is the rising cost of copper, which has increased nearly 90 percent since this time last year.

There is no denying that the broad federal investment offered by the American Jobs Plan will not stretch as far when construction materials cost exponentially more. To make matters worse, a small business contractor typically holds their estimated price to a contract owner for 90 days, while material suppliers hold that estimate to their contractors for 7 to 10 days; in some cases, less.

Many of our industry electrical contractors never stopped working throughout the pandemic. Because of this, our workforce demands never slowed. Our industry must hire and train over 100,000 electricians to meet the workforce demands across the country.

The gold standard for meeting this need was established over 70 years ago by NECA and the IBEW. The National Joint Apprenticeship Training Program, the NJATC, today invests over $100 million annually and receives no direct federal funding.

The program's rigorous training methods require 8,000 hours of on-the-job training and 900 hours of classroom time, and this is what it takes to create a qualified and capable journeyperson.

In my time at ELECTRI, I have had the pleasure to travel this country and meet the small business owners employing the men and women of the electrical construction industry who should, and hopefully will, be tasked with rebuilding this nation.

In the face of constant risk, competition, and an overwhelming workforce need, they come to work every day, striving to succeed. Efforts like the American Jobs Plan and others proposed by Congress offer these businesses a promising future.

On behalf of ELECTRI International and NECA, I want to thank you again for the opportunity to testify at this very important hearing. I applaud the Committee's unwavering efforts to support and advocate for small businesses across the country.

Thank you.

Chairman MFUME. Thank you very much, sir.

I am going to ask staff to do not mute me unless I mute myself, because trying to find the unmute button can be problematic, obviously, from time to time.

I am going to thank again and welcome Mrs. Mecias-Murphy for being with us. I know the Ranking Member properly introduced her, but I want to thank her.

It is always hard being the caboose on a train, but it is your time, and we hope that you will proceed accordingly. You are recognized for the next 5 minutes. Go right ahead.

STATEMENT OF ANNIE MECIAS-MURPHY

Mrs. MECIAS-MURPHY. Chairman Mfume, Ranking Member Salazar, and Members of the U.S. House Small Business Subcommittee on Contracting and Infrastructure, thank you so much for holding this hearing on the utilization of small contractors in the infrastructure plan and inviting me to be with you today.

My name is Dr. Annie Mecias-Murphy, and I am the co-owner and president of JA&M Developing Corp. We are a family-owned construction business and contractor, performing work in the private and public sectors, serving the south Florida market. JA&M is a small- and women-owned business with 26 full-time employees.

I am testifying today on behalf of the Associated Builders and Contractors, a national construction industry trade association established in 1950, that represents more than 21,000 members across the country.

I am currently on the ABC Florida East Coast Chapter board of directors, serving as the treasurer.

It is because of the construction industry that I am able to be here to share my story with you today. I was born to immigrant parents who chose to flee religious and political persecution by the Cuban Government just 90 miles from Florida. It is because of their bravery and a belief in greater freedom that I have the opportunities I do in this country, to own and operate a business in the construction industry.

When my father came to this country in 1969, he entered the construction workforce with nothing except the clothes on his back. Construction was part of our daily lives while I was growing up.

While my initial focus was a career in education, eventually earning my doctorate in philosophy and working in the teaching and counseling field for close to 15 years, I assisted my father with his construction company. However, it wasn't until 2005 that my siblings and I founded JA&M. It was then that our family came together to work full time in the construction industry.

Today, I would like to share how a significant investment in America's infrastructure would impact my small business and other businesses like mine in the construction industry.

I also would like to provide a word of caution to the Subcommittee and to urge Congress to avoid enacting restrictive policies referenced President Biden's American Jobs Plan, like the Protecting the Right to Organize, or the PRO Act; government-mandated project labor agreements, or PLAs; and just a one-size-fits-all approach to our workforce development. The inclusion of these policies and others like them would significantly limit the success of any potential infrastructure bill, as they would prevent qualified merit shop contractors from participating in rebuilding their communities.

Finally, I would also like to highlight the negative impact that proposed tax increases from the majority in Congress and the White House would have on small- and family-owned businesses.

As a small business in the construction industry, an ongoing challenge that we have is hiring the skilled workforce we need to be competitive. And we are not alone, as there are hundreds of thousands of open construction jobs right now.

Any infrastructure proposal should make it easier for private employers to train tomorrow's construction workforce through a variety of workforce development options, including industry-tested and recognized craft training programs and registered apprenticeship models.

Unfortunately, President Biden's American Jobs Plan urges Congress to tie infrastructure investments funded under this plan to the restrictive policies that I referenced before, which would limit the pipeline of workers entering the industry.

I would call on Congress to reject these policies as the current shortage of workers would only be exasperated by an increase in the money spent on infrastructure. Importantly, Congress must realize that most small businesses in the construction industry are not signatory to a construction union.

These policies are likely to increase costs, reduce job creation, decrease the number of infrastructure projects, and discourage the merit shop construction industry and their skilled local workforce from competing for taxpayer-funded construction projects.

I urge Congress to consider investing in America's infrastructure and ensuring that small construction businesses are not excluded from the competitive bidding process for federal infrastructure projects.

While I do appreciate the conversation taking place and a public commitment to infrastructure improvements, it is my understanding that only a small percentage of the funds in the American Jobs Plan are allocated toward the construction of physical infrastructure.

The construction industry can help lead America's economic resurgence, and Congress should not allow this to become a missed opportunity.

So in conclusion, construction is an industry that gave my family its start. It was our shining light of opportunity, and continues to provide for my family and my employees.

It has been an industry that has allowed us also to give back, to improve the life of others, and to become a supporting role in our local community. The industry has responded to the skilled work shortage by increasing wage rates and improving benefit packages.

In Florida, we are fortunate to participate in partnerships between the Associated Builders and Contractors and groups like the Boys and Girls Clubs where we can speak to students about the benefits of a career in construction.

Through an all-of-the-above approach to pre-apprenticeship and apprenticeship programs, we continue to work to expand the numbers of people educated and upskilled in the trades.

The American Dream and construction industry, they go together. It is through construction that we can provide for our family, create jobs for workers, and give back to our communities.

If enacted, I cannot imagine what this plan would mean for all the families that depend on JA&M, let alone all the millions of families around the country that depend on small business for their survival.

I plead with you to help us preserve the construction industry for the next generation. Without you, there may not be a future for countless potential craft professionals.

I thank you for your time and consideration of this testimony as a representation of a small, merit shop contractor, and I look forward to answering any questions you may have.

Chairman MFUME. Thank you very much, Mrs. Mecias-Murphy. I appreciate your comments. And the fact that we have divergent views on this bill that all of us are looking forward hopefully to the same bright future, a future with good results, is what drives this committee.

This is really sausage-making in the process, so it is not pretty, but we will find a way to make the sausage hopefully, eventually, and to deliver something very important on infrastructure.

I want to thank all of you who have shared your time with us. And I want to begin the questioning by recognizing myself for 5 minutes.

And I would like to start with Ms. Ohrenberg. I read in your testimony that a single million dollar contract is different from 40 $25,000 contracts. Now, they both equate to the same dollar amount.

My assumption is, and I hope you can expand on this, that there are inherent benefits in wielding million dollar contracts for small businesses that sometimes people in the larger society may not understand and what that does to enhance the growth of a small business, as opposed to 40 $25,000 contracts that you referenced.

Ms. OHRENBERG. Correct. So one single project is going to require, from an internal office staff, a project manager. So if you break those all up into 40 different contracts, you have to have 40 different project managers.

It takes as much resources, from an office perspective, to manage one $25,000 project as it does a million dollar project, from an accounting, from project management, superintendents. So if we have to divide our staff up against 40 jobs instead of just one job, then we have to have 40 times more staff, and that is very difficult for a small business to be able to staff that many types of projects.

Chairman MFUME. And does it enhance bonding requirements? Does it create, in addition to that, a better perception with primes or with the government?

I am just trying to get to the heart of understanding all of it. I do recognize the need to hire a bunch of different people for project management, but are there some inherent benefits there also?

Ms. OHRENBERG. A $25,000 project is not likely going to require a bond, but a larger one would. So you would be building your bonding capacity by having larger projects.

Chairman MFUME. Thank you.

And, Mr. Thomas, if I can come to you, I want to go specifically to Amtrak and to kind of get your experience that you have had representing contracting opportunities with Amtrak. They are set to get quite a bit of support under this program. Can you talk about that for just a moment?

Mr. THOMAS. [Inaudible.]

Chairman MFUME. I think you are muted.

Mr. THOMAS. Thank you. Thank you. So I said all that for nothing. No. Oh, well.

What I mean is, you know, I was executive director of this organization in the eighties, in 1985. And there was a big, big project with Amtrak, $2.2 billion to our project, and we had DBEs on the contract, a lot of our members. And a study was done to test the effectiveness, and, you know, it was a great report. It was documented that we performed within budget and on time. The goal was 15 percent. The actual action was 17.8 percent. We got very good reviews, and that is what you can do when you have the leadership.

The leadership at the time of Amtrak and DOT, they were committed to the project, and it did well. The excuses like, "we can't find them," was just not made available. And so if we can have that same kind of commitment today, I think we can have the same results.

Chairman MFUME. So was the "we can't find them" statement meaning, we can't find minority contractors qualified?

Mr. THOMAS. Exactly. Well, it is the same excuse that we have heard since I have been involved in the business, and it is not something that can't be resolved. You know, they used to do the same thing at NASA. You know, at NASA, it is the most technological agency that there is probably in the world. And we also got those excuses until we came up with a solution that worked for a while.

We would measure—we would get the needs of the prime contractors, what they said they needed, and we would send them to our list of contractors, of small, disadvantaged business contractors. And they would send their qualifications to these prime contractors in the form that they ask it to be presented, and that resolved that problem right away.

At one point for one project, they told us to stop sending them, you know, so——

Chairman MFUME. Okay.

Mr. THOMAS.—so they are there. You can—you know, if you do it right, you know, you will get the right person.

Chairman MFUME. Okay. Maybe we can come back to that. My time has expired.

Mr. Bone and Mrs. Murphy, perhaps in the second round, I will have an opportunity to pose a question to both of you. But right now, I am going to yield to the Ranking Member, Ms. Salazar of Florida, who is recognized now for 5 minutes.

Ms. SALAZAR. Thank you very much, Mr. Chairman, and I am very happy that you are willing to invite the other side of the aisle, the minority party, to create the sausage. So we really want to make it big, fat, and good for everybody to eat.

Chairman MFUME. Okay.

Ms. SALAZAR. So I wanted to, first of all, recognize Mrs. Mecias and thank you once again for being here with us. I have a couple of questions, and I also, within my 5 minutes, I would like to ask the other witnesses or the other guests.

You know, Mrs. Mecias, that the Biden administration is proposing to favor unionized workers over nonunionized workers. In other words, the people that are not part of a union could be discriminated by people like you in the construction industry.

So I would like you to explain to us, give me an example, what would this look like for a small business entrepreneur, minority-oriented company like yours. What would this look like if this part of the provision were to be accepted?

Mrs. MECIAS-MURPHY. Thank you, Representative Salazar. It pretty—what it does to my company, in particular, and a lot of small businesses, it basically completely takes us out from being able to bid, from the opportunities to be able to bid on any one of these projects. Most than 80 percent of the workforce is nonunion. We are a merit shop company, and therefore, we wouldn't even qualify at all.

Ms. SALAZAR. That bad?

Mrs. MECIAS-MURPHY. Yes.

Ms. SALAZAR. All right. Now, what about the other side? You know that your company is a very good example for what you explained to us the other day, that under the Tax Cuts and Jobs Act, that truly helped people like you and your employees, and one of them, you were explaining to us, that was able to purchase their first home because of the extra cash in their pocket, thanks to that law.

Now, if we see the opposite happening and you see, as you mentioned in your statements, that there is the possibility of taxes increasing, give me, once again, a scenario, what would that look like? What would that be—what type of effect will that have in a small business, minority owner, entrepreneur like you are?

Mrs. MECIAS-MURPHY. So, first of all, I would just like to explain, the excitement that comes across my desk when I get an employee verification form, which has not just been one, it has been close to four employees that have purchased their first home, and that to us is just super exciting.

Ms. SALAZAR. That is the American Dream.

Mrs. MECIAS-MURPHY. Yes, yes. What would—I mean, we have been able to give health insurance benefits and 401 benefits for the first time since our company opened. We weren't able to do that before. And actually give higher bonuses.

Ms. SALAZAR. Okay.

Mrs. MECIAS-MURPHY. If this tax increase were to occur, we most likely would have to let go some of our employees, and I am not sure if we would be able to offer the incentives that they so well deserve if——

Ms. SALAZAR. Thank you. I am going to cut you off because I want to—we got your answer. But I want to go to Ms. Sheila and Mr. Ralph Thomas.

Just briefly, we sponsored, along with other Members of the Committee, a bill, H.R. 3065, the Expanding Contracting Opportunities for Small Business Act. And this bipartisan bill—and I am very proud to be part of it—would praise the maximum threshold for sole source from $5 million to $8 million for general contracts and from $7 million to $10 million for manufacturing contracts. What do you think about this, this initiative?

Mr. THOMAS. Are you addressing me first?

Ms. SALAZAR. Yes, sir, absolutely. We have 45 seconds. You can have it all.

Mr. THOMAS. Okay. Well—so, well, that—well, a lot of the smaller businesses would love that, you know, in terms of because it would create more opportunities. If you make the sole source higher, then that means there will be more competition. So the smaller companies would like that as well as the—you know, we have a problem with manufacturing businesses, but, you know, in terms of—there is a shortage of them. But for those that exist, I am sure they would prefer the ability to do more work. And the higher the sole source limit is, then they can compete for more projects.

Ms. SALAZAR. Thank you.

I yield back. My time is up. I will talk to you later on today. I have a couple of other questions, but my time is up.

Yield back to you, Mr. Chairman.

Chairman MFUME. [Inaudible.]

Ms. NEWMAN. Mr. Chairman, I think you are on mute.

Chairman MFUME. Okay. Thank you.

I am going to make my second request to staff, do not mute me. Allow me to mute and unmute myself. It is hard sometimes locating the button I need. I don't know if I can be any clearer than that.

Thank you very much for yielding back, Ms. Salazar.

The Chair would like to recognize the distinguished gentlewoman from Illinois, Ms. Newman, to proceed for the next 5 minutes. Go right ahead, please.

Ms. NEWMAN. Well, thank you, Chairman Mfume, and thank you, Ranking Member Salazar. Good to see everybody today. I hope everybody is enjoying the summer.

I thought I would start by congratulating everyone, all of our guests. You have all been through a heck of a year and really came out on top, so congratulations.

Mrs. Mecias-Murphy, I have run a couple small businesses, so God bless, and thank you for employing folks. And we all have had challenges but excited to move forward.

I did want to correct the record on a couple comments that were made. So I sit on the T&I Committee, and I am from the labor movement. I am a former small business owner, ran a couple of companies, as well as was a management consultant to both Fortune 500 companies down to sole proprietor, so the whole spectrum of folks, right, and got in the muck of it with process and ops and facilities and on and on and on.

So, with all that, I just wanted to come back to you. At 4:15 this morning, we finished the Surface Transportation Act, which is separate from the American Jobs Act.

So I wanted to tell you—Annie, Sheila, Ralph, and Josh—that we have a robust, over $500 billion plus act that is separate from the American Jobs Act, which will include fixing bridges, fixing roads, and making sure that housing goes up well, and that things are funded across our nation that are civic infrastructure projects. So look forward to that and enjoying all of that. I am excited the jobs that that will produce.

Now, the American Families Act, let's just do a quick fact-check on that, because we just got a fact sheet on that, so why don't we just share a little bit about that.

So in the American Jobs Act, it includes housing, as well as transit agencies, rail, fixing roads and bridges, civic infrastructure, retrograde housing, and on and on and on. So it is an infrastructure bill, largely, and a jobs bill. I just wanted to clear that up for everybody.

So moving on, also with regard to the PRO Act, so given that I have been actively involved in 30 years and have worked with over 50 municipalities in this nation, around labor movements, I just want to assure you, Mrs. Mecias-Murphy, that in no town of those 50 did we have any negativity attached to PLAs and that kind of thing. In fact, the exact opposite happened.

In right-to-work—in those 33 right-to-work—or States, rather, actually, the health incomes go down, incomes go down, the overall income and tax income in a State goes down in all 33. So I just wanted to clear that up for everybody.

Now, Ralph, I have a couple questions for you. I am very excited about what you said. I love workforce training. So wanted to find out, can you share—by the way, congratulations on 52 years, way to go. Can you share a little bit about what would be helpful to you in terms of workforce training and development immediately to help your organization?

I loved your NASA analogy, and I am very well aware of how that program works, so tell us more about what you would like to see happen.

Mr. THOMAS. [Inaudible.]

Ms. NEWMAN. Ooh, you are on mute, Mr. Thomas.

Mr. THOMAS. Okay. How is that?

Ms. NEWMAN. Great.

Mr. THOMAS. Yes, yes. Well, the first thing has already happened. I mean, what we see—I don't know if this is in the program that you just agreed to——

Ms. NEWMAN. Yeah.

Mr. THOMAS.—but we were happy to see projected more funds for workforce development. Because we have to draw upon—and we have to have it be diverse, because those are the employees that we are dependent upon to draw from. And where there is no move toward workforce development—and I don't think there has been in DOT since 2017 when it wasn't re-funded——

Ms. NEWMAN. Yep.

Mr. THOMAS.—that leaves us in a bind, because where are we going to get the people from, you know. And so we would like to see that. We would like to always be involved in that, in terms of apprenticeships, in terms of—we like to be involved in the ground floor, so that we can determine, you know, what the fields are that are going to be developed so that we can, you know, get our folks into those programs, into those programs and graduated from those programs. I mean, because that provides the best—workforce development provides the best training that I am aware of, so——

Ms. NEWMAN. We are at the end of our time. And Mr. Mfume, if I may at this time at the end, I would love a couple more questions if you have time. Thank you.

And I yield back.

Chairman MFUME. Thank you. Thank you. Absolutely. Gentlewoman yields back.

The Chair would like to recognize the distinguished gentleman from Minnesota, Mr. Hagedorn.

Mr. HAGEDORN. Mr. Chairman, thank you very much. And I know it is not your decision, but I think we have a solution to this mute/unmute issue and it is, let's start meeting in person, again, and doing our job in Washington in our Committee room. You know, we are watching NHL and NBA games played indoors with 10-, 20,000 people. I think we can squeeze 30 or 40 into a Committee room and do our job in person. That is just my opinion.

Of course, I support infrastructure—roads, bridges, locks, dams, trucks, rail, and pipelines. And I think, actually, the majority might have to explain to us how they are for infrastructure, but they want to shut down things like Keystone Pipeline. But that is very important to our district in southern Minnesota, infrastructure. I am all for it. We have farmers that need to move their grain. We have the Mayo clinic and other institutions of medicine that receive samples and tissues from all around the world every day. Small businesses and manufacturers, of course, depend upon infrastructure and transportation to do their businesses and, hopefully, we can get together and have a bipartisan bill in order to focus on those types of things.

So Dr. Mecias-Murphy, I am going to throw out a couple of ideas about how we can have some good government policies moving forward, and maybe you can address them. One is the in the area of the labor shortage. Some Members of Congress in my State, including Representatives Emmer, Stauber, Fischbach, and myself have written Governor Walz and said, you need to forego that extra $300 a week federal unemployment compensation and get back to regular order when someone doesn't seek work or they refuse work outright, they lose their benefits. They lose that compensation. You need to push them into the workforce. That is the first idea.

The second is, a bill that I have introduced, the American Workforce Empowerment Act, H.R. 2691, which would enable families to use 529 savings accounts for people not just to go to 4-year college, but also go to vocational school and get certificates, go do those programs, and get into the trades and purchase equipment and tools and things like that which would be necessary. We think that would be good to help our skilled workforce.

What are your thoughts about those two ideas?

Mrs. MECIAS-MURPHY. So you have just hit an area aside from construction that is just something that I am super passionate about. Our involvement and our partnership with the Boys and Girls Clubs and ABC allows us to work on apprenticeship level because, as you know, kids in middle school and high school, they are not always being said, Hey, the trades are a viable option. It is something that can really work for you and can give you a good living. It is a good first option.

So what we have been able to do is able to go into the Boys and Girls Club, have different trades, different member companies from ABC go in there and be able to show and expose the students. I know not everybody has had the privilege to be able to see on a daily basis growing up what the construction industry is like, but going into these clubs and working with the middle and high school students and being able to expose them, taking them on field trips, providing internships for them has allotted exposure to them.

And over the last couple of years, there has actually been close to 40 students that have graduated, and have actually been hired with some of our member companies. An example, actually, is a crane company. An 18-year-old just to start training was paid $20 an hour. And that is just to start training. And as they went up, a crane operator can make high as $30, $40 an hour, depending on their experience.

So anything that is going to help that aspect, especially with the pre-apprenticeship, it is a little bit longer piece. But we have also extended it to the family, to the parents of these kids that may not have jobs that could actually start on the labor level, and labor level starts at the $15 an hour.

Mr. HAGEDORN. That is great. I have to reclaim my time——

Mrs. MECIAS-MURPHY. So sorry about that.

Mr. HAGEDORN.—and I appreciate that very much what you are doing. I would also like to point out that we talked a little bit about—the witnesses did—about material cost and copper was mentioned. And I think, you know, one of the things that goes on, we are driving up the cost of things because they are in short supply, because the environmentalists, extremists won't let us go and get the copper and things like that in America.

In Congressman Stauber's district, he is on this call right now, up in northern Minnesota, they have a large supply of the nickel and copper for the United States right up there, but he is having a hard time, you know, getting through and getting those mines open.

So I just want to commend Congressman Stauber for fighting for his constituents and getting mining in America going. I certainly support you, Congressman Stauber, every step of the way. O thank you for what you are doing.

I yield back.

Chairman MFUME. Thank you very much. The gentleman yields back.

The Chair recognizes, ironically, Mr. Stauber, for the next 5 minutes. Feel free to proceed. Thank you.

Mr. STAUBER. Well, thank you, Mr. Chair. And there are times I have trouble with my mute button too, so if we can be in the same class. I appreciate Mr. Chair and our Ranking Member for holding this important meeting. I also want to thank the witnesses for being part of the discussion. Your success and your conversations are very vital to all of us as we craft good legislation.

Line 3 is a 340-mile pipeline replacement taking place in northern Minnesota. Construction of the new Line 3 will not only help in our efforts for energy independence, but will supply countless jobs to small contractors in an area desperate for economic development and modernize our energy infrastructure for the future.

This project should be celebrated, yet just this week, thousands of dangerous protesters, led by Democrat Party stalwarts like Jane Fonda, are being bussed in from Hollywood and other coastal elite cities and are causing harm to small contractors seeking to simply do their jobs. In fact, nearly 50 union workers had to be evacuated from their work site, including employees of the entire Native American-owned and operated pipeline contractor Gordon Construction.

Dr. Mecias-Murphy, could you describe the danger and damage that protesters would pose to your construction business if they showed up to your sites and chained themselves to equipment, punctured tires, damaged windshields, and other equipment? What would that do to your small business?

Mrs. MECIAS-MURPHY. Thank you, Representative Stauber, for that question.

First of all, when I read about that, I—it just truly really surged in me just so much concern, and my heart really went out to that business. If that would have happened to our business, first of all, with safety being such an important and critical factor that for our employees and for everyone around us, the first thing, obviously, that would have come to mind is the concern for safety by these protesters having gone in, having trespassed, having damaged property, and having tied themselves to this equipment. But putting that piece aside to a small business, I think folks might not realize that sometimes a day of delay or just that—that the woman is saying, Oh, it is just a day; it is not a big deal. In the construction industry with so many overlapping pieces and parts of the puzzle, that can delay you 2 weeks, 4 weeks. And what that does, especially for a small business, is that in your cash flow, you are having to pay for all these different things, putting them up to speed to try to have them work where they need to be back to the time that you lost.

And, then, not only that, put aside the small business piece, you have workers that can't go into work. You have then workers who can't get paid because they aren't working. Their families aren't getting fed or paying their bills. You have done a domino effect where maybe folks have been trying to prove a point. What they have actually done is hurt the people that they are saying that they are trying to help. They are affecting families and communities.

Mr. STAUBER. So what I hear you saying is, it is devastating for the small company; it is devastating for the workers; it is devastating for the families, and it is devastating for the communities?

Mrs. MECIAS-MURPHY. Absolutely. Yes, sir.

Mr. STAUBER. Thank you. Thank you. To me it is actually laughable to me that we are here today to discuss Joe Biden's infrastructure plan, and how it will, quote, help small contractors.

President Biden and his administration canceled thousands of jobs already on the Keystone XL Pipeline earlier this year, in fact, within 5 hours of his inauguration.

It is the actions of this administration that empowers these activists currently doing damage in my district and others throughout the country.

If President Biden wants to demonstrate that he is serious about America's infrastructure future, he will call on these activists to stop their protesting at once so that our small contractors can get back to work.

And I yield back.

Chairman MFUME. The gentleman yields back.

The Chair is deciding to do a second round and unless we are joined by other members, it should probably go faster than the first round, but I would like to begin and recognize myself for 5 minutes and go to Mr. Bone.

Mr. Bone, do recruitment strategies change based on the segment of the population that you are trying to attract? And I appreciate all the work that you are doing with ELECTRI. Can you tell us what strategies would you recommend in this bill as it goes forward to recruit men—women, I should say, and minorities at a better and higher rate than we have previously done?

Mr. BONE. Absolutely. Thank you, Chairman Mfume. Yes, to be successful, you have to use different methods to recruit. For me, I have had the privilege in my career to work more closely with minorities and women in construction as a construction technologist. A lot of the thought leaders in the industry that have adopted new technologies have had that opportunity in our industry. So—and today, one of the things I have found for women in the industry, is they bring a lot of great skill sets, and there is a lot of new technologies that enable them and empower them to work in this industry. I think there is a lot of misconceptions around the fact that this industry is a male-driven industry. And we need to start at early ages educating young girls in middle school, high school, and even in the community and technical colleges, that this industry is changing. We are adopting technology.

What once was a very strenuous job today with exoskeletons and equipment, and moving work off-site looks more like a manufacturing floor today on any—for a lot of these companies. So we are doing a lot more off-site construction to help us deliver projects on time and within budget.

Chairman MFUME. Thank you, Mr. Bone. And no matter what kind of a bill we come up with, the electrical construction industry is going to be significantly impacted.

Mr. BONE. Absolutely.

Chairman MFUME. Can you take a minute to talk about the importance of unions in electrical construction and throughout that industry?

Mr. BONE. Yes. Now, ELECTRI is not affiliated with any unions, but our friends at NECA have worked closely with IBEW labor partners for over a 100 years without a single strike. So NECA and our contractors take great pride in the skill level and commitment of the workforce that we bring to the table.

I just, last week, was in Jacksonville, Florida, visiting a JTC that had opened up a new systems integrator lab that takes these new technologies, provides hands-on training installing new technologies like that are linked to software that connect sensors and intelligent equipment that can help us invest in infrastructure that is more sustainable, and it creates new types of skills and jobs that are—that we can use for many years going forward.

So it makes our—for small businesses that get involved with this it provides an opportunity for them to create jobs that have long-lasting impact to their small businesses.

Chairman MFUME. Thank you, sir.

And Mr. Thomas, I want to slightly change the conversation and go from the electrical industry back over to transportation. We don't know what is going to eventually come out of this Committee, out of this Congress, but we hope that we are going to have a bill, and whatever that bill is, I would like for you, based on your experience and counseling in serving small firms across the country, what is, in your opinion, the biggest obstacle going forward that has to be addressed in that bill to increase participation by minorities in transportation projects.

Mr. THOMAS. Yes. We have to take a stronger approach to compliance and enforcement. As I said, we have a 10 percent goal floor for all the States, and 23 percent are not meeting it. Many of them ask for waivers and, you know, whatnot, and, you know, by saying they are not there. What we need to do is find something that, you know—I think a lot of organizations like those here should be funded, to some extent, for the purpose of identifying eligible small contractors, whether they be minority, or women, or otherwise disadvantaged, to identify them for the prime contractors and the agencies.

Chairman MFUME. Thank you.

Mr. THOMAS. Thank you.

Chairman MFUME. Thank you, Mr. Thomas. I am almost at the end of my time.

I do want to get over to Ms. Mecias-Murphy one more time and ask, what role do you think, Ms. Murphy, that the SBA contracting programs and DBE Program ought to play now as we obviously move toward infrastructure, but also, as we see businesses trying to recover from this year-long pandemic? Any thoughts on those lines?

Mrs. MECIAS-MURPHY. From hearing the conversations, I would say that it is just making sure that whatever laws are in place and goals, that they are followed.

Chairman MFUME. Okay. I appreciate it. At some point in time, maybe not here, but later, I would like to get all of you to comment on the Prompt Payment Act and what prompt payment has done, and is not doing with respect to small businesses, but my time is expired.

So let me, again, recognize the Ranking Member, Ms. Salazar, of Florida.

Ms. SALAZAR. Yes. Thank you, Mr. Chairman, and I think my next question is for Mr. Bone. I was following your testimony, and I am also very concerned, as you are, about the delays in payments to subcontractors. I mean, if you don't get the money, you may go under in a month or two. And I would like for you to expand a little bit more on your suggestion regarding sending payment notices and getting paid on time, if you can expand on that a little bit further.

Mr. BONE. Absolutely. Capital is king in the construction industry. It is how businesses survive, and small contractors have limited amounts of capital. And what we have to ensure that when you are a sub to a sub to a sub, and that happens very frequently in these flow down policies on the larger projects that it becomes even tougher to get paid.

So the ability to fund your business and work off that capital to pay your people is extremely tough for the smaller businesses that flow down in that work. So the larger contracts that do sub out to these small arsenal of contractors, it makes it much tougher for them.

Ms. SALAZAR. So what do you suggest? What can we do in order to help that sub of the sub of the sub, the one that has the small business, entrepreneur that has three employees and needs that money right away?

Mr. BONE. We need to have opportunities to work with contracts directly with those that are paying. So that it doesn't have to go through the process of a general contractor through the sub and working back up through that flow. Representative Salazar, that is the challenge that we face. So if it is—if we are waiting on pay if paid or paid when paid, that language is what impacts our small contractors more than anything else. We need to have the ability, once we can prove we have done the work in a fair way, that the contracts can ensure that our small contractors are being paid promptly.

Ms. SALAZAR. And I would like to ask the same question to Ms. Mecias. Just give me a scenario, an anecdote, where you have felt exactly what Mr. Bone is describing?

Mrs. MECIAS-MURPHY. Absolutely. You have the—especially on federal contracts, you have a paid when paid clause and sometimes it is 60, 90, 120 days. And for a small business, that is completely detrimental. You have—I think in Florida, the sunshine—there is Prompt Payment Act and the whole piece is that you get paid promptly, but it is more of a theory than really a practice.

Ms. SALAZAR. A reality. Uh-huh. So, in which way Congress could help that very small business owner get paid on time in a fair fashion, the way that it needs to be done? Because from what I am understanding here is that someone is taking advantage of the small guy. So in which way—and specifically minority business owners, that I am sure don't have the protections that the big general contractors have, so what can we do with the last—we have a minute and a half, so I will yield to you.

Mrs. MECIAS-MURPHY. So I can only speak from personal experience and my personal experience, usually the contractors that I have worked with, we will get paid within 5 days of payment. So, it is not on that end. Unfortunately, it is on the whole paperwork bureaucratic component that gets stuck up on that level.

Again, I am not at the time one with all the answers, but probably a quicker way of going through those leaps and hurdles and trying to be a little bit more considering the small business, and the businesses and realizing that the quicker they are able to do that processing, and be conscientious of that, and having a certain timeline to do that, realize how big it really affects small businesses. And that really draws up the cost, because any federal project that you know you are going to bid, you realize that you have that in the back of your mind, that I am not going to get paid for 60 or 90 days. So it does drive up the cost to the taxpayer as well.

Ms. SALAZAR. I see. Very good point. Thank you.

I yield back, Mr. Chairman.

Chairman MFUME. Thank you very much. Gentlewoman's time has expired.

I want to recognize Ms. Newman, but Ms. Newman, if you would hold on for just a second. This whole issue of prompt payment, which I think Mr. Bone referenced that we should just follow existing laws on this, underscores an important point. In 1996, when the regs were written on this, enter the Prompt Payment Act. Any agency that fails to pay within the required time would be liable for the delinquent payment. So obviously if we know that the biggest hurdle and detriment to Black businesses, Latino businesses, Asian businesses, women businesses is the lack of access to capital and credit, prompt payment does play an extremely crucial role, and it is maybe something that the full Committee on Small Business decides to look at, and if not, I could try to find some way for us to be able to do that, because it is a law that just has to be enforced.

I am going to stop my filibuster, since I am on the House side anyway, and yield to the distinguished gentlewoman from Illinois, Ms. Newman, and thank her for hanging around to the end.

Ms. NEWMAN. Well, thank you for putting together this great conversation today, and, Chair Mfume, I will gladly volunteer to work with you on that topic. I am a big fan of paying people on time, and having it be predictable. I am seeing a thumbs up from my friend, Ms. Salazar. So maybe all three of us could get together and have a coffee over that. So look forward to that.

Couple of things—first of all, Mr. Bone, thank you so much for highlighting that. I think that is critical. But this goes—this, actually, proves my point about PLA. So interestingly—this is a fun little data point—is that more than 80 percent of the time when there is a PLA in place, that it requires whoever is engaged in the party system, so whether there is a subcontractor, a contractor, a franchiser, whatever it is, it requires a very specific payment chronology and cadence on top of that federal law Mr. Mfume has talked about.

So PLAs are really good at enforcing those types of things, particularly when there is a union involved. And, by the way, I might remind everybody that when you have a PLA, it doesn't prevent you from having nonunion help, it just requires and protects those that are engaged in unions, and so that they have better benefits and pay, et cetera, and that is safer.

I also might add on PLA-based construction sites that more than 60 percent of those engagements, whether it is a GC contractor or PLA/GC contractor, it is usually somewhere in the range of 66 (ph) to 65 percent safer, there are fewer accidents, people are paid on time, and they tend to be not be overbudget, and they tend to be on-time projects. So I understand there is some confusion around PLAs, but it is not the boogie man as was suggested.

So I guess I am going to turn it over to Ms. Mecias-Murphy and tell me the top three things that frustrate you about PLAs.

Mrs. MECIAS-MURPHY. Sure, Representative Newman. Thank you for the opportunity to speak on that. I would say the biggest part—it is not really that we are, you know, that I am antiunion by any means; it is just basically that a lot of the mandates they are not as good. They restrict someone like a merit shop company to be able to bid on certain projects if these things aren't in place. That is number one. We just want fair all across the board.

Ms. NEWMAN. Uh-huh.

Mrs. MECIAS-MURPHY. Not—to this day, we are still in a country that is free, and, you know, we could pick whether we want to be part of a union or not.

Ms. NEWMAN. Sure.

Mrs. MECIAS-MURPHY. So with that being said, a high concern is, especially as the Representative from Minnesota had mentioned, and that concern, there is new possible concerns regarding these labor union—again, I don't want to get into all the weeds piece. I want to kind of stay very——

Ms. NEWMAN. Yeah. I—just to be clear, I just need—so I haven't—the first reason why PLA is bad. So if you can go back to your first reason.

Mrs. MECIAS-MURPHY. So the noncompetitive. Not being able to compete—being able to be on a fair playing field as far as it relates to this proposed bill. The second one, and with that is the missed opportunities. The second one is if there is a—if there is a project and there is a protest under this new act, even though it may not deal with me as a subcontractor, those labor unions can actually go on any one of my jobs and actually do that as well. And that is a concern because that can really hurt my company personally, and those that work for us as well.

Ms. NEWMAN. So you are saying that you don't want anyone to ever protest on any business ever?

Mrs. MECIAS-MURPHY. That is not what I said. That is not what I said.

Ms. NEWMAN. Okay. I am not sure how that syncs up with your right to protest and your freedom of speech.

Mrs. MECIAS-MURPHY. No. I just said that that could really hurt our company. That is all.

Ms. NEWMAN. But it would anybody. So any business where someone feels the need to protest, they have that right to do that, as long as they are not physically harming people. So I guess that is just a freedom of speech right to protest situation, not necessarily, no one is targeting you, in other words.

Mrs. MECIAS-MURPHY. So the third point is the increased cost that typically having unions on the job tend to have. I have seen that in different projects in Florida. I don't know. Maybe in your State, or your area, it is a little bit different and maybe in your experiences. But in Florida, the jobs have definitely gone up a lot higher by using unions. You do have a more limited, especially in Florida—and, again, I can only talk about Florida. It is a right-to-work State. More than 80 percent of the workers are nonunion, so there is more competitive, and it does allow to have better pricing; otherwise, when you have the PLAs and those agreements, there are certain amounts that are required.

So that is all I am saying as——

Ms. NEWMAN. Okay. I just want to remind, for the record, that right-to-work States, all 33 States, health outcomes are much far worse, lower incomes overall, and lower wages. So I just want to end with that, but thank you very much.

And I yield back.

Mrs. MECIAS-MURPHY. Sure. Our offices can get back to you as well, Representative Newman, with any additional questions that you or the Committee may have.

Chairman MFUME. Thank you very much. The gentlewoman from Illinois yields back.

The Chair recognizes the distinguished gentleman from Pennsylvania, Mr. Meuser.

Mr. MEUSER. Thank you, Mr. Chairman. Happy to be with the Committee here today, and thank you to the witnesses. I am, in fact, joining a little bit late, but I did catch that exchange, which I found fascinating. Ms. Murphy, I am going to ask you, and you probably didn't come here to get inquisitioned about whether or not you are antiunion, but I will say that is certainly what it sounded like. I, myself, am a Republican in a non-right-to-work State, Pennsylvania, and I am always favorable to the trades.

I think our unions have some great apprenticeship programs, and prevailing wage is something that we are all for, prevailing wage plus when it is plus-plus, that tends to get in the way of projects. So anything that is antigrowth and antidevelopment, I think is certainly a matter of discussion. And I think the trades—and it certainly sounded like you were trying to get this out, was—deserve a seat at the table just like those who choose not to be part of a trade or a union at that particular time. And PLAs, by the way, are one of the [inaudible]. It is not an inclusionary proposition, which is the reason that many companies have an issue with it.

So I would just ask in the PRO Act, to have it remove States' rights such as the right to work is just unfair. States should be the ones who determine such things and the idea that the PRO Act calls for a secret ballot, or looks to remove the secret ballot, is quite interesting as well, because we are not talking about fairness here; we are talking about some other tactics that are simply inappropriate.

So I appreciate where you are coming from, but at the same note, we have got to figure out how businesses can move forward, wages can stay high, and it is a very inclusionary atmosphere. But I will just ask you related to the PRO Act, and this might be repetitive, how will that affect your business if the PRO Act were to pass?

Mrs. MECIAS-MURPHY. Thank you, Representative. So I would like to maybe focus on the taxes piece about the increase in taxes, maybe, again, in this aspect as well, especially with all the benefits and the growth that we have seen in the last couple of years.

I guess the biggest piece about the Act is the taxes piece also, that that concerns me. Because with—it just brings a lot of uncertainty to my company of what that would look like. Will I be able to continue with the employees that we do have? Will we be able to still provide the benefits that we do have?

And those are high—those are high concerns, as well as—I agree with you on the secret ballots and all those other things, which kind of surprised me. I didn't really understand why that would be in this kind of bill. All we are asking is for, like what you said, a seat at the table and fairness all across the board for everyone.

Mr. MEUSER. Let me ask you this, Ms. Murphy: The idea of the tax reductions that took place a couple of years ago had about a 20 percent reduction for small business. I have many friends who have small businesses, and most of them told me they were able to bring in more inventory, they were able to hire one or two more people, they were able to expand their business. They did not say, Hey, this is great. I am going to be making an extra $20,000 a year.

What was your experience? What did you do with the tax relief that took place?

Mrs. MECIAS-MURPHY. I immediately went back and it went back into the employees. We were able to hire double the amount of employees that we had before then. We were able to also give raises, give very high bonuses, and be able to provide healthcare and 401 plans for the first time.

Mr. MEUSER. So you are a passthrough business, of course. If that was changed, and that is a lot of talk, of course, about raising the income tax, as well as eliminating small business relief, would that reverse things for you, or how would you handle that, particularly after recovering out of COVID?

Mrs. MECIAS-MURPHY. Yes, it would definitely affect our business financially in a huge way, especially since with COVID, even though the construction companies were still working, there was a 3- to 4-month delay. Let's say we had projects that we were working on during COVID and we continued with those projects. But then, there was a lot of bidding and a lot of projects got held, because the building departments were closed, plans weren't being reviewed, or what have you.

So it is kind of now—I would say there is probably a 4- to 6 months that there weren't any new projects being awarded, and that had an effect as well, especially with COVID, and that would just add on top of that situation.

Mr. MEUSER. Thank you, Mr. Chairman.

I yield back.

Chairman MFUME. Absolutely. The gentleman from Pennsylvania's time has expired.

In fact, all time has expired. And I want to personally, again, thank all of our witnesses for being here today to have comments on what we consider to be a very, very important subject, particularly our new witnesses in the persons of Mr. Bone, Ms. Ohrenberg, and Ms. Murphy, and our old friend, Mr. Thomas, who has joined us, again, before this Committee.

We all agree, I think, that we have got to find ways to put the funding of whatever we come up with as a Congress so that it works for small businesses. Those businesses over the centuries helped to build this country. It is critical now, I think we will all agree, that they have to help be a part of the rebuild.

It is my hope that this hearing shed light on existing programs to ensure the participation of small firms in that procurement process.

And as we consider infrastructure proposals, we have got to work also to expand contracting opportunities, and provide small businesses with the resources they need to complete them.

So at this point, I would like to ask unanimous consent that Members have 5 legislative days to submit statements and supporting materials for their record. Without objection, it is so ordered.

And I want to thank, in particular, the Ranking Member, Ms. Salazar, for joining us for what we both consider is, hopefully, a step forward on this whole issue of contracting and infrastructure.

If there is no further business before the Committee, the Committee now does stand adjourned.

Thank you all very, very much.

[Whereupon, at 2:37 p.m., the Subcommittee was adjourned.]

APPENDIX

WCOE
Women Construction Owners & Executives, USA

Testimony of Sheila Ohrenberg
President, Sorella Group
Kansas City, Kansas

Committee on Small Business
House Subcommittee on Contracting and Infrastructure
Hearing on
"Utilization of Small Contractors in the Infrastructure Plan"
June 10, 2021

Good afternoon, Mr. Chairman, Ranking Member, and Members of the Subcommittee.
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Thank you for holding this hearing on the "Utilization of Small Contractors in the Infrastructure Plan." As a small businesswoman and as President of Women Construction Owners and Executives (WCOE), I commend your commitment to ensuring that all categories of business owners will benefit from the robust infrastructure investments being debated.

First, I want to take a moment to thank the Members of the Small Business Committee for their key role in enacting and finetuning the Paycheck Protection Program. The program was a lifeline to WCOE members. Thank you for your quick action in the face of the pandemic.

Introduction

I am Shelia Ohrenberg, President of Sorella Group out of Kansas. I am pleased today to be representing WCOE, a national trade association representing the interests of women owners and executives in the construction industry. WCOE was founded in 1984 and has continued to be the voice of women business owners in the construction industry for over 37 years. We have worked to create fairer procurement processes under the WOSB program so that female owners in the construction industry will have greater opportunities for success.

WCOE members from across the nation work in a wide variety of construction industry occupations and our firms includes both union and nonunion companies. Members include a rebar/highway contractor in Illinois, a landscaper who performed the landscape revitalization for the Statue of Liberty, a steel supplier for major federal projects from CA, a minority female owner out of Kentucky, the owner of an electrical company in CA, a trucking company owner from MO, and many more, including women who own construction-related professional service businesses. We are all eager to help maintain and modernize American Infrastructure. WCOE members hold a variety of different certifications: small business, WOSB, EDWOSB, DBE, MBE, EDWBE, and HUBZone contractors. As a group, WCOE focuses on helping women-owned businesses – and women executives – succeed in the construction industry.

My company, Sorella Group, is headquartered in Kansas City, Kansas, with additional offices in Nashville, Tennessee and Denver, Colorado. Sorella Group is a full-service carpentry company and material supplier, complete with design and installation services. Sorella is an accomplished company performing a variety of work including work as a subcontractor on a one and a half billion-dollar, state of the art, international airport project and a military hospital renovation. I founded Sorella Group in 2006 and have grown considerably over the past 15 years.

Today's topic is timely. Direct investment in infrastructure by the federal government is desperately needed but women business owners continue to be underutilized in the federal procurement process. Unfortunately, women face discrimination in the bid process both in the private and the public sector. The ability to fully compete for federal contracts is critical because winning a federal contract award is a powerful tool that will help women, and any small firm, grow their business.

Importance of Federal Infrastructure Investment to Small Business

WCOE urges Congress to enact a bold infrastructure package. The President has proposed a wide-ranging American Jobs Plan (AJP) and we hope the bipartisan negotiations will quickly bring agreement on critically important infrastructure spending. Infrastructure is the strategic underpinning of the nation and yet the U.S. has been underinvesting in our infrastructure for decades.

Direct federal contracts are important to small businesses, but equally important are the grants and federally assisted project funds that go to state and local governments and make up many of the set-aside and DBE contracts that are extremely important to small businesses. The USDOT funds transportation projects in aviation, railway, and highway construction. After responding to the pandemic, state and local governments are "tapped out." Construction projects on the books have been pushed back, due to lack of funds, in some cases for years.

Maintaining and modernizing infrastructure is essential to any business. Infrastructure investment is critical for small business owners like me. An infusion of federal infrastructure projects means work, job creation, more opportunities for expanding my business and all women-owned construction firms.

Maintaining and building infrastructure expands access for business, enhances business operations, creates demand, and is vital to growth. Construction work means being on the road – road congestion leads to wasted fuel, lost productivity and more pollution. For WCOE members working on transit systems or highway construction or almost any project, delays mean higher costs and consequently the scope of the project is cut down or curtailed indefinitely.

Importance of Ensuring Contracting and Subcontracting Opportunities for Small Firms

Although small businesses drive innovation, job creation and economic growth, women-owned small businesses, minority businesses, and veteran-owned small businesses continue to face direct and structural barriers to success. Unfortunately, this is true in the federal marketplace as well as the private market.

The federal contracting programs Congress has put in place to provide greater opportunities for small businesses to win federal contracts and subcontracts are still necessary today. The rates and costs of obtaining financing, bonding, and insurance are disproportionately high for small business and especially women-owned businesses. At WCOE events, new members share stories of the same social and economic barriers faced by women in past decades. As the Congress and the Biden Administration consider a massive infrastructure investment initiative, WCOE hopes more will be done to see that a fair portion of federal contracts and subcontracts go to these groups.

Consider that after 25-years, the WOSB program is still seeking only 5% participation across all market sectors even though 42% of all businesses are at least 51% owned, controlled, and managed by one or more females.[1] **The federal contracting goal for WOSBs still sits at 5% and the goal has been met only twice, once in 2015 and again in 2019.**

A February 2021 Congressional Research Service Report (R46322)[2] reports that although WOSB program usage has increased, WOSB set-asides and sole source awards continue to account for a relatively small portion of the federal contracts awarded to WOSBs and that the Department of Defense accounts for almost half of the WOSB awarded contracts.

Congress needs to do more to see that women-owned firms, in addition to minority and veteran-owned firms, receive fair access to federal contracts and subcontracts.

Enhance Economic Opportunities for Small Business Through the Federal Marketplace

A bold, expansive infrastructure package would be a great vehicle that government can use to increase contracting opportunities for women-owned businesses that have continued to face an uphill battle in winning contracts and for whom the playing field is not yet level. WCOE has promoted several ideas that would help women in construction and other industries to grow.

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1 State of Women-Owned Business Report, 2019, Commissioned by American Express,

2 SBA Women-Owned Small Business Federal Contracting Program (R46322), Congressional Research Service February 2021, Robert J. Dilger,

In addition to robust funding for core federal programs and innovative financing mechanisms, legislation could:

A. Increase the statutory goals (currently 5%) for WOSBs and other categories. Considering that 42% of U.S. businesses are owned by women, the goal should be higher. It has been 5% since 1996, even as the percentage of women business owners has increased. In New York state, for example, when the goals were set higher, the number of contract awards to women-owned companies increased.[3] **Incentives to the meet the goals would be helpful, especially if there are no consequences for never meeting goals.**

B. Include language from a bill to be re-introduced next week by Representative Grace Meng (D-NY) in the House, and by Senator Tammy Duckworth (D-IL) in the Senate, which would revive the Interagency Committee on Women's Business Enterprise (ICWBE), which would ensure more effective coordination of agency resources for women business owners.

C. Require more transparency utilizing the SBA Procurement Scorecard. The Scorecard should include how many WOSB contracts are awarded along with the value of the contracts awarded by each agency. This would give a more complete picture of which agencies have an energetic WOSB outreach. A single million dollar contract is different than 40, $25,000 contracts.

WCOE has recommended other regulatory changes that would make a difference to WOSBs. These would:

- Require that SBA determine how many different women-owned businesses there are within NAICS Codes. If there are 1,000 WOSBs under a particular NAICS code but 12 received all the contracting funds, that would reveal over 988 businesses did not receive work.

- Increase the small business size standards for construction by using an area multiplier. Costs of labor and materials are much higher in some urban areas. A construction industry firm can easily exceed a high dollar gross revenue threshold. For construction, receipts are a misleading indicator for size due to material, supplies and labor costs.

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[3] *Making the Grade: NYC Agency Report Card on Minority- and Women-owned Business Enterprises* | *2017), Scott M. Stringer*

- Utilize the USDOT Personal Net Worth (PNW) statement that is currently used by the Department of Transportation to determine Economic Disadvantage, rather than utilizing the owner's adjusted gross income.

In addition, WCOE has worked with other construction industry coalitions for legislative contracting reforms, which will help make small businesses, including women-owned, construction firms more viable, particularly considering access to capital and to bonding are always significant issues. These include:

- Ensure payment and performance bonds for P3s and other creative financing mechanisms
- Address payment issues for change orders`
- Exempt Miller Act from Indexing

Conclusion

Thank you again for your focus in the effort to increase contract awards to entrepreneurs who have continued to face discrimination and fight barriers beyond the usual hardships of running a small business. WCOE hopes to continue to work with you to fight for pathways that will encourage and support new generations of women so they can successfully take the leap into the world of small business.

"UTILIZATION OF SMALL CONTRACTORS IN NEW INFRASTRUCTURE PLAN

TESTIMONY OF THE

NATIONAL ASSOCIATION OF MINORITY CONTRACTORS

WASHINGTON, D.C.

BY

RALPH C. THOMAS III, ESQUIRE

EXECUTIVE DIRECTOR OF COMMUNITY ENGAGEMENT

BEFORE THE

HOUSE COMMITTEE ON SMALL BUSINESS

SUBCOMITTEE ON CONTRACTING AND INFRASTRUCTURE HEARING

RAYBURN HOUSE OFFICE BUILDING

ROOM 2350

JUNE 10, 2021

Good morning, Mr. Chair and ladies and gentlemen of this most important Congressional Committee. Thank you for your invitation to testify before this most important hearing of House Small Business Committee's Subcommittee on Contracting and Infrastructure.

My name is Ralph C. Thomas III, and I am testifying today on behalf of the National Association of Minority Contractors (NAMC). Our headquarters is here in Washington, D.C., and we have chapters and affiliates all over the country. NAMC was founded in 1969, to advocate primarily on behalf of minority –owned construction firms, so our organization has been around for more than 50 years, making us the oldest minority construction trade association in the United States.

We advocate not just for our members but also for the approximate 100,000 minority contractors across America and for the construction industry as a whole and, almost all our members would qualify as Disadvantaged Business Enterprises, otherwise known as DBE's, although they qualify in other small business categories in other federal small business programs. The inclusion of minority contractors/DBE's in the rebuilding of America's infrastructure is particularly important to ensuring that America is operating at the full productive capacity of its citizenry. Needless to say, NAMC looks very much forward to playing a significant role in the upgrading of this nation's infrastructure.

I. POTENTIAL BENEFITS TO DBE'S AS A RESULT OF NEW INFRASTRUCTURE PLAN

As contractors, DBE's both understand and encourage the Administration's implementation of a new Infrastructure Plan that will address America's need to improve the nation's current deteriorating infrastructure with bridges, highways, and roads sorely in need of repairs. It is what we do and have always done. We help America to build the nation.

Accordingly, we look forward to participating in all phases of the rebuilding of our country's infrastructure.

The figures that have been mentioned in connection with the Plan should allow minority contractors and DBE's more opportunities than ever before. The $621 billion that the Administration presently anticipates spending on roads, bridges, public transit, rail, ports, waterways, airports, are all areas that DBE's are currently performing in, and the new infusion of federal spending will be more than welcome. NAMC was very encouraged by the remarks of Transportation Secretary Pete Buttigieg before the House Committee on Transportation and Infrastructure in March of this year. The Secretary testified that the DBE Program would be more robust under his watch. He said that the DBE Program within the U.S. Department of Transportation would be a priority for him and that he would make it a robust program. He also said that he would build up the capacity of DBE's to perform a wider range of contracts. So, we are committed to helping the Secretary making his commitment a reality.

In that light DBE's also expect to participate to the maximum possible extent in the President's proposal for allocating $115 billion to modernize 20,000 miles of highways, roads, and main streets, and another $20 billion to improve road safety, which will include fixing the significant large bridges and repairing the worst smaller bridges.

The current $80 billion currently projected to address Amtrak's repair backlog and modernize the Northeast Corridor line between Boston and Washington DC is particularly welcome and is an area in which DBE's have been commended in the past. In a 1986 Study conducted was by an Advisory Panel of the U.S. Commission on Civil Rights DBE's were highly commended in the performance of their work on a $2.2 billion project to improve the main Amtrak rail line running through eight states in the Northeast Corridor, including New York, New Jersey, and Connecticut. DBEs were reported to have performed their role in the project within budget and on time. DBE's performed 17.8 percent of the work, even though the goal was 15%, and it was noted in the study that part of the DBE's success on the project was because of 10 years of strong commitment from top officials at Amtrak and the U.S. Department of Transportation. We are confident that with a similar from today's leadership that we will be able to repeat such performance.

The President's Infrastructure Plan would also allocate $100 billion to workforce development, helping dislocated works, assisting underserved groups, and getting students on career paths before they graduate high school. Secretary Buttigieg has testified before Congress that this was an especially important issue for him, and that DOT was going to go about increasing diversity in the transportation construction workforce in a big way. He said that DOT would develop programs to get to individuals early in their development – as early as Middle School, to perk their interest in this field.

NAMC welcomes this commitment because we have long been concerned about workforce development within the construction industry. The U.S DOT had a workforce development program in 2017, however, it was not reauthorized under the 2018 federal budget. That represented a loss of investment in American workers which minority contractors desperately need to develop an essential workforce in their performance of future transportation projects. Without the Administration's attention to this most important area, NAMC feared that America would lose a generation of minority youth unnecessarily. For example, African American males, ages 18-35, are projected to have the highest unemployment rate in America. Other minority groups, women veterans and disabled veterans have seen similar disparities and should be included in reestablishing the workforce development program. And these are the primary groups that DBE's will rely upon to fulfill their labor force needs.

The U.S. DOT has estimated that for every $1 billion in transportation infrastructure investment, 13,000 jobs will be created over the next 10 years. In addition to these jobs, transportation employers will need to hire up to 4.6 million workers, or 1.2 times the current transportation workforce, during the same period. Many of these workers will require skills training to meet job requirements - a need that is projected to be met by the current Infrastructure Plan. So, we are pleased that the current Infrastructure Plan would also funnel $48 billion into much-needed apprenticeships, career pathway programs for middle and high school students and job training at community colleges. This will fill a current hole in the construction workforce from which DBE's will depend upon.

Lastly, the Administration's plan would double federal funding for public transit to $85 billion to modernize existing transit and help agencies expand their systems to meet demand. Once again, such additional funding gives DBE's an opportunity to better participate in those projects which they use in their own communities and which they see the need for improvement.

II. <u>U.S. DOT's ROLE IN THE UTLIZATION OF DBE'S IN INFRASTRUCTURE PLAN</u>

The U.S. Department of Transportation's (USDOT) Disadvantaged Business Enterprise (DBE) Program is designed to include Disadvantaged Business Enterprises in federally assisted highway, transit, airport, and transportation-safety projects. The program embraces the concept of engaging minority and women small business owners into the transportation industry as contractors.

The DBE Program is established under the Act itself: Fixing America's Surface Transportation Act (FAST-Act). The FAST Act requires that, unless the Secretary of Transportation determines otherwise, no less than 10% of funds made available for any program under Titles I, II, III and VI of the Act and 23 U.S. Code 403, shall be expended with DBEs. The FAA also manages a separate DBE program for airport concessions.

Although there are other federal programs designed to improve the government's utilization of small disadvantaged businesses, including the SBA's 8(a) Business Development Program, the Small Business Subcontracting Goals Program, the SBA's Women Enterprise Development Program, the Veterans and Disabled Veterans Small Business Program as well as a Program designed for small businesses located in Historically Underutilized Business (HUB) Zones, the bulk of the utilization of DBE's for the Infrastructure Program will come from the DOT's DBE Program.

NAMC will be working closely with the DOT to ensure that the DBE Program is maximized in enforcement and compliance to ensure that the rebuilding of America's infrastructure with the full participation of DBE's is a dream realized . We also intend to work closely with this Subcommitte to ensure the system designed to help DBE's get transportation contracts runs smoothly and efficiently.

III. THE IMPACT OF ADDITIONAL CAPITAL TO DBE'S THROUGH THE INFRASTRUCTURE PLAN

If DBE's are able to access additional capital for their businesses through the acquisition and performance of more contracts obtained through the Infrastructure Plan, such capital should result in higher profits. With these higher profits, DBE's should be able to invest in better technology, equipment and labor expertise. Moreover, DBE's will develop more experience, giving them a competitive benefit in past performance evaluations when being considered for new work. Moreover, it will give large primes a larger base from which to choose good subcontractors, particularly its DBE base.

In addition, the new capital should allow them to pay better wages and benefits, allowing themselves and their workers to have a better lifestyle. It should have social benefits as well.

That ends my testimony, distinguished Members of the Committee. Once again, thank you for allowing me to testify today. I am now ready for any questions that you might have.

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Statement
Mr. Josh Bone, Executive Director
ELECTRI International
on behalf of the National Electrical Contractors Association

to the U.S. House of Representatives, Small Business Committee,
Subcommittee on Contracting and Infrastructure

for a hearing on: Utilization of Small Contractors in the Infrastructure Plan

June 10, 2021

NECA is the voice of the $171 billion electrical construction industry that brings power, light and communication technology to buildings and communities across the United States. NECA's national office and 118 local chapters advance the industry through advocacy, education, research and standards development.

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Statement of Mr. Josh Bone
Executive Director, ELECTRI International
On behalf of the National Electrical Contractors Association (NECA)
Presented to the
U.S. House of Representatives, Committee on Small Business
Subcommittee on Contracting and Infrastructure
June 10, 2021

Thank you, Chairman Mfume, Ranking Member Salazar, and members of the Subcommittee for inviting me to testify today at this important hearing. On behalf of ELECTRI International - the non-profit foundation for the electrical construction industry and our founding association, the National Electrical Contractors Association (NECA), we sincerely appreciate the opportunity to submit a statement for the record to the Subcommittee on Contracting and Infrastructure, on "Utilization of Small Contractors in the Infrastructure Plan." The Subcommittee should be commended for holding this important hearing to address the critical challenges and needs of America's small business community as we work together towards a once in a generation infrastructure package.

My name is Josh Bone and for more than two decades I have helped architects, engineers, owners, general and sub-contractors leverage technology solutions to improve communication and reduce risk on projects across the country. When working with some of the top technology leaders in the industry, my focus has been to identify best practices and methodologies for integrating technology into everyday workflows for businesses of all sizes.

In my current capacity as Executive Director of ELECTRI International, I work to ensure electrical contractors and industry partners across North American and around the world have access to the best research, educational programming, student engagement, and international outreach. My role gives me the opportunity to share the knowledge we gain with audiences and publications across North America.

ELECTRI International is a 501(c)(3) charitable organization established in 1989 by the National Electrical Contractors Association. ELECTRI is currently guided by the ELECTRI Council Chair Michael Parkes of O'Connell Electric and a Board of Trustees comprising electrical contractors and industry partners from across the country. The goal of the Foundation is to help electrical contractors - large and small - meet today's demands and tomorrow's challenges by transforming our commissioned research results into meaningful, useful educational and consulting programs and practical publications. ELECTRI investigates trends that affect the electrical construction industry and commissions top-quality research that supports contractors in their business efforts. Each year, multiple research projects are evaluated by ELECTRI's leaders and then funded according to the current needs of the industry.

The work of ELECTRI is amplified by the National Electrical Contractors Association's network of nearly 4,000 contractor members. NECA is the voice of the $171 billion electrical construction industry that brings power, light and communication technology to buildings and communities across the United States. NECA's national office and 118 local chapters advance the industry through advocacy, education, research and standards development.

The concepts presented in this hearing will be of key importance both to NECA and ELECTRI's informed research and also our nation as a whole. With more than three million small businesses in this country, nearly 3,200 of which are NECA members and consumers of ELECTRI's research, it is very clear that the growth of small businesses is paramount when measuring the true economic impact of an infrastructure plan. With this in mind, this testimony will begin by establishing the state of play in the electrical construction industry and our nation's infrastructure, as well as perspective on the American Jobs Plan. From there, my comments will touch on the need to utilize small businesses as unique engines for innovation, the realities of the construction industry, NECA's undertakings in the workforce development and apprenticeship space. I will also reference the potential for governmental action throughout.

Setting the Stage - Infrastructure and the American Jobs Plan

It cannot be stated strongly enough that the infrastructure of this country, while superb compared to many others, is crumbling and subpar for the American Economy. The American Society of Civil Engineers recently awarded our nation a C- for its overall infrastructure. This is a miniscule increase from the previous 2017 D+ rating, showing our nation is in need of a makeover. Thankfully, Congress and the current administration have shown a clear and urgent understanding of this need. To that end, we view the American Jobs Plan as the culmination of a generation's worth of conversations to address an aging and lacking infrastructure. This plan is the first step of many in moving this country forward.

Here at ELECTRI and with our partners at NECA, we continue to proclaim that there are methods for updating our infrastructure in a structurally sound manner while remaining technologically advanced. The country's electric grid connects electricity from thousands of power plants to 150 million customers through more than five million miles of power lines and approximately 3,300 utility companies. Despite an increasing abundance of energy-efficient buildings and other measures, electricity demand has risen by around 10% over the past decade, partly driven by the massive growth of digital device usage and the expanding demand for air conditioning. According to 2013 data from the Department of Energy (DOE), U.S. power grid outages have risen by 285% since 1984 when records on blackouts began to be noted officially, for the most part driven by the grid's vulnerability to weather events. This is a growing problem that is costing the U.S. a great deal of money – at least $150 Billion a year according to the DOE.

Upgrading the electrical grid will ensure consumers are provided with reliable, high-quality digital-grade power and increased electricity-related services. The smart electrical grid will allow consumers to benefit from the rapid growth of renewable power generation and storage as well as the increased use of electric vehicles. Investment in a smart modern electric grid will enable us to embrace individual technologies like electric vehicles, energy storage, demand response, and distributed generation – all of which improves our efficiency and resiliency. Our small contractors support local investments in our grid by providing expert installation of new technologies inside homes, commercial buildings and industrial facilities. This includes items such as LED lights, electric vehicle charging, lighting controls, energy storage and smart equipment. These innovative technologies help homeowners and other small businesses save money on their utility cost while reducing the demand for power generation.

Our nation's small business electrical contractors are perfectly positioned to build, preserve, and retrofit the more than 2 million homes and commercial buildings referenced in the American Jobs Plan. After the volatile 15 months created by the COVID-19 pandemic, there is no question that small contractors will prioritize these types of projects and be grateful to have the work. Small contractors can deploy their existing skills while developing new knowledge that they can then apply to other local projects. Working on these types of projects as a result of the AJP, will help small contractors better learn how to scale and price these new energy saving technologies.

With the Biden Administration's efforts to electrify the federal fleet, we at ELECTRI recognize the potential growth spurred by the EV movement. This issue has often been understood as a "chicken and the egg" debate. For example, while consumers may wish to purchase this technology, the infrastructure for easily utilizing it does not exist. Conversely, the infrastructure to meet potential demands has not been adequately expanded because the need has not yet been realized. We too have seen this catch-22 at the small business level, where contractors have interests in better educating their electricians to install charging stations and other needed facilities but have not yet seen the effective market push to incentivize this investment in their workforce.

With those challenges in mind, our partners at NECA along with other industry leaders have established the Electric Vehicle Infrastructure Training Program (EVITP). This national training and certification program aims to ease the challenges facing EV manufacturers and investors by providing the confidence of a supportive, highly educated contractor base with the technical knowledge and workforce to install these new items. Through programs like EVITP certification and this administration's willingness to lead on the perpetual chicken and the egg cycle of electronic vehicles, we remain optimistic that the $174 billion investment proposed in the American Jobs Plan in these technologies will come to fruition in some form.

As the country continues to address issues associated with our infrastructure, the conversation must touch on the need for stronger natural disaster protections and preparations. These perennial challenges remain catastrophic. With the National Oceanic and Atmospheric Administration (NOAA) forecasters predicting a 60% chance of an above-normal 2021 season, the danger has reared its head again. After disaster strikes, whether in Puerto Rico, New Jersey, or as we've recently seen in Texas, the electrical construction industry is a key component to any recovery effort. NECA contractors often find themselves orchestrating for the relief effort and preparing their field employees to work long days and late-nights even before these catastrophes take place.

While we do not have the ability to control the weather, our industry certainly has the capability to modernize itself and to build in a more resilient fashion. While the traditional electric grid is one of humanity's greatest innovations, new resilience-building technologies allow us to enhance that foundation, providing the capability to leverage distributed energy resources (that is, small-scale power generation and energy storage) and improve energy resilience through microgrids and other innovations. Electric utilities worldwide are addressing community vulnerabilities to weather and related disasters by investing in microgrid technology, a unique energy system that can provide power to a community by operating in conjunction with the grid or independently.

One such example of innovation is the microgrid in the Bronzeville neighborhood of Chicago is part of the first utility-operated microgrid cluster in our nation. It demonstrates what increased energy resilience looks like for the community and nearby areas. The Bronzeville microgrid is projected to provide more than 1,000 residences, businesses, and public institutions, including the Chicago Fire and Police Departments, with a new layer of defense when it comes to dealing with power outages. This microgrid made up of distributed, distributes energy resources including battery energy storage systems (BESS), solar (PV), and controllable natural gas generation and will be used to meet the specific needs of the community. Microgrids can benefit day-to-day operations, and the economy of a region while enhancing reliability.

Informed by our research and qualitative work with NECA, we urge lawmakers to reinforce the country's infrastructure before any more natural disasters occur. As Benjamin Franklin said, "An ounce of preparation is worth a pound of cure." So too, the efforts of reinforcing and preparing for disasters are of key importance in ensuring that homes and businesses can recover quickly and smoothly. Whether these efforts are funded through public-private methods, mimicking the Grid Modernization Initiative at the Department of Energy, or through broader funding methods like the President's recent announcement doubling the budget of the Building Resilient Infrastructure and Communities program, we have seen the need across the country for both modernization and preparation. To address this country's infrastructure and ignore more weather resilient technologies is to invite more challenges on an increasingly traumatic scale.

The state of American infrastructure is lacking at best. At worst, when combined with continued disregard, away from collapse. We at ELECTRI along with NECA contractors look forward to working with the Administration and Congress to enact a sweeping infrastructure plan that will rebuild and invest in the future. Whether that investment comes through electric vehicles, modernizing our nation's electrical grid, protecting against natural disasters or in any other way, we stand ready.

Small Businesses as the Engine for Innovation

As this committee knows best, small businesses charge this nation's economy. Recent data from the Small Business Administration show small businesses accounting for two-thirds of net new jobs and 44 percent of U.S. economic activity. These numbers are understandably impressive. What is less understood is how these businesses utilize innovation and specialization to maintain prominence and to surmount the increasing challenges (touched on later in this testimony) associated with the construction market. For the American Jobs Plan or a finalized infrastructure package to achieve the goal of rebuilding this nation and reinvigorating our economy, it must be curated towards small businesses. In turn, what Congress and others will find is that these same businesses will respond with a more innovative approach and an added degree of craftsmanship brought about by a pronounced specialization.

Trending over time across the construction industry, we have witnessed small contractors building their businesses around niche markets in order to be more competitive. By focusing their business on scopes of work like tenant improvement, lighting controls, renovations, residential, healthcare, and other specific markets, contractors are positioned to increase their productivity on certain tasks and gain knowledge that tightens their bids so they can more easily adapt to address common challenges they face when doing similar work.

Many of the contractors with whom I work have greatly diversified their businesses over the last decade to meet new customer demands and find new opportunities to grow their businesses in emerging fields. In 2004, Electrical Contractor Magazine started a bi-annual interview series titled "The Profile of an Electrical Contractor." At that time, 70% of an electrical contractor's work was transmission and distribution of power throughout a job. By 2016, those tasks had declined to 43% of the work of an electrician. In the following two-year span taking us to 2018, that work dropped to just 25.4%. While this type of work has been further commoditized, our contractors shifted their businesses to embrace new technology-driven areas of work such as installing energy efficient lighting fixture and controls, installing communication and data systems, security systems, fire alarm systems and other types of low voltage work that are far less commoditized and require different knowledge and skills.

Small contractors need to stay on the forefront of these types of advancing technologies to ensure their longevity and change the way they are viewed by consumers. Today, most construction projects are based on who can do it cheaper and faster. Clearly, this does not promote the healthiest of business models. Having expertise in these emerging technologies adds value to small contractors' businesses so they can be viewed more as a consultant than a commodity. This innovation demonstrates itself in many ways. One method we have seen is the increased use of prefabrication shops. Design and construction have changed drastically over my 23 years in the industry. In 2021, contractors are forced to work around tighter schedules. To ensure they can deliver the work on time and within budget, contractors have had to embraced offsite construction methods to remain competitive. Many of our contractors have invested in fabrication shops where they now run everything through the facility, including purchasing, to help reduce jobsite waste and clutter. In fab shops, contractors do things like unbox fixtures and equipment, place them in containers and onto carts, and label them by room number and floor to streamline the flow of material and tools on the jobsite.

Contractors can use less-skilled labor in their fab shops and still provide a safe and efficient on-the-job training environment. In our fab shops, we can better control the temperature, heights at which people work, equipment to help us lift heavy objects while increasing our productivity. Workers in these environments have all the tools and materials in close proximity similar to what you would see on a manufacturing floor. This approach enables workers to bend, cut and fasten more components in a day than a worker onsite could handle in weeks or months. Prefabrication of assemblies and construction of large modular components are becoming a contractual requirement on many projects across the country. Owners understand the impact to safety along with the increased productivity and the certainty it provides to the schedule. We can start construction offsite months ahead of when work begins onsite, giving us a competitive advantage against the schedule.

When examining the capabilities and unique nature of small business, we would be remiss to not comment on the perspectives and abilities brought to the market by Minority and Disadvantage Business Enterprises (DBEs). A majority of NECA's DBE(s) are small contractors who have demonstrated a clear ability to thrive in a challenging market space. These contracting firms are primarily owned and operated by socially and economically disadvantaged individuals who often face uphill battles to secure loans or expand their networks in an industry notorious for long-established relationships. To that end, NECA continues to advocate to its membership the benefit of the mentor-protégé system. NECA has previously testified to the benefits of the Runway Extension Act of 2018 which allowed small businesses, to calculate their status on a five-year basis instead of the shorter three-year window previously assigned. This allows contractors, a number of whom are MBE or DBE to maintain their small business classification for a longer period of time.

America's small businesses remain dedicated to their projects and end products and do so in the face of overbearing financial risk. While the federal government has aided these businesses through a variety of support programs, these industry leaders are able to sustain their herculean efforts through innovation and specialization. Combine this with the fact that in the construction industry, reputation is critical to a small businesses success these companies know they cannot afford a bad job. In turn, they continue to adapt and move forward.

Construction Timelines and Payment Practices – The Effect on Small Businesses

In the construction industry, it is said that you are always working yourself off of a job. This simply means, that, when a contract is awarded, the contractor immediately sets out to fulfill the scope of work for the job and accomplish the task in the appropriated amount of time thereby finishing the job and ending their contract. What comes in between the awarding of the job and working oneself out of it is a myriad of risk and project management.

A key concern within the small business construction community is one likely widespread across this country, namely access to capital. If the federal government wishes to benefit small businesses through a broad infrastructure package, it must do its best to unbundle contracts to the greatest extend possible. Doing this would make these contracts more accessible to small businesses who are structurally limited from accessing the capital necessary to complete larger scale projects. Other challenges present themselves to small businesses in the electrical construction community, as an extension of limited access to capital. These are the risks associated with delayed payment practices combined with flow down clauses, bonding, and fluctuating material costs.

Structurally, a small business does not have the same degree of capital reserves when compared to a large firm and so they must make calculated risks in order to survive. This is a rampant problem within the construction industry that keeps many small businesses from competing for work. Occurring with both public and private owners, it is not uncommon in the construction industry to hear stories detailing a delay of payment to the subcontractor(s) for almost 18 months after a job's completion. This delay has the capability of crippling small businesses that are unable to balance their books and/or anticipate capital for upcoming projects.

Under the Prompt Payment Act of 1982 (PPA), businesses are entitled to receive payment for services rendered as originally anticipated, or else they run the risk of losing their business.

If payments are made as required under the PPA by the contracting officer to the prime contractors, subcontractors are often not made aware of when these transactions take place. This lapse in communication complicates the payment process when it comes time for the subcontractor to be paid by the primary contractor. The more complex a job, with multiple subcontractors, can exacerbate this payment communication issue, making it difficult for subcontractors to advocate for prompt payment. Mitigating this issue by requiring payment notices to be released by contracting officers to impacted parties would be thoroughly appreciated by all those involved. Small contractors need contractual and prompt payment support when it comes to working on larger projects like airports, ports, schools, healthcare projects, federal buildings, and power plants. That said, until this reform and still greater reform is sought by Congress and the President, small business construction contractors of all walks of life will continue to assume this onerous risk as a cost of doing business.

The risk assumed by small business contractors cannot be understated. In some cases, subcontractors have recounted stories of offering their homes as collateral when applying for bonding on contracts. As reliable contractors who complete their assigned work, many NECA members, who participate as subcontractors, hold their primary concern on payment bonds, those contractual disputes focused on equitable and timely payment for services. In the event a prime contractor refuses to pay, regardless of reason, a subcontractor's only recourse is to file a claim with the project's bonding agency. Under the Federal Miller Act of 1935, Federal Acquisition Regulation requires that payment bonds be utilized on all jobs exceeding $150,000.

Usually designated for an agreed-upon duration of time, these bonds also hold a fixed interest rate. Bonds and their benefits are not typically implemented until a contractor is incapable of completing a project or paying subcontractors for services. When this occurs, the financier is obligated to pay the responsible parties for the completed work.

Issues arise when a subcontractor tries to remedy this lapse in payment because the information needed to contact the bonding officer or access the original bond text is often withheld by a proprietary group of people involved in the job. Restricting access to bond information is an industry-wide problem and could be easily alleviated by using the current networks of platforms where many of today's contracting documents reside.

While delayed payment practices, flow down clauses, and bonding are typical challenges against electrical industry subcontractors, the recent extreme fluctuation in material costs has presented a new headwind poised to limit the impact of the forthcoming infrastructure plan. We at ELECTRI hold growing concerns over the rapid increase in material prices. While many in the residential building space have felt the damaging effects of the nearly 400% increase in the price of framing lumber since last spring, the main concern for electrical contractors is rising copper costs. The cost of copper, an integral component in the completion of electrical construction, has risen nearly 90 percent since this time last year. The concern over commodity costs has two somewhat apparent negative effects.

With higher costs of building materials, simple math will leave anyone concerned. As Congress and the administration work to rebuild this country through various forms of financing, there is no denying that these dollars will not stretch as far when construction itself costs more. Secondly, and more germane to the committee, is the effect these fluctuating prices have on small business contractors who work in both the private and public sector. To be awarded a job in the construction industry, contractors must navigate their way through the bidding process and propose an estimated cost for the work to be completed. These final numbers -- often presented weeks or months before ground is broken on the jobsite -- are the product of intricate pricing and risk management. With the volatility present in the materials space, contractors are now being subjected to another degree of risk.

When awarding a job, contract owners often present the winning bidder with specific terms for work. These terms typically contain "hold price on materials" for typically 90 days or more while, conversely, the pricing provided to the bidding contractor from a material supplier typically is only held for 7 to 10 days. To make matters worse, most contracts only account for 5% to10% inflation on materials from the time the bid is awarded to the time our contractors start the actual work. Prior to the current state of market challenges, these types of risk were understood as the nature of our industry but, the now realized extreme of prices rising 400 percent in a year have given many small business contractors increased fear and uncertainty when competing for work.

Risk is inherent in every industry. What makes the construction industry so challenging for small business is the extreme institutional risk it poses to companies every day. Whether that be through delayed payments, bonding challenges, or a volatile commodities market, stability is not something typically granted to small businesses. As such, when implementing a broad infrastructure package, Congress and the administration must continue to work with those risks in mind, establishing protections and reforming the regulatory process when necessary.

Workforce Development and the Apprenticeship Program

Getting America back to work is not only a huge priority for Congress and the Biden Administration but also for our NECA contractors and the electrical construction industry as a whole. Though our contractors, as essential workers, never truly stopped working and powering lives during the pandemic or experienced the mass employment challenges other industries felt, we recognize that in order to continue to exceed the demands of our marketplace, we must remain devoted to educating our current employees and expanding our workforce. We are employing 486,609 fewer electricians than we did in 2007 prior to the great recession.

We believe that through the partnership of NECA and the International Brotherhood of Electrical Workers (IBEW) and aided by ELECTRI research we have exhibited the success and achievements of our joint training program and we are prepared for the challenge of training the next generation to meet this country's infrastructure needs. Our registered apprenticeship program not only benefits participants but powers the lives of people across America.

NECA and IBEW developed the National Joint Apprenticeship Training Program (NJATC) together over 70 years ago. This "Electrical Training Alliance" invests over $100 million annually in the largest and arguably most successful apprenticeship and training program in the nation. Today, with over 300 joint local programs, well over 350,000 apprentices have graduated to journeyperson status. NECA is deeply involved in our industry's most challenging and effective training program that produces the finest electrical work in the nation. At every level, our national apprenticeship program instills the highest degree of skill and professionalism in our electricians. We strongly believe that our program offers a distinguished experience, education, and career that competes with most other higher education institutions with the increased benefits of little to no debt and guaranteed employment to graduates. ELECTRI's innovative research and studies often help the NJATC program to advance the teaching of the most critical skills to apprentices. Graduates from our training centers excel in a wide range of specialties including but not limited to power quality, backup power generation, communication systems, traditional power and lighting, and energy efficiency projects.

Our NJATC program's rigorous training method takes apprentices who may lack comprehensive knowledge of electrical construction and creates qualified and capable journeypersons. While learning their trade, apprentices earn a superb wage and gain invaluable experience in their full-time position, arguably the biggest benefits of the NJATC program. Through this immersive program, we aim to provide the electrical construction industry with the highest-skilled workforce possible. The required 8,000 hours of on-the-job training and 900 hours of classroom time over 4-5 years allows us to achieve our goal of an exceedingly competent workforce. As electrical apprentices learn new skills and reach set milestones, they also receive incremental pay raises. Incidentally, our journeypersons and apprentices are paid at or above the President's $15/hour minimum wage on all projects, not just federal projects. The NJATC program is fully funded by the industry and places no burden on the American taxpayer. Annually, program participants contribute more than $600 million in federal, state, and local taxes. Participants, from the start of the program, receive retirement plans and medical coverage for themselves and their families all provided for by the industry.

ELECTRI, in conjunction with NECA contractors has worked to expand the reach of our apprenticeship in a number of innovative ways. Most notably, our NJATC program partners with Community Colleges across the nation, such as Community College of Allegheny County, Northwest State Community College, and the College of DuPage. These community college degree paths cover much of the classroom time required by the JATC program, allowing participants to earn an associate degree in their field. For some of these programs, there is money available to reimburse participants for their degrees through industry funding. The flexibility provided by these partnerships is perfect for working while in earning a degree and learning practical skills.

From this higher education space, our local training centers have continue their efforts to reach various populations. Whether it be working with educators to educate young folks of the benefits of our programs or with community advocates to reduce recidivism through our pre-apprenticeship programs, teaching incarcerated and formerly incarcerated persons a trade. We at ELECTRI have found that the key to making these inroads is not just in the financial messaging highlighting how tremendous our benefits or pay may be but to also show a degree of specialization in the work thereby attracting a more steadfast workforce.

There is no infrastructure package without a workforce to make it happen and a skilled workforce comes through structure and methodical education. Programs like our Department of Labor registered NJATC and other similar ones will play a paramount role in making sure that when we do rebuild this nation's infrastructure it is done right the first time. With this in mind, the electrical construction industry recognizes that in order to fill the massive workforce demand in this country, we must expand our outreach to historically underrepresented areas like high schools, community colleges, prison systems and others. We at ELECTRI believe these goals can be met and will continue to provide the insights necessary to our industry partners to do so.

Conclusion

Thank you again for the opportunity to testify at this very important hearing. ELECTRI International and NECA applaud the Committee's unwavering efforts to examine the role of small business in any forthcoming infrastructure plan. We remain supportive and optimistic at this Committee's efforts to address the broad issues that are challenging America's small businesses that were noted above. Finally, we will continue to offer our support in helping advance the Committee's agenda and look forward to working with you all as you move forward in enacting smart and sound policy for the entirety of the construction industry.

Testimony of:
Dr. Annie Mecias-Murphy
Co-Owner and President of JA&M Developing Corp.
On behalf of Associated Builders and Contractors

U.S. House Small Business Committee Subcommittee on Contracting and Infrastructure Hearing:
"Utilization of Small Contractors in the Infrastructure Plan"

June 10, 2021

Chairman Mfume, Ranking Member Salazar and members of the U.S. House Small Business Subcommittee on Contracting and Infrastructure:

Thank you for holding this hearing on the "Utilization of Small Contractors in the Infrastructure Plan", and for the invitation to discuss the vital role of small construction contractors in infrastructure.

My name is Dr. Annie Mecias-Murphy, and I am the co-owner and president of JA&M Developing Corp. We are a family-owned construction business and subcontractor in the areas of concrete, masonry, structural steel, rough carpentry, stucco, etc. We also conduct general contracting work in the private and public sectors serving the South Florida market. JA&M is a small and woman-owned business with 26 full-time employees.

It is because of the construction industry that I am able to be here to share my story with you today. I was born to immigrant parents who chose to flee religious and political persecution by the Cuban government just 90 miles south of Florida. It is because of their bravery, and a belief in greater freedom, that I have the countless opportunities I do in this country, such as owning and operating a business in the construction industry.

When my father came to this country in 1969, he entered the construction workforce with nothing except the clothes on his back. Construction was part of our daily lives while I was growing up. My initial career focus was a career in education; I earned my doctorate in philosophy and worked in the teaching and counseling fields for close to 15 years. I assisted my father with his construction company, and in 2005, my siblings and I founded JA&M. It was then that our family came together to work full time in the construction industry.

I am testifying today on behalf of Associated Builders and Contractors, a national construction industry trade association established in 1950 that represents more than 21,000 members across the country. Founded on the merit shop philosophy, ABC and its 69 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which its members live and work.

I am currently on the ABC Florida East Coast Chapter board of directors, serving as the treasurer. ABC is the largest commercial construction association in Florida. The ABC

East Coast Chapter represents general and specialty contractors, associate and supplier members from Key West to Brevard County who share ABC's belief in open and competitive processes, in the importance of industry education, training and safety services, and in the role the association plays in these areas.

The construction industry is fueled by small businesses; in fact, 99% of United States construction firms employ fewer than 100 workers, according to the U.S. Census Bureau 2019 County Business Patterns. The majority of ABC's general contractor and subcontractor members qualify as small businesses as defined by the Small Business Administration. This is consistent with the SBA's findings that the construction industry has one of the highest concentrations of small business participation. Additionally, many of ABC's large member companies not only contract directly with the federal government to successfully build large-scale projects that are subject to federal acquisition regulations, but they also subcontract work to qualified small businesses and meet federal agency small business goals.

Improvements to infrastructure can play a huge role in enhancing the opportunities for small business like ours to be able to bid so that we may win work and diversify our experience. These types of projects are critical for the future livelihood of small business in the construction industry. While I appreciate the conversation taking place, and a public commitment to infrastructure improvements, it is my concern that the funding directed towards construction of our nation's most critical infrastructure under the president's American Jobs Plan is limited and contains restrictive policies that could inhibit small businesses from bidding on these projects. Construction can help spark economic resurgence but excluding a majority of our construction businesses from these important projects would hinder our nation's economic growth and recovery.

While a significant investment in America's infrastructure would impact my small business and other businesses like mine, this subcommittee and Congress must avoid enacting partisan, restrictive policies referenced in President Biden's American Jobs Plan like the Protecting the Right to Organize Act, government-mandated project labor agreements, and one-size-fits-all approaches to our workforce development. The inclusion of these policies, and others like them, would significantly limit the success of any potential infrastructure bill, as they would prevent qualified, merit shop contractors and their skilled and diverse workforce from participating in rebuilding their communities. Finally, I would also like to highlight the negative impact that proposed tax increases from the majority in Congress and the White House would have on small and family-owned businesses.

Infrastructure Plan Should Expand Workforce Development Opportunities:
As a small business in the construction industry, JA&M faces the ongoing challenge of hiring the skilled workforce we need to be competitive. Any infrastructure proposal should make it easier for private employers to educate tomorrow's craft professionals through a variety of workforce development options, including industry-tested and -recognized craft training programs and registered apprenticeship models.

I am proud that ABC delivers construction education through 800 education programs at 1,400 locations nationwide, including innovative and flexible earn-while-you-learn models and industry-recognized apprenticeships in more than 50 professions, plus more than 300 U.S. Department of Labor and equivalent state government-registered apprenticeship programs across 20 different occupations. ABC contractor members invested $1.3 billion in workforce development initiatives in 2020, providing craft, leadership and safety education to 500,000 course attendees to advance their careers in commercial and industrial construction. Unfortunately, the plans coming out of the majority focus on restrictive, one-size-fits-all workforce development programs favoring registered apprenticeship programs and union apprenticeship programs, like the recently considered National Apprenticeship Act, which fail to expand construction industry career opportunities and support sufficient workforce development pipelines for all of America's workers.

At the local level, more can be done to expand and improve the pipeline of workers that enter the industry. As a small business owner, I am concerned that expanding restrictive labor and regulatory requirements on contractors, as President Biden's plan would, places an additional burden on small businesses that may already be faced with a limited number of resources. My company does both public and private work, and I can tell you, that the burdensome regulations and requirements that are often tied to public projects, can be overwhelming and difficult to navigate. The President's American Jobs Plan, as proposed, could create a scenario that is so overly burdensome, that it serves as a barrier to entry for small businesses to even compete for these critical taxpayer-funded projects. In my company's experience these unnecessary regulations will result in additional costs to a small business both in manpower to track and adhere to mandates but then also in increased overhead not contemplated by companies still struggling from the pandemic. For some companies, these increased costs will be too much to bear.

JA&M's challenge attracting skilled workforce is an issue that is mirrored nation-wide. According to an analysis of U.S. Bureau of Labor Statistics data released by ABC, in 2021, construction companies will need to hire 430,000 more workers than they employed in 2020. The analysis also revealed that every $1 billion in extra construction spending generates an average of at least 5,700 construction jobs. This proves that a significant investment in infrastructure can lead to incredible job creation. However, Congress should be cautious to add any policies that would limit the pipeline of workers entering the industry, as the current shortage of workers would only be exacerbated by an increase in the money spent on infrastructure.

President Biden's plan also urges Congress to tie infrastructure investments funded under this plan to ABC-opposed government-mandated project labor and community workforce agreements that discriminate against our nation's small, women-, veteran-, and minority-owned businesses; supports inaccurate prevailing wage rates for construction projects; and fails to establish an all-of-the-above approach to workforce development in construction and infrastructure. These policies are likely to increase costs, reduce job creation, decrease the number of infrastructure projects and discourage the merit shop construction industry and their skilled local workforce from competing for taxpayer-funded construction projects to rebuild their own communities.

I urge Congress to consider investing in America's infrastructure, and ensuring that small construction businesses are not excluded from the competitive bidding process for federal infrastructure projects. Importantly – Congress must realize that most small businesses in the construction industry are not signatory to a construction union. When governments mandate project labor agreements on a federal or federally assisted taxpayer-funded project, small businesses are disproportionately harmed, as they drive up the cost of construction projects by 12% to 20% and discriminate against the 87.3% of U.S. construction workers who choose not to join a union.

New and Expanded Labor and Regulatory Requirements on Contractors:

Unfortunately, the American Jobs Plan also calls on Congress to pass the PRO Act, a draconian rewrite of America's labor and employment laws. Congress should also steer away from restrictive new labor policies such as the PRO Act, which would limit the opportunities for small businesses to compete and recover from the pandemic. The PRO Act would enact harmful policy changes that would eliminate right-to-work protections in 27 states - including Florida, violate employees' privacy, upend the business community and devastate the economy at a time when small businesses and the economy as a whole are struggling to recover from the COVID-19. As a small contractor, if enacted, this bill would be a disaster for my chances to compete.

American Jobs Plan's Proposed Tax Increases Harm Small Businesses:

Lastly, the proposed tax hikes on small businesses proposed in the American Jobs Plan will also hurt our business and our employees. In the last three years we have doubled the number of employees hired, raised employee bonuses, offered health and 401K benefits, and expanded our business. Close to a third of our employees have purchased their first homes ever during this period as well. If taxes increase, we are concerned about the impact it could have on the number of workers we are able to employ and the additional benefits that we offer our employees. Simply put, significant tax increases could potentially bring our company down.

The Tax Cuts and Jobs Act has a significant impact on our industry before the COVID-19 pandemic, and it is critical that these tax policies are maintained as we work to recover from the devastation caused to many small businesses during the pandemic. The tax proposals included in President Biden's American Jobs Plan and American Families Plan would hinder our recovery efforts and make it harder for our small businesses to thrive.

The American Jobs Plan's proposal to hike the corporate tax rate from 21% to 28%, would affect the ability of America's companies to compete globally and impact the approximately 1.4 million small businesses with 500 or fewer employees that are officially organized as C-Corporations.

President Biden's American Families Plan would impose harmful tax policies on small, family-owned businesses, like mine. According to the Main Street Employers Coalition, the Biden proposal taxing capital gains at death would impose a new, 43.4% tax on the appreciated value of a business when the owner dies, and then tax those same assets again with the 40% estate tax. The combined hit would force many families to sell the business just to pay taxes and make it nearly impossible to keep family-owned businesses in the family.

The deduction for qualified business income (QBI) under Section 199A is unquestionably the most important provision in the Tax Cuts and Jobs Act for the majority of ABC members, just as is for the overwhelming majority of construction companies, 94 percent of whom are organized as pass-through businesses according to analysis by the Tax Foundation. A domestic S-Corporation that receives the full 20 percent deduction can see a 31.9% effective rate, competitive with the average C-Corporation rate of 30.6%.

However, this delta grows sharply under current law, before exploding in 2026 and beyond, when the provision is slated to expire. It is therefore crucial that Congress work to make this deduction permanent through the passage of H.R. 1381 and S. 480, the Main Street Tax Certainty Act of 2021. The proposal's cap on Section 1031 regarding like-kind exchanges would also severely impact the construction industry. Internal Revenue Code Section 1031 permits the deferral of capital gains on certain real estate transactions, and President Biden has proposed abolishing these exchanges on real-estate profits of more than $500,000 as a pay-for in his $1.8 trillion American Families Plan.

Additionally, Section 1031 encourages turnover and investment of new capital in properties that can serve as an important source of jobs for contractors. It is estimated that like-kind exchanges are expected to generate 568,000 jobs this year. The 1031 tax provision also encourages investment and expansion during economic downturns and will assist in our nation's recovery from the COVID-19 pandemic.

Conclusion:

Construction is an industry that gave my family it's start, was our shining light of opportunity and continues to provide for my family and my employees. It has been an industry that has allowed us to give back, to improve the lives of others, and to become a supporting role in our local community.

The industry has responded to the skilled worker shortage by increasing wage rates and improving benefit packages. In Florida we are fortunate to participate in partnerships between Associated Builders and Contractors and groups like the Boys and Girls Club where we can speak to students about the benefits of a career in construction. Through pre-apprenticeship and apprenticeship programs, we continue to work to expand the numbers of people educated and upskilled in the trades.

The American dream and the construction industry go together. It is through construction that we can provide for our family, create jobs for workers and give back to our communities. I cannot imagine what this legislation will do to all the families that depend on JA&M, let alone all the millions of families around the country that depend on small businesses for their survival.

I plead with you to help us preserve the construction industry for the next generation. Without you, there may not be a future for countless potential craft professionals. I thank you for your time and consideration of this testimony, as a representation of a small merit shop contractor.

sorella GROUP
SPECIALTY CONTRACTOR

June 30, 2021

U.S. Committee on Small Business
Subcommittee on Contracting and Infrastructure
2361 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Mfume, Ranking Member Salazar and members of the Subcommittee on Contracting and Infrastructure:

Thank you for the opportunity to testify on behalf of Women Construction Owners and Executives before the Committee on Small Business Subcommittee on Contracting and Infrastructure at the June 10 remote hearing titled: "Utilization of Small Contractors in the Infrastructure Plan."[1]

I appreciated the discussion regarding opportunities Congress can include the construction industry's small, minority and women-owned businesses and their diverse employees so that they can benefit from contracting opportunities under the Biden administration's infrastructure plan as well as additional legislation addressing roads, bridges, schools and water, energy and transportation systems in urgent need of public and private investment in order to keep America competitive in a global economy.

I am writing to provide additional, personal perspective about two topics discussed during exchanges between lawmakers and witnesses that I would have been happy to address, had I been invited to comment. Please submit this letter into the official hearing record.

Pro-Act would not create more or new opportunities for Women Owned or Disadvantaged Businesses. It would create barriers to work. There are non-union contractors that offer fair wages, benefits, training, and long-term careers to 87% of the construction industry - much like mine. My company has been in business for 15 years employing hard working Americans that raise families, buy homes, and send their children to college or trade schools. Because we choose not be part of a union does not make us bad, dishonest, or untrained Americans. In fact, we (employers and employees) believe in the merit shop philosophy. We work next to one another promoting hard work in ourselves and others. Union agreements may be a good choice for some people and companies. The key word is "CHOICE". By allowing boycotts that lead to business failure and loss of jobs is not a choice. It will harm American workers and will destroy the small business that are the backbone to the United States of America.

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SPECIALTY CONTRACTOR

My experience with Project Labor Agreements (PLAs) is indeed like the "Bogey Man" mentioned during the hearing. A reputable company such as mine who have worked on over a dozen large infrastructure projects including billion-dollar airports throughout the United States, but we are not qualified to preform or even step foot on the airport in our hometown because we could not sign a PLA/Community Benefits Agreement. We could not sign the agreement because our field personnel would never have access to the pension funds deposited on their behalf through the union pension plan.

All Americans should be presented with the same opportunities regardless of union affiliation.

I urge this committee to support small businesses in the construction industry by ensuring that language encouraging or requiring PLAs is not included in any infrastructure legislation. Let contractors negotiate with unions directly and freely without government interference. Let both parties decide if entering a PLA is the best way to deliver to taxpayers a project safely, on time and on budget. Please support win-win policy where the best contractors, regardless of their willingness to sign union agreements, can compete on a level playing field for taxpayer-funded construction contracts.

I urge you to include all businesses and all workers in the future of this Country and the Infrastructure Plan.
Sincerely,

Sheila A Ohrenberg
President
Sorella Group

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JA&M

Questions for the Record
Committee on Small Business
Subcommittee on Contracting and Infrastructure
Remote Hearing: Utilization of Small Contractors in the Infrastructure Plan
Thursday, June 10, 2021

Questions for Dr. Annie Mecias-Murphy, Co-Owner & President, JA&M Developing Corp., Pembroke Pines, FL from Rep. Mfume

You mentioned in the hearing that Project Labor Agreements (commonly known as PLAs) restrict small businesses ability to bid on certain construction projects. The American Jobs Act barely references PLAs. In addition, the Federal Government's policy regarding PLAs, which is reflected in Executive Order (E.O.) 13502 and the Federal Acquisition Regulations (FAR), is that federal agencies are encouraged but not required to consider the use of PLAs on a case-by-case basis in federal construction contracts exceeding $25 million in total cost, to promote economy and efficiency in federal procurement. Interestingly, both the E.O. and FAR 22.504 emphasize that the use of PLAs shall "allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements."

Could you please pinpoint for the Committee any language, either in the American Jobs Act or in any other legislation or regulation, that restricts small business ability to bid when PLAs are used?

Questions for Dr. Annie Mecias-Murphy, Co-Owner & President, JA&M Developing Corp., Pembroke Pines, FL from Rep. Fitzgerald

Your companies have built taxpayer-funded construction projects procured by local, state and federal governments. I have some concerns about language proposed by the Biden administration and some in Congress in their infrastructure proposals that might reduce competition, increase costs and reduce the ability of nonunion contractors and nonunion workers—who compose 87% of the construction industry workforce and compose the vast majority of small, women and minority-owned businesses—from participating in the construction of taxpayer-funded infrastructure projects.

In your personal experience, if infrastructure bills mandated project labor agreements on taxpayer-funded construction projects, would this encourage or discourage your firm to pursue this work and would most DBE and WOSB's have a similar point of view?

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Responses to Questions for the Record
Committee on Small Business
Subcommittee on Contracting and Infrastructure
Remote Hearing: Utilization of Small Contractors in the Infrastructure Plan
Thursday, June 10, 2021

June 30, 2021

U.S. Committee on Small Business
Subcommittee on Contracting and Infrastructure
2361 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Mfume and Representative Fitzgerald:

Thank you for the opportunity to testify before the Committee on Small Business Subcommittee on Contracting and Infrastructure at the June 10 remote hearing titled: "Utilization of Small Contractors in the Infrastructure Plan."[1]

In addition to my written and oral testimony, I hope that you will find my response to your respective questions for the record enlightening concerning the negative impact of current federal government policy and proposed[2] regulations[3] and legislation[4] promoting government-mandated project labor agreements on federal contracting opportunities for small businesses and minority, women and veteran owned businesses and their diverse workforces.

As I mentioned in my written statement, the construction industry is fueled by small businesses; in fact, 99% of United States construction firms employ fewer than 100 workers, according to the U.S. Census Bureau 2019 County Business Patterns. The majority of Associated Builders and Contractors' general contractor and subcontractor members qualify as small businesses as defined by the Small Business Administration. This is consistent with the SBA's findings that the construction industry has one of the

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[1]Hearing available at: https://smallbusiness.house.gov/calendar/eventsingle.aspx?EventID=3741
[2] *White House Fact Sheet: The American Jobs Plan*, March 31, 2021. Accessed June 10, 2021.
[3] See language in the U.S. Treasury's May 17, 2021, interim final rule on $350 billion worth of federal funding for state and local fiscal recovery allocated in the American Rescue Plan that encourages recipients of federal dollars to mandate project labor agreements on federally assisted water, sewer and broadband projects. In addition, the U.S. Department of Transportation Build America Bureau announced Feb. 17, 2021, that the FY 2021 Infrastructure for Rebuilding America (INFRA) grant program, which provides $889 million to fund state and locally procured transportation projects of national and regional significance, encourages grant applicants to mandate PLAs. See *Notice of Funding Opportunity for the Department of Transportation's Infrastructure For Rebuilding America (INFRA) Program for Fiscal Year 2021*, https://www.transportation.gov/buildamerica/sites/buildamerica.dot.gov/files/2021-02/FY%202021%20INFRA%20NOFO.pdf and https://www.transportation.gov/buildamerica/financing/infra-grants/infrastructure-rebuilding-america

[4] House Energy and Commerce Committee's CLEAN Future Act

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highest concentrations of small business participation. In general, the vast majority of small businesses in the construction industry are not signatory to unions.

Additionally, many of ABC's large member companies not only contract directly with the federal government to successfully build large-scale projects, but they also subcontract work to qualified small businesses and help federal agencies meet their small business contracting goals. In fact, from fiscal year 2009 to fiscal year 2020, ABC members won 57% of the total value of the $118 billion in direct federal construction contracts exceeding $25 million awarded from fiscal year 2009-2020.[5]

In short, any existing or new policies encouraging or requiring government-mandated PLAs on federal and federally assisted construction projects will have a significant negative impact on the ability of my company and other small businesses to win federal construction contracts.

Understanding Impact of Government-Mandated PLAs on Small Businesses

PLAs, when mandated or encouraged by government agencies, are inherently anti-small business. Any policy encouraging or mandating the use of PLAs has the practical effect of restricting small businesses' ability to win a federal construction contract. Even though all small businesses are *technically* allowed to compete to win contracts subject to PLAs under current federal policies, the *practical* negative impact of PLA mandates on small business is real and its anti-competitive and costly impact needs to be addressed proactively by allowing firms to voluntarily enter into PLAs but not require them to do so.

A PLA typically forces contractors and subcontractors to agree to recognize specific unions as the representatives of employees on that job; use union hiring halls to obtain most or all craft workers; obtain apprentices exclusively through union apprenticeship programs, follow inefficient union work rules; and pay into union benefits and multi-employer pension plans even if companies have their own plans. Employees would have to join a union and/or pay union dues as a condition of employment, even if they already work for a nonunion business, and will never access contributions to union benefit and pension plans unless they join a union and meet vesting schedules.

These problematic provisions included in a typical PLA, discussed in greater detail later in this response, discourage competition from the best qualified, most experienced small, large and disadvantaged contractors and diverse local workers that can build projects for the federal, state and local government at the best possible price.

In a 2018 ABC membership survey about government-mandated PLAs,[6] 98% of survey respondents indicated that they would be less likely to bid on a taxpayer-funded construction contract if a PLA was imposed as a condition of winning a contract and 89% of respondents said a government-mandated PLA would result in decreased hiring of minority, women, veteran and disadvantaged business enterprises. In

[5] "February 2021 Update: ABC's Fight Against Government-Mandated Project Labor Agreements," February 10, 2021, TheTruthAboutPLAs.com, Accessed June 25, 2021

[6] ABC Newsline, *Survey: ABC Members Strongly Oppose Government Mandated PLAs*. Jan. 30, 2019. Survey results available here: https://tinyurl.com/yy5v3y4c

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addition, 94% said they would expect less competition from subcontractors for construction contracts subject to a government-mandated PLA and 97% of survey respondents said a PLA would result in worse local hiring outcomes for a project.

When governments mandate or encourage PLAs on federal and federally assisted projects, the American people suffer from inefficient, anti-competitive and discriminatory procurement policies that studies have found raise the cost of taxpayer-funded projects between 12% and 20%,[7] which results in fewer infrastructure improvements and reduced construction industry job creation.

Further, government-mandated PLAs effectively prevent qualified contractors and the 87.3% of the U.S. construction workforce that chooses not to join a labor union[8] from fairly competing for contracts to build taxpayer-funded projects on a level playing field.

Finally, the U.S. construction industry currently needs to hire and upskill an estimated 430,000 construction workers in 2021[9] to meet current industry demand, which does not include additional short and long-term investment in infrastructure. Divisive PLA mandate policies will exacerbate the industry's skilled workforce shortage by creating opportunity for just 13% of the construction workforce employed by union firms. It will also choke off merit shop and community apprenticeship and workforce development pipelines not offered by unions and joint labor/management programs from opportunities created by investment of taxpayer dollars in infrastructure.

Current Federal Policy: Executive Order 13502

On Feb. 6, 2009, President Obama signed Executive Order 13502, Use of Project Labor Agreements for Federal Construction Projects,[10] which encourages federal agencies to mandate PLAs on federal construction projects exceeding $25 million in total value on a project-by-project basis, and permits states and localities to mandate PLAs on projects receiving federal dollars. It also rescinded President George W. Bush's PLA-neutral policy, Executive Orders 13202[11] and 13208,[12] which permitted firms to voluntarily enter into PLAs but prohibited government-mandated PLAs on federal and federally assisted construction projects from 2001 to 2009.

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[7] Most recently, a study published in January 2020 found Connecticut school projects subject to government-mandated PLAs were 19.8% more expensive compared to school projects not built with PLA mandates. Multiple studies measuring the impact of government-mandated PLAs on school construction in California, Massachusetts, New Jersey, New York and Ohio (all states with school construction prevailing wage laws) made similar conclusions and are available at TheTruthAboutPLAs.com, *Research on Government-Mandated Project Labor Agreements*, updated March 2020.
[8] Bureau of Labor Statistics *Union Members Summary*, Jan. 2021.
[9] The Construction Industry Needs to Hire an Additional 430,000 Craft Professionals in 2021, ABC Release, March 23, 2021,
[10] https://www.gpo.gov/fdsys/pkg/FR-2009-02-11/pdf/E9-3113.pdf
[11] https://www.gpo.gov/fdsys/pkg/FR-2001-02-22/pdf/01-4622.pdf
[12] https://www.gpo.gov/fdsys/pkg/WCPD-2001-04-09/pdf/WCPD-2001-04-09-Pg584-2.pdf

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On April 13, 2010, the FAR issued a final rule,[13] effective May 13, 2010, implementing President Obama's executive order, despite comments submitted by ABC[14] and ABC members[15] and other stakeholders detailing its negative impact on small businesses and the entire construction industry. In addition, the Office of Management and Budget issued a memo, Implementation of New Regulatory Coverage on Project Labor Agreements,[16] encouraging federal agency Chief Acquisition Officers and Senior Procurement Executives to consider mandating PLAs and again requesting that they report their agency's PLA activity to the OMB on a quarterly basis.

Since the FAR's rule was finalized, federal agencies procuring direct federal construction contracts—including the U.S. Army Corps of Engineers,[17] Naval Facilities Engineering Command (NAVFAC),[18] Department of Veterans Affairs[19] and General Services Administration[20]—have issued specific guidance memos and new agency procurement policies on the use of government-mandated PLAs and PLA preferences.

For example, the GSA has a controversial (and likely illegal) blanket PLA preference policy that awards contractors bonus points for submitting a PLA offer, while other agencies (USACE, NAVFAC and VA) issue formal surveys on FBO.gov on a project-by-project basis[21] to determine if a PLA is supported by members of the responding contracting community. These federal agency PLA surveys typically

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[13] https://www.federalregister.gov/documents/2010/04/13/2010-8118/federal-acquisition-regulation-far-case-2009-005-use-of-project-labor-agreements-for-federal#p-24

[14] See ABC comments on the proposed rule, FAR Case 2009-005 Use of Project Labor Agreements for Federal Construction projects RIN 9000-AL31, Concerning the Economic Impact of the proposed Rule and the Council's Failure to Comply with the Regulatory Flexibility Act: http://thetruthaboutplas.com/wp-content/uploads/2012/12/ABC-Comments-on-RFA-for-PLA-NPRM-081309.pdf and general comments: http://thetruthaboutplas.com/wp-content/uploads/2012/12/ABC-Comments_FAR_PLA-NPRM_081309.pdf

[15] See narrative responses from ABC members, especially small business owners, against government-mandated PLAs, which was also submitted to the FAR in response to the proposed rule: http://thetruthaboutplas.com/wp-content/uploads/2012/12/Contractor-responses-to-PLA-survey-for-FAR-PLA-NPRM-081309.pdf

[16] http://thetruthaboutplas.com/wp-content/uploads/2015/04/OMB-Memo-for-Acquisition-Procurmenet-from-Dan-Gorden-Highlighted-041310.pdf

[17] See USACE's PLA policy: *Procurement Instruction Letter (PIL) 2011-01-R1, USACE Policy Relating to the Use of Project Labor Agreements for Federal Construction Projects* (Dec. 16, 2011) at http://thetruthaboutplas.com/wp-content/uploads/2015/04/USACE-PIL_2011-01-R1_Project_Labor_Agreements_Policy-121611.pdf and *Procurement Instruction Letter (PIL) 2011-01, USACE Policy Relating to the Use of Project Labor Agreements (PLAs) for Federal Construction Projects* (Oct. 15, 2010) at http://thetruthaboutplas.com/wp-content/uploads/2015/04/USACE-Memo-on-PLAs-PIL2011-01ProjectLaborAgreements-101510.pdf

[18] See NAVFAC's PLA policy: *Naval Facilities Engineering Command (NAVFAC) Use of Project Labor Agreements In Construction Contracts* (Feb. 8, 2011) at http://thetruthaboutplas.com/wp-content/uploads/2015/04/NAVFAC-PLA-POLICY-MEMO-11-02-Feb-8-2011.pdf and NAVFAC's proposed rule comment on FAR Case 2009-005, Use of Project Labor Agreements for Federal Construction Projects at http://thetruthaboutplas.com/wp-content/uploads/2015/04/Navy-Comment-on-FAR-Case-2009-005-Use-of-PLAs-for-Federal-Construction-Projects-Docket-FAR-2009-00241.pdf

[19] The VA's Office of Acquisition and Logistics Information Letter IL 001AL-10-11 (July 15, 2010) at http://thetruthaboutplas.com/wp-content/uploads/2015/04/VA-IL-001AL-10-11-Use-of-PLAs-on-Federal-Construction-Projects-071510.pdf

[20] GSA's PLA policy GSA Public Building Service (PBS) Procurement Instructional Bulletin 11-05 (Aug. 2, 2011), GSA PBS Procurement Instructional Bulletin (PIB) 10-04 Revision 1 (Sept. 24, 2010), GSA PBS Procurement Instructional Bulletin (PIB) 10-04 (April 30, 2010), GSA PBS Procurement Instructional Bulletin (PIB) 09-02 (August 11, 2009)

[21] See federal agency PLA surveys ABC has responded to and alerted members about at http://thetruthaboutplas.com/tag/pla-survey/

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require detailed answers to up to 22 open-ended essay questions, requiring extensive research and analysis from contractors and costing federal contractors and the federal acquisition workforce time and money to submit and review each response. Recently, ABC was made aware of a federal contractor that responded to more than 300 federal agency PLA surveys since the final rule was issued, which takes company personnel at last four hours to complete, on average, depending on the complexity of the survey.

Congress should consider the impact of this waste and inefficiency multiplied across the thousands of government contractors and small business contractors submitting responses to individual federal agency PLA surveys and the acquisition workforce reviewing such responses.

In addition, the PLA determination process can even vary between regional offices in a federal agency, and the patchwork of varying and inconsistent agency PLA policies is confusing and frustrating for both large contractors and small businesses pursuing contracts across a single federal agency and/or multiple federal agencies.

Further, some federal agencies (DOL,[22] VA and GSA) have hired expensive consultants to produce studies recommending whether a PLA is appropriate, while in other instances agency officials call federal contractors directly and use this information to make their final PLA determination, which again leads to waste of time and resources ultimately shouldered by taxpayers.

This needless paperwork, waste and red tape is even more exasperating because ABC is aware of just 12 contracts (totaling $1.25 billion dollars) out of 1,889 federal contracts (totaling $117.36 billion) exceeding $25 million from FY2009 to FY2020 that were procured and built in the United States subject to federal government-mandated PLAs.[23]

Small Businesses Harmed by Government-mandated PLAs on Federally Assisted Projects

In addition to promoting PLA requirements on direct federal construction contracts, Executive Order 13502 has led to PLA mandates on billions of dollars of federally assisted projects procured by state and local governments. While Executive Order 13502 does not require recipients of federal assistance to mandate PLAs, federal agencies such as the U.S. Department of Transportation and the Housing and Urban Development[24] have been inappropriately encouraging state and local recipients of federal funding to mandate PLAs. As discussed, government-mandated PLAs have been limited to a handful of direct federal contracts since 2009, but small business contractors are severely impacted by PLA mandates on federally funded projects.

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[22] See evidence of a total of $428,000 worth of DOL-commissioned pro-PLA reports for a Job Corps Center in Manchester, NH, ($128,000) and a study promoting PLAs across all federal agencies ($300,000).
[23] "February 2021 Update: ABC's Fight Against Government-Mandated Project Labor Agreements," Feb. 10, 2021. TheTruthAboutPLAs.com. Accessed June 25, 2021.
[24] See HUD Sec. Shaun Donovan's pro-PLA comments at the White House Jan. 18, 2011. http://thetruthaboutplas.com/wp-content/uploads/2009/07/HUD-Secretary-Shaun-Donovan-on-Emerald-Cities-Collaborative-and-PLAs-11811.pdf. ABC is aware of HUD pushing housing authorities procuring construction projects supported by federal dollars from HUD to mandate PLAs on projects in Boston, Chicago, New Orleans, Oakland, Philadelphia and Portland.

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It is unknown how many federally assisted contracts have been subjected to state and local government-mandated PLAs, but snapshots of data from federal agencies demonstrate it is significant. For example, according to DOT Federal Highway Administration report of projects receiving FHWA funds from May 2010, to December 2020, state and local lawmakers mandated PLAs on 437 projects totaling an estimated $12.88 billion.[25]

To date, a total of 24 states benefit from an inclusive law allowing all qualified firms and their construction workers to fairly compete to build their communities by restricting government-mandated PLAs and preferences on state, state-assisted and local public works projects, to some degree.[26] Typically, these laws prevent government-mandated PLAs on projects receiving federal assistance.

Unfortunately, eight states have enacted pro-PLA policies that have led to PLA mandates on federally assisted projects. Small and large contractors pursuing work in pro-PLA states such as Hawaii, California, Washington, Illinois, New York, New Jersey and Connecticut, in addition to states without a formal PLA policy, have complained about being shut out of numerous state and local government-mandated PLA projects supported by federal funding.[27]

Congress and the Biden administration's support of proposed regulations and legislation expanding the federal government's current favorable policy towards government-mandated project labor agreements would restrict federal and federally assisted contracting opportunities for small businesses and minority, women and veteran owned businesses and their diverse workforces.

Common PLA Provisions That Reduce Competition

Government-mandated PLAs are commonly replete with provisions that have the effect of eliminating competition from quality small and large contractors and needlessly increasing costs. There are five common requirements of PLAs, in particular, that are the most problematic.

- **Problem 1: Use of Existing Employees**

PLAs typically require nonunion companies to obtain their workers from union hiring halls for each trade, respectively. This means that a nonunion company cannot use their existing workforce at all and must follow unfamiliar union work rules governing labor productivity. In some PLAs, contractors can use a limited number of existing employees but they must be sent to the union hiring hall and dispatched through a union hiring halls' individual rules and practices, which vary from union to union. In addition, because union hiring halls typically dispatch workers according to seniority and/or time out of work, out-of-town union members receive hiring preference on PLA jobs at the expense of local nonunion workers.

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[25]FHWA data available in pdf at https://thetruthaboutplas.com/wp-content/uploads/2021/01/FHWA-PLA_Summary_Tables_through-122220-Received-010821.xlsx
[26] See TheTruthAboutPLAs.com, https://thetruthaboutplas.com/wp-content/uploads/2020/02/Current-State-FOCA-Laws-GMPLA-Bans-through-Texas-Updated-June-3-2019.xlsx
[27] "Government-Mandated Project Labor Agreement Failures on Federal and Federally Assisted Construction Projects," TheTruthAboutPLAs.com March 10, 2021, Accessed June 25, 2021

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Large and small businesses that cannot use all or most of their existing skilled workforce face increased risk and may be unable to deliver a quality project to government customers on-time, on-budget and safely with an unfamiliar workforce governed by unfamiliar union work rules and multiple collective bargaining agreements. This additional risk and uncertainty needlessly increase bid costs and/or discourage contractors from pursuing projects subject to a PLA requirement.

- **Problem 2: Use of Apprentices**

PLAs typically require nonunion companies to obtain apprentices exclusively from union apprenticeship programs.[28] This means participants in federal or state government-approved nonunion apprenticeship programs cannot work on a typical PLA job. Residents enrolled in nonunion apprenticeship programs are excluded from work on PLA projects, which will ultimately undermine industry efforts to address the construction industry's skilled workforce shortage, which is estimated to be 430,000 skilled workers in 2021 alone.[29]

Some PLAs can be somewhat more inclusive by inviting all participants in federal and state government-registered construction apprenticeship programs, regardless of their program's affiliation with unions. However, these programs only graduated about 40,000 completers in 2020, according to U.S. DOL[30] and state government data. Government registered apprenticeship programs are important parts of a broader all-of-the-above solution to the industry's skilled worker shortage, but they can't meet the construction industry's workforce development needs alone. The truth is the vast majority of the construction industry workforce is not upskilled via registered apprenticeship programs and the vast majority of contractors do not participate in registered apprenticeship programs and instead upskill their employees via a variety of other workforce development pathways. Small businesses are less likely to participate in government-registered apprenticeship programs because of the paperwork and costs associated with setting up and participating in a program when easier, cost-effective and more practical workforce development alternatives are available.

For example, ABC of Florida is a workforce development leader in the state, as it partners the future construction workforce of America with the best employers in the industry. JA&M is fortunate to participate in partnerships between Associated Builders and Contractors and groups like the Boys and Girls Club where we can start students in a career in construction. Through this pre-apprenticeship and apprenticeship program, we continue to work to expand the numbers of people educated and upskilled in the trades. However, limiting opportunities for the future construction workforce like the apprentices coming out of the partnership with the boys and girls club through registered apprenticeship mandates, will hurt both workers and businesses as they seek to build their communities.

- **Problem 3: Union Membership and Union Dues**

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[28] See "Government-Mandated Project Labor Agreements Exacerbate Construction Industry's Skilled Labor Shortage," TheTruthAbouPLAs.com, March 30, 2021, accessed June 25, 2021.
[29] The Construction Industry Needs to Hire an Additional 430,000 Craft Professionals in 2021, Associated Builders and Contractors, March 23, 2021,
[30] "Registered Apprenticeship National Results Fiscal Year 2020," U.S. Department of Labor Employment and Training Administration, accessed June 25, 2021.

PLAs often require nonunion workers to join a union and/or pay union dues and fees to the union, even if they aren't members of the union, as a condition of employment on a PLA project. More than 87% of the U.S. construction workforce freely chooses to work for a nonunion employer. The marketplace has spoken. Construction workers are able to apply for union membership and work for union-signatory employers through union hiring halls at any time. Nothing prevents workers from joining a union in the construction industry, which is why lawmakers and regulators mandating union membership and union dues as a condition of employment is especially problematic and unnecessary.

- **Problem 4: Fringe Benefits and Wage Theft**

PLAs often require nonunion companies to pay their workers' health and welfare benefits to union funds. This is true *even* if these companies have their own benefit plans which are more generous than the union benefit plan. Worse still, the money deducted from workers' paychecks and sent to union benefit and pension funds is, for all intents and purposes, a form of wage theft. Nonunion workers almost never vest in these pensions and thus are deprived of these funds which would otherwise be paid to them as wages. Studies have found that the wage theft associated with PLAs amounts to 20% of workers' take-home pay.[31] In addition, contractors sometimes cover the cost of this wage theft to make employees whole. This duplicative payment of benefits increases labor costs and makes nonunion contractors less competitive because these are costs unionized contractors do not face under a PLA project.

- **Problem 5: Potential Multiemployer Pension Plan Withdrawal Liability**

Potential multiemployer pension plan withdrawal liability is a key reason that many nonunion construction companies will not bid on PLA projects. The Employment Retirement Income Security Act (commonly called "ERISA") allows union-affiliated multi-employer pension plans to make assessments against employers *even* after they withdraw from those plans and no longer have an obligation to contribute. Employers who withdraw from a multiemployer pension plan, for example after ceasing work on a project covered by a PLA, can be required to pay the plan an additional amount to cover part of the plan's alleged "unfunded vested benefits" in certain circumstances.

Many multiemployer pension plans, particularly in the construction industry, are underfunded now or will be in the future. Hundreds[32] are listed as critical or endangered according to the U.S. Department of Labor,[33] and insolvent plans are backed by the U.S. Pension Benefit Guaranty Corporation which unfortunately pays participating workers pennies on the dollar for benefits they have been promised to them through the collective bargaining process.

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[31] McGowan, John R. Phd., "The Discriminatory Impact of Union Fringe Benefit Requirements on Non-Union Workers Under Government-Mandated Project Labor Agreements," 2012.

[32] Stakeholders interested in reviewing construction industry multiemployer pension plans in critical and declining, critical and endangered status from 2008 to March 16, 2021, can search this spreadsheet: https://thetruthaboutplas.com/wp-content/uploads/2021/03/Troubled-Construction-Industry-MEPP-Notices-For-Plan-Years-2008-to-2021-031821.xlsx (accessed June 25, 2021).

[33] "Critical, Critical and Declining, Endangered and WRERA Status Notices," U.S. Department of Labor Employee Benefits Security Administration, accessed June 25, 2021, https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/public-disclosure/critical-status-notices

Nonunion construction companies, especially small and diverse businesses, are not likely to bid on a PLA project when it requires them to sign-up for open-ended, unknowable financial liabilities.[34] The size of these potential financial liabilities are based on how well a pension plan is managed and funded, but the nonunion companies have no role in the management of the plan.

Recommendations To Help Small Businesses Win More Federal Infrastructure Contracts

The Biden administration and Congress cannot meet its infrastructure, affordable housing and clean energy agenda without strong participation from the construction industry businesses and workforce directly harmed by anti-competitive and costly government-mandated PLA policies.

In addition, federal agencies will not be able to meet their small and disadvantaged contracting goals if PLA mandates are widespread on federal contracting opportunities.

Instead of needlessly limiting competition and increasing costs via pro-PLA legislation and executive actions, Congress and the Biden administration can create more opportunities for small businesses and employees and all of the construction industry by championing fair and open competition on federal and federally assisted taxpayer-funded construction projects.

I urge this committee to support Sen. Todd Young (R-Ind.) and Rep. Ted Budd's (R-N.C.) Fair and Open Competition Act (S. 403/H.R. 1284). The Fair and Open Competition Act would prevent federal agencies and recipients of federal assistance from requiring or encouraging contractors to sign a controversial PLA as a condition of winning a federal or federally assisted taxpayer-funded construction contract. A total of 24 states have protected taxpayers and preserved open competition with similar laws impacting taxpayer-funded state and local construction projects.

Ensuring fair and open competition on taxpayer-funded construction projects will ultimately result in savings to taxpayers, more opportunities for all qualified small businesses, minorities and women in the construction industry, and the construction of more quality infrastructure projects so America can Build Back Better and faster.

Thank you.

Annie Mecias-Murphy

[34] The future liabilities and health of multiemployer pension plans has been further complicated by the injection of an estimated $86 billion in federal cash into the multiemployer pension plan system and the PBGC as a result of a provision in the American Rescue Plan Act of 2021 (H.R. 1319) and related rulemaking currently underway.

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Testimony for the Record

Rosemary Swierk

President, Direct Steel LLC

House Small Business Committee,
Subcommittee on Contracting and
Infrastructure Hearing

"Utilization of Small Contractors in the
Infrastructure Plan"

June 10, 2021

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Direct Steel LLC ("Direct") is a Commercial General Contractor (WOSB) and entered the Federal Government marketplace about 2010. Since that time, our team has had many experiences within the Federal Government contracting arena, as a subcontractor and as a prime. Perhaps by providing some specific firsthand experiences, you and pertinent policy makers may better understand some of the many and evolving challenges small businesses encounter.

Subcontracting: The Prime Contractor with which Direct contracted, repeatedly and maliciousness treated subcontractors with disregard to the contract between them and the subcontractors. I brought the issue to the attention of the Contracting Officer who advised due to privity there was nothing he could do. Similarly, the SBA PCR advised privity prevented their involvement. At one point I contacted the applicable OSDBU who agreed the mistreatment was not in alignment with the contract, but she too advised the Federal Government could not get involved in the issue due to Privity. However, she found several other issues with the Prime Contractor when she initiated an investigation. Soon thereafter she was promoted and relocated to Washington DC. Despite assurances, my repeated phone calls and emails were never returned thereafter. One of the tactics this Prime Contractor utilized is to not pay the subcontractor amounts due; essentially stating if you think you are owed the money sue us (with the knowledge it would cost more to sue then the amount owed). I called USACE DC legal offices and spoke with an attorney who advised this tactic is well known and has a name "squeezing" but no one can figure out to prevent a prime contractor from using this tactic.

Many resources and data support the most impactful and efficient way to raise small business is by increase Prime contract opportunities; not subcontract opportunities.

Woman Owned Small Business (WOSB) Set Asides were created for 236220 in 2016. WOSB Opportunities for this NAICS were very few. Calls, emails with Contracting Officers and many government representatives advised:

- it takes a long time for these types of changes to filter thru to Contracting Officers.
- The recession of 2008/9 created a gap in experience levels of contracting officers.
- Not enough WOSB were identified as interested/qualified to offer a WOSB (despite over 80 instances in which Direct and at least one other qualified WOSB General Contractor provided a response to the Market Survey). Only two of the 80+ resulted in WOSB set asides. Once a former Contractor Officer once told me the Market Survey, in most part is a formality. Generally, the decision to assign a category is determined in advance of the Market Survey.
- Agencies can "double dip". If a contractor has multiple certifications, the agency credits each of the diversity boxes. If there is an 8(a) set aside and the awarded contractor is also WOSB, the agency records the WOSB and the 8(a).
- Market research YTD 2021 indicates covering all agencies for these NAICS only \$21.4M has been awarded as WOSB. Remember some of those WOSB are also 8(a), HUBZone, etc. Not one of those contracts is more than \$2.2M in value; the vast majority under \$200k in value. Currently there are no WOSB set aside opportunities over \$1M for 236210 or 236220.

When WOSB set asides for 236220 and 236210 started to appear, most of the projects were very small projects. A small project has almost the same about of work and risk as a large project. To grow, a business needs to successfully complete relatively larger projects. Direct for instance, is not able to be competitive on projects less than \$5M. For the first time, in December of 2016 an appropriate solicitation appeared. Direct pursued it and was awarded the approximate \$10M project. Please note, to get to this stage, it took hundreds of hours and costs of hundreds of thousands of dollars.

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Teaming: Federal Government now allows Teaming Arrangements, whereby the teaming contractor takes on the small/diverse contractor's certifications. As a few other relatively larger opportunities appeared, increasingly we find ourselves competing against Large Prime contractors who had teamed with exceptionally small WOSB contractors (who had little or no experience – essentially businesses working off a cell phone).

Solicitations: Contracting Officers are increasingly including provisions which are very restrictive and appear to gear the contract toward a particular Prime Contractor. Examples include:

- A recent project solicitation indicated insurance requirements about twenty times typical insurance requirements from any other solicitation I have read, or in which Direct has been involved. The Contracting Officer was insistent on the insurance requirements via RFI responses. I reached out to the USACE Small Business Specialist via phone and email, but neither was ever returned. I connected with the SBA and was advised follow-up would happen, but I never received a follow-up.
- A solicitation indicated very restrictive past performance CPARs. The Contracting Officer was not compelled to modify the solicitation via RFI responses. I then reached out to the applicable USACE Small Business Specialist who consulted with an attorney. They agreed with Direct's position and the Contracting Officer eventually modified the criteria.
- Increasingly solicitations include past performance criteria which would be very difficult for most of the small business to comply UNLESS that small business is in a Teaming Agreement, Joint Venture or Mentor-Protégé program.
- The trend away from design/bid/built and to design/build creates substantial additional risk to the general contractor. A small business general contractor typically does not have in house architectural/engineering firm in house. Again, this format pushes the small business either not to pursue opportunities or forces them to Joint Venture or Team.
- Direct recently pursued a roughly $5M project. Ultimately nine amendments to the solicitation were provided. Three times (twice on bid day! – despite clear evidence the Contracting team knew of the extension days before bidders were notified) the bid date was extended. Bid day a lot of forces are in place. It is a very time and fiscally intensive day.

OSDBU/Small Business Specialists and PCRs – Responsiveness of these representatives is largely undependable.

- Rarely are emails and phone calls returned promptly, if at all. Just two weeks ago, I left a message at the Ombudsman office. That call has not been returned.
- Messaging tends to be inconsistent.
  - Understanding you never know who will or will not return your call/email, in at least on instance I reached out to two PCRs for guidance. Much to my surprise both returned my call. However, I received conflicting information.
- I recently contacted a PCR regarding a solicitation requirement regarding a WOSB self-performance requirement. The PCR advised "I have no comment on the WOSB" and offered nothing else. I asked to whom I should obtain feedback/guidance simply responded, "Call D.C" and was silent. This PCR certainly was not supportive.
- Over the last week, I have attempted to obtain name and contact information for the Ombudsman who handles USACE Ft. Hood. Even a PTAC and a SBDC representative were not able to locate.

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- When I tried to reach a SBA PCR recently, I was initially emailed and told by the PCR he did not cover/handle USACE MARSOC

Cost to Bid - With each project and its solicitation requirements different, it is very costly for contractors to bid solicitations. It costs roughly between $20,000 and $40,000 for Direct to bid each of the projects it pursues.

Project cancellations – Direct has bid many projects for which it has been apparent low bidder. However, these solicitations were eventually cancelled due to lack of funding. Direct has spent hundreds of thousands of dollars to bid projects which were cancelled due to lack of funding. One solicitation (approx. value $4M) for which Direct was apparent low bidder was cancelled within two weeks of bid opening. However, just two weeks later that same agency/location sent a Sources Sought notice for $3 billion. That $3B was awarded to all large contractors with small business subcontracting guidelines/requirements. Data supports the most impactful way to positively impact small businesses is to provide Prime contracting opportunities.

MATOC/IDIQ – Obviously, it costs a lot to bid the initial project from which Matoc/IDIQ contractors are selected. Once selected there is no assurance solicitations will be forthcoming yet, bonding is tied to that MATOC thereby restricting the number and size of projects a contractor can pursue.

Bid results -

- Direct has bid many projects in which the apparent low bidder has been 20 to 25% below government estimates and Direct's bid has been very near (either higher or lower) than the government's estimate. The large delta has not dissuaded Contracting Officers from awarding the project to the low bidder.
- Direct bid a USACE project in which it was apparent low bidder. The project was held open for about a year and a half during which time Direct's bonding capacity was impacted and restricted number of projects Direct was able to pursue. The project ended up being cancelled due to lack of funding. However, that same project was rebid a year later. I spoke with the PCR who agreed that if the project were largely the same, it would place Direct at a disadvantage as other bidders would know our approx. bid amount. The PCR additionally advised the USACE initially wanted to add a requirement bidder needed an office within a range of the facility. He did not allow that provision, but additional past performance criteria were added. The project, largely the same as the previous project was solicited again this summer. Direct was not the apparent low bidder.

CPARs - CPARs are the future of a Prime Contractor. If you have a fair and reasonable Contracting Officer, the CPARs as intended works well. However, there is a lot of subjectivity involved in the CPAR review. Reviewers tend to only remember the contractor's performance at the end of the project. Reviews sometimes allow discussion and modification prior to publication; some do not. It costs a lot to contest a CPAR.

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Regulatory burden - certainly, there is a lot of regulatory burden associated with Federal Contracting. A most recent addition is the CMMC requirement passed January 31, 2020 and subsequent DFARS 252.204.7020. NIST 800 171 has been a requirement for a long time. Direct reached out to PTACs, SBA and was advised the expectation is to make best efforts. Direct has continued to improve its cybersecurity practices over the last 10 years. Additionally, Direct has attended many hours of webinars/conference calls to learn the

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requirements and find resources to best achieve the requirement efficiently and effectively. The SBA believes it should not cost more than two to three thousand dollars for small business to achieve certification. It is my experience this cost expectation is woefully low. Of those who say they have the knowledge and experience to get Direct aligned with a very smooth audit, Quotes have range from $30,000 to $60,000 with addition annual costs. Direct has already spent tens of thousands of dollars thus far and yet have not achieved much of CMMC Level 2. PTACs and SBDC are not realist resources to achieve the requirements. The need for cybersecurity is reasonable. The definition of CUI is nebulous. By definition, Direct handles technical data (construction drawings) which may be considered CUI. However, Direct does not know if we are handling CUI but may be responsible for establishing if we do. Direct does handle FCI. The level of the requirement for the construction projects for which Direct is involved would not create a security risk. Last week, Direct submitted a proposal for a project in Virginia. DFARS 252.204-7020 was included in the solicitation. The PCR with whom I spoke was not familiar with the requirement. He is not able to advise how the Contracting Officer would verify compliance. Direct has spent well into the five figures to obtain compliance. It would not be fair for another contractor who is not compliant to be awarded the project.

Contracts – Each solicitation/award has unique requirements and personnel. These unique requirements create unique challenges; some reasonable – some unreasonable. A current project for which Direct is currently involved included a provision, Direct is required to use two government contractors who are the utility providers. During the solicitation stage, Direct obtained a cost for the work. It took, thru bid extension about 15 months from date of bid to award. During this time only once did one of the governments utility contractors return an email/phone call. This issue was discussed with contracting representatives and ACO who during our initial call and as documented in the Pre-construction meeting minutes advised they were exceptionally dissatisfied with the utility providers communication and service and advised they would pay for any price increase. Direct submitted a change order. We subsequently were advised by the ACO (who has the authority to approve the change order), much to his and the COR disappointment, the KO denied it. Direct has subsequently submitted a Request for Equitable Adjustment. Unfortunately, REAs don't require a KO to respond within a certain period of time. At this point, we believe it under internal discussion. However, if it does not resolve itself, Direct will be required to file a claim. In the meantime, Direct has absorbed the $165,000 increase!

Economic Environment – There is no secret about substantial material cost increases throughout the construction industry. Steel prices alone have increased over 70% since January. There is little opportunity for these unpredictable and unprecedented price increases to be recovered by the government, creating exceptional challenges.

It is well known there is nothing easy about Federal Government contracting. However, it appears if the goal is to encourage and increase small business participation, the above is provided to facilitate the goal.

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