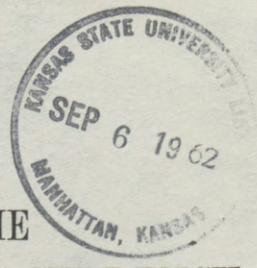


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HEARINGS  
BEFORE A  
SUBCOMMITTEE OF THE  
COMMITTEE ON BANKING AND CURRENCY  
UNITED STATES SENATE  
EIGHTY-SEVENTH CONGRESS  
SECOND SESSION

ON  
S. 1363 and S. 3096

BILLS TO AMEND THE SMALL BUSINESS ACT TO PROVIDE  
THAT THE PROGRAM UNDER WHICH GOVERNMENT CON-  
TRACTS ARE SET ASIDE FOR SMALL BUSINESS CONCERNS  
SHALL NOT APPLY IN THE CASE OF CONTRACTS FOR  
MAINTENANCE, REPAIR, OR CONSTRUCTION

JUNE 7, 8, AND 26, 1962

Printed for the use of the  
Committee on Banking and Currency



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2-1363

## CONSTRUCTION SET-ASIDE AMENDMENTS

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THURSDAY, JUNE 7, 1962

U.S. SENATE,  
COMMITTEE ON BANKING AND CURRENCY,  
SUBCOMMITTEE ON SMALL BUSINESS,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:20 a.m., Senator William Proxmire (chairman of the subcommittee) presiding.

Present: Senators Proxmire, Sparkman, and Neuberger.

Senator PROXMIRE. Today the Small Business Subcommittee is opening hearings on S. 1363 and S. 3096. These bills would amend the Small Business Act to exempt Government construction contracts from the Small Business Administration set-aside program. These bills have caused considerable comment and controversy, and it is the purpose of these hearings to provide for the record views both for and against these bills. The bills and the agency reports on them will go in the record. Also, we will insert the appropriate sections from the Small Business Act and the regulations of the Small Business Administration.

(The material referred to follows:)

87<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1363

---

## IN THE SENATE OF THE UNITED STATES

MARCH 16, 1961

Mr. METCALF introduced the following bill; which was read twice and referred to the Committee on Banking and Currency

---

## A BILL

To amend the Small Business Act to provide that the program under which Government contracts are set aside for small-business concerns shall not apply in the case of contracts for maintenance, repair, or construction.

- 1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That (a) the fourth sentence of section 2 (a) of the Small  
4 Business Act is amended to read as follows: "Such security  
5 and well-being cannot be realized unless the actual and po-  
6 tential capacity of all business is encouraged and developed."  
7        (b) The fifth sentence of section 2 (a) of such Act is  
8 amended by inserting before the period at the end thereof  
9 the following: ", and to insure that full and free competitive

## 2

1 bidding by all contractors, on an equal basis, shall be afforded  
2 in connection with contracts for maintenance, repair, and  
3 construction”.

4 SEC. 2. The first sentence of section 15 of the Small  
5 Business Act is amended by striking out “but nothing con-  
6 tained in this Act shall be construed to change” and inserting  
7 in lieu thereof “but nothing contained in this Act shall be  
8 construed to prevent or eliminate full and free competitive  
9 bidding, on an equal basis, by all contractors in connection  
10 with contracts for maintenance, repair, or construction, nor  
11 to change”.

SMALL BUSINESS ADMINISTRATION,  
OFFICE OF THE ADMINISTRATOR,  
Washington, D.C., June 10, 1961.

Re S. 1363.

Hon. A. WILLIS ROBERTSON,  
Chairman, Committee on Banking and Currency,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Further reference is made to your letter of March 17, 1961, requesting our comments on the above bill “to amend the Small Business Act to provide that the program under which Government contracts are set aside for small business concerns shall not apply in the case of contracts for maintenance, repair, or construction.”

Section 1(a) of the bill would amend the statement of congressional policy contained in section 2(a) of the Small Business Act by eliminating the reference therein to the necessity of encouraging and developing “the actual and potential capacity of small business.” This would be accomplished by substituting the word “all” for the word “small” in the reference quoted above.

Section 1(b) of the bill would make the congressional policy stated in section 2(a) of the Small Business Act inapplicable to maintenance, repair, and construction contracts. A similar amendment to section 15 of the act as contained in section 2 of the bill would result in termination of the Government's small business set-aside program with respect to such contracts.

Enactment of this bill would seriously impair the ability of this agency to assist small concerns in obtaining a fair share of Government contracts. It would also nullify the revision made in 1958 in the Small Business Act after question had been raised as to whether Congress had intended to include construction contracts when it provided (in the Small Business Act of 1953) that small business concerns obtain a fair share of Government contracts. To resolve the question, section 2(a) of the act was amended to include the specific reference “including but not limited to contracts for maintenance, repair, and construction.”

The construction set-aside program was begun in mid-1958. In May 1959, SBA concurred in a proposal of the Department of Defense to suspend construction set-asides temporarily provided that the small business share of this work were not adversely affected. Unfortunately, the participation of small firms in military construction contracts promptly declined. By the end of fiscal year 1960, the small business share of military construction contracts had

dropped to about two-thirds of the dollar value of the small business share for fiscal year 1958. Because of this decline, SBA requested reactivation of the construction set-aside program.

Under this agency's agreement with the Department of Defense, that Department's construction procurement offices consider that this agency has recommended a set-aside on all construction procurements (except Capehart housing) between \$2,500 and \$500,000. The military contracting officers then evaluate the justification of the set-aside for each procurement. No procurement is set aside without the concurrence of both SBA and the procurement agency.

The same safeguards apply to making awards for construction procurements under the set-aside program as are applicable to set-asides for other property and services made by the Defense Department and other Government procurement agencies. Set-asides on construction procurements are neither initiated by this agency, nor agreed to by the contracting agency unless there exists a reasonable expectation that bids will be received from a sufficient number of responsible small-business concerns. The Armed Services Procurement Regulation and the Federal procurement regulations each authorizes set aside awards to be made at fair and reasonable prices, but empowers contracting officers to reject any bid that in their opinion is unreasonable.

Because of the marked decline since 1954 in the small business share of military procurement (from 25.3 percent in 1954 to 16.1 percent in 1960), it would seem particularly untimely to restrict a program that now channels procurement opportunities to small firms. Further, we hope through a more vigorous set-aside program, among other things, to arrest the downward trend of recent years in small business participation in Government procurement. We would also call attention to the inhibiting effects of this bill on the small business share of Government procurement at a time when the President has urged all Government procurement agencies to take steps to increase the small-business participation in the Government's procurement dollar.

For the foregoing reasons, this agency opposes enactment of S. 1363.

The Bureau of the Budget has advised us that it has no objection to the submission of this report.

Sincerely,

(Signed) JOHN E. HORNE,  
Administrator.

---

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,  
Washington, D.C., May 12, 1961.

Hon. A. WILLIS ROBERTSON,  
Chairman, Committee on Banking and Currency,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense on S. 1363, 87th Congress, a bill to amend the Small Business Act to provide that the program under which Government contracts are set aside for small-business concerns shall not apply in the case of contracts for maintenance, repair, or construction.

The bill would amend the Small Business Act in several respects. Section 2(a) of the Small Business Act, the policy declaration section, would be amended to provide that the actual and potential capacity of "all business," as compared to "small business," should be encouraged and developed. It would further amend section 2(a) to provide that "full and complete competitive bidding by all contractors, on an equal basis, shall be afforded in connection with contracts for maintenance, repair, and construction." Complementing this latter amendment, the bill would amend section 15 of the act. Section 15 presently provides for the set-aside of procurements of maintenance, repair, and construction for the exclusive participation of small business firms which would be amended by this bill to provide that "nothing contained in the act shall be construed to prevent or eliminate full and free competitive bidding, on an equal basis, by all contractors in connection with contracts for maintenance, repair, or construction."

It is noted that, in amending the Small Business Act of 1953 (Public Law 85-536), the Congress considered the matter of coverage of maintenance, repair, and construction procurements and specifically included such procurements within the scope of the act, including the act's set-aside provision. The Department of Defense in full appreciation of the importance of a healthy small busi-

ness community, did not object to the inclusion of maintenance, repair, and construction procurements within the coverage of the act. In view of the fact that the President recently has directed that small business participation in Government procurement be increased, it would be inappropriate now to eliminate this category of procurements from the existing small business preferences based upon the act. In view of the foregoing, this Department would not favor enactment of the bill in its present form.

This Department defers to the views of the Small Business Administration with respect to that provision of the bill which would amend the policy declaration section of the act to include the encouragement and development of "all business" as compared to the present provisions of that section which relate to "small business" only.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

CYRUS R. VANCE.

---

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,  
Washington, D.C., November 24, 1961.

HON. A. WILLIS ROBERTSON,  
Chairman, Committee on Banking and Currency,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to S. 1363, a bill to amend the Small Business Act to provide that the program under which Government contracts are set aside for small business concerns shall not apply in the case of contracts for maintenance, repair, or construction.

The bill would amend the Small Business Act to provide that the set-aside program for Government procurement contracts would no longer be applicable to construction and maintenance contracts. The Small Business Act presently requires that small business enterprises receive a fair share of such contracts.

This Department supports the objective of the present set-aside program to assure small business a fair share of Government contracts.

We are, therefore, inclined to question any curtailment of the scope of that program such as here proposed in the absence of substantial evidence that it is necessary to protect the Government's interest in economical and expeditious procurement of the services involved. We are not aware from our own experiences of any such situation with respect to construction services, but would defer in this respect to the views of the General Services Administration and the Department of Defense, which are responsible for the great bulk of Federal construction and maintenance contracts.

The Bureau of the Budget advised there would be no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

ROBERT E. GILES.

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GENERAL SERVICES ADMINISTRATION,  
Washington, D.C., June 27, 1961.

HON. A. WILLIS ROBERTSON,  
Chairman, Committee on Banking and Currency,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your letter of March 17, 1961, to the General Services Administration which requested a report on S. 1363, a bill to amend the Small Business Act to provide that the program under which Government contracts are set aside for small business concerns shall not apply in the case of contracts for maintenance, repair, or construction.

The principal changes which the proposed bill would make in the act involve sections 2(a) and 15 and would require full and free competitive bidding, on an equal basis, by all contractors in connection with maintenance, repair, or construction.

Section 2(a) of the act now provides that "It is the declared policy of the Congress that the Government should \* \* \* insure that a fair proportion of the total purchases and contracts for property and services for the Government (includ-

ing but not limited to contracts for maintenance, repair, and construction) will be placed with small business enterprises." It is significant that as originally enacted, the Small Business Act did not include the parenthetical reference to maintenance, repair, and construction and that the reference was incorporated through a subsequent amendment of the act.

Section 15 of the act now provides that "to effectuate the purposes of this act, small business concerns within the meaning of this act shall receive any award or contract or any part thereof \* \* \* as to which it is determined by the Administration and the contracting procurement \* \* \* agency \* \* \* (3) to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government are placed with small business concerns \* \* \*." These determinations commonly are referred to as "set-asides" for small business.

It has been our experience that small business is very successful in securing GSA contracts for the maintenance and repair of public buildings. Traditionally, the majority of this work has been awarded to small business concerns. As a result, there is presently very little need for a set-aside program in this area. With respect to new construction, it has been our experience that this type of work does not lend itself to performance by small business concerns. This situation has not been improved appreciably by the set-aside program, and set-asides have not generated a significant increase in the small business share of GSA new construction. In view of these experiences, we do not feel that set-asides currently are necessary in order to insure that small business receives a fair proportion of GSA maintenance, repair, or new construction. It is entirely possible, however, that circumstances may change substantially in the future and that set-aside authority may be needed in order to insure that small business receive a fair proportion of such work.

We believe consideration also should be given to the fact that the Government currently is making an increased effort to insure that small business receives a fair proportion of Government procurement. In this connection, GSA has been developing revised small business policies and procedures for issuance in the Federal Procurement Regulations and has been emphasizing its own small business set-aside program. In our opinion the elimination of set-asides for maintenance, repair, or construction, at a time when both GSA and other Government agencies are making a concerted effort to help small business, would have an adverse psychological effect on the accomplishment of the overall program to assist small business.

In view of the foregoing comments, we recommend that the proposed legislation not be enacted.

The Bureau of the Budget has advised that, from the standpoint of the administration's program, there is no objection to the submission of this report to your committee.

Sincerely yours,

BERNARD L. BOUTIN,  
*Acting Administrator.*

87<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3096

---

## IN THE SENATE OF THE UNITED STATES

APRIL 2, 1962

Mr. WILLIAMS of New Jersey (by request) introduced the following bill; which was read twice and referred to the Committee on Banking and Currency

---

## A BILL

To amend the Small Business Act to provide that the program under which Government contracts are set aside for small business concerns shall not apply in the case of contracts for maintenance, repair, or construction.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Cóngress assembled,*

3        That (a) the fourth sentence of section 2 (a) of the Small  
4        Business Act is amended to read as follows: "Such security  
5        and well-being cannot be realized unless the actual and po-  
6        tential capacity of all business is encouraged and developed."

7        (b) The fifth sentence of section 2 (a) of such Act is  
8        amended by inserting before the period at the end thereof  
9        the following: ", and to insure that full and free competitive

I

1 bidding by all contractors, on an equal basis, shall be afforded  
2 in connection with contracts for maintenance, repair, and con-  
3 struction”.

4 SEC. 2. The first sentence of section 15 of the Small  
5 Business Act is amended by striking out “but nothing con-  
6 tained in this Act shall be construed to change” and inserting  
7 in lieu thereof “but nothing contained in this Act shall be  
8 construed to prevent or eliminate full and free competitive  
9 bidding, on an equal basis, by all contractors in connection  
10 with contracts for maintenance, repair, or construction, nor  
11 to change”.

12 SEC. 3. All other statutes to the contrary notwithstand-  
13 ing, the Congress finds that the nature of and special condi-  
14 tions that exist in the construction industry are such that  
15 prime contractors in construction, maintenance, and repair,  
16 as a matter of practice and policy, generally do subcontract  
17 a large percentage of their construction work. This condi-  
18 tion varies depending on the nature and type of construction  
19 to be performed.

20 SEC. 4. (a) In order to maintain present policies and  
21 practices of subcontracting to small business firms whose or-  
22 ganizations are not large enough to take on the responsibility  
23 of prime contracts, therefore, contractors having prime Fed-  
24 eral construction, maintenance, and repair contracts shall file  
..25 annual reports with the Federal agency administering such

## 3

1 contract, showing the names of any subcontractors working  
2 under such prime contract and amount of contract volume  
3 such subcontractor had in the previous year.

4 (b) Such reports of subcontracted work shall be made  
5 annually by the Government agency administering Federal  
6 prime contracts in construction, maintenance, and repair to  
7 the Administrator of the Small Business Administration.  
8 The Administrator shall forward these reports upon receipt  
9 to appropriate committees of the House of Representatives  
10 and the United States Senate.

THE SECRETARY OF COMMERCE,  
*Washington, D.C., June 6, 1962.*

HON. A. WILLIS ROBERTSON,  
*Chairman, Committee on Banking and Currency,  
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to S. 3096, a bill to amend the Small Business Act to provide that the program under which Government contracts are set aside for small business concerns shall not apply in the case of contracts for maintenance, repair, or construction.

The bill would amend the Small Business Act to provide that the set-aside program for Government procurement contracts would no longer be applicable to construction, maintenance, and repair contracts. The bill would require contractors having prime construction, maintenance, and repair contracts to file annual reports with the contracting agency listing all subcontractors working under such contracts, and the amount of contract volume of each such subcontractor in the previous year.

The Small Business Act presently requires that small business enterprises receive a fair share of such contracts. This Department supports the objective of the present set-aside program to assure small business a fair share of Government contracts. We are therefore inclined to question any curtailment of the scope of that program such as here proposed in the absence of substantial evidence that it is necessary to protect the Government's interest in economical and expeditious procurement of the services involved. We are not aware from our own experience of any such evidence with respect to construction services, but would defer in this respect to the views of the General Services Administration and the Department of Defense which are responsible for the great bulk of Federal construction and maintenance contracts now subject to small business set-asides. In any event the proposed substitution of a subcontracting report program for the present set-aside program would not seem to provide adequate assurance that small contractors would receive a fair share of Government construction, maintenance, and repair contracts.

The Bureau of the Budget advised there would be no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

JACK N. BEHRMAN,  
*Acting Secretary of Commerce.*

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,  
Washington, D. C., June 7, 1962.

Hon. A. WILLIS ROBERTSON,  
Chairman, Committee on Banking and Currency,  
U. S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense on S. 3096, 87th Congress, a bill to amend the Small Business Act to provide that the program under which Government contracts are set aside for small-business concerns shall not apply in the case of contracts for maintenance, repair, or construction.

The bill would amend the Small Business Act in several respects. Section 2(a) of the Small Business Act, the policy declaration section, would be amended by section 1(a) of the bill to provide that the actual and potential capacity of "all business," as compared only to "small business," should be encouraged and developed. Section 1(b) would further amend section 2(a) of the act to provide that "full and complete competitive bidding by all contractors, on an equal basis, shall be afforded in connection with contracts for maintenance, repair, and construction." Complementing this latter amendment, section 2 of the bill would amend section 15 of the act. Section 15 presently provides a basis for the set-aside of procurements, including procurements of maintenance, repair, and construction, for the exclusive participation of small-business firms. This section would be amended to provide that "nothing contained in the act shall be construed to prevent or eliminate full and free competitive bidding, on an equal basis, by all contractors in connection with contracts for maintenance, repair, or construction," thus eliminating such procurements from the categories of procurements which can be reserved for small business.

The bill contains a finding that maintenance, repair, and construction contractors generally subcontract a large percentage of the contract work (sec. 3) and provides that such prime contractors must file annual reports with Federal agencies administering such contracts relative to the amount of work subcontracted (sec. 4).

It is noted that, in amending the Small Business Act of 1953 (Public Law 85-536), the Congress considered the coverage of maintenance, repair, and construction procurements and specifically included such procurements within the scope of the act, including the act's set-aside provision. The Department of Defense in full appreciation of the importance of a healthy small business community, did not object to the inclusion of maintenance, repair, and construction procurements within the coverage of the act.

Congress, in the Small Business Act and the Armed Services Procurement Act, directed that a fair proportion of total purchases and contracts be placed with small business enterprises. This direction, and the repeated urging of congressional small business committees that the role of small firms in defense work be increased, can be achieved only if the preference provisions of this act continue to be available for application to the total procurement effort. The exemption of the construction industry or of selected purchases from provisions of the act, particularly the set-aside provision, will have a direct relation to the ability of this Department to maintain and expand small business participation in defense work.

The Congress has provided for, and successive administrations have supported, the Federal small business program in the belief that a healthy small business community is an essential ingredient in a sound national economy. While it is true that the set-aside program restricts competition to some extent, this program has been endorsed by both Congress and the executive branch for many years. Evidently, therefore, there can be little doubt that the set-aside program was intended to be restrictive as a means of enabling small business to receive its fair share of Government business. Presumably, then, the restrictive nature of the set-aside procedures was believed to be overwhelmingly offset by the likelihood of continuing small business competition over the years, and with continuing competition, of course, there would be substantially lower prices in the long run.

The reporting provisions of section 4 of the bill would not in their present form produce sufficiently useful information to compensate for the added burden which would be imposed on prime and subcontractors, as well as on Federal agencies administering maintenance, repair, and construction contracts.

In view of the foregoing, this Department does not favor enactment of this bill.

This Department defers to the views of the Small Business Administration with respect to that provision of the bill which would amend the policy declaration section of the act to include the encouragement and development of "all business" as compared to the present provisions of that section which relate to "small business" only.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

CYRUS R. VANCE.

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GENERAL SERVICES ADMINISTRATION,  
Washington, D.C., June 6, 1962.

HON. A. WILLIS ROBERTSON,  
Chairman, Committee on Banking and Currency,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of April 3, 1962, to the General Services Administration which requested a report on S. 3096, 87th Congress, a bill to amend the Small Business Act to provide that the program under which Government contracts are set aside for small business concerns shall not apply in case of contracts for maintenance, repair, or construction.

The principal changes which the proposed bill would make in the Small Business Act involve sections 2(a) and 15, and would require full and free competitive bidding, on an equal basis, by all contractors in connection with maintenance, repair, or construction. The bill also would require prime contractors having Federal maintenance, repair, or construction contracts to report sub-contractors working under such contracts.

It has been our experience that small business is very successful in securing GSA contracts for the maintenance and repair of public buildings. Traditionally, most of this work has been awarded to small business concerns. As a result, there is presently little need for a set-aside program in this area. With respect to new construction, it has been our experience that this type of work does not lend itself to performance by small business firms. This is due to such obvious factors as capacity, efficiency, experience, etc., and also to the fact that in the new construction field, the area from which small business competition may be drawn is limited by the general lack of geographical mobility characterizing most small construction firms. As a result, competition by small firms may well be limited by their lack of proximity to the construction site. Set-asides consequently would generally tend to be effective only for those small firms geographically able to compete rather than the number of small firms necessary to provide adequate competition, assuming adequate competition is possible without large firms bidding. The set-aside program itself, insofar as we are able to determine, has not generated a significant increase in the small business share of GSA's new construction work.

In view of our experiences, we do not believe that set-asides are necessary in order to insure that small business receive a fair proportion of GSA maintenance, repair, and new construction contracts and subcontracts.

However, it is our view that the elimination of set-asides for maintenance, repair, or construction, at a time when both GSA and other Government agencies are making a concerted effort to help small business, may have an adverse psychological effect on the accomplishment of the overall program to assist small business. For this reason, it is recommended that S. 3096 not be enacted.

The purpose of the finding contained in section 3 of the bill is not clear, particularly in the light of the introductory language "All other statutes to the contrary notwithstanding." On the assumption, however, that the section is not intended to affect the small business subcontracting program for which provision is made in section 8(d) of the Small Business Act, we raise no further question concerning section 3.

In our opinion section 4 of the bill is unnecessary and may place an undue burden on contractors. We believe that adequate information concerning subcontracting to small business will be available through the operation of the small business subcontracting program clause which has been prescribed by GSA and by the Department of Defense, with the concurrence of the Small Business Administration. The GSA contract provision referred to is contained in section 1-1.710-3 of the Federal Procurement Regulations.

The financial implications affecting GSA as a result of enactment of this bill are incapable of being accurately ascertained at this time. However, we would anticipate that at least some administrative costs involved in the set-aside program would be diminished if not eliminated, but this reduction may be offset to some degree by the reporting requirement costs.

The Bureau of the Budget has advised that, from the standpoint of the administration's program, there is no objection to the submission of this report to your committee.

Sincerely yours,

ROBERT T. GRIFFIN,  
*Acting Administrator.*

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EXCERPTS FROM SMALL BUSINESS ACT

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SEC. 2. (a) The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.

(b) Further, it is the declared policy of the Congress that the Government should aid and assist victims of floods and other catastrophes, and small-business concerns which are displaced as a result of federally aided construction programs.

\* \* \* \* \*

SEC. 15. To effectuate the purposes of this Act, small-business concerns within the meaning of this Act shall receive any award or contract or any part thereof, and be awarded any contract for the sale of Government property, as to which it is determined by the Administration and the contracting procurement or disposal agency (1) to be in the interest of maintaining or mobilizing the Nation's full productive capacity, (2) to be in the interest of war or national defense programs, (3) to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government are placed with small-business concerns, or (4) to be in the interest of assuring that a fair proportion of the total sales of Government property be made to small-business concerns; but nothing contained in this Act shall be construed to change any preferences or priorities established by law with respect to the sale of electrical power or other property by the Government or any agency thereof. These determinations may be made for individual awards or contracts or for classes of awards or contracts. Whenever the Administration and the contracting procurement agency fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator.

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EXCERPT FROM REGULATIONS OF SMALL BUSINESS ADMINISTRATION

PART 127—JOINT SET-ASIDES

Sec.

127.15 Statutory Provisions

127.15-1 General

127.15-2 Government Procurement Set-Asides.

AUTHORITY: Sections 127.15 to 127.15-2 issued under Pub. Law 85-536, sec. 5, 72 Stat. 385.

§ 127.15 *Statutory provisions.*

SEC. 15. To effectuate the purposes of this Act, small business concerns within the meaning of this Act shall receive any award or contract or any part thereof,

and be awarded any contract for the sale of Government property, as to which it is determined by the Administration and the contracting procurement or disposal agency (1) to be in the interest of maintaining or mobilizing the Nation's full productive capacity, (2) to be in the interest of war or national defense programs, (3) to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government are placed with small-business concerns, or (4) to be in the interest of assuring that a fair proportion of the total sales of Government property be made to small-business concerns; but nothing contained in this Act shall be construed to change any preferences or priorities established by law with respect to the sale of electrical power or other property by the Government or any agency thereof. These determinations may be made for individual awards or contracts or for classes of awards or contracts. Whenever the Administration and the contracting procurement agency fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator.

§ 127.15-1 *General*. Set-asides are made by the Government for the purchase of property and services including, but not limited to, contracts for maintenance, repair, construction, research and development, and for the disposal of real and personal property, including timber and minerals.

§ 127.15-2 *Procedures*—(a) *Government procurement set-asides*. (1) Under agreements with Federal agencies, representatives of SBA are assigned to the major Federal procurement installations to screen purchase requirements.

(2) When a procurement or a class of procurements meets one or more of the statutory criteria and there are sufficient numbers of small business concerns considered capable of furnishing the property or services, at fair and reasonable prices, SBA representatives will initiate small business set-asides. Set-asides may be for entire procurements (called 100 percent set-asides) or for portions thereof (called partial set-asides). If the procurement officer does not agree to the set-asides, the SBA representative will attempt to resolve the disagreement with the Head of the local installation. Whenever the SBA representative and the Head of the procurement installation fail to agree, the matter will be submitted for determination to the Secretary or Head of the procuring Department or Agency by the Administrator of SBA.

(3) In a 100 percent set-aside, the entire procurement is restricted to small business concerns and bids or quotations by large firms will be rejected as nonresponsive. It is SBA policy to request 100 percent set-asides when there is reasonable expectation that bids or proposals may be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices.

(4) In a partial set-aside, only a portion of the procurement is restricted to small business concerns. It is SBA policy to request partial set-asides when (i) the procurement is not totally set-aside, (ii) it is severable into two or more reasonable lots, and (iii) two or more small business concerns are believed to have the technical competency and productive capacity to furnish a severable portion of the item being purchased by the Government. Insofar as practicable, the set-aside portion shall be such as to make the maximum use of small business capacity.

(b) *Property sales or disposal set-asides*. (1) Under agreements with Federal agencies, SBA assigns representatives to cover major property sales and disposal activities in the regions to screen inventory or proposed sales of real, personal and mixed property, including timber and minerals.

(2) SBA representatives review proposed sales or disposals of Government property, including cost factors and proposed sales method, for the purpose of assuring that a fair proportion of the property for sale or disposal shall be made available for purchase by small business firms, taking into consideration existing preferences and priorities. When SBA representatives believe there is a sufficient number of small business firms capable of competing for the purchase of such property at fair and reasonable prices, the SBA representatives will initiate small business set-asides. Set-asides may be for entire sales (called 100 percent set-asides) or for portions thereof (called partial set-asides). If the disposal officer does not agree to the set-asides, the SBA representative will attempt to resolve the disagreement with the head of the local disposal installation. Whenever the SBA representative and the Head of the disposal installation fail to agree, the matter shall be submitted for determination to the Secretary or Head of the disposing Department or Agency by the Administrator of SBA.

(3) Bids or quotations by firms not qualifying as small business concerns, on any portion of a set-aside property sale or disposal, will be rejected as nonresponsive.

(c) *Awards on procurements, sales, or disposals partially set-aside.* (1) Under agreements with Federal agencies, when only one award is made on the unreserved portion (the portion that is open to both large and small bidders), the set-aside portion will be awarded at the same unit price as that paid or received by the Government on the unreserved portion. When multiple awards are made on the unreserved portion, the awards on the set-aside portion will be made at the highest unit price of the unreserved portion in case of purchases by the Government or at the lowest unit price in case of property sales or disposals by the Government.

(2) In partial set-asides involving Government procurement, negotiations for award of the set-aside portion will be conducted by the purchasing officer with responsible small firms who submit responsive bids or proposals on the unreserved portion within 120 percent of the highest unit price awarded on the unreserved portion, beginning with the firm that submitted the lowest bid or proposal.

(3) In partial set-asides involving Government property sales and disposals, negotiations will be conducted by the disposal officer with small firms that bid on the unreserved portion beginning with the firm that submitted the highest bid on such unreserved portion.

(d) *Withdrawal of set-asides.* If prior to award, the contracting officer considers that procurement of the set-aside from a small business concern would be detrimental to the public interest (e. g., because of unreasonable price), the contracting officer will initiate a request to the SBA representative for withdrawal of the joint set-aside. If the SBA representative does not agree to the withdrawal, he will attempt to resolve the disagreement with the Head of the local procurement or disposal installation, as the case may be. Whenever the SBA representative and the Head of the local installation fail to agree, the matter will be submitted for determination to the Secretary or Head of the procuring or disposal Department or Agency by the Administrator of SBA.

(e) *Participation by small business concerns.* Small business concerns desiring to take advantage of the set-aside program should (1) determine which Government purchasing or disposal offices are most likely to buy items which they can supply or dispose of property they desire to purchase, (2) request placement on the bidders' lists maintained by such offices, and (3) bid competitively on these procurements and disposals. Informative concerning counsel and guidance in connection with contracting with the Government, furnished by SBA, is set forth under § 124.8-4.

Effective date: Dec. 31, 1958. Cite: 23 F.R. 10530.

Senator PROXMIRE. We will insert in the record a statement from Senator Williams of New Jersey, who introduced S. 3096, and one from Senator Metcalf, who introduced S. 1363.

(The statements referred to follow:)

STATEMENT OF HARRISON A. WILLIAMS, JR., A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Mr. Chairman, I welcome this opportunity to make a statement on S. 3096 to amend the Small Business Act to provide that the program under which Government contracts are set aside for small business concerns shall not apply in the case of contracts for maintenance, repair, or construction.

I am especially grateful to you, Mr. Chairman, for scheduling these hearings on this matter which is of great importance to small business and the construction industry, and which has been the subject of prolonged debate, especially in the last 2 years. I am sure these hearings will provide an invaluable opportunity to clarify the many divergent views and sometimes contradictory aspects of this problem so that Congress will be better able to give appropriate direction to the set-aside program.

In introducing this bill at the request of a number of constituents, it seemed to me that there was merit in many of the arguments made on behalf of the bill.

It has, for instance, been maintained, that the small business set-aside program, as it relates to the construction industry, has actually subsidized inefficient and marginal small business contractors at the expense of solid and responsible businessmen.

The present program has been criticized as bringing new contractors into a field in which competition is already acute and where the existing firms are by no means fully occupied.

It has been said that this competitive pattern obtains in construction set-asides, as opposed to other aspects of the set-aside program, that in other set-asides, competitive bidding is used to determine price, and that after the price has been arrived at in this manner, the procurement item in question is set aside in order that small businessmen may have an opportunity to meet the competition of price as well as quality. Yet it is urged that in the operation of the construction set-aside, this has not been the case; the competent and efficient contractors are not allowed to bid, with the result that the Government does not know what a fair price for these set-asides might be.

Those who defend this program urge that exempting any given industry from the set-aside provision would establish a precedent that could only lead to attempts to exempt other industries. In response it has been maintained that Congress has always treated the building construction industry separately, as in the Landrum-Griffin Act, the Taft-Hartley Act, and other statutes dealing with labor-management relations.

It has been maintained that the workings of the present construction set-aside by definition invite people into Government construction who are non-union and not organized; that even though these small business contractors pay the prevailing wage provided by the Davis-Bacon Act, they are not required to pay the so-called fringe benefits which exist in all construction contracts. And it is pointed out, too, that the set-aside contractors make no contribution to the manpower training program in the construction industry, nor are they part of the apprenticeship agreements.

I have heard disputed the loss rate of loans by the Small Business Administration in the construction industry. It is maintained that the loss rate on these loans far exceeds the loss rate on the other SBA loans.

These are but a few of the many varied aspects of this matter, which I am sure will be clarified through these hearings. Again, Mr. Chairman, I would like to express my personal appreciation to you for your courtesy in giving such prompt consideration to this legislation.

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STATEMENT OF LEE METCALF, A U.S. SENATOR FROM THE STATE OF MONTANA

I appreciate the opportunity to support my bill, S. 1363, and an identical bill introduced by my good friend and colleague, the junior Senator from New Jersey. I am delighted that your committee, despite its busy schedule, has provided an opportunity for those of us who favor this legislation to appear and to discuss it with you.

The problem of small business set-asides in Government construction, maintenance, and repair is one which has received considerable publicity in the last few months. I am sure the members of your committee, and every Member of the Senate, for that matter, would agree with me when I say that we are all interested in correcting any inequities that exist. We also are anxious to protect the legitimate interests of small businessmen.

In the case of the special set-asides for construction, we have near unanimous agreement among the organized labor unions and organized employers in the construction industry that this set-aside program is harmful and is doing great injury to the public interest.

As far as I am concerned, I agree with the contractors and the labor unions.

As I understand the operation of the set-aside program, the construction set-aside differs from the other types because certain contractors are prevented from bidding on jobs. It has been my experience that the set-aside program normally provides for opening bidding on a program by all interested suppliers or contractors. After this bidding results in the establishment of a price, it is my understanding that the item or contract is then set aside for small businessmen as defined by the agency.

In the case of construction, however, I am informed that large contractors are excluded from bidding in the first place. Therefore, whatever competitive bids are finally submitted do not take into account the prices that could be offered the Government by efficient and well-established contractors. I believe that the construction set-aside is ill advised because it, first of all, does not permit genuine competitive bidding, and secondly, it doesn't encourage stability in construction performance.

I am told by friends, who represent labor in the construction industry, that the set-aside program by definition encourages the establishment of construction companies which are not organized and are not part of any collective bargaining agreement. They tell me further that they know of no instance where a so-called small business contractor, as defined by the Small Business Administration, has sought to be included in a collective bargaining agreement affecting wages and hours and working conditions in the area of its operations.

The building construction industry is unlike any other industry in that collective bargaining takes place prior to actual employment and before a job is started. Conditions of employment in this industry for generations have depended upon agreements between contractors and construction unions. The operation of the small business set-aside program has created serious problems because of this.

Perhaps the most compelling reason for the enactment of my bill is that it would require that the Government have the advantage of genuine open and competitive bidding on all construction contracts. There is no other way to get the best price for a construction job.

No matter how we may want to favor persons described as small businessmen, if these people are not able or are not willing to meet the competitive bidding process of the construction industry, we are running grave risks of scandal and waste in the administration of public funds.

This is the position of management and labor alike in the building construction industry. My file shows support for this legislation from the Colorado and Montana Contractors' Associations as well as numerous expressions of support from individual contractors. I also have received communications supporting this bill from many individual union members, the Western Conference of Operating Engineers and locals of the Operating Engineers.

I appreciate this opportunity to present their views and mine.

Senator PROXMIRE. We are honored to have as our first witness a distinguished Congressman from the great State of Nebraska, the Honorable Phil Weaver. Come right up and proceed in your own fashion. We are very happy to have you.

#### STATEMENT OF PHIL WEAVER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. WEAVER. Thank you very much, Mr. Chairman.

I am here today to testify in behalf of the bill, S. 1363. I have introduced a similar bill in the House and I have a statement which I would like to present to your committee, sir.

Senator PROXMIRE. Proceed.

Mr. WEAVER. Mr. Chairman, I am Phil Weaver, a Member in Congress from Nebraska. I appreciate the opportunity afforded me by this committee to express my views on the bill, S. 1363, which is identical to my own bill in the House, H.R. 3690, which I introduced on January 31, 1961.

Mr. Chairman, I would like to emphasize at the outset that my statement here—and my bill—are not designed in any way to hamstring the Small Business Administration. Far from it. My own conviction is that the agency is doing an outstanding job in most respects in helping to strengthen our economy through strengthening the backbone of that economy, the small business firms. The agency is making it possible for many of these firms to survive and to expand and to prosper.

I personally have supported the Small Business Administration, both in legislative matters and as a member of the Appropriations Committee of the House through efforts to guarantee adequate funds for the agency to carry out the designated purpose for which it was created.

It is primarily because I do believe in the purposes of the Small Business Administration and that act that I introduced my bill and am speaking out today. When the Small Business Administration undertook to regulate the construction industry through the set-aside program and by its size standards and definitions, it touched off a hornet's nest of opposition. Nobody within the construction industry itself wanted or wants such regulations. It has been imposed upon the industry without any large segment of the construction people asking for it. Every major association representing construction contractors has gone on record as opposing this program. Almost every one of the major labor unions which deal with construction contractors is opposed to the set-aside program. Privately, every Government contracting officer who dares to express his personal viewpoint is opposed to the program.

Senator NEUBERGER. Could I interrupt you there? What do you mean when you say "who dares to express"?

Mr. WEAVER. Let me say this, that in testimony that has been taken on the House side—contracting officers who have a wide discretionary authority personally in expressing their viewpoints feel that the program is costly, unnecessary, and unwarranted.

Senator NEUBERGER. But you mean to imply there are some who won't express their viewpoints?

Mr. WEAVER. Yes.

Senator NEUBERGER. Why? Because they fear reprisals?

Mr. WEAVER. Because they are supposed to, I suppose, adhere to what the policy of the Small Business Administration is.

Senator NEUBERGER. You know in talking to them privately, then, that they feel differently from what they express publicly?

Mr. WEAVER. Yes, ma'am.

This kind of opposition has developed into a ground swell of public opinion against this phase of the program. I am very much afraid, Mr. Chairman, that if this program is continued and allowed to expand, this ground swell of opinion may become so virulent that the entire act may be endangered.

I have no quarrel with the set-aside program in the manufacturing end of Government procurement. I think that both under the present Administrator, my good friend, Mr. John Horne, and under his predecessors, this program has worked well. In fact, at times it has saved the Government money. Mr. Horne has figures to prove that. I believe his figures and I endorse that program.

But there is a vast amount of difference between manufacturing and construction. It has been difficult for the people in the construction industry to make this point. But I believe it is the key to the whole issue and should be emphasized over and over again.

In the case of manufacturing, the Government has an absolute yardstick by which to guide its purchasing from small business concerns. One transistor, one bolt, is just exactly like another. It takes just so many man-hours to produce the item and there is an exactly equal amount of material in each of them.

If the Government wishes to set aside an order of transistors so that only small firms can bid on them, the prices offered by the small firms can be checked against the catalog prices of such giants as RCA, Western Electric, or GE.

Another technique for determining whether the price from small concerns is good or not is to split a procurement order, setting aside part for small concerns, the rest for larger outfits.

None of these techniques will work in construction. You cannot have half of a building built by one firm, half by another, so that prices can be properly compared. You have no catalog of construction prices. Even buildings of the same size and dimensions built side by side will be different because of soil conditions. Bedrock lies at varying depths from one block to the next, from one area of the country to the next.

Furthermore, the elements constitute a major factor in construction. An assembly line can keep going rain or shine, but not a construction job. Manufacturing plants run throughout the winter, but not most construction jobs.

The cost of labor, too, varies from job to job, from city to city, from State to State.

All of these factors make it impossible to state with any degree of certainty exactly what a construction procurement will cost. The contracting agencies, such as the Corps of Engineers, the Bureau of Yards and Docks, and General Services Administration, make an educated guess and come up with an estimate. That these estimates are no hard and fast price is best demonstrated by the fact that the bids, when opened, seldom even approximate the engineers' estimates.

There is no built-in yardstick by which construction prices can be figured.

Senator NEUBERGER. May I interrupt you again?

Mr. WEAVER. Yes.

Senator NEUBERGER. That explodes a notion that I have had all my life that you can get a bid because construction prices could be figured in building a house. Can't you figure how much a square foot will cost? How do people submit bids if they do not have a yardstick?

Mr. WEAVER. They have a yardstick based on what their costs will be, but, as I say, two houses side by side may have varying costs because of soil conditions, because of weather conditions, because of labor prices or where the construction people for those houses may acquire the materials to go into those houses.

Senator NEUBERGER. I still don't understand. You can't expect a construction company to make a bid which they could live up to on constructing a building or road or anything else?

Mr. WEAVER. I think that you certainly can expect them to live up to their bids, but, as I say, there is a vast difference between construction items and those items of procurement where the material is in items, size of the items, can be compared—whether it is from General Electric, Western Electric, or RCA.

Senator NEUBERGER. Or whether they get together before they make their bid; is that it?

Mr. WEAVER. I have no comment on that.

Senator NEUBERGER. All right; continue.

Mr. WEAVER. The only guarantee the Government had that it would get fair and reasonable prices was through the system of free and open competitive bidding. Every construction company in the country qualified to do the work was invited to bid on the contracts, regardless of the size of the company or the size of the contract involved.

The Government, through this system, got the benefit of free enterprise competition, plus the added bonus of the best brains in the whole industry competing against each other to come up with the right bid price.

This system saved the country money. This can be demonstrated by the literally hundreds of contracts which were let at figures considerably below the Government's own estimated cost.

That was the traditional way of doing business. Now, however, the situation has changed. Under the SBA program of setting aside all defense construction procurement between \$2,500 and \$500,000 for exclusive bidding by small concerns, this element of open competition has vanished. An umbrella of subsidy has been spread over the small concerns, and the result is that prices will continue to rise sharply, now and in the future.

This subsidy, this protection, is neither wanted nor necessary. I have figures to demonstrate that this protection is not really needed. The figures come from the Corps of Engineers and cover a period of 10 months from July 1, 1961, through March 31, 1962.

Other than in the realm of missile base construction—which is so fantastically big and complicated that only the really big construction contractors are even interested in bidding on most of the work—small business firms fared more than fairly well. For instance, of 433 Army construction contracts awarded, 362 went to small business concerns. Of this 362, the SBA had set aside 279.

There were 666 Air Force contracts other than ICBM, and of this number, 337 had been set aside while small business was able to bid successfully on 543 of the total 666.

Eleven of thirty-five contracts described as "other construction" were set aside. In this category, small business was able to go the SBA a good deal better. Small firms won a total of 25 of these awards.

These figures, I think, demonstrate pretty clearly that small business when left on its own can do pretty well for itself in the free enterprise system—at least in construction. These firms can and do stand on their own two feet.

I have further evidence of this. In a letter to me in March of 1961, Mr. Floyd E. Dominy, Commissioner of Reclamation wrote, and I quote:

This Bureau recently made a limited survey of construction contracts amounting to less than \$500,000 each which were awarded by our principal contracting officer, the Assistant Commissioner and chief engineer in Denver during the 26-month period ending February 28, 1961.

During this period he awarded 111 such construction contracts with a total face value of \$15,553,955, of which 99 awards, totaling \$13,553,955 went to small business firms.

According to his figures, then, 89 percent of the contracts in question went to small business. And this was under a non-set-aside program. In other words, competing openly with all contractors, the small fellows walked off with 89 percent of the work in this category. They did it on their own and without the help or protection of the Small Business Administration.

Despite this mass of evidence that the set-aside program is not needed, SBA has persistently pushed the program. When it was first proposed, the Department of the Army and the Navy Department

refused to go along with it, even though the first proposition was to set aside contracts of less than \$50,000, and small contractors at that time were defined as those concerns employing 500 or less.

The original set-asides also ran afoul of a ruling by the Comptroller General that they went beyond the intent of the original Small Business Act.

In 1958, when the act was rewritten, the clause including construction under its provisions was inserted.

Armed with this and declaring it had a mandate from the Congress to act, SBA went back to the Defense Department and pried out of that Department, and over the muffled objections of all the professional contracting officers in the Department, an agreement to set aside certain construction contracts.

SBA took another step in 1958. A new definition of small contractors was drawn up and made into a regulation. SBA held a hearing on this and the SBA points out that only one contractor showed up for the hearing which lasted less than 20 minutes. The lack of interest on the part of contractors in general is deplorable, but can be explained by the fact that they thought only contracts of \$50,000 or less were involved.

At any rate, the new definition was written into the regulations and now in construction a small firm is defined as one which is independently owned and operated, is not dominant in its field and which did, on an average, less than \$5 million worth of work over a 3-year period.

With the set-aside agreement from the Defense Department and this new definition in hand, SBA went to work. At once I began to get complaints from constituents, most of them small contractors themselves. In early 1959 I conferred at length with Defense Department officials and with colleagues in the House who serve on the Military Construction Appropriation Subcommittee. The upshot was that in May 1959 the Department of Defense abandoned the program.

We thought that the matter was settled.

But it wasn't. In August 1960 SBA went back to the Department and again demanded a set-aside program. Again the Department, paying no attention to the objections of the professionals in the field, agreed to the program.

The SBA in its efforts to put the program into operation claimed that the total amount of work being done by small construction firms had declined by between 15 and 20 percent during the period from May 1959 to August 1960 when the program was reinstated. There is some doubt as to the accuracy of these figures since they apparently did not take into account the amount of subcontracting done. However, be that as it may, I wrote the Administrator a letter in which I touched on this contention. I said, in that September 1, 1960, letter, in part:

Construction work is concentrated now in the field of missile launching sites. These programs are far too big for the "small" contractors possibly to handle \* \* \*.

Further along in that letter I made note of an even more important reason for the apparent decline in the amount of work being handled by the small firms. I said:

You have changed the definition of small contractor from that of an employer of 500 or less to that of a contractor doing less than \$5 million in gross

business on an average over a 3-year period. This definition has substantially lowered the number of small contractors and, consequently, has statistically lowered the number of firms doing business and the percentage of all business they are doing. If the old criteria were applied I think you would find the percentage of decline would be a great deal less.

This type of argument was not mine alone. Many contractors and others used similar arguments in an effort to rid the industry of this set-aside program. The arguments fell on deaf ears. Also, the argument that this program would ultimately cost the taxpayers money was largely ignored by the agency. I made this argument in my 1960 correspondence with the SBA. In that letter I said:

It is my contention that your action, if followed through to its ultimate goal will result in at least a 10-percent increase in the cost of construction for all defense facilities.

Facts since the SBA action demonstrate that my premise was fairly close to accurate in this matter. I have contacted the Department of the Army and the Navy Department in requesting information on the workings of this program. I have received from both reports on items in which legitimate big business bids were thrown out in favor of small business firms because the projects had been set aside. I asked the Army to run a survey of the situation, using as a guideline the difference in price between the bids entered by big firms and the nearest small firm bid, during a period when there was no set-aside program.

The Army complied and in March 1961 I received, in a letter signed by a Colonel Vollendorf of the Army liaison staff, the following information:

The Corps of Engineers reviewed basic contracts awarded to large firms which were also bid on by small firms for the period July 1, 1959, through January 31, 1960.

The review disclosed that for the 107 contracts totaling \$156,162,351 awarded to large firms, the lowest small business bids totaled \$175,045,308. This latter figure is 12 percent in excess of the total contract award amount.

The Navy Department's Bureau of Yards and Docks also replied to my original inquiry concerning SBA and the possible increased costs due to the set-aside program. In a letter to me, Adm. P. Corradi, at the time Acting Director of the Bureau, had this to say, in March 1961:

Speaking only for this Bureau I believe you will find most of the people immediately concerned with construction are of the opinion that our program will cost us more under set-asides.

There are a number of these examples which I have cited before and which will be presented to this committee which testify to the accuracy of Admiral Corradi's forecast of increased costs. These examples range in cost increases up to as high as 83 percent on some jobs.

It is obvious that we cannot make an absolute statement, at this time, as to the full impact of the set-aside program on the cost of Government construction. Just as there is no yardstick by which to judge what a fair and reasonable price is to the Government unless the criterion of free and open competitive bidding is followed, so also is it impossible to determine fully the cost impact unless there is the yardstick of free and open competitive bidding.

Once the open competition is blocked off, such as through the exclusion of the just-a-bit-bigger-than-small contractors and the bigger fellows, the cost factor becomes a matter of conjecture.

SBA makes much of the point that only a few examples have turned up to demonstrate the increased cost. This point is overworked by the Administrator. The fact is, Mr. Chairman, that it costs a good deal of money to prepare a bid. As soon as a contractor who is a bit bigger than small sees those ominous words "set-aside" attached to a bid form, he tosses the form aside. He can't afford to waste the time and money preparing a bid. Therefore, we will never know what his honest bid would have been; we'll never know how much could have been saved for the overburdened taxpayers.

The only criteria we have are those already cited—the surveys made by the Corps of Engineers during a period when contracts were not being set aside, the sound and considered judgment of such experts as the heads of the Bureau of Yards and Docks and the few examples which have from time to time cropped up. Every one of these possible criteria demonstrate that this program is and will cost more money.

I sincerely feel that as Members of Congress we do owe a responsibility to the taxpayers in this regard.

In closing, Mr. Chairman, I would like to reiterate one very important point. I think that this legislation is designed to accomplish one thing and one thing only—and that is to make the administration of the Small Business Act more equitable and more just. If the kind of inequities and the situations which others will discuss here are allowed to continue, the whole act itself may be put in jeopardy and I know that this is one eventuality we want most heartily to avoid.

I thank the chairman for his courteous consideration of this point of view.

Senator PROXMIRE. Senator Sparkman?

Senator SPARKMAN. Congressman Weaver, I followed your statement with a great deal of interest. I read it carefully. One thing that puzzles me is that in the statement you refer repeatedly to the SBA set-asides. I don't understand that the law gives SBA the right to set aside. In fact, that has been a matter of discussion in this subcommittee time after time after time. Do you understand SBA has an absolute right to set aside a contract?

Mr. WEAVER. They automatically set aside all construction contracts up to \$500,000.

Senator SPARKMAN. You say they automatically set aside—who does?

Mr. WEAVER. SBA does, sir.

Senator SPARKMAN. I just don't understand that to be the law.

Mr. WEAVER. That is exactly what has been taking place.

Senator SPARKMAN. I don't understand that to be the law at all. Under the law, SBA can request such set-asides, but it must be a joint determination, following SBA's request, and the final say is in the Defense Department. We have wrestled with that problem many times. As a matter of fact, if you will bear with me a little bit, I remember during World War II, the Small Business Act that we operated under then—I don't even remember the name of it now—Smaller War Plants Corporation, I believe. It did have the right

of set-asides. It had the right to reach in and pluck out contracts and to set them aside. But that died out after the war was over and then during the Korean war, Small Defense Plants Administration, I believe was the name, was set up. That did not have the right of set-aside and that was a point of considerable controversy in the enactment of that legislation.

In 1953-54, after the termination of the Korean war, the Small Defense Plants Administration was converted into the Small Business Administration and again we wrestled with this question of set-asides; and it was left out of the legislation. It is not in the legislation, and I think I am correct on that. If there is anyone here that can show me I am wrong, I will be glad to listen.

Mr. WEAVER. In 1958, a parenthetical insertion was made, without proper consideration of what the impact would be, when the SBA legislation and the SBA agency became a permanent act, sir.

Senator SPARKMAN. I know it became a permanent agency, but that did not affect the set-aside provision.

Mr. WEAVER. Prior to this time, as I pointed out in the statement, the Comptroller General had overruled some of these set-asides.

Senator SPARKMAN. I wish you would review it and I would be glad to be corrected if I am wrong, but that is my recollection. I have been pretty closely connected with this legislation from the very beginning and I think I am right in my assertion that SBA does not have the right of set-aside. It has the right to suggest set-aside, but set-aside determination is made by the Department of Defense.

Mr. WEAVER. If I could just comment on that point.

Senator SPARKMAN. Yes.

Mr. WEAVER. Mr. Horne testified before our Appropriations Subcommittee last year and stated the percentage of set-asides that they wanted for small business. At that time they said they were not satisfied with the percentage they were receiving.

Senator SPARKMAN. That is right.

Mr. WEAVER. In other words, it may be discretionary, but for all practical purposes, it is mandatory, they feel, in order to get for the small contractors the percentage that they want.

Senator SPARKMAN. All right, that opens up something else I want to bring in and I think it is something for us to consider. I have never urged an impractical program and I would not urge one now that is impractical. Goodness knows, if this needs change, we ought to consider carefully the change. But I just don't believe that we ought to assume that all is bad about it and throw it out the window without carefully considering the various complexities of it, the various facets.

A year ago or a little over, President Kennedy issued a directive. I am sure you are familiar with the fact that the total defense work that small business has been able to do has gradually declined. A few years ago it was 25 percent or better and it gradually declined until at the end of 1960 or 1961, it reached a level of 16 percent, if I remember correctly. It was approximately 16 percent and it was still going down. The Select Committee on Small Business of the Senate, and I think the same thing is true of the committee in the House, pointed out that there was this steady decline in business given to small business, and it was understandable.

There were features that explained it. That was something that you pointed out in your statement, that a great deal of the work had

moved to missiles and to weapons systems that small business was not capable of doing. We all recognize that fact, but, at the same time, we knew there was a great deal of business that small business could do that could turn that curve upward again.

President Kennedy issued a directive to the Defense Department and to GSA, if I remember correctly, that they should take steps to increase within the year the share of small business participation by 10 percent. That was 10 percent of 16 percent, which after all didn't amount to very much.

I think we are just about at the 10-percent increase level now or we are not quite up to it yet. That explains why there has been a rather active program in set-asides. We ought to keep that in mind. We are not trying to do anything that is unfair or impractical, but we do believe that small business, which after all employs 50 percent of the people of this country and I believe the figures show that they turn out 40 percent of the product—I am just giving these figures out of my recollection but I believe they are correct—should have a larger share. Certainly it is not reasonable to think that they should have only 16 percent of the business that the Government does.

Senator PROXMIRE. Senator, will you yield at that point?

Senator SPARKMAN. Yes.

Senator PROXMIRE. It must be understood in spite of the President's order and his sincere wish, and the effort of the executive agencies, that the proportion of Government contracts to small business has declined below 16 percent; in other words, it is lower now than it was when the President gave his order.

Senator SPARKMAN. That may be, I don't know. I'm sorry to hear it.

Senator PROXMIRE. They are worse off, so it seems to me this is all the more reason for being deeply concerned, and to take every responsible step to give small business the greatest possible opportunity.

Senator SPARKMAN. I certainly agree with the Senator in that statement.

Mr. WEAVER. If I may just comment.

Senator SPARKMAN. Yes, I would be very glad to have you do so.

Mr. WEAVER. The record clearly shows, sir, that during periods when there was no set-aside program in effect or at least when the SBA did not feel that they had to have a mandate to follow that, the record clearly shows that small business received the bulk of the contracts in all types of procurement activities and construction activities, not only in defense, but in the Bureau of Reclamation, for example.

Senator SPARKMAN. That might be at the—

Mr. WEAVER. These are the figures right from the agency.

Senator SPARKMAN. But the statistics do not bear that out. The highest point I think that small business ever reached was approximately 25 percent or slightly above that. So when we say the great bulk was given to them, we are just considering certain small sectors of the business, but the overall statistics show that about 25 percent was as high as they ever went in Government business. And, as I say, that declined to 16 percent.

You deal rather extensively with the matter of competitive bidding and the Select Committee on Small Business has from the very beginning, every since it was reorganized in 1950, recommended and urged competitive bidding.

If I may go back and indulge in a little history, I was on the Military Affairs Committee in the House of Representatives before World War II; while we were getting ready for it. Competitive bidding is something we fought and wrestled with all the time, particularly when we got into the big construction program just preceding World War II. Regardless of all we would say and all of the promises that they would make about competitive bidding, we found that the people in charge of the construction program just didn't use it.

We have said in the Select Committee on Small Business report each year since 1950 that small business would be willing to take its place if we had competitive bidding across the board. Of course, it can't be done if there are just certain small sectors given to competitive bidding. We couldn't afford to do it unless it does have some help such as the set-aside program. You have no comment on that?

Mr. WEAVER. No, sir; I do not.

Senator SPARKMAN. My understanding is that even in the set-aside program on construction there is sharp competitive bidding.

Mr. WEAVER. How can there be sharp competitive bidding when people are eliminated before they can even bid. How can you justify that statement, sir?

Senator SPARKMAN. Might I turn that around and say, by the same token, how can there be competitive bidding on certain big business that small business is excluded from?

Mr. WEAVER. We hope small business will grow and become big business. That is the desire.

Senator SPARKMAN. They can't do it unless they get business, unless they get work to do. That is our hope, too, and we have pointed that up from time to time. One of the great principles of the American free enterprise system is that anybody has a right to venture such money as he may have saved up in a small business and to run that business with the hope of making a profit and growing and growing and growing into a big business if he wants to. I think that is the history of this country.

I have known a lot of small businesses that have done that. I just happened to think of a small business down in my State that is in the construction business. They had not been able to get any Government work. Finally they came in on the set-aside program at Redstone arsenal and won a contract. They did a good job, delivered on time, and they kept getting contracts. I don't know, but I am quite certain that business is not listed as a small business any more. They have just grown and grown and grown. That is what we want in America.

Mr. WEAVER. An example somewhat along those lines was a dredging operation at Norfolk, Va., where a small firm bid \$2 and a large firm bid \$1.09. There was an increased cost of \$7,000 and about 83 percent more to the taxpayers. Now what happened? SBA removed dredging deals from the set-aside program because they recognized that people in small business don't have the capital and the equipment and the money to handle such.

Senator SPARKMAN. I remember when that problem was up before our Select Committee on Small Business. It took the best part of a year, as I recall, for Senator Russell Long to resolve it, that is the dredging operation. I think small business undoubtedly acted wisely in doing that because they saw they were not fit for it.

It seems to me the question before the subcommittee, certainly so far as my consideration is concerned, is this: Has the set-aside program in construction work set aside work that small business is not capable of doing? I have had some of my contractor friends tell me that was true. So, if that is true, that would be a good criticism. I think those are things we need to explore in the course of these hearings.

Mr. WEAVER. You know, Senator, I haven't found anybody that is for this program other than the SBA and the recommendations that the President has put out in his directive. Ninety percent of the members of the Associated General Contractors are in the small category and these people are not in favor of the program. So I would like to know who is in favor of this program other than the SBA?

Senator SPARKMAN. The Defense Department must be or it would not approve it. It doesn't have to approve it. I think they recognize that it is a system whereby this great and important segment of the American economy can be helped in line with the recommendation of the directive of the President. I may say to you now, we have had such recommendations repeatedly in our Select Committee on Small Business, and that certainly is a bipartisan committee. Every report we have rendered since 1950 has been a unanimous report and we have recommended set-aside programs every year. We haven't dealt with specific programs, but set-aside programs generally. And we have recommended in this committee in reporting out legislation, a requirement that there be a cooperative program between SBA and the Defense Department and General Services Administration and the different Government agencies that are concerned with it.

I won't take any more time, Mr. Chairman. I did want to make those points.

Mr. WEAVER. Thank you, sir.

Senator PROXMIRE. Mrs. Neuberger?

Senator NEUBERGER. No questions.

Senator PROXMIRE. I would just like to ask one brief question, Congressman Weaver. The main thrust of your statement, although there are many subsidiary points, is that this program is costing the taxpayer more money.

Mr. WEAVER. Yes, sir.

Senator PROXMIRE. I notice that in documenting this, you quote from a letter signed by Colonel Vollendorf, of the Army Liaison Staff. You say—

The Corps of Engineers reviewed basic contracts awarded to large firms which were also bid on by small firms for the period July 1, 1959, through January 31, 1960.

You point out—

The review disclosed that for the 107 contracts totaling \$156,162,351 awarded to large firms, the lowest small business bids totaled \$175,045,308—

and from this you conclude that the latter figure is 12 percent in excess of the total contract award amount, the implication being that the money paid is perhaps as much as 12 percent more on the average.

Mr. WEAVER. We know it is at least that much in this instance, but as I say, where many firms never bid on contracts, the untold additional cost to the taxpayer we will never know.

Senator PROXMIRE. I can't see where it would suggest in the first place that these particular bids would be set aside simply because some

small business firm comes in and bids on the contract. It doesn't mean these would have been set aside. With the set-aside program, most of these contracts, very possibly would not have been set aside and you would still have had the big contractor getting it at the lower price, so there would have been a saving. At the same time, I think we can show that on contract after contract, small business bid less than big business and if you showed those, you could see a saving with small business getting it.

So, it seems to me this particular quotation is not conclusive unless you show that under a set-aside program, each of these contracts would have been set aside for small business, but with big business bidding the price at less to the taxpayer. Isn't that correct?

Mr. WEAVER. I would agree with you; yes, sir.

Senator PROXMIRE. Thank you very much, Mr. Weaver.

Mr. WEAVER. I want to thank you, Mr. Chairman, and members of your committee, for your courtesies. Thank you.

Senator PROXMIRE. Before calling the next witness, I want to say we have a series of 16 groups of witnesses who are appearing, so that if we are going to get through this day and tomorrow, we are going to have to move right along. You witnesses are welcome to make your presentation any way you wish, but it would certainly be a real convenience for the committee and other witnesses if you could possibly summarize your testimony and put the rest of it into the record. The full text will be printed in the record.

Our next witness is Mr. Paul A. Askew, assistant to the general president of the International Union of Operating Engineers.

We are delighted to have you here. As I say, proceed in your own way, but you do have a substantial statement here. We will be happy to print the entire statement in the record and we would greatly appreciate it if you could summarize.

#### STATEMENT OF PAUL A. ASKEW, ASSISTANT TO THE GENERAL PRESIDENT, INTERNATIONAL UNION OF OPERATING ENGINEERS

Mr. ASKEW. Mr. Chairman, if I may make an observation, the labor unions affiliated with the building and construction trade department have for many, many months now discussed this matter and we have somewhat coordinated our feelings about the set-aside program of the Small Business Administration. So, I believe that it would be safe to say that those who may follow me will submit statements for the record and whatever testimony they offer would be very brief.

I shall go through the testimony as expeditiously and as rapidly as possible. I would beg the chairman to bear with me just a little bit because I think the bulk of labor's testimony will be incorporated in my statement.

Senator PROXMIRE. Proceed.

Mr. ASKEW. As I have said, Mr. Chairman, my name is Paul A. Askew; I am assistant to the general president of the International Union of Operating Engineers. We are an international union with established local unions in all 50 States of the United States and in Canada. In the construction industry we have among our membership both light and heavy construction equipment operators.

Our interest in the proposed legislation being considered by your committee is manyfold. This is so because the present set-aside program of the Small Business Administration is affecting us in so many ways, all of them being detrimental.

First of all, Mr. Chairman, we believe that these hearings will show that the set-aside program of the Small Business Administration was never written in the act for the construction industry until July 18, 1958, when the Congress passed an amendment to the act bringing this about. We don't know why this amendment attracted so little attention when hearings were being held upon it or why the destructive dangers to the industry escaped the attention of everyone associated with the industry. The record at the time of passage of this amendment does not show that any workers of the Nation appealed for its passage or that their unions did. Neither does the record show that any contractor associations or business people in the industry appealed for its passage.

The record can only show that a Government agency, doing business in a big way, and now improperly called the Small Business Administration, wanted to grow bigger and that the legislation was requested and sought by them. So Mr. Chairman, people who were affected by the amendment passed on July 18, 1958, both management and labor, are having the opportunity to be heard for the first time here today.

Senator PROXMIRE. I hesitate to interrupt because we want to proceed as expeditiously as possible, but at this point we should indicate what the comments of the Small Business Administration have been in this regard, because I think they are very appropriate. If you can refute any of them, I think it would be a service.

As I understand, on May 9, 1958, there was published in the Federal Register a new definition for the construction industry which would include the set-aside program. After publication of the new size standard, because of questions raised in connection with it, the Administrator decided that he would ask for comments and hold a hearing for the purpose of permitting those who were interested to appear and indicate what, in their opinion, was or should be the correct definition.

On November 11, 1958, there was published in the Federal Register a notice of hearing on the definition of small business for the construction industry. The notice stated that there would be a hearing on November 25, 1958, and that all interested parties could submit written statements, opinions, or arguments concerning the definition, and those persons who wished to make an oral presentation could do so.

In addition to publishing the notice in the Federal Register, copies of the notice were sent to interested Government departments, to the House and Senate Small Business Committees, to the House and Senate Armed Services Committees, to the National Contractors Association, the Associated General Contractors of America, Inc., General Contractors Association, the National Association of Home Builders, the Bureau of Contract Information, and the National Federation of Independent Businesses.

The SBA hoped to receive constructive comments and received none. Only a representative of the National Association of Plumbing

Contractors appeared at the hearing and advised that the definition was acceptable so far as his association was concerned.

The hearing started at 9:05 a.m. and was concluded at 9:25 a.m. It thus appeared reasonable to believe the definition was acceptable to the construction industry.

Mr. ASKEW. I think, Mr. Chairman, it is well that the record stand corrected as you have, but I should like to make two observations. I believe that the previous witness, the Honorable Phil Weaver, Congressman, made the observation that the people at that time were under the impression that they were dealing with contracts of less than \$50,000.

The other observation I should like to make is, I believe in your reading of those who received notices from the Small Business Administration, they did not notify any labor unions, did they?

Senator PROXMIRE. That is correct. They did, however, notify the construction industry. As I understood your remark, your earlier remark, you said this was the first opportunity in which the construction industry, as well as the labor unions, had an opportunity to appear. Perhaps I misunderstood you.

Mr. ASKEW. I have reference to hearings before a committee of the Congress. I believe these hearings were held by the Small Business Administration themselves, were they not?

Senator PROXMIRE. That is correct.

Mr. ASKEW. My reference, Mr. Chairman, was to hearings before the committees of Congress.

Next, Mr. Chairman, the observation should be made that in all that I have been able to read which has been written by officials of the Small Business Administration in defense of their position, they seem to be saying that only a few big contractors oppose the set-aside program of SBA in the construction industry. Well, the record should now show that every union in the United States affiliated with the Building & Construction Trades Department, and, Mr. Chairman, that is all of them, assembled in convention this last November 1961, voted unanimously to approve a resolution requesting this legislation now before you.

Not one single vote was cast against the resolution. Mr. Chairman, these men assembled in this convention had more to do than just idle away their time passing resolutions just to be doing something about which they knew little. These men came to this convention from every nook and corner of the United States and from every union in the industry, and came in great pain from the destructive program of SBA. They knew and understood their subject well and consequently voted unanimously to seek relief.

Perhaps at this point I should begin to be more specific about some of labor's complaints. As a first example, during the latter part of 1961 and the early part of 1962 increasing and alarming requests were coming from the various local unions at Cape Canaveral to their international unions for permission to strike over various issues. Finally the Brevard County Building & Construction Trade Council, with all of its affiliated local unions in attendance, voted unanimously to request the Building & Construction Trades Department for permission to strike. President C. J. Haggerty of the department dispatched a committee, of which I was a member, to Cape Canaveral to investigate

the conditions there and the reasons for the desire to strike. Now let's remember that many of these men have distinguished themselves in the defense of their country on battlefields the world over and that men do not normally want to stop work without a reason, more especially on a defense installation such as Cape Canaveral. The first day was spent in more than 12 hours of listening to more than 40 business representatives of the various trades tell of an increasing influx of small contractors who brought many evils with them.

First of all, they would not employ the members of their unions. Secondly, they had no collective bargaining relationship with any union, which meant that wages and conditions of employment would rapidly deteriorate. We are aware of the contentions of the SBA—that wages are predetermined by Davis-Bacon, and that it is absurd to say that their small contractors with no collective bargaining agreements are reducing the standard of living and conditions of employment. Yet, the SBA knows better than this. They know, as we do, that these contractors cut corners. They pay no attention in assigning craftsmen to their proper craft's work, misassign personnel, and do great portions of the work with helpers instead of mechanics. It is impossible for the enforcement branch of Davis-Bacon to police their activities. These local union representatives at Cape Canaveral feel that these companies are encouraged to cut corners and operate without collective bargaining agreements.

Senator PROXMIRE. May I interrupt again? This is an important issue and I feel a great deal of the opposition to the set-aside program is based on this. Have you made any study—do you have any documentation to show that the small contractors necessarily are not employers of union labor? Can you show us in any convincing way that a substantial number of small contractors don't hire union labor? What I am thinking of is my own home city of Madison, Wis., where, at least a few years ago, I know there were something like 23 electrical contractors. They are all small business. Twenty-two of them employed union labor exclusively.

Maybe I misunderstand and there is a pattern of nonunion labor being hired by small contractors, but I just see no documentation of this. You made such an emphatic statement here that I think it will be a real service if you can document it and establish it.

Mr. ASKEW. Mr. Chairman, I believe that later on in my testimony, in the written testimony, there will be further reference to that, which will go further toward, I believe, firming up that point. But I might add, however, that I am aware that the Air Force has kept a record at Cape Canaveral of the trend since the more activated program of SBA in setting contracts aside and the impact that it has had on Cape Canaveral and the trend away from union labor to nonunion labor, which has been recent, as I go on to explain.

Senator PROXMIRE. Wouldn't you agree this is only one factor and the no-strike pledge and so forth may have something to do with this too?

Mr. ASKEW. I certainly believe that the no-strike pledge has put us in a position, with SBA contractors coming in and contract set aside, and where they ignore the rules and the regulations, even the law, even Davis-Bacon provisions, and our hands are tied behind us by a no-strike pledge, it makes the fences around our Government installations become arms of haven and refuge for nonunion contractors.

Senator PROXMIRE. You are associating, however, the set-aside with the no-strike pledge. It is the no-strike pledge, from what I have heard from a number of union leaders, which is the main reason for the increase in nonunion employees at Canaveral and other missile bases.

Mr. ASKEW. I don't believe that is particularly true, Mr. Chairman, certainly not in the missile bases that I have been to. I believe I will touch on it later in this testimony.

Senator SPARKMAN. Mr. Chairman, in that connection, if I may just ask this one question. Isn't it true, though, that the same requirements from the Government such as the Davis-Bacon Act standards, wage levels, and so forth, apply to all business alike? There are no differentials so far as small business is concerned. They are required to meet the same levels that big business is required to meet.

Mr. ASKEW. My point, Senator, is that sure, I agree that Federal legislation affects one and all alike. My point, however, is that when the Small Business Administration sets aside a contract for small business, by and large—

Senator SPARKMAN. I hope the record may be corrected—the Small Business Administration does not set aside. It asks the Defense Department to set aside.

Mr. ASKEW. I believe the Small Business Administration develops the criteria under which the contracting officer works and which he uses as a guide, does he not, Senator?

Senator SPARKMAN. As I said a while ago, the Defense Department must agree to the set-asides. The Small Business Administration can only request the set-asides.

Mr. ASKEW. Back to your question, Mr. Chairman, what we feel is that when our employers, most of whom have become successful enough by our trying to increase our productivity, the efficiency, the workmanship of the job and so forth, that once we become efficient with our employers, it seems that we then are classified as big business and our employers are prohibited to bid on the work. Consequently, the buildup of small contractors—and I think here your question related to the matter of whether they were union or nonunion—and it has definitely favored the nonunion contractors. I don't contend that it is by design or the will of the Small Business Administration that this happens. I hasten to add at this point that the SBA is very necessary but not in the construction industry. We don't believe it adapts itself to the construction industry, but by its very nature in the set-aside program on small business, it becomes violently antiunion, just by its nature, not by design of SBA. That has been our experience. We have had to live under this only since 1958. It took a short period of time, I believe perhaps maybe a year, for SBA to ever get into motion where they could even set up the machinery where we would begin to feel the brunt of this program and to feel the dangers of it and the tragedies that we think are involved in it, both of us and for our employers. Now we believe we are really beginning to feel the impact of it.

But I don't want to stray to far with that, Mr. Chairman, and if it is all right, I will go back to the transcript.

We notice some language contained in a pamphlet distributed by SBA under date of February 1962. It is entitled, "How SBA Helps

Small Construction Firms." Contained in this pamphlet are the following words:

SBA specialists will counsel you on management problems confronting your firm and will guide you in improving your management ability.

In another place it says:

Specialists in the agency's field offices will counsel you on financial problems.

Does this mean that these contractors are advised that if they employ union labor their costs will be higher? Each of the labor representatives at Cape Canaveral were asked: "Do the problems and grievances of which you complain primarily involve contractors for whom contracts were set aside by the SBA?" In nearly every case the answer was an emphatic "Yes."

On the following day we met with management officials of the Air Force, NASA, and the Corps of Engineers. Under specific questioning regarding the effects of SBA set-asides in bringing turmoil among the workers at Cape Canaveral, these officials did not deny, but rather supported, the testimony of the labor representatives, but they added that their hands were tied by a Federal act and agency, the SBA.

The labor representatives had already told us that a great percentage of construction work at Cape Canaveral and Patrick Air Force Base was rapidly going to small nonunion contractors and that the percentage of work being done by union labor was rapidly decreasing. Of course, the local unions were never given strike permission. On the contrary, they were advised in the strongest terms that they were to abide by and fully honor the no-strike pledge which had been given to our Government. In effect, we were saying to our people that even though the law of the land supposedly gives you the right to strike to improve your standard of living on economic issues, you are now prohibited by your own pledge from striking to even maintain the standard of living which you previously had.

Senator PROXMIRE. Does this mean that wages are going down?

Mr. ASKEW. It means, Mr. Chairman, I would say that this mostly pertains to fringe benefits where a contractor comes in on the base. When I say "fringes," it definitely amounts to wages in the pay envelope because we found at Cape Canaveral that 12 out of 18 labor unions who make up the building industry, that 12 of these 18 unions had a double-time provision in their agreement.

The point here is that the small contractor coming in is not working under labor agreements. He is working strictly under the law, as Senator Sparkman has pointed out, but here is the vast difference in wages. Now these 12 unions negotiated in the free American style and system with their employers in free, open collective bargaining with the contractors association at Cape Canaveral and at Patrick Air Force Base. The point here is that the outsiders were coming in or the small contractors, the SBA contractors, and their contractors are naturally favored or in a favored position rather in figuring these costs.

While I mention this, Mr. Chairman, it is only one of the items in cost for figuring a bid for a contract.

In defense of the set-aside program of SBA, Mr. Irving Maness said in a speech in Los Angeles, Calif., on April 13, 1962—incidentally, that was Friday, the 13th—"It is in the public interest and it promotes Government economy and fairplay."

We submit that Mr. Maness would have extreme difficulty in convincing workers that it was fairplay to prohibit their employers from bidding on a contract, to, in effect, lock it up for the employer who refuses to hire them and who destroys their standard of living when they are bound to a no-strike pledge and cannot defend themselves. This is like beating a man who has his hands tied behind him. The SBA cannot justify this as fairplay.

The hard, cold facts of the set-aside program of SBA is that by its very nature, this giant Government agency is violently antiunion. To further prohibit employers from bidding who do provide a decent standard of living is a terrible and destructive reverse in the American competitive system. The unions of this country can only conclude that this activity of Government does not lend itself to the principle of free management and labor in a competitive system.

Senator PROXMIRE. Once again, I note for the record, this is a strong sentence you have in the beginning of that paragraph:

The hard, cold facts of the set-aside program of SBA is that by its very nature, this giant Government agency is violently antiunion.

You don't mean to imply this to the head of the SBA or SBA administrators. What you are saying is with the set-aside program, the consequences have an adverse effect on unions. You certainly would not say these were antiunion officials, would you?

Mr. ASKEW. Absolutely not, Mr. Chairman. I am glad you are helping me clear that point up. As I said a few moments ago about that same point, I do not contend that any public official in SBA, the Corps of Engineers or anywhere else, is antiunion. I am saying that the structure of the criteria itself is the thing that makes it within itself violently antiunion.

Much serious and devoted attention has been given to the problems at Cape Canaveral by management and labor who would like to bring stability, economy, onschedule construction, and labor-management peace to the huge construction program that lies ahead at Cape Canaveral. Among the many meetings that we have had at Cape Canaveral were a number with the officials of the Cape Canaveral Contractors Association. Mr. Grover Carter, president of that association, and Mr. J. T. McCormick, also an officer in that association, further supported by their statements to us that the set-aside program of SBA was creating most of the problems. They complained bitterly to us about contracts set aside upon which they were not allowed to bid.

Just to briefly review the foregoing, we contend that officials of the Air Force, NASA, the Corps of Engineers, the contractors associations and all labor unions have testified unanimously that the set-aside program of SBA is in large measure responsible for the turmoil and problems created at Cape Canaveral.

Another example where the unfairness of the set-aside program of SBA brought turmoil to a defense project was at Lowry Air Force Base near Denver, Colo. Here a contract for 30,000 feet of chain link fence was set aside by SBA. Union contractors in the area were not permitted to bid. The contract was finally awarded to Armco Fence Co., which came all the way from Houston, Tex. The construction program at this missile site had been going well and without turmoil. The Armco Fence Co. started work. They misclassified workmen, paid under the prevailing and predetermined rate and would not pay

time and one-half for overtime for time worked in excess of 40 hours per week even though worked on Saturday or Sunday. The workers walked off the job. The case came before the Missile Sites Labor Commission here in Washington, D.C. The CSA Reporting Corporation kept record of the hearing held on September 19, 1961. In the transcript of this hearing, on page 34, the chairman of the hearing, Dr. John Dunlop, asked Mr. W. A. Schindler of the Armco Fence Corp. a question, and discussion followed. I quote the question and discussion:

Chairman DUNLOP. May I ask a couple of questions?

Mr. SCHINDLER. Sure.

Chairman DUNLOP. I am sure my colleagues would like to ask you a couple of questions too.

Would you tell me first, who was it that indicated to you that—and I take it this was before you bid the job, was it not—that 7 days could be worked with only, let us say, daily overtime after 8 hours?

Did you so state that?

Mr. SCHINDLER. I think it was either you, Jim, or Paul.

Chairman DUNLOP. I am interested in this. It is rather important.

Mr. SCHINDLER. Yes, sir.

Chairman DUNLOP. First of all, did someone so indicate to you? Or did you get that impression? And if so, from whom did you get it?

Mr. SCHINDLER. I got the impression, but I don't honestly know who I got it from.

Chairman DUNLOP. You don't know whom you got it from?

Mr. SCHINDLER. No.

Chairman DUNLOP. Did you get this impression prior to the time you bid the job?

Mr. SCHINDLER. Yes.

Chairman DUNLOP. Prior to the time you bid the job?

Mr. SCHINDLER. Yes, sir.

On page 11 of this transcript a statement is made by John H. Lyons, Jr., now general president of the Ironworkers International Union, which is quoted in part as follows:

We want to call to the attention of the Commission that in these negotiations it became apparent to us that the two agencies of the Government, by the manner in which they operate within their own procedures, not only impeded a proper settlement of this at the time it was trying to be settled, but, in fact, encouraged the situation to get into the difficult status that it was.

I am referring to the Small Business Administration, who by their own interpretation of the law that exists, whether it is correct or not correct I would have no way of knowing, but who apparently fostered and pushed small contractors into going into jobs and to endeavor to operate those jobs contrary to the conditions which exist on those jobs with respect to the payment of benefits and the hours of work and so forth which are due to that category of employee for other contractors.

Two contractors, one of whom is the most qualified by even-dollar volume of business in that part of the country and this type of work were forbidden to bid on the job. Both of those contractors pay the conditions which we have requested, and if they had been allowed to bid, would have quite possibly have obtained the job and quite possibly have eliminated all this problem.

I think that in hearing this case that the Missile Commission must not only work toward a solution of this particular problem but must take cognizance of the fact that this problem exists on many other missile sites; that it will continue to exist as this missile program continues throughout the country.

The presently scheduled construction of operational and test facilities in the missile field will last at least 2 to 3 years. And then we have every reason to believe that the modification will continue for years to come. And that this is a problem which exists. This is not a problem which can be pushed under the rug. This is not a problem which people can say that despite what we want to do, we are totally unable to do it if everybody else shirks their own responsibilities in the matter.

We feel that the Missile Commission has been charged with this responsibility, and that they have got to work out some sort of an agreement with the Department of Defense, or whatever Government agencies are involved, so that these problems can be equitably resolved, and so that the men on these missile sites, who number by the hundreds and the thousands, most of whom are veterans, and I assume just as dedicated Americans as the rest of us, will not feel that they have to take the matters in their own hands because they have got nobody else working for them.

Now rather than go into all of the extenuating circumstances, I would just as soon leave that as the situation briefly as we see it.

Another important one, Mr. Chairman, if you will bear with me—the late Mr. James Marshall, a member of the Missile Sites Labor Commission, hearing this case made a statement which appears on page 65 of the transcript, and I should like to quote from his statement:

There are some phases of this that I would like to discuss a little bit. We are here because this is a most important program. And we have found during World War II in the atomic energy programs that it was necessary that if you wanted to accomplish anything on these jobs to have more or less of a uniform policy for labor.

I want to point out, Mr. Chairman, here is a representative of management speaking, and not a layman.

I don't mean union or nonunion, but I mean at least working conditions. Now, then, if the Small Business Administration is in supreme command of this thing so that they may inject anybody that they feel should be entitled to come in, regardless of how ill-informed they may be of what goes on on the project, I don't know how you can expect this Commission to straighten out such troubles. Now, it is bad enough to meet the ordinary conditions, but when we have an agency of the Government promoting an opportunity for those people to come in, and actually destroy what has been set up—

and here, Mr. Chairman, I want to point out he is talking about the same thing that labor is talking about; when he says—

and actually destroy what has been set up—

he is talking about bread, butter, meat, and beans.

\*\*\* by the larger contractors already on the job, I can see very little hope for this problem that we have before us, that we have at Canaveral, and a lot of places from here out.

Now, we have felt that the answer in the past has been not necessarily a general contractor running everything with his own forces and so forth, but a management contractor to coordinate all these things. And you haven't even got in the Government agencies that coordination. And you just cannot—I don't care how you feel about it, you cannot, with all the pledges in the world, have peaceful conditions and good production on a job if there is going to be continual irritation by people coming on the job with differing policies.

How to overcome that is our problem. But I think it is hopeless if you are going to let the Small Business Administration run this show, if they can come in and dictate what we have to do. For that reason, I am quite discouraged to find—I thought at least they would keep their hands off of something that we tell the workmen "You must not lose a day because it is important to the United States." But they are privileged to come in and upset the applecart. I can't understand that. And I hope you people—if you don't feel as seriously about it as I do, I hope you will at least consider the seriousness of it. Because we have got to find some solution to this thing.

Mr. James Marshall was, as I say, a representative of management, and here he said the same thing that we of labor say, that this is destructive to those conditions and standards of living that workmen across this Nation have won for themselves and through the employers and free collective bargaining.

Mr. Chairman, this man spent a lifetime in the construction industry and knew, as many of us do, that the set-aside program of SBA cannot be successfully adapted to the construction industry. I submit to your honorable committee now that the solution, as referred to by Mr. Marshall, is passage of the legislation now before your committee.

At this point, we would again like to point out that officials of SBA have frequently stated that set-aside contracts in the construction industry "do not reduce wages and conditions" and that they do "promote fairplay." We should hope to hear someone from SBA reconcile such statements with the *Armco Fence* case at Lowry Air Force Base and other missile bases and defense projects around the country.

Mr. Chairman, another very important aspect of the effects of SBA set-asides with which your committee should concern itself greatly is the lost man-hours brought about in defense construction in cases where SBA will cause all bids to be rejected because none of the bidders qualified as small contractors. They will continue their search and rebidding of the job until a small contractor is found. This is done even though the first bids may have been below or in line with the Corps of Engineers' estimate.

Let me give you an example: On February 12 bids were opened for a contract at the Westhampton Beach Air Force Base in New York. J. J. Haggerty, Inc., was low bidder on this contract and East Suffolk Concrete & Asphalt Corp., was second low bidder. The Small Business Administration got into the act and prevented awarding of the contract to either of the bidders. On April 2, 1962, the contracting officer wrote a letter to both bidders. And I won't take the time to read that letter. It just simply says the contracts were thrown out, all of them were. All bids were rejected.

That was back in February when that started, and even unto this date we have not yet been advised that that work is proceeding.

During this period of lost time, the search went on to find or create a small contractor to take this contract. However, at the writing of this testimony we are advised that SBA has given up on this one and will open bids again on May 29 permitting any contractor to bid who wishes to.

Mr. Chairman, these should be classified as work stoppages by SBA and a score chart of lost man-hours should be kept for them with the public being made just as aware of these figures as they are of some others. We also hope your committee will take into account the unnecessary expense our Government places upon our contractors when they spend the money to figure a job and then have their bids rejected.

Two of the companies whose bids were rejected in the first bidding were J. J. Haggerty, Inc., and East Suffolk Concrete & Asphalt Corp.

J. J. Haggerty, Inc., has been located in Westhampton Beach, N.Y., for the past 16 years employing approximately 45 to 60 men with a payroll of about \$440,000 per year. I am advised that due, in part to their being prohibited by SBA from bidding on Government contracts, they went out of business on May 1, 1962. This company was low bidder in the first bidding at Westhampton Air Force Base.

East Suffolk Concrete & Asphalt Corp. was second low bidder on this same contract and due to the fact that the owners of Tufano Contracting Corp. are the principal stockholders in the East Suffolk Corp., and did in excess of \$5 million in the past 3 years, they, too, were disqualified. Tufano Contracting Corp. rents equipment to East Suffolk Corp. and purchases sand and gravel from them. Tufano Contracting Corp. employs 75 to 100 men with a yearly payroll in excess of \$500,000. This company is faced with the same problems and has stated that it, too, will close down at the end of this year.

Mr. Chairman, in the pamphlet distributed February 1962, by SBA, which I have already referred to, there is another statement of interest and I quote it as follows:

During 1961 SBA approved nearly 400 business loans for almost \$22 million to small construction companies.

Mr. Chairman, while SBA was apparently giving birth to these new small contractors, they fail to mention that Dun & Bradstreet reports for the same year (1961) that 2,752 established construction firms went broke and out of business. We feel extremely confident in saying that an autopsy by this committee would find the poison of SBA set-asides to have been the cause of death for many of these firms.

Mr. Chairman, both the Suffolk Concrete & Asphalt Corp. and J. J. Haggerty, Inc., have done their work under collective bargaining agreements paying the wages and conditions provided therein. Therefore, it is not difficult to understand the frantic pleas of construction workers from all over the Nation to Members of Congress for relief, which passage of the legislation before your committee would provide. If it is not clear to anyone else, it is clear to the construction worker that the SBA is lowering and destroying their wages and working conditions and destroying their unions as well.

If I might make the observation, Mr. Chairman, if the members of your committee have not seen this pamphlet put out by SBA it certainly is a document that would be very interesting reading. I could visualize a man coming out of high school perhaps wanting to go to college to study to become a businessman. If he ever got his hands on this juicy document he would have to conclude that there would be no need to go to college because first of all, he would have to prove that he was not reputable enough to get a loan from a sound financial institution. But this is a real juicy document, and I suggest it for your reading.

Senator PROXMIRE. You say you are extremely confident that an autopsy would find that 2,752 construction firms went broke, and that the set-aside program is responsible in considerable extent. You know the definition is that they have to gross more than \$5 million before they will be adversely affected by the set-aside program.

I would be very interested to find out how many of those 2,752 established construction firms had averaged more than \$5 million for the preceding 3 years. Obviously if they did not, their failure could not be attributed to set-asides because they would be qualified, they would be benefited by set-asides. Is that not right?

Mr. ASKEW. Mr. Chairman, all they have to do is get about one contract a year and then for 3 years, and they would be out of business. I mean insofar as any Government work that SBA is setting aside.

I talked personally with the J. J. Haggerty Co., and a very interesting point about this is that they employed only 45 to 60 people, and if you recall now, I think that the record already shows this morning that SBA at one time said that a small business firm was anybody having less than 500 people. That was the line of demarcation. Now here is a contractor that they have disqualified as big business and only works 45 to 60 people. It has been an established firm there for some 16 years.

But this company tells me the way that SBA helps put them out of business, that they have to tool themselves and gear themselves with equipment costing in the millions of dollars to have a variety of equipment to handle each situation on the job.

Senator PROXMIRE. I think it is too bad there was not testimony—it is not your fault you were uninvited—before the SBA when they arrived at this definition. I think you can criticize the \$5 million gross, as you say, when some of these firms employ less than 100 people.

Mr. ASKEW. They did not invite us either.

Senator PROXMIRE. But at the same time I think you might think also in these alternative terms as well as your frontal assault on the SBA's set-aside program. You may not succeed there. You may succeed with regard to the size definition which, after all, is subject to reconsideration, and there is every disposition to be as fair as possible. You might also succeed in terms of providing requirements—I understand there is a bill before Senator Hill's committee—requirements that if a firm is going to take away business from another firm that they have to meet certain wage standards, they have to meet the Fair Labor Standards Act, and pay time and a half for overtime, and so forth.

This is the kind of thing for which I think you could get a great deal of support in the Congress that would eliminate a great many of the difficulties which you cite.

Mr. ASKEW. Another case of interest comes from the Des Moines Municipal Airport on a runway for the Air National Guard. The Hallett Construction Co. could not qualify as a small business firm. The contract was set aside for small business, and the J. D. Armstrong Construction Co. was awarded the job for about \$830,000. They then subcontracted more than half of the job to the Hallett Construction Co. which was prevented from bidding because they were too big. No one in the construction industry can understand this as "fairplay" or even good business methods.

While I have mentioned a few specific cases here, the set-aside program of SBA in the construction industry has been detrimental to the best interests of all concerned. These few citations do not, by any means, represent the volume which constantly comes to my office. Construction firms which are our employers all over the Nation have been screaming to us to come to their rescue to join with them in an appeal to Congress to remove the construction industry from the set-aside program of SBA.

Within, Mr. Chairman, even the last 30 days we have had calls almost daily from many of the places in the Nation, New Jersey, Alabama, Virginia, Iowa, Colorado, Nevada, Arkansas. Recently after this testimony was written we have appeals from the State of Alabama which

I believe all of the congressional delegation and both of the honorable Senators are now aware of, where they are setting aside a contract estimated between \$5 and \$7 million, determined there as to how you slice the pie. The ultimate cost is \$7 million, so I understand. It involves the construction of a Saturn static test tower.

An examination of our people, our local unions in the State of Alabama who are citizens there and members of our union—and they have been screaming to me on the telephone for several days now that this set-aside will eliminate practically all of their employers, eliminate them because even the volume of equipment that they have to buy—cranes, derricks, draglines, bulldozers, and so forth—they will either be too big under SBA's definition or they will probably be too small to be able to handle the job in the beginning.

So here is another case where SBA is reaching out going for \$7 million contracts to be set aside, and we do not know where the advantage is in trying to find efficiency in increased production in our collective bargaining with our employers when that is the very thing that once they become successful firms it seems to disqualify them.

I hope your committee will bear in mind that the volume of construction dollars in this country today as represented by those dollars which are spent in defense, and Defense is certainly the leader in construction, and certainly a company trying to tool up for that kind of construction, even once it has done it, it automatically becomes a firm too big to bid on the work.

I am attaching, Mr. Chairman, but will not take the time to read, letters furnished to me by the Tidewater Construction Corp. and J. J. Haggerty, Inc., which are typical of these calls for help.

(The letters referred to follow:)

U.S. ARMY ENGINEER DISTRICT, WILMINGTON,  
CORPS OF ENGINEERS,  
Wilmington, N.C., January 19, 1961.

TIDEWATER CONSTRUCTION CORP.,  
Engineers-General Contractors,  
Norfolk, Va.

(Attention: Mr. S. E. Liles, Jr., president).

GENTLEMEN: Reference is made to your letter dated January 16, 1961, concerning the set-aside for small business under the proposed contract for the replacement of broken fender pile at the U.S. Army Transportation Terminal, Sunny Point, Southport, N.C.

Under a joint Small Business Administration-Defense program the Assistant Secretary of Defense (Supply and Logistics) has entered into an agreement with the Administrator, Small Business Administration, whereby the Department of Defense agencies will consider that the Small Business Administration has initiated a joint set-aside request for each proposed construction procurement estimated to cost less than half a million dollars. This office must comply with this agreement, except in rare cases where it can be shown that the work is beyond the capability of small business or where public safety requires speed beyond that capability. The proposed contract for the replacement of broken fender pile at the U.S. Army Transportation Terminal, Sunny Point, Southport, N.C., does not fall within that category. Accordingly, this office has no alternative but to comply with the set-aside agreement.

It is true that your firm had a contract for similar work at Sunny Point a few months ago and that your performance was entirely satisfactory to this office. The exclusion of your firm from bidding on this contract is in no way related to any past performance, but is due to the fact that we must comply with the joint Small Business Administration-Defense program which became effective after your recent contract was awarded. You may rest assured that your firm is highly regarded by this office and will be invited to bid on any

proposed construction falling within your category and outside the joint Small Business Administration-Defense program set-aside.

Sincerely yours,

L. C. McDUFFIE, Jr.,  
*Acting District Engineer.*

TIDEWATER CONSTRUCTION CORP.,  
*January 16, 1961.*

The DISTRICT ENGINEER,  
*U.S. Army Engineer District, Wilmington,  
Corps of Engineers, Wilmington, N.C.*

DEAR SIR AND BROTHER: Receipt is acknowledged of yours of January 12, 1961, forwarding to us the forms in which to request plans, specifications, and bidding papers covering the replacement of broken fender piles at the U.S. Army Transportation Terminal, Sunny Point, Southport, N.C.

Immediately that we reviewed the advertisement we were confronted with the fact that this job was set aside for small business.

Just a few months ago your office received bids on similar work at Sunny Point. Our company was the low bidder and our proposal was approximately 20 percent less than that of the second bidder. We were awarded the job and completed it promptly and, to the best of our knowledge, to your complete satisfaction.

As we were completing the work covered by the contract, our representatives were approached and asked to furnish your office with prices for the replacement of additional piles, which apparently are now the subject of this separate advertisement. We made estimates and visited your office, and apparently our prices were very much in line. We were informed that technicalities finally made it necessary not to accept our offer but to readvertise the job.

Your advertisement, among other things, carries the following statement: "This action is based on a determination by the Contracting Officer alone or. \* \* \*" It would appear that the contracting officer still has some opportunities to exercise his individual judgment in certain instances. If such is the case, and in view of the fact that we had successfully completed similar work only a short while ago and at a substantial savings to the taxpayers, it would appear that there was a real reason for not excluding us at this time.

Of course, throughout the country there is considerable resentment being built up over the arbitrary action in setting aside at least 90 percent of Government work for so-called small businesses. It is definitely unfair to discriminate against contractors who are established substantially enough to be able to do more than \$5 million worth of business per year, especially when the records will show these contractors have relied principally on jobs of less than \$500,000 in order to maintain an organization which can do work properly and in the best interests of our taxpayers.

We definitely protest your action in this particular instance.

Very truly yours,

S. E. LILES, Jr., *President.*

TIDEWATER CONSTRUCTION CORP.,  
*January 20, 1961.*

ACTING DISTRICT ENGINEER,  
*U.S. Army Engineer District, Wilmington,  
Corps of Engineers, Wilmington, N.C.*

DEAR SIR: This will acknowledge receipt of yours of January 18 for which please accept our thanks.

For your information, our protest was on an objective basis and the specific reference to our own particular company was simply to outline how unfair the present practices are, not only to contractors but to the taxpayers.

We contend that the procedure being followed is contrary to the best interests of the taxpayers and the country and still wish to register a formal protest.

Sincerely yours,

S. E. LILES, Jr., *President.*

U.S. ARMY ENGINEER DISTRICT, WILMINGTON,  
CORPS OF ENGINEERS,  
Wilmington, N.C., January 25, 1961.

TIDEWATER CONSTRUCTION CORP.,  
Engineers-General Contractors,  
Norfolk, Va.  
(Attention: Mr. S. E. Liles, Jr., president).

GENTLEMEN: Reference is made to your letter dated January 20, 1961, concerning a protest of the joint Small Business Administration-defense program.

The joint agreement signed by the Administrator, Small Business Administration, and the Assistant Secretary of Defense, is in accordance with the Small Business Act passed by Congress on July 30, 1953, and amended by Public Law 85-536, approved July 16, 1958.

This office has been directed to comply with the provisions of that agreement and has no authority to deviate therefrom.

Since the Small Business Act is a law and the agreement was promulgated in accordance with the provisions of that law, this office has no power to consider a protest in connection therewith.

Sincerely yours,

R. P. DAVIDSON,  
Colonel, Corps of Engineers, District Engineer.

TIDEWATER CONSTRUCTION CORP.,  
April 17, 1962.

HENRY C. SHAD,  
Captain, Civil Engineer Corps, U.S. Navy,  
Officer in Charge of Construction, Fifth Naval District,  
U.S. Naval Station, Norfolk, Va.

DEAR SIR: Reference is made to invitation for bids dated April 13, 1962, covering specification No. 40406/62, for new concrete keel blocks for the Norfolk Naval Shipyard, Portsmouth, Va.

In recent years, both for the Norfolk shipyard and the Charleston shipyard, when proposals were invited, Tidewater Construction Corp. submitted the low bid for the construction and delivery of keel blocks. In each case, we were around 10 percent or more lower than the second bidder.

Although the amount involved here is not too great, it does seem a shame that a firm who heretofore contracted for doing this type of work to the Government's advantage should be eliminated because of the "small-business set-aside."

Very truly yours,

S. E. LILES, Jr., President.

J. J. HAGGERTY, INC.,  
Westhampton Beach, N.Y., May 18, 1962.

Mr. PAUL ASKEW,  
International Union of Operating Engineer's Building,  
Washington, D.C.

DEAR SIR: We wish to relate the following information in regard to a job at the Suffolk County Air Force Base, namely Project No. SUF-146-0, 30-618-62-63, road improvement, seven sites, where we were low bidder on February 12, 1962.

There were only two bidders on this job, Tufano Contracting Corp. and ourselves; however, we were not awarded the job because we were informed by the contracting officer, Lieutenant Poulcer, that this job was reserved for "small business."

We appealed to the Small Business Bureau in New York City, but after a study of our corporation they decided we were "large business."

This job has been put out for bid again due May 29.

Tufano Contracting Corp. and J. J. Haggerty, Inc., because of the type of work involved, are the only companies qualified to complete this work in this area.

Very truly yours,

JOHN MCGILLY.

MONTGOMERY, ALA., June 2, 1962.

PAUL ASKEW,  
*International Union of Operating Engineers,*  
 Washington, D.C.:

For your information the following telegram has been sent to the entire Alabama congressional delegation:

"The Corps of Engineers, Mobile district, will issue invitations to bid on June 15 for construction of project ENG-(NASA)-01-076-62-3, Saturn static test tower, Redstone Arsenal. This project is valued by the Government at \$7 million and is set aside for small business.

"It is the usual policy of the Corps of Engineers to prequalify bidders on vital and complex missile projects of this type with the basis for prequalification being past experience in performance of comparable work, ability to meet critical completion schedules, and a sound financial position. To restrict the bidding is certainly not in keeping with this policy. As a matter of fact, unqualified contractors will be given an opportunity to bid. Moreover, virtually all Alabama contractors will be eliminated from bidding as the larger firms will not be permitted to do so and the smaller firms in most instances will not have the capacity to bid a \$7 million job.

"All qualified contractors should be allowed to bid on this missile facility regardless of the company's size, and we urge you to immediately make every effort possible to remove this unfair and unreasonable set-aside restriction."

We are aware of your concern about the set-aside program and know that you will work with us in attempting to remove this restriction.

BLOUNT BROS. CONSTRUCTION Co.,  
 WINTON A. BLOUNT.

JUNE 4, 1962.

HON. JOHN SPARKMAN,  
*U.S. Senate, Washington, D.C.:*

We are advised that construction of Saturn static test tower to cost about \$7 million, Huntsville, Ala., has been set aside for small business. This will disqualify nearly all Alabama contractors because they will be either too big to qualify or too small to handle the job. This is unfair to workers in Alabama and our members, also to our employers in Alabama who are highly qualified to bid this work. We urge that you use your good offices to have this contract withdrawn from set-aside and to permit open competitive bidding.

JOSEPH J. DELANEY,  
*General President, International Union of Operating Engineers.*

(A similar telegram was sent to Senator Hill, Small Business Administration, Building Trades Department, AFL-CIO, and Engineer Corps.)

Mr. ASKEW. More generally I receive phone calls, and never a week goes by that we do not have considerable complaints. These employers realize, as we do, and as we always have, that their ability to stay in business and our opportunity to work for them are really one and the same thing and require our mutual cooperation with each other. It will not help them nor us to have the year of 1962 come to an end with the Small Business Administration bragging that they have given birth to another 500 construction firms, while Dun & Bradstreet reports that nearly 3,000 went broke and out of business.

Senator SPARKMAN. Mr. Chairman, if I may, I want to go back just a little to that Saturn test stand. That is the one at Redstone Arsenal, is it not, that you referred to?

Mr. ASKEW. That is correct.

Senator SPARKMAN. I had a communication from a friend of mine in Alabama, Mr. Blount of the Blount Construction Co., whom I am sure the witness knows, or knows about, regarding that. I had it checked into and I think it might be interesting to note on the record that SBA had nothing to do with that, it was not an SBA set-aside. It

was a voluntary action on the part of the Corps of Engineers acting for NASA in which they put out the notice that—this was a conditional notice—if sufficient small firms with capacity to perform showed interest in this then it would be limited to small business. But my understanding is it has not even been determined yet whether it will be limited to small business or not.

Mr. ASKEW. Well, Senator, yesterday afternoon late, Mr. Soper over in the Small Business Administration, as a result of a telegram that our union had sent to Mr. Horne, called me and said that he would like to discuss it on the phone rather than losing the time to write, which I, of course, appreciate, and he said pretty much the same thing to me as you have said, that it was, I believe, what he termed a “unilateral set-aside” by the Corps of Engineers.

Senator SPARKMAN. That is right.

Mr. ASKEW. And he pointed out it was not what he termed a “joint set-aside.”

Senator SPARKMAN. That is right.

Mr. ASKEW. To us down there, our people in Alabama, this is sort of like the choice of being hung or getting shot.

Senator SPARKMAN. I realize for all practical purposes so far as you are concerned it does not matter. But much of this testimony has been directed to SBA setting aside. In this instance SBA did not ask for a set-aside.

Mr. ASKEW. Well, you know, you can call over to SBA and ask about a thing like this and they toss the ball to the Corps of Engineers, and since this thing got to be really dangerous and detrimental to us you call over to the Corps of Engineers and they throw the ball back to the SBA, and they say it is as wrong as the \$3 bill. This is what you get from the Corps of Engineers, I think as to the points that Mr. Weaver made, it might be well to look behind some of them because we find a lot of agreement, we find nobody in favor of the program, but you find an awful lot of people will not get up and say so.

Senator SPARKMAN. Anyhow that is the information I received, that the Corps of Engineers did this unilaterally and did it only on a conditional basis. That is that if there were sufficient number of small business firms interested in it.

Mr. ASKEW. Mr. Chairman, on March 10, 1961, Mr. Roswell L. Gilpatric, Deputy Secretary of Defense, wrote a memorandum to the Secretaries of Army, Navy, and Air Force and in that memorandum he said the following:

Therefore, you are directed to take such steps as are necessary to assure that small business firms will receive, in fiscal year 1962, prime contract awards (measured in dollars received as a percentage of total dollars) sufficient to constitute at least a 10-percent increase over the percentage received from your department in fiscal year 1960.

Now, just 100 days later, on June 21, 1961, Mr. John E. Horne, Administrator of SBA, testified before the Select Committee on Small Business and said the following:

During the first quarter of this year, nearly \$300 million in prime Government contracts were awarded to small firms under the SBA set-aside program. This represents an increase of 67 percent over the value of contracts awarded small firms under the program during the same period of last year.

Mr. Chairman, if these two statements are correct, it simply means that even at the time the memorandum went out from the Defense

Department, on March 10, 1961, directing a 10-percent increase that a record was already established showing a 67-percent increase for that very same first quarter of 1961.

Senator PROXMIRE. If I can just interrupt for a minute, of course that 10-percent request was a request that the very low level of 16.1 percent be increased by 10 percent, and this was overall. Obviously if they are going to achieve that, there is some area where they would not be able to achieve it; it was a target. In other areas there might be a 100-percent or a 200-percent increase. This did not mean the 10 percent would be the limit or the maximum.

As a matter of fact, most of us on the committee—and I think the President shared that view—we would like to see small business go back to the level they once had of 25 percent instead of 16 percent of the total.

So I think it would be unfair to make any implication that Roswell Gilpatric was requesting that they stay at the 10-percent increase level.

Mr. ASKEW. Mr. Chairman, I might make the observation that these percentages can get to be rather tricky. You know if you were to take when SBA changed the criteria of number of employees as a line of demarcation and went to dollars, at that very point they knocked hundreds and thousands of construction firms right out of the business, out of the category. They knocked thousands of construction firms out of the category of small business. This naturally drives the percentage down and makes the scorecard look real bad.

I hope your committee will look into that end of it because every time they juggle the ball over there—and you know you have got no control over their criteria. They set the criteria on Monday and they change it on Thursday if they want to. Apparently that is the way it has been going, and every time they change the criteria they can make the percentage figures that you get back as to what small business has got look about any way they want them to look.

On May 25, 1961, a Subcommittee on Appropriations was holding hearings on military construction. Rear Adm. E. J. Peltier, Civil Engineer Corps, U.S. Navy, Chief, Bureau of Yards and Docks, testified on that date and his testimony, in part, was as follows:

On certain types of work, particularly in the heavy equipment field, these small business people do not have that type of equipment available.

Mr. SHEPPARD. They are not qualified within this field, are they?

Admiral PELTIER. I think we will have to be a little tougher on that type of project and perhaps try to keep it open for general bidding. Many small business people do not have the particular type of equipment required and they have to go to large business because that is the only type of contractor who can afford that type of equipment, particularly heavy equipment for grading and paving.

Mr. SHEPPARD. Am I correct in my appraisal of the situation that where that pertains you are getting another overhead because obviously the small businessman is a prime contractor even though he subs out to a large contractor who formally is forbidden from bidding?

Admiral PELTIER. That has happened.

Mr. SHEPPARD. Do you think this is a good approach to the issue under the circumstances? You have had experience in this field for some time, both as Chief of the Bureau and otherwise. What is your opinion?

Admiral PELTIER. It is always our effort to obtain the lowest possible cost for our work, of course. The Small Business Administration has a problem of trying to support small business and keeping them alive.

However, in the construction field we have over 500,000 contractors, over 85 percent small, and it is perhaps not as urgent a requirement as it may be in some of the other procurement fields.

Also in Admiral Peltier's testimony was this statement:

There have been occasions where for some reason or another, if we did get a bid from a contractor classified as big business, we have had instances where we have paid as much as 10 to 15 percent more through having to reject the low bid. In these cases the contractor was not qualified because the contracts were small-business set-asides. When we reviewed the record, we had to throw out the bid.

Overall, I would say it was costing us some percentage more which would be difficult to determine, but there is an increased cost.

A further statement by Admiral Peltier was as follows:

Admiral PELTIER. There are projects going to small business because of the set-asides that probably would not go to small business otherwise. We have had these four or five instances where we have had the low bid from large business that we had to throw out. This is more business going to small business contractors because of the set-aside.

Mr. LAIRD. I can see where in procurement or some other area this might serve a very useful purpose, but when you get up to the military construction and you have a record where over 95 percent of all contracts being let out are going to small business, where you have dollar volume over 82 percent going to small business, I just cannot quite follow this directive.

Perhaps the Department of Defense did notify this committee, but I did not know anything about this until today. However, it would seem to me that this is a new procedure that you embarked upon and you should have at least made some presentation to the committee about it.

Admiral PELTIER. There was some effort made about a year ago, and we stalled it off because we felt we had a pretty good record in small business. It is costing us administratively a little more in addition to this. We have to have people in the field to watch out for this.

So it was delayed until October. In October they decided to go ahead with it. I am not sure the Department of Defense had an option on this. I think it might have been a directive from Small Business. I do not know the history of that.

In these same hearings, Mr. Chairman, there is considerable testimony from others and I would recommend it to your committee as informative on the subject.

Senator PROXMIRE. Secretary of the Navy Connally in testifying before the Senate Select Committee on Small Business on April 25, 1961, cited several instances where the set-aside program had saved the Government money. I will insert his remarks in the record at this point.

(The remarks referred to follow:)

Secretary CONNALLY. Let me say, along the lines of your questions, Mr. Schoepel, I mentioned in my prepared statement the purchase of helicopter rotor blades in which we saved money and I also mentioned, without going into detail, the containers for the Sidewinder rocket motor tube.

Our former price for that had been running from \$15.88 to \$16.14 each, depending on the quantity.

Our current price is now running \$10.92 each, so that we had an indicated savings per unit from \$4.96 to \$5.22.

Now, we had savings comparable to that in the containers for the ASROC missile. We procured these on a set-aside for small business in February of this year with these results. We saved in one case \$65,000, which represented about a 32-percent saving, and in another case \$142,000, which represented as much as a 64-percent saving.

I don't think that either of those are necessarily reflecting any average of savings, but they are two glaring examples of what can be done, and, as I say, the later one we did in February of this year when we made a set-aside and two small businesses got the award with those resultant savings.

Mr. ASKEW. He has contradicted Admiral Peltier.

Senator PROXMIRE. I would say he probably has more of an overall view than the admiral has.

Mr. ASKEW. During the past 12 months, Mr. Chairman, every Member of Congress has received mail from workers or their unions condemning the set-aside program of SBA in the construction industry. Resolutions have been passed in cities all across the Nation and forwarded to Members of Congress. Committees of people from home have called upon Members of Congress and complained about this program and have tried to point out that the set-aside program of SBA in the construction industry, first of all, is not needed, won't work in the industry, and is destroying their standard of living.

We submit that the military supported this view, as did Admiral Peltier, that military management at missile bases and Cape Canaveral, the Corps of Engineers, the contractors themselves at the cape through their association, and all of the workers through their unions have made very clear to us in a unanimous voice that the program is wrong, that the Missile Sites Labor Commission knows it is wrong.

A McGraw-Hill publication entitled "Construction Methods" in an editorial in March 1962, said the "Government is wrong."

The Wall Street Journal says our Government is wrong and in an editorial by them calls it, and I quote, "united arrogance."

Every union in the industry, excluding none, and nearly every publication, trade, management, labor, and many newspapers are now saying our Government is wrong.

Everybody, Mr. Chairman, is in agreement that the program is wrong with but one exception, and who is that? The Small Business Administration, a big business Government agency wanting to grow bigger.

Mr. Chairman, Government construction can be simply covered by saying that it primarily is construction for defense of our country against all aggressors. No one will deny, including labor, that this construction should be free from work stoppages, even those created by SBA when they hold up the work looking for, or trying to give birth to, a nonunion contractor to do the work. If this construction is to be free from work stoppages, then it must also be free from the turmoil created by the SBA. You cannot accept labor's pledge of no work stoppages on the one hand, and then, on the other, declare every Government installation a refuge for nonunion or SBA contractors who immediately come in and begin to destroy wages and conditions.

If then, Mr. Chairman, Government construction is primarily defense construction and should proceed without delays, we should be willing to correct those things which trial and error have taught us must be corrected. We submit that passage of the legislation now before this honorable committee is a necessary and immediate step which should be taken.

In closing, Mr. Chairman, if I might say this, all of us occasionally, I suppose, get rumors from the rumor mill and perhaps we should not pay too much attention to them, but we hear the rumor that perhaps SBA may offer some willingness to change the criteria again. We have even heard the figures mentioned around \$7 or \$7½ million.

To us, Mr. Chairman, who live in the industry every day and have felt the brunt of this program so badly and so detrimentally, to us this would be like giving the patient with cancer an aspirin tablet, and we think that your committee can correct this thing and we be-

lieve it to be the appropriate step to remove the set-aside program from the construction industry because it just does not fit. We believe that cutting the cancer out will save the patient, but we do not think the aspirin tablet will.

And for the kind consideration, Mr. Chairman, of yourself and your colleagues on this committee, I am deeply grateful to have been heard.

Senator PROXMIRE. Thank you very much, Mr. Askew. I would like to ask you just a couple of things very quickly.

One, do you have any information or knowledge of the average take-home pay of workmen at the missile sites, especially Canaveral, on a yearly basis?

Mr. ASKEW. I do not, but I would be happy—

Senator PROXMIRE. You can supply that for the record?

Mr. ASKEW. I would be happy to go into some research and try to develop that, Mr. Chairman.

Senator PROXMIRE. Fine, Then I would appreciate it very much if you or other leaders in the labor movement could document this position which does concern me, I am sure, and other Members of the Congress, as to the labor union membership of employees of businesses qualifying as small business under the definition for contractors as compared to those who do not qualify.

What I am asking is for you to be able to document for me the assumption which I take it is behind the opposition by organized labor to the set-aside program that the small business firms that are qualified employ nonunion labor and the larger firms employ union labor.

Thank you very much.

Mr. ASKEW. Thank you, Mr. Chairman.

Senator PROXMIRE. Your statement was very hard hitting and effective.

(The following were received for the record:)

INTERNATIONAL UNION OF OPERATING ENGINEERS,  
Washington, D.C., June 11, 1962.

Senator WILLIAM PROXMIRE,  
Senate Office Building, Washington, D.C.

DEAR SENATOR PROXMIRE: You will recall your request to me while testifying on small business set-asides for certain wage information covering all construction employees at Cape Canaveral, Fla. I am attaching hereto the hourly wage rates and weekly take-home pay for those crafts.

The source of my information is Mr. Hank Rosenthal, Corps of Engineers, U.S. Army District Office, Jacksonville, Fla., phone Elgin 5-6411. Mr. Rosenthal advises me that no overtime is being worked by any crafts except in unusual instances of emergency. Mr. Rosenthal further advises that the bricklayers and stone masons have recently concluded their negotiations and have renewed their agreement for a 2-year period without any increase in wages. This means that the old rate of \$3.60 per hour will continue for another 2 years.

You further requested information concerning the volume of contracts set aside by SBA which were awarded to contractors who do not employ our members. I am currently working to obtain this information and will be in further contact with you at an early date.

Sincerely yours,

PAUL A. ASKEW,  
Assistant to the General President.

## CONSTRUCTION SET-ASIDE AMENDMENTS

## SCHEDULE

Hourly rates and weekly take-home pay of all workers, based on 40-hour week—  
Cape Canaveral, Fla.

	Hourly rate	Weekly take-home pay		Hourly rate	Weekly take-home pay
Asbestos worker.....	\$3. 71	\$140. 98	Painters.....	\$3. 30	\$125. 40
Brick mason.....	3. 95	150. 10	Sand blasting.....	3. 87½	147. 25
Bricklayers, stone.....	3. 60	136. 80	Spray painting.....	3. 87½	147. 25
Cement mason.....	3. 45	131. 10	Steel painting.....	3. 55	134. 90
Carpenter.....	3. 50	133. 00	Plumbers and steamfitters.....	3. 70	140. 60
Millwright.....	3. 81	144. 78	Sheet metalworkers.....	3. 60	136. 80
Pledriver.....	3. 75	142. 50	Truck drivers.....	1. 25	47. 50
Electrician.....	3. 85	146. 30	Elevator constructors.....	3. 87	146. 00
Lineman.....	3. 85	146. 30	Power engineers:		
Ironworker.....	3. 82½	146. 49	Crane operator.....	3. 50	133. 00
Laborers.....	1. 80	68. 40	Crane oiler.....	2. 20	83. 60
Semiskilled.....	1. 95	74. 10			

INTERNATIONAL UNION OF OPERATING ENGINEERS,  
Washington, D. C., June 13, 1962.

Senator WILLIAM PROXMIRE,  
Senate Office Building,  
Washington, D.C.

DEAR SENATOR PROXMIRE: This will supplement my letter to you of June 11, 1962, furnishing information which you requested of me while testifying before your committee on June 7, 1962, regarding small business set-asides in the construction industry. I have a telegram from Mr. Grover J. Carter, president of the Patrick Air Force Base Contractors Association, copy attached, which reads as follows:

"Corps of Engineers awarded 18 contracts at Cape Canaveral and Patrick Air Force Base first 5 months of 1962 aggregating \$1½ million. Fourteen set aside for small business aggregating \$3¼ million. At least half of small business contractors do not have signed agreements with the union. At least 75 percent of large contracts was subcontracted to others by the large contractors."

I have checked with the Corps of Engineers the figures given in Mr. Carter's telegram with respect to number of contracts awarded, the number set aside for small business and the number awarded to nonunion contractors and the Corps of Engineers confirms these figures to be correct. As a matter of fact, the Corps of Engineers advises me that exactly half of the contracts awarded were given to nonunion contractors.

I should like to also call your attention to the statement in Mr. Carter's wire that "at least 75 percent of large contracts was subcontracted to others by the large contractors."

I discussed this particular matter with Mr. Carter over the phone and he advises that these are contracts which were not set aside for small business but that small business gets 75 percent of them anyway because of subcontracting. This would be in addition to those contracts which had been set aside for small business. So you see, the program is not really needed in the construction industry. Small business would still do very well without it.

In light of the figures supported by the Corps of Engineers and the contractors association at Cape Canaveral, that half of the contracts awarded were given to nonunion contractors, perhaps it will become a little easier for you to realize why we of labor are so greatly concerned. It should also tend to further support the testimony which I gave. Permit me to say again that we of labor feel that the proper answer to these problems is passage of the legislation before your committee.

If it is possible to do so, we will appreciate your incorporating my letter of June 11, 1962, and this letter, in the record to show that I complied with your request to furnish further information.

Thanking you for your consideration, I am,  
Sincerely yours,

PAUL A. ASKEW,  
Assistant to the General President.

ORLANDO, FLA., June 15, 1962.

PAUL ASKEW,  
International Union of Operating Engineers,  
Washington, D.C.:

Corps of Engineers awarded 18 contracts at Cape Canaveral and Patrick Air Force Base first 5 months of 1962 aggregating \$11½ million. Fourteen set aside for small business aggregating \$3¼ million. At least half of small business contractors do not have signed agreements with the union. At least 75 percent of large contracts was subcontracted to others by the large contractors.

GROVER J. CARTER.

INTERNATIONAL UNION OF OPERATING ENGINEERS,  
Washington, D.C., June 11, 1962.

Senator WILLIAM PROXMIRE,  
Senate Office Building, Washington, D.C.

DEAR SENATOR PROXMIRE: Enclosed please find copy of letter received from Lt. Col. William R. Ledbetter, Corps of Engineers District, Mobile, Ala., regarding the Saturn static test tower at George C. Marshall Space Flight Center, Huntsville, Ala., being withdrawn from set-aside and to be advertised for unrestricted bidding. Also enclosed is copy of my reply.

Sincerely yours,

PAUL A. ASKEW,  
Assistant to the General President.

U.S. ARMY ENGINEER DISTRICT, MOBILE,  
CORPS OF ENGINEERS,  
Mobile, Ala., June 8, 1962.

INTERNATIONAL UNION OF OPERATING ENGINEERS,  
Washington, D.C.

(Attention: Mr. Joseph D. Delaney, general president).

GENTLEMEN: Reference is made to your telegram of June 4, 1962, regarding small business set-aside under invitation No. ENG(NASA)-01-076-62-3 covering construction of superstructure and appurtenances for Saturn static test tower at George C. Marshall Space Flight Center, Huntsville, Ala.

The project was set aside in consonance with directives implementing the policy of the President of the United States to increase defense contract awards to small business firms. The basic criteria for determining whether a procurement should be set aside for small business participation is whether there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small business concerns so that awards may be made at reasonable prices.

A preliminary review of responses from interested small business concerns on June 7, 1962, indicated that a sufficient number of bids would not be obtained from responsible small business concerns to assure award of the contract at a reasonable price. In view of this finding, a supplement to the advance notice was issued on June 7, 1962, lifting the small business restriction. A copy of the advance notice and the supplement are inclosed for your information.

Sincerely yours,

WILLIAM R. LEDBETTER,  
Lieutenant Colonel, Corps of Engineers, Acting District Engineer.

INTERNATIONAL UNION OF OPERATING ENGINEERS,  
Washington, D.C., June 11, 1962.

Lt. Col. WILLIAM R. LEDBETTER,  
U.S. Army Engineer District, Mobile, Corps of Engineers, Mobile, Ala.

DEAR COLONEL LEDBETTER: This will acknowledge your letter of June 11th, SALSU, advising that construction of static test tower at George C. Marshall Space Flight Center, Huntsville, Ala., has been withdrawn from set-aside and will now be advertised for unrestricted bidding.

I wish to take this opportunity to thank the Corps of Engineers for reconsidering this matter and permitting unrestricted bidding which we fully believe is the only justified manner in which this contract should be let.

Very truly yours,

PAUL A. ASKEW,  
Assistant to the General President.

INTERNATIONAL UNION OF OPERATING ENGINEERS,  
Washington, D.C., July 10, 1962.

HON. WILLIAM E. PROXMIRE,  
U.S. Senate, Washington, D.C.

MY DEAR SENATOR PROXMIRE: I wish to thank you for your continued interest in the SBA set-aside program which vitally affects all unions in the construction industry who are affiliated with the building and construction trades department.

In discussions of the last few days with Mr. Richard Pollock in your office on the point that the set-aside program has worked to the advantage of the nonunion contractor, it seems that my testimony and the additional information that I furnished your office is termed "suggestive and inadequate." It also seems that more comprehensive and complete statistics are desired.

First of all, we would not like to see the consideration being given this legislation pinned to this single point when so many other important points were raised at the hearings before your committee. Nevertheless, I believe if testimony before your committee is completely analyzed, it would go even further than the additional information I furnished you to establish this point. The case that I mentioned at Denver, Colo., was an example where union contractors were prohibited from bidding and the Armco Fence Co., a nonunion contractor, did the work. A complete check of the cases that the Green Construction Co. complained of (a representative from this company did appear before your committee) would reveal that a great majority of them resulted in the company's being prohibited from bidding and a nonunion contractor's being awarded the work.

In my testimony, I also made reference to the Tidewater Construction Corp.'s complaining about the set-aside program. I mentioned that, in the interest of saving time before your committee, I was submitting certain attachments regarding this company. I can assure you that where this company was prohibited from bidding, a nonunion contractor was awarded the work. When the Tidewater Construction Corp. was permitted to bid prior to the SBA's disqualifying them, we had no complaint. We were content to have our contractors compete with anyone. We complain now about having them termed big business and being disqualified. In almost every instance called to our attention, it has been the natural result that union contractors were termed big business and disqualified, leaving the field wide open to nonunion contractors.

I call to your attention again that every union affiliated with the building and construction trades department has gone on record, assembled in convention and by adoption of a resolution, to support the legislation now before your committee. These unions would not have done this unless their experiences with the set-aside program had been detrimental to them and their employers.

In view of the fact that trade unions in the building and construction industry do not have complete information as to who the contractors are who are receiving job awards under the SBA set-aside program, it is extremely difficult for us to furnish complete information on this particular point. As I stated to you in my letter of June 13, I received the figures for Cape Canaveral on this question from the Corps of Engineers, and we are certain that these figures are kept and are available to committees of Congress. It is the exception rather than the rule that we are furnished such information when it is requested. We believe that your committee would be in a position to request and receive such information from the Corps of Engineers.

On the other hand, we feel very strongly that information received from our representatives throughout the country to the effect that the overwhelming bulk of these contractors are operating nonunion is valid and should be heavily weighed by your committee.

We trust that this point will not seriously delay expeditious consideration of the proposed legislation now before your committee.

Sincerely yours,

PAUL A. ASKEW,  
Assistant to the General President.

PAUL A. ASKEW,  
Assistant to the General President.

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,  
INSTALLATIONS AND LOGISTICS,  
Washington, D.C., July 11, 1962.

Hon. WILLIAM PROXMIRE,  
U.S. Senate.

DEAR SENATOR PROXMIRE: Receipt is acknowledged of your letter of July 3 inquiring whether information existed on the unionization status of firms receiving construction contracts for the Defense Department.

I have checked with the Army Corps of Engineers, the Navy Bureau of Yards and Docks, and the Air Force Deputy Director for Construction, Deputy Chief of Staff for Operations, and have been advised that records are not maintained which would permit determination of the unionization status of firms receiving construction contracts from the military departments.

As you know, all contractors, including construction contractors, must meet certain minimum standards in order to be eligible for contract awards. These minimum standards are set forth in the Armed Services Procurement Regulation, section I, part 9. They are based generally upon the provisions of the Walsh-Healey Public Contracts Act. In addition, construction contractors are required to comply with the provisions of the Davis-Bacon Act with respect to the payment of prevailing wage rates.

I regret that the information which your subcommittee seeks is not available in the Department of Defense.

Sincerely,

RICHARD W. WEBB,  
Director, Small Business Policy.

Senator PROXMIRE. I am afraid that we are going to have time for only one more witness this morning because the hour is late. We will convene tomorrow morning. I have discussed this with Senator Sparkman, I discussed it with Mr. Barnes—would it be all right with you if we met at 9:30 or 10 o'clock?

Senator SPARKMAN. I have a 9:45 appointment, but it will be very brief. I believe 10 o'clock will be all right.

Senator PROXMIRE. Well, then the committee will meet tomorrow morning at 10 o'clock.

Our next and final witness this morning will be Mr. William McCarter.

Senator SPARKMAN. Mr. Chairman, while Mr. McCarter is coming around I am going to have to leave. The Senate is in session and there is a quorum call, so I feel I need to get to the Senate floor.

Senator PROXMIRE. The Senator from Alabama as acting chairman of the Foreign Relations Committee, of course, is manager of the foreign aid bill.

Senator SPARKMAN. That is correct, and I need to get over there. I will read Mr. McCarter's comments in the transcript with interest.

Senator PROXMIRE. Mr. McCarter, I understand you have no prepared statement. Proceed in your own way. Of course, we would appreciate as concise a statement as you feel you can make.

#### STATEMENT OF WILLIAM McCARTER, GREEN CONSTRUCTION CO., OAKTOWN, IND.

Mr. McCARTER. Thank you, Mr. Chairman and members of the committee.

I am William McCarter, manager of Green Construction Co., an independent contracting firm with long years of experience in general construction, particularly in the flood control field, spanning a period of over 20 years.

I speak in favor of amending the Small Business Act to exclude construction from set-asides.

Over a period of more than 20 years we have done much work in flood control, particularly in the Louisville district and in the Jacksonville district. We have built a reputation for efficiency and competitiveness of which we are very proud.

Recently we find ourselves in the position of not being able to bid on much of the work in which we are interested because it is limited to small business. We feel that is unjust in many cases, particularly in the area in which it deals with flood control, many times in which there is an element of time, saving of property and even lives, concerned.

We have been interested in bidding on some contracts. I would like to mention one or two of the most recent ones. The Barren River Reservoir, Ky., in January of 1962 was let at about \$3,400,000, and we were unable to bid on this. At the same site and dealing not with the reservoir proper, but with roads and other aspects, bids were received at about \$2 million, also on which we were unable to bid. More recently and in our own backyard on Niblek levy, a flood control levy, Knox County, Ohio, over a million cubic yards of earth, our particular field, we were unable to bid. There are many others.

Senator PROXMIRE. How large a contract is that dollarwise?

Mr. McCARTER. I cannot tell you exactly, but I would say roughly \$700,000 or \$800,000.

In Florida where we also have been actively engaged in flood control projects there have been several contracts let on which we were unable to bid. Dade County, 500 million yards of earth in January of this year. In Osceola County, canal 31, 231 million cubic yards of earth, March of this year. Canal 35 in Osceola County, 1,100,000 yards of earth on which we were unable to bid. Levy 28, section 1, in Dade County, 3½ million yards of earth on which we were unable to bid.

Senator PROXMIRE. In general would you summarize by saying how much annual business were you excluded from?

Mr. McCARTER. Let me say this. In years gone by the backbone of our business has been flood control construction.

Senator PROXMIRE. And you are excluded from how much annual business? You have given us a \$2 million figure, and a \$708,000 figure. I would like to get some quantitative estimate of what this effect has been.

Mr. McCARTER. I would guess that we have been excluded from at least \$4 or \$5 million worth of business annually.

Senator PROXMIRE. Annually. Proceed.

Mr. McCARTER. Our organization has been built into a firm that is especially adept at this particular type of work. Our personnel, our equipment—this has been the backbone of our organization. Now we find ourselves in a position that we have to seek work in another field at which we are less skilled, other phases of the construction industry, and we think this is unfortunate for us. We think it is a little bit unfortunate for the taxpayers. We think it is even more unfortunate for the property owners in these areas where flood measure construction is in process.

We are not against small business. We think this area of flood control may penalize many smaller businesses for the sake of letting a

contract to one considered as a small business. In my thinking each of the landowners and property owners in a flood control district protected by these flood control construction measures is a small businessman and needs consideration as such.

I will not try to pinpoint what they are due to, but we feel strongly that if the Small Business Act were amended to exclude construction certainly there would be fewer set-asides by the Corps of Engineers and other contracting officers, and we feel that would help us and help business in general.

I thank you very much for the opportunity to be heard here, and I apologize for not having a prepared statement. If one is wanted I would be more than pleased to furnish one.

Senator PROXMIRE. Very good. I have just a very few questions.

In the first place, you are here to represent the Green Construction Co. of Oaktown, Ind., only? You represent no association of any kind?

Mr. McCARTER. That is true.

Senator PROXMIRE. What is your capacity with Green Construction?

Mr. McCARTER. General manager.

Senator PROXMIRE. And you come authorized by the president or by—

Mr. McCARTER. By the owner, Mr. Robert Green.

Senator PROXMIRE. By the owner. All right. What is your gross revenue?

Mr. McCARTER. We average between \$5 and \$6 million a year.

Senator PROXMIRE. Just barely over the limit.

Mr. McCARTER. And part of that is due to our being an individual. We operate a coal mining business; but for the purpose of determining our class those are thrown together.

Senator PROXMIRE. Were you ever small business?

Mr. McCARTER. Yes, sir; we were.

Senator PROXMIRE. How recently?

Mr. McCARTER. It has been about 5 years or more ago.

Senator PROXMIRE. How much have you grown over the past 5 or 6 years?

Mr. McCARTER. I am guessing—possibly 15 percent.

Senator PROXMIRE. You have grown 15 percent in the past 5 or 6 years. Do you feel you would have grown much more rapidly if you had an opportunity to bid on these contracts from which you are excluded because of your size?

Mr. McCARTER. I feel sure we would. Now one thing I failed to mention, I would like to say—

Senator PROXMIRE. Incidentally, how many people do you employ?

Mr. McCARTER. Between 300 and 500 people. Ours is largely seasonal work; being outside construction with heavy equipment. We cannot work the year round in the Middle West.

Senator PROXMIRE. You say your gross was around \$5 or \$6 million?

Mr. McCARTER. Yes.

Senator PROXMIRE. And when did you move out of the category of small business?

Mr. McCARTER. I cannot tell you exactly according to this definition. Approximately 5 years ago.

We have presently in the Jacksonville district in Florida two large draglines, for instance, that were sent down there some years ago to do flood control work. These cost about a quarter of a million dollars apiece, and they are presently sitting there. We are excluded from being able to bid on flood control work.

Senator PROXMIRE. Is your firm unionized?

Mr. McCARTER. Mostly, yes.

Senator PROXMIRE. Mostly—to what extent?

Mr. McCARTER. Our construction workers are union.

Senator PROXMIRE. You have 400 or 500 employees. This would mean that what proportion of them are members of unions?

Mr. McCARTER. A large proportion. I would not have a percentage figure.

Senator PROXMIRE. Ninety percent?

Mr. McCARTER. Probably, yes.

Senator PROXMIRE. And you do have construction contracts? You do have Government contracts for flood control work; the work you do is not set-aside work?

Mr. McCARTER. That is true.

Senator PROXMIRE. All right, sir. Thank you very much. We appreciate your testimony.

I understand that Mr. Burger is here and he has given us a statement. If it is acceptable to you, Mr. Burger, we will print that statement in the record, because you cannot be here tomorrow.

Mr. BURGER. I cannot.

(Mr. Burger's prepared statement follows:)

STATEMENT OF GEORGE J. BURGER, VICE PRESIDENT, NATIONAL FEDERATION OF  
INDEPENDENT BUSINESS

I am George J. Burger, vice president and in charge of legislative activities through the Washington office of the National Federation of Independent Business. Our head office is located in San Mateo, Calif., and division offices located in Cincinnati, Ohio, Chicago, Ill., and New York City.

Our membership in the 50 States now totals 179,641, all individual members comprised of independent business in the production and distribution field, and also professional men.

While we have not polled our members directly on the specific bills before your committee, we are committed by membership vote to support all programs which will secure for all smaller, independent businesses a fair chance to compete for Government contracts.

This was one of the reasons why our members committed us to work for the creation of the Small Business Administration in 1953, to steps which strengthened it in the years following, and to the moves made in 1958 which resulted in securing permanent status for the agency.

Since 1953 we have made it our business to maintain an active, not academic, interest in the agency's functioning. Executives of the federation have made regular personal visits with the agency's national headquarters and with its regional and branch offices. Our last visits were made in the fall of 1961. Our inquiries have covered the entire range of the agency's services, including the functioning of its set-aside programs. For that reason, when we speak with you on this phase of the agency's program we do so on the basis of firsthand knowledge.

Our observation is that in line with the duties and authority vested in it by the Congress, and consistent with the responsibility placed on it to render services only to smaller, independent business units, the Small Business Administration has performed an effective job. This holds true on the set-aside program as well as in all other phases of its work.

We would add that, based on firsthand knowledge derived from our own contacts with smaller, independent business people, and from the reading of the

countless hearings by committees of the Congress, it has been doing a most necessary service for the small business people of this country if they are to have the opportunities they vitally need, not only in the field of Government contracts but also in all other areas covered by the agency.

Now, we know that the agency has been criticized and is under constant fire. On the one hand, there is a tendency among the smaller independents to say it is to liberal in aiding what they consider as "big" independents. On the other, the larger independents have complained that the cutoff points in its regulations are too restrictive. Just recently one of our members wrote in to complain that since he had successfully competed for sizable subcontracts with a truly large Government prime contractor his volume had grown to a point where he could not benefit by the set-aside program. Quite naturally he resented the fact. However, it occurred to us that if the agency is to be charged with assisting smaller independents, then it must limit assistance to such firms. If this latter be not true, then the agency must become a general help agency. But the Congress has not so created and charged it. For our part, our members have not supported it on such a basis.

We are not arguing here in favor of the status quo in set-aside size limits in the construction contracting or any other fields. Wisely these limits are always open to revision, upward as well as downward, as conditions require. Possibly revisions are in order for greater fairness and more reality in the contract construction field. We understand that proposals are under consideration by the SBA right now to raise the size limits from \$5 million volume in 3 years to \$7.5 million in 3 years. We hope that the construction contractor associations will counsel with and advise the agency in that connection, for the true welfare of all in their fields, smaller independent contractors as well as the larger independent units. If any changes are needed in the Small Business Administration handling of set-asides for the construction contractor industry we hope they will be suggested.

While we are wholeheartedly in favor of reasonable revision of size standards, and while we cannot take and do not take a position directly on the bills before your committee, we are concerned about their implications which clearly seem to point in the direction of a step by step, but finally complete breakdown of the set-aside system. Exempt that industry, and precedent is set for exempting all others. In this sense, the bills directly affect not only those in the construction contract industry but also those in the electronics field, the precision industries, the clothing field, in fact the entire range of industries in which smaller independents have the desire and capability of supplying the needs of Government. This must not be overlooked by anyone, especially those of the Congress who are members of this subcommittee.

Frankly, we are convinced that it would be a sorry day for smaller, independent business people, who are the backbone of our economy and whose continued existence and fair opportunities are so vitally important to the maintenance of our individual liberties, should the Congress consent to any move which would deprive them of any necessary assistance such as is afforded in the set-aside program.

It is our earnest hope that the members of this subcommittee will give long and serious consideration to these facts before reaching decisions on the bills now before you.

Senator PROXMIRE. We will be very happy to accommodate any other person who is here and cannot be here tomorrow who would like to have his statement printed in the record.

Mr. McCARTER. Thank you again, Mr. Chairman.

Senator PROXMIRE. Thank you, sir.

If there is anybody else here I would appreciate it very much if you would just get up and indicate that you are here and give us your name so that we can have a record that you were here and we can put your statement in the record if you cannot be here tomorrow.

All right, in that event the committee will stand in recess until 10 a.m. tomorrow morning.

(Whereupon, at 12:20 p.m., the committee was recessed, to reconvene at 10 a.m. the following day.)

The author's main thesis is that the American people have been misled by a small group of men who have sought to control the government for their own interests.

He argues that the framers of the Constitution were not the heroes of the American Revolution, but rather a group of men who were motivated by self-interest.

The author also claims that the American people have been misled by the media and the political establishment, which have worked together to keep the truth hidden from them.

He concludes that the only way to bring about real change in America is to overthrow the current system and replace it with a new one based on the principles of justice and equality.

The author's argument is based on a number of historical events and figures, which he uses to support his claims. He also provides a detailed analysis of the American political system and its various institutions.

Overall, the book is a well-written and thought-provoking work that offers a new perspective on the history of the United States. It is a must-read for anyone who is interested in the current state of the country and its future.

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## CONSTRUCTION SET-ASIDE AMENDMENTS

FRIDAY, JUNE 8, 1962

U.S. SENATE,  
COMMITTEE ON BANKING AND CURRENCY,  
SUBCOMMITTEE ON SMALL BUSINESS,  
*Washington, D.C.*

The subcommittee met, pursuant to recess, at 10:02 a.m., Senator William Proxmire (chairman of the subcommittee) presiding.

Present: Senators Proxmire and Sparkman.

Senator PROXMIRE. The subcommittee will come to order.

Our first witness is Mr. Graeme Bannerman, Deputy Assistant Secretary of Defense for Procurement.

Mr. Bannerman, we are very happy to have you. Proceed.

**STATEMENT OF GRAEME C. BANNERMAN, DEPUTY ASSISTANT SECRETARY OF DEFENSE (PROCUREMENT) (INSTALLATIONS AND LOGISTICS); ACCOMPANIED BY RICHARD WEBB, DIRECTOR OF SMALL BUSINESS POLICY, OFFICE OF ASSISTANT SECRETARY OF DEFENSE**

Mr. BANNERMAN. Thank you, Senator.

I am happy to have the opportunity to discuss with this committee the defense small business program, particularly as it relates to construction work. I have included in my statement comments with respect to the five questions most frequently asked us concerning the small business set-aside program:

1. What is the small business set-aside procedure?

The small business set-aside is a purchasing procedure under which the Government's requirement is reserved for the exclusive competition of small business concerns. Set-asides are generally established jointly by the Small Business Administration representative, located at our principal procurement activities and the contracting officer. They determine whether such a set-aside will be in the interest of maintaining the Nation's full productive capacity or whether such action will assure that a fair proportion of Government procurement is placed with small business concerns. This joint determination is provided for under the Small Business Act.

2. What is the Defense policy with respect to making small business set-asides?

The Defense policy is stated in the Armed Services Procurement Regulation and reads in part as follows:

\*\*\* the entire amount of an individual procurement or class of procurements (including but not limited to contracts for maintenance, repair, and construction) shall be set aside for exclusive small business participation where there is a

reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices. Total set-asides shall not be made unless such a reasonable expectation exists \* \* \*.

Thus, it is apparent from this policy statement that adequate competition is obtained in all set-aside awards and that under such procedures contracts are awarded to the lowest responsible bidders. If, during the competition, bids are received from large business firms, those bids are normally rejected as being nonresponsive to the Government's invitation.

However, if it appears to the contracting officer for any reason, after the bids are opened, that the low bid from a small business firm was not fair and reasonable, he may reject all bids and open the contract to full and free competition.

3. Why does the Government make set-asides in construction work?

Prior to 1958, the language of the Small Business Act did not make reference to "construction," and, as a consequence, it was considered that the set-aside authority did not extend to Government construction procurement.

To resolve any doubt as to the applicability of the set-aside program to construction contracts, the Congress amended the Small Business Act on July 18, 1958 (Public Law 85-536), specifically providing that small business should receive a "fair proportion of the total purchases and contracts for property and services for the Government (including but not limited to contracts for maintenance, repair, and construction)." This change in the law was considered as authority to make set-asides of construction jobs.

After passage of the act, the Department of Defense and the Small Business Administration agreed that small construction firms were then receiving in open competition a substantial share of the military construction contracts and that a set-aside program was not necessary. However, in fiscal years 1959 and 1960, the proportion of awards to small construction firms dropped from 72.8 percent of the dollar value of all military construction procurements in 1958 to 65 percent in 1959 and to 50 percent in 1960.

Senator PROXMIRE. Just for the record at that point, were there any changes in the definition of small business construction firms during this period?

Mr. BANNERMAN. There has been a change in the definition, Senator. When was that, Mr. Webb?

Mr. WEBB. The change did not take place during this period, Senator.

Senator PROXMIRE. It did not affect these statistics that you are giving us now during this period?

Mr. WEBB. During 1959 and 1960, to the best of my knowledge, it did not.

Senator PROXMIRE. It was precisely the same during all this period?

Mr. BANNERMAN. I think this change of percentage occurred for another reason which I explain in the statement.

Senator PROXMIRE. Fine.

Mr. BANNERMAN. As a result of this sharp decline, the Department of Defense and the Small Business Administration decided to activate the construction set-aside program. This helped some. The small

business share increased during fiscal year 1961 to 54 percent. However, small firms have received only 40 percent of the total construction awards during the first 8 months of fiscal year 1962.

Thus, despite our all-out efforts to improve the role of small business firms in all defense programs, there has been a further decline in construction awards to small firms.

The rapid buildup of missile sites and the heavy construction required therefor has been primarily responsible for the current decline in small business awards by the Army's Corps of Engineers. These large construction projects are not within the capabilities of small construction firms.

#### 4. Do construction set-asides result in increased costs?

It is obvious that the effect of the reservation of any procurement for competition exclusively for small business firms, pursuant to the Small Business Act, potentially rules out lower bids of large business firms. Therefore, it is impossible to tell whether, or the extent to which, there might have been lower bids from large firms if we had not made small business set-asides.

We are all aware, of course, that a Government-wide small business program has had the support of Congress and successive administrations for many years. This was done in the belief that a healthy small community is an essential ingredient in a sound national economy. Evidently, therefore, the Congress intended that the set-aside program would provide the means of enabling small firms to receive a fair proportion of the Government's total purchases.

Should the price, in some cases, be higher than that which might otherwise have been possible through completely unrestricted competition, this possibility was recognized and accepted. Presumably, the possibility of a slightly higher price on some procurements was believed to be overwhelmingly offset by the assurance of continuing small business competition in future procurements. With such continuing competition, of course, the Government will be assured of lower prices in the long run.

Last December we made a study of construction contracts awarded between January and June 1961 in an effort to determine the extent to which the set-aside program in construction was resulting in the payment of increased costs. The study showed that 5,483 new construction contracts of \$10,000 or more each were awarded in the half-year ending June 30, 1961. It also showed that 5,291 of these were under \$500,000, while 192 were over that size. Almost 4,000 of the smaller awards and 34 of the larger contracts involved set-asides.

There is, of course, no way of measuring the savings which might have been made had all of these awards been open for unrestricted competition. However, we found only 18 construction procurements which were performed during the 6-month period wherein the low bid of a large concern was rejected as being nonresponsive to the Government invitation, which restricted the competition to small concerns. The 18 rejected bids were \$296,203 lower than the bids of the successful small business bidders. Thus, in less than one-half of 1 percent of the number of set-aside construction contracts for this period was there any evidence of possible increased costs as a result of the set-aside program.

The total of all awards made during that period was \$734 million with set-aside procedures being used in only 33 percent of the dollar value of these total awards.

The difference between the award price and the rejected price on these 18 contracts represents approximately one-tenth of 1 percent of the total cost of construction projects set aside for small business during the 6-month period.

We have, just prior to these hearings, brought this study up to date, and we are submitting to this committee the results of our current investigation.

(The study referred to follows:)

*Net amount of military and civil functions prime contracts for construction work,<sup>1</sup> January 1961-February 1962*

	<i>Amount (in thousands)</i>
All contracts of \$10,000 or more:	
Total-----	\$1, 844, 851
Awarded to large business firms-----	1, 018, 940
Awarded to small business firms (subtotal)-----	825, 911
Set-asides used-----	438, 484
Set-asides not used-----	387, 427
Percent:	<i>Percent</i>
Small business to total-----	44. 8
Set-asides to total-----	23. 8
Set-asides to small business subtotal-----	53. 1
Contracts of \$10,000 to \$499,999:	
Total-----	<i>Amount (in thousands)</i> \$758, 446
Awarded to large business firms-----	202, 511
Awarded to small business firms (subtotal)-----	555, 935
Set-asides used-----	360, 700
Set-asides not used-----	195, 235
Percent:	<i>Percent</i>
Small business total-----	73. 3
Set-asides to total-----	47. 6
Set-asides to small business subtotal-----	64. 9
Contracts of \$500,000 or more:	
Total-----	<i>Amount (in thousands)</i> \$1, 086, 405
Awarded to large business firms-----	816, 429
Awarded to small business firms (subtotal)-----	269, 976
Set-asides used-----	77, 784
Set-asides not used-----	192, 192
Percent:	<i>Percent</i>
Small business to total-----	24. 9
Set-asides to total-----	7. 2
Set-asides to small business subtotal-----	28. 8

<sup>1</sup> Includes new contracts and modifications of existing contracts for construction, alterations, and repairs. Excludes architect-engineer contracts.

*Number of new military and civil functions prime contracts for construction work,<sup>1</sup> January 1961-February 1962*

All contracts of \$10,000 or more:		<i>Number</i>
Total	-----	9, 064
Awarded to large business	-----	554
Awarded to small business (subtotal)	-----	8, 510
Set-asides used	-----	6, 186
Set-asides not used	-----	2, 324
Percent:		<i>Percent</i>
Small business to total	-----	93. 9
Set-asides to total	-----	68. 2
Set-asides to small business subtotal	-----	72. 7
Contracts to \$10,000 to \$499,999 :		<i>Number</i>
Total	-----	8, 719
Awarded to large business	-----	423
Awarded to small business (subtotal)	-----	8, 296
Set-asides used	-----	6, 111
Set-asides not used	-----	2, 185
Percent:		<i>Percent</i>
Small business to total	-----	95. 1
Set-asides to total	-----	70. 1
Set-asides to small business subtotal	-----	73. 7
Contracts of \$500,000 or more :		<i>Number</i>
Total	-----	345
Awarded to large business	-----	131
Awarded to small business (subtotal)	-----	214
Set-asides used	-----	75
Set-asides not used	-----	139
Percent:		<i>Percent</i>
Small business to total	-----	62. 0
Set-asides to total	-----	21. 7
Set-asides to small business subtotal	-----	35. 0

<sup>1</sup> Includes new contracts for construction, alterations, and repair work; excludes architect-engineer contracts, and modifications of existing construction contracts.

List of construction contracts on which a low bid from a large business firm was rejected because the project was set aside for exclusive bidding by small business concerns

Construction site	January 1961-February 1962		Difference
	Rejected low bid	Accepted bid	
<b>Army:</b>			
Dow Air Force Base, Bangor, Maine	\$13,322	\$16,064	\$2,742
Sheppard Air Force Base, Wichita Falls, Tex.	4,315,817	4,482,255	166,438
Aircraft Control and Warning Station, Eufaula, Ala.	84,710	85,096	386
Keystone Reservoir, Okla.	508,458	527,220	18,762
Humphreys County, Mississippi	107,690	111,548	3,858
Blue Island, Ill.	33,995	37,677	3,682
Jacksonville, Fla.	78,780	88,391	10,611
Black Hills Ordnance Depot, Igloo, S. Dak.	82,361	89,887	7,526
Fort Gordon, Ga.	39,448	43,465	4,017
Air Force facilities, Hilo, Hawaii	94,931	131,036	36,105
Fortuna Air Force Station, N. Dak.	124,213	129,276	5,063
White Sands Missile Range, N. Mex.	229,145	239,720	10,575
Redstone Arsenal, Ala.	589,092	564,766	25,674
Fort Snelling National Cemetery, Minneapolis	302,431	311,162	8,731
Mather Air Force Base, Calif.	322,174	332,470	10,296
Vandenberg Air Force Base, Calif.	164,261	164,900	639
Do.	12,300	15,916	3,616
Tulare County, Calif.	145,896	163,399	17,503
Columbia River dike repair, Portland, Oreg.	9,725	11,110	1,385
Clearwater County, Idaho	22,385	23,875	1,490
Vicksburg, Miss.	399,698	405,256	5,558
Old Hickory project, Tennessee	34,199	39,510	5,311
Jacksonville, Fla.	61,340	79,450	18,110
Mobile, Ala.	4,884	5,115	231
Block Island, R.I.	124,045	140,000	15,955
San Joaquin River, Calif.	683,845	705,643	21,798
Calaveras, Calif.	298,112	303,674	5,562
Matagorda, Tex.	101,201	104,469	3,268
Army, total	8,938,458	9,353,350	414,892
<b>Navy:</b>			
Norfolk Naval Shipyard, Portsmouth, Va.	8,720	16,000	7,280
U.S. Naval Base, Newport, R.I.	116,872	137,536	20,664
Marine Corps Air Station, Cherry Point, N.C.	30,850	39,350	8,500
Naval Supply Center, Bayonne, N.J.	14,680	16,438	1,758
Navy Electronics Laboratory, San Diego, Calif.	30,565	31,665	1,100
U.S. Naval Air Station, New Orleans, La.	13,949	15,800	1,851
Naval Radio Station, Annapolis, Md.	74,800	79,445	4,645
Cherry Point, N.C.	12,405	13,700	1,295
Trenton, N.J.	98,850	104,449	5,599
Great Lakes, Ill.	48,520	54,340	5,820
Naval Air Station, Brunswick, Maine	31,500	31,980	480
Naval Air Station, Alameda, Calif.	19,270	21,446	2,176
Naval Base, Newport, R.I.	49,835	50,716	881
Navy, total	550,816	612,865	62,049
<b>Air Force:</b>			
McClellan Air Force Base, Calif.	53,962	58,117	4,155
Tinker Air Force Base, Okla.	363,108	393,627	30,519
Elmendorf Air Force Base, Alaska	9,441	11,795	2,354
Air Force, total	426,511	463,539	37,028
DOD, total	9,915,785	10,429,754	513,969

MR. BANNERMAN. However, even in these 18 cases, the statistics purportedly showing an increased cost as a result of set-asides were based on a large business firm volunteering a lower bid in a procurement reserved exclusively for small business firms. Under the small business set-aside procedure, as you know, such volunteer bids cannot legally be accepted and the companies submitting them are normally aware of this fact. Therefore, in cases, there may be doubt as to the validity of the alleged increased costs.

Our policies provide that if prior to the award of any contract involving a set-aside for small business the contracting officer con-

siders that the procurement of the set-aside from a small business concern would be detrimental to the public interest because of unreasonable price, the contracting officer may cancel the set-aside and readvertise the requirement obtaining full competition.

Very recently, we had occasion to reject all bids received under a small business set-aside where a large business firm had submitted a bid under the assumption that it was a small firm and where that firm's bid was \$280,000 lower than the next lowest qualified small business firm. After consideration of all the facts, it was determined that even though the large firm's bid was legally nonresponsive and could not be accepted, it would be detrimental to the public interest to award this contract to the lowest small business firm because of the unreasonable contract price. Therefore, all bids have been rejected and the job will be readvertised under full and free competition.

5. Do set-asides result in the Government receiving less than the requisite quality of products and services in contracts with small business firms? All contractors, regardless of size, are required to comply fully with the contract terms and conditions, including the Government's specifications. All prospective contractors being considered for Defense awards (including awards under small business set-asides) must meet the minimum standards for responsible contractors as set forth in the Armed Services Procurement Regulations.

That is, the firm must have adequate financial resources or be able to obtain such resources as required during performance of the contract, be able to comply with the required delivery or performance schedule, have a satisfactory record of performance in previous Government contracts, have a satisfactory record of integrity and, in general, to be otherwise qualified and eligible to receive the award under applicable laws and regulations.

Senator PROXMIRE. Would this include any regulations with regard to wages paid?

Mr. BANNERMAN. Yes, sir.

Senator PROXMIRE. Precisely which regulations?

Mr. BANNERMAN. The construction contracts are required by law to contain provisions that the contractor will comply with the wage rates prescribed under the provisions of Davis-Bacon Act.

These wage rates are established on a going wage scale normal in the locality by the Department of Labor. The Department of Labor interpretations are carried into our contract and are made a part thereof.

Senator PROXMIRE. Also the Fair Labor Standards Act? What I am getting at is that yesterday the representation was made that in some cases time and a half has been paid for overtime by some of the competing contractors.

Mr. BANNERMAN. Senator, I have the impression—but I would like to have the privilege of clarifying this for the record—that the Fair Labor Standards Act is also carried into these contracts. But I am not positive of that. Davis-Bacon I know is.

Senator PROXMIRE. Very good.

Mr. BANNERMAN. Furthermore, the Armed Services Procurement Regulations contains additional standards (over and above the normal minimum standards) for construction contractors. That regulation

requires that construction firms have the necessary organization, experience, and technical skills, and the necessary construction equipment facilities, or the ability to obtain them, in order to be considered a responsible prospective contractor.

Considering the investigations made by our contracting officers to determine the responsibility of each prospective contractor, it is apparent that the Government is taking every reasonable precaution to assure that it will receive supplies or services of the quality contracted for from all firms.

In conclusion, it is our view that—

1. Any increased costs resulting from small business set-asides in construction are not substantial;
2. Set-aside procedures increase small business participation in Government procurement;
3. There is no reason for making a distinction between construction set-asides and set-asides for other types of supplies and equipment;
4. Congress has indicated that it wants the Defense Department to increase the participation of small firms in defense work; and
5. If we are stopped from making construction set-asides it seems likely that there will be a reduction in the small business share of defense work.

Senator PROXMIRE. Let me ask you this then: On this you are saying that in about only one-half of 1 percent of the contracts did you find any real evidence that the set-aside program had cost more than it would have cost if there had been no restriction against larger firms. Is that correct?

Mr. BANNERMAN. Senator, it is my opinion there is no real evidence of any kind even in those cases.

Senator PROXMIRE. In those cases, however, even if you applied the evidence without modifying it for future competition, and so forth, you would have a one-tenth-of-1-percent increase in cost? Is that roughly your conclusion?

Mr. BANNERMAN. No, sir. Let me explain that, if I may.

What I am saying is, when we make a set-aside there is obviously no way of predicting what would have happened if we had not made a set-aside. We do not know who may have bid who did not bid. All we know is that in a few of the cases where we did make set-asides we had volunteer bids from large business firms in one-tenth of 1 percent of the cases, the dollar value of such cases was very small.

Senator PROXMIRE. You just do not know really?

Mr. BANNERMAN. We just do not know. We have no reason for supposing there is a differential involved in construction that differs in any respect from what you get in any other industry.

Senator PROXMIRE. The example you give, however, is a situation in which a small firm was under the impression it was qualified but was not qualified. You do not give the percentage but you give the dollar amount. But it was big enough so you threw out the whole thing and required readvertising.

Mr. BANNERMAN. That is correct, Senator.

Senator PROXMIRE. Why is it not possible this situation might occur quite often, no large firm bids because they know they are not qualified to bid anyway?

Mr. BANNERMAN. I certainly would not say it is impossible, but we do not make set-asides unless we are assured that there is very substantial small business competition, sufficiently substantial so that we are assured of a fair and reasonable price, not necessarily the lowest possible price.

Senator PROXMIRE. Were you present yesterday?

Mr. BANNERMAN. No. Mr. Webb was.

Senator PROXMIRE. Mr. Webb, do you recall the testimony that charged that the set-aside program had cost in some instances as much as 12 percent more?

Mr. WEBB. I do recall that, Senator.

Senator PROXMIRE. What is your response to that?

Mr. WEBB. It is my impression that those statistics assume that had we made set-asides in all cases where both large and small people competed at that time, then the differential would have amounted to 12 percent. It seems rather ephemeral, if I may say, and rather presumptuous to make that assumption.

Our statistics certainly do not show that, and we have made a thorough analysis of 5,000 cases and only found 18 where any possibility existed.

It is my judgment—and I have not had an opportunity to review thoroughly the presentation made by the witness—that the 12 percent did not fairly represent the facts that we have uncovered.

Mr. BANNERMAN. Senator, my understanding of that testimony yesterday—and I have read a little of it—is that that was based upon 107 contracts totaling \$150 million. And these contracts were selected as contracts in which the low bid was a large business firm and that then the differential between that low bid and the lowest small business bid was computed on those contracts and this totaled 12 percent you are talking about.

Obviously, you might have selected 107 other contracts in which the low bidder would have been small business, and if you had measured up to the lowest large business firm you might have arrived at the same differential.

Furthermore, there is the fact it was 107 contracts—

Senator PROXMIRE. I made that point yesterday, except that we do not set aside for large business.

Mr. BANNERMAN. No. That is correct.

Senator PROXMIRE. We only set aside for small business.

Mr. BANNERMAN. That is correct.

Senator PROXMIRE. Therefore, the loss would all be on the side of the set-aside.

Mr. BANNERMAN. Again, this was 107 contracts, totaling \$150 million, which indicates an average contract of something over a million dollars. Our automatic set-aside procedure in the construction business is limited to \$500,000, and the average contract, therefore—I mean all of those contracts—is well below the average of these that we have examined.

Senator PROXMIRE. Do you have any information at all on the charge that the small business contractors tend to be nonunion or less union than the bigger firms?

Mr. BANNERMAN. I do not have any information on that, Senator. I have heard that charge. I have no reason to believe it to be wrong.

I think, however, that if that is true, it would be applicable to the performance of our work by small business contractors regardless of whether we had a set-aside program.

Senator PROXMIRE. Do you find any reflection on the basis of bids that the smaller firms are able to bid less because they pay lower wages?

Mr. BANNERMAN. I do not find that reflection, Senator.

Senator PROXMIRE. You do not?

Mr. BANNERMAN. No, sir. They are all required by our contracts to comply with the Davis-Bacon Act, which requires payment of prevailing wages in the area. I think it is fair to say that the Davis-Bacon wages sometimes do not include certain fringe allowances that are covered by union agreements, and, hence, it may well be—I certainly would not say that it is not true—that Davis-Bacon does not assure payment of wages as high as are covered by union agreement.

Senator PROXMIRE. Ordinarily you would assume that unions would probably be able to do a little better than Davis-Bacon?

Mr. BANNERMAN. I would assume so.

Senator PROXMIRE. All right. Then my final question before I turn it over to Senator Sparkman is: How would you feel about the definition? Have you found the definition is perhaps a little bit restrictive, that maybe it ought to be reconsidered, that \$5 million of gross is too exclusive?

We had a witness yesterday who testified that his firms were between \$5 and \$6 million gross over the last 3 years, average, so he was classed as a large business, and he had been excluded from bidding on a number of contracts.

Mr. BANNERMAN. Of course, individual cases of this sort are bound to happen.

Senator PROXMIRE. No matter where you draw the line.

Mr. BANNERMAN. I was a somewhat secondary party to this study that was made by the SBA several years ago when they went away from the number of employees base, and it is my understanding that the present definition was arrived at only after the most careful study and a rather thoroughgoing economic analysis of the industry.

To answer your first question, we are not finding that there is any shortage of small business construction contractors to compete for the transactions that we put out on the set-aside procedures.

Senator PROXMIRE. Thank you very much.

Senator Sparkman?

Senator SPARKMAN. Mr. Secretary, I have enjoyed your statement. I was not here when you started, but I read it through and listened attentively to the questions and answers. You made a very clear, very fine statement.

Now let me ask you: Do you feel that the set-aside program in the construction and maintenance field is operating satisfactorily?

Mr. BANNERMAN. Yes, sir; I do.

Senator SPARKMAN. That is your own conscientious opinion?

Mr. BANNERMAN. Yes, sir.

Senator SPARKMAN. You have been closely connected with it?

Mr. BANNERMAN. I have been associated with it since it started; yes, sir.

Senator SPARKMAN. On the basis of your experience, you believe it is working well?

Mr. BANNERMAN. I do, indeed.

Senator SPARKMAN. I do not like to push this testimony, but we did have a rather strong statement yesterday to the effect that the people in the Defense Department did not believe in it and that if they were free to speak their own feelings we would get a different story.

From your experience, is that statement justified?

Mr. BANNERMAN. Senator, I think it is fair to say that anybody awarding a contract would prefer, left to his own devices, to have no restrictions of any kind placed upon his method of awarding it.

I think that there is a feeling among the people who are actually awarding construction contracts, rather generally held but not universally, that they would prefer not to make set-asides because it does provide a degree of restriction in the extent of competition.

I think that what I have said to you earlier is that this degree of restriction we are willing to accept as a matter of defense policy to increase the total percentage of awards that are going to small business firms, and I for one certainly see no reason whatsoever for treating construction any differently in this respect than any other industry.

Senator SPARKMAN. Certainly, we understand the feeling that any person would rather take the easy route. That is something that we have discussed time after time in various committee hearings. It is one of the things that we have felt made it necessary for us to have small business programs.

It is always easy in procurement, for instance, much easier, to make a contract with a big company that has been supplying the goods for a long, long time; and it is much easier, I should think, to negotiate a contract than to have to go through all the fields of competitive bidding, and so forth.

Yet, we know Congress throughout the years has stressed competitive bidding and has stressed various restrictions, if you want to call it that, in order to make certain that we get the best results for the money spent.

Mr. BANNERMAN. Senator, I would like to say in complete fairness to the people who make construction contracts in the Department of Defense that they have never had any tendency to overuse the negotiation authority. Quite the contrary. Practically all construction contracts are formally advertised.

It is not their desire to place contracts by negotiation with selected large firms. Their desire is to continue using unrestricted advertising without the restriction involved in a small business set-aside. I do not think that the comment that you made is applicable to our construction people.

Senator SPARKMAN. Yes. You notice I said "procurement."

Mr. BANNERMAN. Yes; I understand.

Senator SPARKMAN. I realize construction is generally done on bidding.

Mr. BANNERMAN. On formal advertising.

Senator SPARKMAN. I had a good bit of experience with this during World War II and just prior to it. I was on the Military Affairs Committee of the House of Representatives, and we had all these can-

tonments we were building over the country and the various military installations. It was a tremendous program, as you recall, of construction.

Mr. BANNERMAN. Yes.

Senator SPARKMAN. That used to be one of the thorns in our side in the Military Affairs Committee. And, of course, there was a great deal of negotiation at that time.

But I think when the war passed and we settled down, we arrived at the point where construction was done primarily by competitive bidding.

But you do feel that the program as it exists today works no hardship and does get good results for the Government— and this while protecting the small business segment of our economy?

Mr. BANNERMAN. I do, indeed. I think we must recognize that a set-aside procedure involves exclusions, and there are firms that are excluded. And if I were in their position, I would be opposed to this program, too. I can understand their opposition. But it seems to me that we are carrying out the intent of Congress by this program.

Senator SPARKMAN. And the directive of the President.

Mr. BANNERMAN. That is correct.

Senator SPARKMAN. That is all, Mr. Chairman.

Thank you.

Senator PROXMIRE. Thank you very much, Mr. Bannerman. It is very fine testimony.

Mr. BANNERMAN. Thank you, sir.

(The following was received for the record:)

(P. 846—Revised insert)

A survey of Corps of Engineers field offices revealed that the following military construction projects were awarded during the period January 1, 1961, through March 31, 1962, under a small business set-aside on which large business bid:

Contract number and award date	Project description, location, and contractor	Bids received		Contract award amount	Remarks
		Amount	Large business Small business		
DA-94-612-ENG-311, Mar. 7, 1962.	AFAC facilities, Hilo, Hawaii: Jas. W. Glover, Ltd.	\$94,931	X	*\$131,036	*Original proposal negotiated downward. Low bidder (\$94,931) certified himself as large business. Bid rejected as nonresponsive.
		133,636	X		
		168,400	X		
DA-15-029-ENG-6123, Feb. 22, 1962.	Improved Nike-Hercules facility, Pittsburgh, Pa.: Missile Sites, Inc.	547,963	X	439,000	
		539,950	X		
		522,847	X		
		477,950	X		
		545,498	X		
		439,000	X		
DA-23-028-ENG-4786, Jan. 18, 1961.	Truck dock, Lake City Arsenal, Archibson, Kans.: Ashbach Construction Co.	249,850	X	249,850	
		276,286	X		
		269,371	X		
		323,847	X		
		314,539	X		
		300,675	X		
		275,343	X		
		280,016	X		
		310,882	X		
		323,020	X		
		336,237	X		
		480,875	X		
		DA-25-066-ENG-6728, Feb. 8, 1962.	Water supply addition, Fortuna Air Force Station, N. Dak.: Kemper Construction Co.		
124,276	X				
DA-25-066-ENG-7012, May 29, 1961.	USAR maintenance shop, Lincoln, Nebr.: Judds Bros. Construction Co.	61,525	X	55,070	
		63,700	X		
		55,070	X		

## CONSTRUCTION SET-ASIDE AMENDMENTS

(P. 846—Revised insert)—Continued

Contract number and award date	Project description, location, and contractor	Bids received			Contract award amount	Remarks
		Amount	Large business	Small business		
DA-25-466-ENG-7022, June 9, 1961.	Weapons support facilities, Pueblo Ordnance Depot, Colo.; Bickley Construction Co.	\$305,362 381,009 310,325 307,838 318,400 318,992 294,722		X X X X X X	\$305,362	Low bidder (\$294,722), a small business, qualified his bid, and was declared nonresponsive.
DA-25-466-ENG-7069, June 30, 1961.	Apron transient, F. E. Warren Air Force Base, Wyo.; Thomasson Concrete Co.	420,237 427,770 411,941	X	X X X	411,941	
DA-64-612-ENG-310, Mar. 8, 1962.	Taxiway, Hickam Air Force Base, Hawaii; C. W. Vincent, Inc.	739,585 955,163 922,893 765,112 1,279,289 1,014,864 983,239	X	X X X X X X X	739,595	
DA-08-123-ENG-3286, May 25, 1961.	Propellant disposal facilities, Patrick Air Force Base, Fla.; Oroandó Welding & Piping Contractors.	634,597 590,602 599,914 635,030		X X X	590,602	
DA-29-405-ENG-2864, July 25, 1961.	Roads, White Sands Missile Range, N. Mex.; Burn Construction Co., Inc.	229,145 239,720 309,108 319,700 484,701	X	X X X X	239,720	SBA determined low bidder (\$229,145) to be large business. Bid rejected as nonresponsive.
DA-41-443-ENG-6034, Feb. 13, 1961.	Hospital, Sheppard Air Force Base, Tex.; Lawless & Allford, Inc.	4,315,816 4,482,255 4,953,939 4,799,174 4,689,153 4,622,118	X	X X X X X	4,482,255	SBA determined low bidder (\$4,315,816) to be large business. Bid rejected as nonresponsive.

DA-01-076-ENG-5089, Feb. 8, 1961.

Aircraft fueling system, Fort Rucker, Ala.: B. B. Saxon, contractor.

50,895			
48,516	X		
54,570	X		
56,745	X		
43,680	X		
38,020	X		38,020
45,782	X		
38,733	X		
54,899	X		
58,300	X		
61,437	X		
40,329	X		
43,778	X		
44,728	X		

DA-01-076-ENG-5099, Feb. 28, 1961.

Air National Guard Building, Jackson, Miss.: Valley Construction Co.

1,164,217	X		
1,156,600	X		
1,140,922	X		
1,097,458	X		
1,130,251	X		
1,041,274	X		
1,062,139	X		
1,127,805	X		
1,140,464	X		
1,120,117	X		
1,025,177	X		1,025,177
1,048,702	X		

DA-01-076-ENG-5127, Mar. 15, 1961.

Transmitter-receiver building, Thomasville, Ala.: George E. Henson, contractor.

79,803	X		
73,203	X		
77,039	X		
77,583	X		
82,425	X		
72,255	X		72,255
74,948	X		
73,485	X		
79,329	X		
72,856	X		

DA-01-076-ENG-5138, Mar. 29, 1961.

Transmitter-receiver building, Eufaula, Ala.: B. B. Saxon, contractor.

103,577	X		
80,868	X		
85,096	X		
88,515	X		
85,693	X		
97,888	X		
111,785	X		85,096

## CONSTRUCTION SET-ASIDE AMENDMENTS

(P. 846—Revised insert)—Continued

Contract number and award date	Project description, location, and contractor	Bids received			Contract award amount	Remarks
		Amount	Large business	Small business		
DA-01-076-ENG-5300, Aug. 8, 1961.	Static test facilities, Redstone Arsenal, Ala.: S & E Contractors, Inc.	\$524,794		X	\$564,766	Low bid (\$524,794), a small business, was rejected as being nonresponsive contractor. 2d low bid (\$539,092) subsequently determined itself to be large business. Bid rejected as nonresponsive.
		665,482		X		
		564,766	X	X		
		539,092	X	X		
DA-01-076-ENG-5315, Sept. 15, 1961.	Power line, Eufaula, Ala.: Andy Electric Co.-----	17,600		X	12,947	
		14,981		X		
		12,947		X		
		13,654		X		
		14,274	X	X		
		15,800		X		
		13,473		X		
		15,725		X		
		14,896		X		
		13,990		X		
		17,490		X		
		21,139		X		
		15,000		X		
17,232		X				
19,705		X				
DA-11-082-ENG-8771, Feb. 15, 1962.	Addition to Fort Snelling National Cemetery, Minneapolis, Minn.: The Jacobsen Co.	341,800		X	311,162	SBA determined the low bidder (\$302,431) to be large business. Bid rejected as nonresponsive. ! Not indicated.
		330,143		X		
		343,871		X		
		311,162	(1)	(1)		
		365,876		X		
		388,476		X		
		405,681		X		
		332,633		X		
		361,444		X		
		355,812		X		
		311,895		X		
		360,065		X		
		321,198		X		
302,431	X	X				
341,704		X				



(P. 857—Revised insert)

A survey of Corps of Engineers field offices revealed that the following military construction projects were awarded during the period January 1, 1961, through March 31, 1962, under a small business set-aside where the small business contractor subcontracted a portion of the job to large business firms:

Contract number and award date	Project description and location	Prime contract		Subcontracting to large business as of Mar. 31, 1962	
		Amount	Percent complete	Amount	Description
DA-08-123-ENG-3243, Mar. 2, 1961.	Sewage treatment plant alterations, Patrick Air Force Base, Fla.-----	\$220, 721	100.0	\$12, 582	Miscellaneous materials and anchor bolts.
DA-08-123-ENG-3255, Mar. 23, 1961.	Army Reserve center and maintenance shop, Tampa, Fla.-----	338, 395	100.0	3, 040 10, 516 5, 720 3, 780	Install acoustical tile. Structural steel and metal fabrication. Clearing, grubbing, and paving. Install overhead doors.
DA-08-123-ENG-3273, Apr. 28, 1961.	ACW shelter and ammunition building, Ineson Airport, Jacksonville, Fla.-----	199, 245	100.0	1, 000	Roof decking cast in place.
DA-08-123-ENG-3274, May 3, 1961.	G/A transmitter-receiver SAGE facilities, Patrick Air Force Base, Fla.-----	93, 639	100.0	8, 200 11, 700 4, 500	Prefabricated metal structures. Clearing, grubbing, and paving. Roof deck and sheet-metal work.
DA-08-123-ENG-3275, May 14, 1961.	Supply building, Marco Island site, Naples, Fla.-----	56, 908	100.0	1, 845 12, 500	Gypsum roof deck. Concrete foundation pile.
DA-08-123-ENG-3278, May 15, 1961.	Army Reserve center and maintenance shop, Miami, Fla.-----	459, 000	99.0	4, 000	Gypsum roof deck.
DA-08-123-ENG-3282, May 22, 1961.	Army Reserve center and maintenance shop, Palatka, Fla.-----	116, 200	100.0	3, 000 7, 050	Acoustical work. Glass and glazing. Roofing and sheet-metal work.
DA-08-123-ENG-3310, June 27, 1961.	Homestead Air Force Base, Fla., SAGE building.-----	95, 589	100.0	1, 295	Gypsum roof decking.
DA-08-123-ENG-3313, June 29, 1961.	Alterations to hangar, Patrick Air Force Base, Fla.-----	59, 308	100.0	8, 808 8, 550 20, 000	Fences and gates. Roofing and sheet-metal work. Air conditioning.
DA-08-123-ENG-3316, June 30, 1961.	Safe facilities, Jacksonville, Fla.-----	91, 589	100.0	1, 875	Waterproofing and sheetmetal.
DA-08-123-ENG-3360, Sept. 12, 1961.	Minuteman facilities, Patrick Air Force Base, Fla.-----	88, 551	100.0	2, 100 24, 228	Roof deck Site preparation and pavement.
DA-08-123-ENG-3377, Oct. 12, 1961.	Mothballing ship motion simulator, Patrick Air Force Base, Fla.-----	64, 800	100.0	3, 025 5, 070	Roof and waterproofing. Road repair and grading.
DA-08-123-ENG-3600, Dec. 21, 1961.	Operations (GEELA) Building, Patrick Air Force Base, Fla.-----	118, 840	75.0	19, 000	Site preparation and pavement.
DA-08-123-ENG-3643, Dec. 22, 1961.	Guided missile support structures, Patrick Air Force Base, Fla.-----	755, 000	33.0	6, 200 46, 087 14, 555	Roofing and sheetmetal work. Site preparation and drainage. Roofing and sheetmetal work.
DA-08-123-ENG-3646, Dec. 27, 1961.	Army Reserve center and maintenance shop, Fort Lauderdale, Fla.---	248, 402	26.0	1, 800	Roof decking.

DA-08-123-ENG-3784, Jan. 19, 1962.	Radar station (AN/FPQ-6), Patrick Air Force Base, Fla.-----	154,266	30.0	8,100	Site preparation and pavement.
DA-8-123-ENG-3899, Feb. 6, 1962.	Mark VI checkout building, Patrick Air Force Base, Fla.-----	115,458	38.0	12,500	Do.
DA-08-123-ENG-3940, Feb. 8, 1962.	Air conditioning dormitories, Homestead Air Force Base, Fla.-----	217,449	5.0	10,700	Temperature and humidity control system.
DA-08-123-ENG-4206, Mar. 12, 1962.	Cable terminal building, addition, Patrick Air Force Base, Fla.-----	266,274	0	4,206	Gypsum roof decking.
DA-01-076-ENG-5173, June 16, 1961.	Laboratory and maintenance shop, Arnold Engineering Development Center, Tenn.-----	249,700	100.0	75	Glass and glazing.
DA-01-076-ENG-5087, Jan. 30, 1961.	Ammunition magazine, Fort McClellan, Ala.-----	54,594	100.0	2,000	Chain link fence.
DA-01-076-ENG-5096, Feb. 23, 1961.	Hipar training facilities, Redstone Arsenal, Ala.-----	196,241	100.0	3,100	Do.
DA-01-076-ENG-5099, Feb. 28, 1961.	Air National Guard Bldg., Jackson, Miss.-----	1,025,177	50.0	37,634	Excavation and paving.
DA-01-076-ENG-5149, Apr. 28, 1961.	Training building, Keesler Air Force Base, Miss.-----	1,445,131	52.0	2,735	Aluminum doors, glass, and glazing.
DA-01-076-ENG-5182, June 28, 1961.	Maintenance shop, Columbus Air Force Base, Miss.-----	264,477	73.0	2,000	Sprinkler system.
DA-01-076-ENG-5183, June 28, 1961.	Officers' quarters, Columbus Air Force Base, Miss.-----	188,363	68.0	4,420	Paving.
DA-01-076-ENG-5375, Jan. 23, 1962.	Chapel, Keesler Air Force Base, Miss.-----	381,965	10.0	9,500	Doors, glass, and glazing.
DA-01-076-ENG-5442, Jan. 31, 1962.	Army Reserve Center, Gulfport, Miss.-----	237,695	8.0	2,816	Lockers and shelving.
DA-01-076-ENG-5495, Mar. 7, 1962.	Photographic facilities, Memphis General Depot.-----	42,950	1.0	2,000	Sprinkler system.
DA-25-028-ENG-4819, Feb. 23, 1961.	Runway and approach lighting, Whiteman Air Force Base, Mo.-----	502,579	100.0	250,000	Grading and paving.
DA-25-028-ENG-5076, Sept. 28, 1961.	Offsite utilities, Capehart housing, Fort Leonard Wood, Mo.-----	914,070	51.0	830	Fencing.
DA-25-066-ENG-5313, Mar. 9, 1962.	Communication center addition, Fort Leavenworth, Kans.-----	407,357	2.0	182,000	Air conditioning.
DA-25-066-ENG-6686, Jan. 3, 1961.	Water supply and storage, Ofutt, Air Force Base, Nebr.-----	287,316	100.0	153,000	Mechanical work.
DA-25-066-ENG-6687, Jan. 4, 1961.	Transmitter building (SAGE), Pickstown, S. Dak.-----	103,000	100.0	5,100	Fencing.
DA-25-066-ENG-6691, Jan. 9, 1961.	Telephone duet facilities, Grand Forks Air Force Base, N. Dak.-----	29,150	100.0	1,890	Replace rigid pavement.
DA-25-066-ENG-6750, Feb. 23, 1961.	Shop armament (SAC), Grand Forks Air Force Base, N. Dak.-----	107,957	100.0	440	Replace pavement flexible.
DA-25-066-ENG-6793, Mar. 10, 1961.	Operations training (SAC), Grand Forks Air Force Base, N. Dak.-----	78,550	100.0	21,500	Utilities.
DA-25-066-ENG-6806, Mar. 17, 1961.	Nike-Hercules HIPAR, Ofutt Air Force Base, Nebr.-----	225,488	100.0	26,900	Excavating, 9-inch concrete surfacing.
				21,500	Curb and gutter.
				15,700	Utilities and seeding.
				19,640	Remove and replace pipe.
				90,200	Mechanical work.

(P. 857—Revised insert)—Continued

Contract number and award date	Project description and location	Prime contract		Subcontracting to large business as of Mar. 31, 1962	
		Amount	Percent complete	Amount	Description
DA-25-066-EN-G-6833, Apr. 14, 1961.	IE facilities, Grand Forks Air Force Base, N. Dak.	\$195,150	100.0	\$8,600	Roads and utilities.
DA-25-066-EN-G-6836, Apr. 20, 1961.	SAC missile facilities, Ellsworth Air Force Base, S. Dak.	404,714	100.0	21,000	Excavation and pavement.
DA-25-066-EN-G-6860, Apr. 28, 1961.	Army Reserve facilities, Mount Pleasant, Iowa.	157,406	100.0	1,100	Suburbs and sidewalks.
DA-25-066-EN-G-6886, May 3, 1961.	Maintenance shop (SAC), Grand Forks Air Force Base, N. Dak.	239,497	100.0	105,000	Grading.
DA-25-066-EN-G-7013, June 2, 1961.	Equipment laboratory, Grand Forks Air Force Base, N. Dak.	49,196	100.0	5,000	Fencing.
DA-25-066-EN-G-7024, June 6, 1961.	Special weapons facilities, Pueblo depot, Colorado.	305,382	100.0	4,100	Flexible paving.
DA-25-066-EN-G-7048, June 8, 1961.	Equipment laboratory, Minot Air Force Base, N. Dak.	65,161	100.0	14,600	Waterline, gutters, and sidewalk.
DA-25-066-EN-G-7460, Nov. 3, 1961.	SAC missile facilities, Grand Forks Air Force Base, N. Dak.	40,450	69.7	3,000	Sprinkler system.
DA-25-066-EN-G-7656, Nov. 21, 1961.	Operations base, Minot Air Force Base, N. Dak.	96,150	5.8	9,500	Excavating and grading.
DA-25-066-EN-G-7715, Dec. 22, 1961.	Service club, Ellsworth Air Force Base, S. Dak.	406,000	1.3	14,700	Trenching and waterlines.
DA-25-066-EN-G-8190, Feb. 2, 1962.	Dev. Black Hills National Cemetery, Sturgis, S. Dak.	67,950	0	5,448	Sprinkler system.
DA-44-110-EN-G-5102, June 5, 1961.	U.S. Army Reserve Center, Petersburg, Va.	427,518	67.0	33,600	Excavation and waterlines.
DA-44-110-EN-G-5108, June 30, 1961.	Enlisted men's barracks, Fort Eustis, Va.	227,771	68.0	16,180	Pavement and seeding.
DA-44-110-EN-G-5199, Nov. 28, 1961.	Repair shop and facilities, Fort Belvoir, Va.	404,062	12.7	26,800	Roads and sidewalks.
DA-44-110-EN-G-5210, Dec. 28, 1961.	Conversion warehouse No. 32, Chesterfield County, Va.	419,685	50.0	48,000	Grading.
DA-18-020-EN-G-1581, Dec. 19, 1961.	Airfield facilities, Fort Meade, Md.	388,000	5.0	81,200	Grading and utilities.
DA-49-080-EN-G-5328, Apr. 12, 1961.	Construction of roads, Andrews Air Force Base, Md.	429,768	100.0	13,500	Grading.
				1,550	Fencing.
				1,514	Fencing.
				5,552	Asphalt paving.
				5,000	Fencing.
				5,300	Temperature controls.
				9,300	Sprinkler system.
				2,500	Chain link fence.



Item No.	Description	100.0	215,259	100.0	9,500	Do.
DA-49-080-ENG-5325, Mar. 31, 1961.	Approach lighting, Andrews Air Force Base, Md.	99.0	419,761	99.0	40,000	Electrical work.
DA-49-080-ENG-5326, Apr. 13, 1961.	Dining hall, Andrews Air Force Base, Md.	22.0	284,409	22.0	6,075	Paving.
DA-94-612-ENG-304, Jan. 24, 1962.	ANG missile storage facilities, Hickam Air Force Base, Hawaii	9.0	739,595	9.0	153,739	Do.
DA-94-612-ENG-310, Mar. 8, 1962.	Taxiway 11, Hickam Air Force Base, Oahu, Hawaii	5.0	2,286,330	5.0	172,000	Insulation of piping.
DA-15-029-ENG-6096, Dec. 28, 1961.	Central heating plant, Columbus General Depot, Ohio	30.0	43,650	30.0	15,000	Installing insulation.
DA-15-029-ENG-6097, Dec. 29, 1961.	Cold storage building, Wright-Patterson Air Force Base, Ohio	90.0	208,547	90.0	67,656	Paving and sidewalks.
DA-15-029-ENG-6094, May 19, 1961.	Supporting facilities, Capehart housing, Fort Knox, Ky	100.0	95,800	100.0	1,200	Fencing.
DA-36-068-ENG-5103, May 24, 1961.	Sewage treatment plant, Oakdale, Pa.	99.0	157,270	99.0	1,400	Do.
DA-36-068-ENG-4077, 1961.	Army Reserve Center, Painesville, Ohio	2,100	29,136	100.0	2,913	Steel roofing.
DA-45-108-ENG-5524, Jan. 26, 1961.	Modifications to operations building, Kalispell Air Force Station, Mont.	100.0	108,355	100.0	10,800	Air conditioning.
DA-45-108-ENG-5524, Feb. 8, 1961.	Security facilities, Umatilla Ordnance Depot, Ore.	100.0	29,019	100.0	2,850	Fencing.
DA-45-108-ENG-5618, Feb. 24, 1961.	Fueling station, Glasgow Air Force Base, Mont.	100.0	196,799	100.0	3,200	Grading and paving.
DA-45-108-ENG-5622, Feb. 24, 1961.	AN/FPS-7 radar tower, Othello Air Force Station, Wash.	100.0	31,525	100.0	1,800	Fencing.
DA-45-108-ENG-5541, Mar. 9, 1961.	Modifications to operations building, Cut Bank Air Force Station, Mont.	100.0	50,909	100.0	3,800	Air-conditioning controls.
DA-45-108-ENG-5581, Feb. 10, 1961.	Equipment shed, Glasgow Air Force Base, Mont.	100.0	21,003	100.0	2,100	Grading and paving.
DA-45-108-ENG-5634, Mar. 9, 1961.	Modifications to operations building, Blaine Air Force Station, Wash.	98.0	215,000	98.0	2,700	Air-conditioning controls.
DA-45-108-ENG-5642, Mar. 14, 1961.	FPS-26 radar tower, Fort Lawton, Wash.	100.0	16,995	100.0	36,000	Fencing.
DA-45-108-ENG-5736, Apr. 23, 1961.	Access road, Glasgow Air Force Base, Mont.	100.0	94,276	100.0	15,800	Structural steel.
DA-45-108-ENG-5697, Mar. 9, 1961.	AACS building, Glasgow Air Force Base, Mont.	100.0	118,367	100.0	24,000	Grading and paving.
DA-45-108-ENG-5673, Mar. 20, 1961.	IE maintenance shop, Glasgow Air Force Base, Mont.	100.0	100,132	100.0	2,560	Paving and grading.
DA-45-108-ENG-5677, Mar. 20, 1961.	Guided missile assembly building, Fairchild Air Force Base, Wash.	100.0	223,260	100.0	1,800	Sprinkler system.
DA-45-108-ENG-5683, Mar. 29, 1961.	FPS-26 radar tower, Mount Hebo Air Force Station, Ore.	100.0	223,676	100.0	3,200	Heating controls.
DA-45-108-ENG-5689, Mar. 30, 1961.	AN/FP-26 radar tower, North Bend Air Force Station, Ore.	100.0	100,530	100.0	4,100	Do.
DA-45-108-ENG-5700, Apr. 7, 1961.	Storage base AV fuel, Glasgow Air Force Base, Mont.	100.0		100.0	4,100	Air conditioning.
		100.0		100.0	12,800	Fencing.
						Grading and paving.

(P. 857—Revised insert)—Continued

Contract number and award date	Project description and location	Prime contract		Subcontracting to large business as of Mar. 31, 1962	
		Amount	Percent complete	Amount	Description
DA-45-108-ENG-5732, Apr. 28, 1961.	Laboratory building, Glasgow Air Force Base, Mont.....	\$68,137	100.0	{ \$7,500 1,800	{ Grading and concrete. Air conditioning.
DA-45-108-ENG-5735, Apr. 28, 1961.	Transmitter building, North Bend Air Force Station, Oreg.....	179,882	100.0	4,000	Fencing.
DA-45-108-ENG-5756, May 19, 1961.	GAM-77 facilities, Fairchild Air Force Base, Wash.....	409,732	99.0	{ 11,500 17,000	{ Gypsum roof. Sprinkler system.
DA-45-108-ENG-5757, May 19, 1961.	Aircraft fuel storage, Fort Lewis, Wash.....	61,954	100.0	2,200	Steel fencing.
DA-45-108-ENG-5761, May 26, 1961.	U.S. Army Reserve Center, KallsPELL, Mont.....	131,500	87.0	3,100	Do.
DA-45-108-ENG-5763, June 2, 1961.	Improve Nike-Hercules, KingstON, Wash.....	183,284	88.0	1,700	Reinforcing steel.
DA-45-108-ENG-5775, June 6, 1961.	Airmen dormitory, Baker Air Force Station, Oreg.....	54,517	90.0	1,500	Fencing.
DA-45-108-ENG-5781, June 27, 1961.	Armament and electric shop, Spokane International Airport, Wash.....	213,911	98.0	{ 1,840 5,600	{ Do. Movable partitions.
DA-45-108-ENG-5782, June 27, 1961.	Gymnasium, Paine Field, Wash.....	213,354	95.0	{ 2,800 3,400	{ Reinforcing steel. Control equipment.
DA-45-108-ENG-5788, June 20, 1961.	Aircraft repair shop, Glasgow Air Force Base, Mont.....	246,035	99.0	{ 18,500 4,800	{ Grading and paving. Sprinkler system.
DA-45-108-ENG-5789, June 27, 1961.	Water storage, McChord Air Force Base, Wash.....	126,944	100.0	580	Steel fence.
DA-45-108-ENG-5792, June 27, 1961.	Aircraft weapons shelter, McChord Air Force Base, Wash.....	119,815	100.0	3,700	Steel fencing.
DA-45-108-ENG-5793, June 23, 1961.	FFS-26 radar tower, NaeSelle Air Force Station, Wash.....	284,150	80.0	4,690	Heating controls.
DA-45-108-ENG-6175, July 24, 1961.	Equipment shop, Paine Field, Wash.....	101,449	100.0	{ 1,600 7,500	{ Reinforcing steel. Roof beams.
DA-45-108-ENG-6204, Sept. 5, 1961.	Laboratory equipment building, Paine Field, Wash.....	52,440	100.0	750	Reinforcing steel.
DA-45-108-ENG-6450, Jan. 25, 1962.	Water treatment plant modifications, Glasgow Air Force Base, Mont.....	15,500	15.0	5,400	System controls.
DA-11-632-ENG-8648, Jan. 18, 1961.	ICBM facilities, Chanute Air Force Base, Ill.....	222,280	100.0	6,220	Fencing.
DA-11-632-ENG-8649, Jan. 26, 1961.	Nike-Hercules without HIPAR, site C-41 and C-61.....	152,588	100.0	600	Do.

DA-11-032-ENG-8650, Jan. 28, 1961	Nike-Hercules without HIPAR, site M-74.	53,768	100.0	800	Do.
DA-11-032-ENG-8665, Mar. 10, 1961	ARTC, Beloit, Wis.	137,076	100.0	2,364	Do.
DA-11-032-ENG-8670, Mar. 22, 1961	GATR facility, Truxax Air Force Base, Wis.	69,900	100.0	7,185	Do.
DA-11-032-ENG-8671, Mar. 22, 1961	Nike-Hercules with HIPAR, site C-72	214,340	98.0	11,465	Do.
DA-11-032-ENG-8676, Mar. 31, 1961	Sewage improvement, Artigo, Wis.	68,500	100.0	1,530	Do.
DA-11-032-ENG-8687, Apr. 28, 1961	ARTC, Aurora, Ill.	332,980	67.0	1,966	Glass and glazing.
DA-11-032-ENG-8702, June 6, 1961	Nike-Hercules with HIPAR, site C-49	229,329	97.0	6,605	Fencing.
DA-11-032-ENG-8703, June 8, 1961	ARTC, Galesburg, Ill.	164,656	76.0	3,243	Do.
DA-11-032-ENG-8711, June 28, 1961	ARTC, Milwaukee, Wis.	553,372	82.0	4,200	Do.
DA-11-032-ENG-8719, July 19, 1961	Nike-Hercules Imp. site C-93.	228,400	99.0	6,000	Do.
DA-95-507-ENG-1530, Mar. 7, 1962	Fire protection, Clear Air Force Station, Alaska.	21,006	100.0	18,486	Sprinkler system.
DA-95-507-ENG-1575, June 23, 1961	Modification to administration building, Elmendorf Air Force Base, Alaska.	2,771	100.0	2,271	Floor tile.
DA-95-507-ENG-1578, June 28, 1961	Ventilation modification to building, Oblson Mountain, Alaska.	32,985	100.0	3,735	Ventilator controls.
DA-29-005-ENG-2781, Feb. 27, 1961	Water supply storage, Holloman Air Force Base, N. Mex.	163,415	100.0	598	Paving.
DA-29-005-ENG-2825, May 4, 1961	Emergency powerplant, Sac Peak, N. Mex.	43,939	95.0	1,371	Paving and grading.
DA-29-005-ENG-3132, Nov. 21, 1961	Water storage, Fort Bliss, Tex.	78,485	94.0	53,000	Steel tank.
DA-34-000-ENG-6064, Apr. 25, 1961	Training building, Amarillo Air Force Base, Tex.	117,678	100.0	3,902	Excavation.
DA-03-050-ENG-3950, May 29, 1961	Building and maintenance shop, Blytheville Air Force Base, Ark.	236,623	90.0	15,000	Sprinkler system.
DA-41-243-ENG-4424, Mar. 30, 1961	Sam Gam facility, Bergstrom Air Force Base, Tex.	494,254	99.0	3,000	Equipment controls.
DA-41-443-ENG-6352, Nov. 17, 1961	Storage buildings, Fort Hood, Tex.	97,310	12.0	781	Fencing.
DA-41-443-ENG-6365, Nov. 24, 1961	Improvement to Nike-Hercules facility, Dallas-Fort Worth, Tex.	13,237	100.0	437	Do.
DA-41-243-ENG-4441, Apr. 26, 1961	School, Brooks Air Force Base, Tex.	5,479,107	44.0	500,000	Metal pan form work.
DA-41-443-ENG-6060, Mar. 17, 1961	High altitude building, Perrin Air Force Base, Tex.	138,951	100.0	1,000	Equipment controls.
DA-41-443-ENG-6373, Nov. 30, 1961	Enlisted men's barracks, Fort Hood, Tex.	1,439,999	9.0	2,500	Do.
DA-41-443-ENG-6375, Nov. 30, 1961	U.S. Army Reserve Center, Lafayette, La.	136,894	40.0	1,820	Fencing.

## CONSTRUCTION SET-ASIDE AMENDMENTS

(P. 857—Revised insert)—Continued

Contract number and award date	Project description and location	Prime contract		Subcontracting to large business as of Mar. 31, 1962	
		Amount	Percent complete	Amount	Description
DA-41-443-ENG-6501, Feb. 16, 1962.	Supply-warehouse, Carswell Air Force Base, Tex.	\$166,265	6.0	\$630	Fencing.
DA-41-443-ENG-6491, Feb. 16, 1962.	Training building, Carswell Air Force Base, Tex.	265,863	5.0	2,217	Paving.
DA-41-443-ENG-6544, Mar. 21, 1962.	Army Reserve Training Center, Pasadena, Tex.	281,167	1.0	7,172	Do.
DA-41-443-ENG-6024, Feb. 13, 1961.	Hospital and facilities, Sheppard Air Force Base, Tex.	4,482,255	49.0	2,010	Fencing.
DA-04-167-ENG-2223, Feb. 20, 1961.	Operations building, Mather Air Force Base, Calif.	78,993	100.0	60,000	Insulation of piping.
DA-04-167-ENG-2233, Mar. 9, 1961.	Calibration Laboratory, McClellan Air Force Base, Calif.	323,123	100.0	20,000	Pneumatic tube system.
DA-04-167-ENG-2234, Mar. 13, 1961.	Test stand, jet, Beale Air Force Base, Calif.	21,990	100.0	50,000	Air conditioning.
DA-04-167-ENG-2264, May 26, 1961.	Alcohol storage blending system, Travis Air Force Base, Calif.	99,528	100.0	9,752	Paving.
DA-04-167-ENG-2264, Aug. 24, 1961.	Sewage facilities, Fort Ord, Calif.	63,617	100.0	51,826	Sitework.
DA-04-167-ENG-2266, Aug. 28, 1961.	Equipment shop, Mather Air Force Base, Calif.	382,470	91.0	3,200	Concrete slab work.
DA-04-167-ENG-2267, Aug. 28, 1961.	Test stand, jet, Mather Air Force Base, Calif.	35,709	100.0	8,000	Sitework.
DA-04-167-ENG-2281, Nov. 3, 1961.	Offsite facilities, Capehart housing, Fort Ord, Calif.	203,750	85.0	3,502	Earthwork.
DA-04-167-ENG-2473, Nov. 28, 1961.	Improvements (miscellaneous), SAC missile facilities, Beale, Mather, and Travis Air Force Bases, Calif.	121,748	95.0	39,000	Grading and paving.
DA-04-167-ENG-2488, Dec. 29, 1961.	Storage base AV gas, McClellan Air Force Base, Calif.	145,862	25.0	11,659	Do.
DA-04-167-ENG-2492, Jan. 9, 1962.	Q.M. petroleum laboratory facilities, Sharpe General Depot, Calif.	177,476	15.0	7,550	Fencing.
DA-04-167-ENG-2498, Jan. 25, 1962.	Aircraft parts building, Fort Ord, Calif.	290,970	8.0	5,598	Access road.
DA-04-167-ENG-2508, Feb. 26, 1962.	Radar facilities, McClellan Air Force Base, Calif.	308,518	1.0	36,000	Paving and grading.
DA-04-167-ENG-2509, Feb. 27, 1962.	Shop, Hamilton Air Force Base, Calif.	136,493	1.0	4,700	Grading and paving.
DA-04-167-ENG-2545, Feb. 21, 1962.	Waste treatment facilities, Sharpe General Depot, Calif.	153,700	0	1,833	Reinforcing steel.
				110,490	Paving and excavation.
				62,090	Structural steel.
				20,226	Grading and paving.
				130,500	Mechanical and electrical.
				1,620	Piling.
				13,000	Electrical.

D A-04-203-EN G-5964, Feb. 10, 1961.	Unit operations building, Fort Ord, Calif.....	117, 440	100. 0	{ 19, 965	Excavation and paving.
D A-04-203-EN G-6053, May 16, 1961.	Capehart repairs, Fort Ord, Calif.....	10, 122	100. 0	{ 11, 509	Electrical.
D A-04-203-EN G-6053, May 18, 1961.	Sewer system repair, Fort Ord, Calif.....	14, 612	100. 0	{ 3, 875	Complete job.
D A-04-203-EN G-6058, May 23, 1961.	ACW shelter addition, Hamilton Air Force Base, Calif.....	35, 000	100. 0	{ 1, 500	Excavation and paving.
D A-19-016-EN G-7106, Feb. 10, 1961.	Metallurgy facilities, Watertown Arsenal, Mass.....	249, 926	99. 0	{ 800	Piling.
D A-19-016-EN G-7113, Mar. 27, 1961.	Radar facilities, Truro Air Force Station, Mass.....	204, 899	100. 0	{ 2, 900	Fencing.
D A-19-016-EN G-7115, May 22, 1961.	Runway extensions, Barnes Airport, Westfield, Mass.....	597, 718	94	{ 216, 000	Do.
D A-19-016-EN G-7118, June 22, 1961.	Reactor laboratory, Watertown Arsenal, Mass.....	1, 835, 480	63	{ 95, 986	Paving.
D A-19-016-EN G-7151, Jan. 27, 1961.	Repair shop additional, Dow Air Force Base, Maine.....	222, 198	99. 0	{ 16, 013	Electrical.
D A-19-016-EN G-7153, Jan. 27, 1961.	Airfield lighting, Dow Air Force Base, Maine.....	78, 987	100. 0	{ 37, 800	Acoustical.
D A-19-016-EN G-7154, Feb. 7, 1961.	FD radar facilities, St. Albans Air Force Station, Vt.....	191, 998	99. 0	{ 13, 700	Floor and roof decking.
D A-19-016-EN G-7155, Feb. 13, 1961.	Air-conditioning shops, Dow and Loring Air Force Base, Maine.....	111, 846	100. 0	{ 1, 625	Structural steel.
D A-19-016-EN G-7158, Mar. 6, 1961.	Addition and alteration to buildings, Dow Air Force Base, Maine.....	195, 785	99. 0	{ 2, 300	Do.
D A-19-016-EN G-7162, Mar. 30, 1961.	Fire station, Topsham Air Force Station, Maine.....	69, 701	95. 0	{ 4, 650	Fencing.
D A-19-016-EN G-7164, Mar. 31, 1961.	Warehouse addition, Dow Air Force Base, Maine.....	270, 800	100. 0	{ 10, 200	Pavement.
D A-19-016-EN G-7169, May 28, 1961.	Modification of building, Watertown Arsenal, Mass.....	442, 500	73. 0	{ 1, 000	Automatic controls.
D A-19-016-EN G-7246, July 25, 1961.	Physics laboratory, Hanscom Air Force Base, Mass.....	636, 150	23. 0	{ 2, 900	Paving.
D A-19-016-EN G-7382, Aug. 14, 1961.	Modification of building, New Boston, N.H.....	327, 856	41. 0	{ 4, 650	Steelwork.
D A-19-016-EN G-7384, Aug. 16, 1961.	FD radar facility, New Concord Air Force Station, Vt.....	353, 000	7. 0	{ 2, 950	Sash.
D A-19-016-EN G-7389, Aug. 31, 1961.	Equipment shop, Otis Air Force Base, Mass.....	140, 869	44. 0	{ 10, 000	Steelwork.
D A-19-016-EN G-7397, Sept. 20, 1961.	Parking areas, Fort Heath, Mass.....	14, 700	95. 0	{ 7, 000	Sprinklers.
D A-19-016-EN G-7402, Oct. 2, 1961.	Addition to ordnance shop, Otis Air Force Base, Mass.....	16, 961	90. 0	{ 1, 050	Fencing.
				{ 9, 600	Concrete work.

Senator PROXMIRE. I would like to make this announcement before we call the next witnesses.

Yesterday we had three very fine witnesses—Congressman Phil Weaver, Mr. Paul Askew, and Mr. William McCarter—who all testified unanimously against the set-aside program and for the bill, S. 3096. Our first witness this morning consumed about 25 minutes. Mr. Bannerman testified for the bill.

I do not want to be arbitrary, but I think that in fairness to the witnesses we are going to have to cut the testimony pretty sharply.

I am going to make this suggestion. I see that the first witness we have has very brief testimony. We are going to try to limit the testimony to 10 minutes apiece. It is the only way that we can make sure that everybody who is here this morning has a chance to appear this morning and will not have to come back another week and will not be excluded, which I think would be very unfortunate and very unfair.

So with that in mind I call Mr. C. J. Haggerty, president of the Building & Construction Trades Department, AFL-CIO.

Mr. Haggerty, we are very happy to have you here. I see you have a good concise statement. You go right ahead.

**STATEMENT OF C. J. HAGGERTY, PRESIDENT, BUILDING &  
CONSTRUCTION TRADES DEPARTMENT, AFL-CIO**

Mr. HAGGERTY. The statement is quite short.

Mr. Chairman, members of the committee, my name is C. J. Haggerty. I am president of the Building & Construction Trades Department, AFL-CIO. The department is composed of 18 international unions engaged in the building and construction industry and represents 3½ million skilled construction workers throughout the 50 States.

On behalf of the department, I wish to express our appreciation for the opportunity to appear before this committee to present our views on S. 3096, introduced by Senator Williams of New Jersey.

Let me say at the outset that we wholeheartedly endorse the principles set forth in the Small Business Act insuring that a "fair proportion" of Government contracts are let to small businessmen "in order to preserve free competitive enterprise."

We feel that the adoption of S. 3096, excluding Federal construction, maintenance, and repair from the set-aside program under the Small Business Act, would not only preserve but foster free competitive enterprise.

We further feel that the current set-aside program in the construction industry is based on a misconception of the particular facts, circumstances, customs, and practices of the industry.

The building and construction industry is the largest industry in this country, both in dollar volume and in number of individual employers. Individual firms range in size from the single contractor with one or two helpers to multidivision companies employing thousands of persons in all categories necessary to plan, design, erect, and maintain the complex buildings, highways, bridges, tunnels, factories, refineries, dams, and so forth which we see being built throughout our country today.

However, 90 percent of the firms in this industry today fall in the category of "small" as defined by the Small Business Administration.

Further, no firm or firms dominate this highly competitive industry. In fact, for some of the bigger construction undertakings some of the largest firms have had to combine into what is known as a joint venture in order to undertake and underwrite completion of a contemplated job—such as Grand Coulee or, at present, Malstrom Minute-man installation in Montana.

This latter jobsite is geographically an area almost equal to the combined size of Massachusetts, Connecticut, Rhode Island, New Jersey, and Delaware, or actually 158 miles from east to west, and 108 miles from north to south.

I mention this to point out that because of complex modern construction requirements we must have large concerns with the experience to undertake and complete on schedule, but again want to emphasize that the large firms constitute only a small percentage of the total.

In the building and construction industry it is the custom and practice for those firms undertaking large or small jobs to subcontract out to smaller and specialty firms much of their work.

For example, on heavy construction, prime contractors subcontract out about one-third of their work. On building construction, approximately 50 percent is subcontracted. Even a small homebuilder will subcontract various phases such as electrical, plumbing, lathing, plastering, and painting to small firms.

By custom, practice, and practical economic considerations the small firms have always received a fair share, including that of Government construction. For example, during a recent 5-month period, of 827 contracts in amounts of \$500,000 and under awarded by the Corps of Engineers, 763 went to small firms under Small Business Administration definition, even though only 447 were set aside by the Small Business Administration.

We feel there is a basic and vast difference in the method the Government should use in procuring a manufactured component part or piece of equipment and in the method to be used in obtaining a constructed facility.

Federal construction contracts should be awarded on the basis of free and open competition to the lowest responsible bidder. By "responsible" we mean the ability to undertake and complete on schedule the construction called for in the contract. Under such a policy every contractor would be guaranteed an opportunity to bid. There would be no penalty placed on efficiency or competence.

There would be no opportunity for bid peddling with the Small Business Administration certified contractor or an unqualified contractor selling his low bid to a large firm with an unjustified profit from paperwork. Nor would the small contractor who bids on and gets a large Federal work project be barred from bidding again on smaller Federal construction projects until after he was small again for 3 years.

All contractors started as small contractors. Some became big contractors by ingenuity, resourcefulness, pioneering in new methods, willingness to take a risk, and some because of a burning desire to build something never before undertaken. Continuation of the set-aside

program would, in our opinion, tragically affect this intangible but necessary part of the development of an industry vitally important to our economy and our national security.

There is much talk of increased construction costs to the Government and ultimately to the taxpayers as a result of this program. We have no certified audit to offer here as to the increased costs. We do, however, concur with other critics of the set-aside that this program opens the door wide for unnecessary increased costs as well as to create a chaotic labor relations atmosphere in an otherwise highly competitive and labor-stabilized industry.

The cost to the public is difficult to determine for by disqualifying contractors who have, over a 3-year period, annual average above \$5 million from submitting bids, the Government will never determine with accuracy what the real price of the set-aside program is costing.

Congressman Weaver in his remarks September 27, 1961, cites, among others, an example at 31 percent. We do not wish here to strike an average and say the increase amounts to an average 57 percent, but from practical experience in the industry we know that this figure could very well be realistic under the present set-aside program.

To cite an example, the local contractors were disqualified from bidding on set-aside work with the result that the contract was awarded to a contractor as far removed as 1,000 miles from the locality where the work was to be performed. It is obvious that this alone would increase the cost.

Further, because of the pattern of construction industry collective bargaining in local areas between associations of contractors and building trade unions, this can—and has—disrupted existing stabilized relations.

For example, a great number of set-aside contracts have been awarded to contractors who have, contrary to established local practice, endeavored to work employees 56 hours per week at straight time, failed to contribute to prevailing local health, welfare, and pension funds, and failed to contribute to established apprenticeship programs. This has also placed the contractor wishing to take part in these programs at a very serious competitive disadvantage. It places the Federal Government in the position of assisting these shortsighted contractors in undercutting wage conditions and restricting the development of our much needed apprenticeship training programs.

In closing, let me say we urge consideration and enactment of S. 3096 in order that the development and expansion of this vital industry be encouraged in a competitive free enterprise manner unhampered by the substitution of arbitrary unrealistic regulations.

Thank you, Mr. Chairman.

Senator PROXMIRE. Thank you very much, Mr. Haggerty.

Senator SPARKMAN?

Senator SPARKMAN. No questions.

Senator PROXMIRE. Thank you very much. I appreciate your testimony a great deal.

Our next witness is Mr. Robert Stauter.

Mr. Stauter, I understand you are president of the Stauter Lumber Co. of Norman, Ark.

**STATEMENT OF ROBERT STAUTER, PRESIDENT, STAUTER LUMBER CO., NORMAN, ARK., ACCOMPANIED BY MARSHALL McGRATH, INTERNATIONAL PAPER CO.**

Mr. STAUTER. Yes, sir.

Senator PROXMIRE. We are very happy to have you present.

Mr. Stauter, you have a concise statement, too.

I would just like to announce that any witnesses who have detailed statements will, of course, have their full statements put in the record, and they can summarize their testimony.

Mr. Stauter, I see you have a most concise statement, the most concise statement we have had so far.

Mr. STAUTER. I would like to make the following statement for the record in conjunction with S. 3096, which is under consideration before your committee today.

I am president of Stauter Lumber Co. at Norman, Ark. We have approximately 100 employees and qualify as a small business.

We purchase timber from Ouachita National Forest and process it into boards and dimension lumber. However, we find it necessary to depend upon larger lumber companies which do not qualify as small businesses to market our product. Under the existing small business regulations, these larger companies are not able to resell my product to the Government.

Therefore, I would like to propose the attached amendments to S. 3096 which would allow my company and many, many others like it in the lumber industry to participate, though it may be indirectly, in the purchases by the Government for maintenance, repair, and construction.

Our amendments to S. 3096 are:

Page 2, line 1, insert after "contractors": "and suppliers".

Page 2, line 3, add: "or contracts for supplies therefor."

Page 2, line 9, insert after "contractors": "and suppliers".

Page 2, line 10, insert after "construction": "provided, however, that any such supplier may be limited in its original source of supply to sources that qualify as small business concerns within the terms of this Act."

Page 2 line 24, insert after "contracts": "or contracts for supplies therefor."

Page 3, line 2, insert after "prime contract": "or the original source of such supplies."

Page 3, line 6, insert after "repair": "or contracts for supplies therefor."

Senator PROXMIRE. Senator Sparkman?

Senator SPARKMAN. Mr. Chairman, I appreciate the statement that Mr. Stauter has given. I must say that he raises a question and I am not familiar with the facts.

I do not understand, Mr. Stauter, why it is that companies who buy your lumber cannot sell it to contractors. I do not understand the restriction.

Mr. STAUTER. Sir, we sell to some large chain lumberyards. They cannot qualify as small business.

Senator SPARKMAN. I may need to have some educating on this.

Mr. STAUTER. We are talking about the suppliers.

Senator SPARKMAN. Yes, I understand that.

Senator PROXMIRE. As I understand it, now that I think of this, apparently what Mr. Stauter does is sell to large contracting firms. Those large contracting firms are prohibited from bidding? Is that correct?

Mr. STAUTER. No, sir. We are not selling to contractors.

Senator SPARKMAN. No, he is selling to large lumber companies who are suppliers. I do not understand that there is any restriction on a contractor buying his lumber and his supplies wherever he wants to. I just do not quite understand it.

Mr. STAUTER. Mr. McGrath, will you come up here?

Senator PROXMIRE. I do hope, Mr. Stauter, you can document this and give us specific instances. If you can do that, it will be very helpful and add a lot of strength to your testimony.

Would you identify yourself for the record?

Mr. McGRATH. I am Mr. McGrath of the industrial relations department—

Senator PROXMIRE. What is your first name?

Mr. McGRATH. Marshall.

Senator PROXMIRE. Whom do you represent?

Mr. McGRATH. International Paper Co.

The Long-Bell Division of International Paper Co. is one of the large-line lumber companies to which Mr. Stauter sells his products.

The intention of this amendment would be to provide that the Long-Bell Division, which does not qualify as a small business, could, however, sell without restriction to the military installations the supplies necessary for maintenance, repair, and construction insofar as and as long as the original source of those supplies was a small business which qualified. And that would open—

Senator PROXMIRE. Maybe my assumption was correct. You yourself want to compete in selling to the Government, and you find that there have been some programs set aside from which you are excluded?

Mr. McGRATH. That is right, sir.

Senator PROXMIRE. You are not able to compete because you are not a small business?

Mr. McGRATH. That is right, sir. We wish to compete only to the extent that the original source of supply is the small lumber company.

Our inability to compete has a very serious effect on the small lumber companies, particularly throughout the State of Oklahoma, with which Senator Kerr, incidentally, is quite familiar, in their ability to market the products and, consequently, on the economy of their local communities.

Senator PROXMIRE. Yes. But in terms of the small business lumber firms as a whole, the ones that do get the contracts have to buy their lumber. There is no reason why they should be more inclined to buy from big business than big businesses are or from small businesses than big businesses are. Do you see my point? In other words, this lumber is going to be procured somewhere.

Mr. McGRATH. That is right, sir.

Senator PROXMIRE. And it would seem to me there would be somewhat more likelihood that a big firm like yours would tend to be more inclined to buy from another big firm than a small firm would.

Mr. McGRATH. No, sir; those are not the facts of the case. The facts of the case are that the large firm such as ours depends upon these small businesses for between 90 and 95 percent of the supply of their lumber. That has been, incidentally, brought out and discussed quite thoroughly in some hearings that Senator Wayne Morse of Oregon held here approximately 2 months ago, which at that time were directed particularly toward treated lumber. But there is a considerable discussion of that in the record available.

Senator PROXMIRE. You have specific contracts from which you have been excluded?

Mr. McGRATH. That is right, sir.

Senator PROXMIRE. And you would be the prime contractor?

Mr. McGRATH. That is right, sir. It has affected the economy of the State of Oklahoma and surrounding States to the extent that it has been a substantial contributing factor in our having been forced to reduce the number of our retail lumberyard outlets in these States from some 98 originally 2 years ago down to 39 now.

Senator PROXMIRE. Do you have any documentation for the record? I would be very interested in seeing it. I would be happy to include it if you can show this fact that large firms generally, not simply yours but others, do buy from small businesses to a greater extent than the small firms with whom you compete.

Mr. McGRATH. I think, sir, that has already been well pointed out in testimony. It was not a formal hearing but an informal meeting which Senator Morse held here. It is already in the record. We would be happy to refer you to that.

Senator PROXMIRE. Will you simply refer us to that?

Mr. McGRATH. All right.

Senator PROXMIRE. Fine.

Senator SPARKMAN. What kind of contracts have you been excluded from?

Mr. McGRATH. It is the supply of lumber for maintenance and repair at military installations, particularly throughout the States of Oklahoma, Arkansas, Texas, and Missouri, the general area to which our Longbell division would apply.

Senator SPARKMAN. I thought those contracts were given to contractors and a contractor could in turn buy his lumber wherever he wanted to.

You do not make original maintenance and repair contracts, do you?

Mr. McGRATH. Sir, we do supply direct to the bases. It is purchased direct by the base.

Senator SPARKMAN. Where the Government does its own work?

Mr. McGRATH. That is right, sir.

Senator SPARKMAN. Where they do their own maintenance?

Mr. McGRATH. That is right.

Senator SPARKMAN. And they have to buy lumber?

Mr. McGRATH. That is right, sir.

Senator SPARKMAN. I can see where you would come into that.

Mr. McGRATH. Yes, sir.

Senator SPARKMAN. But I did not quite understand it in connection with the contracts.

Mr. McGRATH. It has a sort of second-step, residual effect, you might say, on these small lumber producers. But they have been very

seriously hurt. And we do not know that perhaps this is the most appropriate place to try to make a case for them, but we do feel that something needs to be done to help these people, particularly in this area of the country. I am sure Senator Kerr has considerable documentation in his office on this too and is quite interested in this matter.

Senator SPARKMAN. That is all, Mr. Chairman.

Senator PROXMIRE. Thank you very much, gentlemen. We were happy to have you. We appreciate your testimony.

(The following was received for the record (see p. 162) :)

SMALL BUSINESS ADMINISTRATION,  
OFFICE OF THE ADMINISTRATOR,  
Washington, D.C., June 25, 1962.

Hon. A. WILLIS ROBERTSON,  
Chairman, Committee on Banking and Currency,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to the letter of June 18, 1962, from the committee's staff, concerning the amendments to S. 3096 proposed by Mr. Robert Stauter during the hearings on that bill.

The meaning of these amendments is not at all clear. In substance, however, they seem to call for two changes in the joint set-aside program conducted by the Small Business Administration pursuant to section 15 of the Small Business Act. The first change would eliminate from the program all purchases by the Government of supplies to be utilized in connection with Government maintenance, repair, and construction work. I know of no justification for such an exclusion and, in the absence of further evidence on the subject, I do not favor this proposal.

The second change, which is hardly consistent with the first, would permit large distributors of such supplies, if manufactured by small business concerns, to participate in set-asides. This proposal is doubtless related to the statement, made by Mr. Stauter in his testimony at the hearings on S. 3096, that many small lumber companies find it necessary to market their products through large distributors and, as a result, are unable to have their goods accepted in set-aside procurements.

This is the first time that I have heard the complaint made by Mr. Stauter, and I cannot now say whether the condition is widespread or whether it is limited to one or two firms. However, I have directed my staff to investigate the situation.

SBA already has the authority to effect the second change. All that would be required is an amendment to our size standard regulations. If our pending investigation indicates a need for it, we will make such an amendment.

For the foregoing reasons I am opposed to the statutory amendments offered by Mr. Stauter.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

With kind regards, I am  
Sincerely,

JOHN E. HORNE, *Administrator.*

Senator PROXMIRE. The next witness is Mr. Edward F. Kingman. Mr. Kingman, I understand you represent the Construction Supply Co., of Denver, Colo.

**STATEMENT OF EDWARD F. KINGMAN, PRESIDENT, K. C.  
CONSTRUCTION SUPPLY CO., DENVER, COLO.**

MR. KINGMAN. K. C. Construction Supply Co., sir.

Senator PROXMIRE. What is your capacity with that company, sir?

MR. KINGMAN. I have this in my statement.

Senator PROXMIRE. All right, sir. Go right ahead. I see it is a brief statement. Go right ahead and read it.

Mr. KINGMAN. My name is Edward F. Kingman, and I am from Denver, Colo. I am the president and principal stockholder of a small construction supply company with an annual volume of approximately \$3 million.

Our firm is engaged in a number of supply and service functions for the construction industry. We have a steel and aluminum fabricating department, supply a variety of construction materials, and, in some cases, act as a subcontractor furnishing both labor and materials. We have approximately 45 salaried employees and from 40 to 60 hourly workers, depending on our volume of business.

Our company was formed in 1946, upon my return from the Army, and started with three employees, including myself. In our first year our sales were less than \$50,000.

Most of our customers are small business firms, and a large percentage of our business is done with these firms.

I would like to explain that I have no personal ax to grind in this matter because our chances of obtaining an order or subcontract on a given project have never been affected by SBA actions, and, even if they were, we would still qualify as a small business.

I would also like to state that I am here strictly as an individual businessman who has spent most of his business life in the construction industry and is a firm believer in the American competitive free enterprise system which is today best exemplified by the construction industry.

My reasons for being here are twofold. First, of course, I am here to testify in behalf of the bills being considered; secondly, I welcome the opportunity to speak up for the free enterprise system.

I believe that set-asides in the construction industry are contrary to the competitive system that is the foundation of this industry.

I further believe that a system of set-asides will, in the long run, hurt, rather than help, small contractors. As a matter of fact, I am convinced that this is exactly the wrong way to go about helping the small contractor. I would like to support this contention with four principal points.

First, the construction industry has many unique features which are both its strength and weakness. At the present time, it is a highly competitive business, and the small contractor has many problems. Many of these stem from the fact that on too many projects poorly qualified contractors are allowed to bid with the result that the successful bidder loses money and in most instances the owner will get a poor job because when a job is bid too cheaply the contractor has to try to cut corners. If the Government encourages and supports poorly qualified bidders, it only aggravates this problem and makes it difficult for the experienced contractor to obtain profitable work and stay in business.

A second feature of the industry is that it is not very difficult for a person with reasonable qualifications to go into the construction business. Actually, there is plenty of financial assistance available through regular commercial channels for qualified individuals and firms. The large increase in the number of contractors, most of whom started with very limited capital, supports this contention. As a matter of fact, practically all construction companies started as small

firms and the majority of even the biggest are still operated by the founder or son of the founder.

This ease of getting into the business also creates problems, particularly for smaller firms, because the total capacity of small firms exceeds the available construction volume, large as it is, with the result that the profit margin is too low. Here again, if the Government subsidizes the marginal operator—who is the only one who needs SBA help—it is only aggravating the problem.

My third point is that the large contractor is more apt to be at a disadvantage than an advantage on many small jobs. A small job will often not support the overhead that a large contractor has to carry to do large work. Also, the small operator has advantages of special know-how and personal supervision in many types of work. The industry has become so complicated that it requires a great variety of specialists, nearly all of whom are small, and all of whom survive because of their specialized abilities and experience. If they cannot develop the skills to operate in a competitive market, they will disappear, and if they do not have the qualifications to start with, they should not be in the business.

Mandatory set-asides of contracts or subcontracts may prolong the life of the less competent, but sooner or later the natural workings of the competitive market will eliminate them. In the meantime, the established firms have to suffer because of unnecessary support of marginal operations.

My fourth point is that the construction business is already overcrowded. This results in contractors bidding work too cheaply, sometimes below cost. This, again, tends to eliminate the marginal operation and make it more difficult for the established firm. The bankruptcies in our area have been caused primarily because of this overcrowding. The Government does not do a favor to either the established small contractor or to the neophyte if their actions add to the supply of contractors and subcontractors in an overcrowded field.

Finally, I believe that I speak for most small businessmen when I say that we are not looking to the Government for a crutch or for a subsidy, but, at the same time, take exception to actions that aid our less competent competitors. What we want is a free competitive economic system in which an individual can be properly rewarded for his initiative, enterprise, and the taking of the normal risk of business.

I am a great proponent of the philosophy of giving everyone who is qualified the opportunity of going into business. As a matter of fact, I have been a substantial beneficiary of this system. Coupled with this opportunity, logically, has to be the opportunity to stay in business and to grow with our expanding economy. I submit that the bills before this committee support these aims.

Senator PROXMIRE. Senator Sparkman?

Senator SPARKMAN. No questions, thank you.

Mr. KINGMAN. I have one more thing that was not in my statement that I would like to mention.

Senator PROXMIRE. Go ahead.

Mr. KINGMAN. That is, I feel that the use of statistics can be very misleading. I thought I might just give an example of a situation in Colorado.

We have around \$60 to \$65 million worth of highway work. We only have two or three large contractors who bid highway work, and they probably take 25 percent of the work or less.

We had a missile base there which cost \$65 million, and that in itself just approximately equaled the total highway program for the year.

So that if you take, say, \$120 million worth of work, the \$60 million has to be done by a large contractor on a missile base, so then you take \$15 million of the highway work, and so that gives you \$75 million or roughly 65 percent of the total volume going to large contractors, which would completely distort the picture.

However, if you consider that of the highway work, even the part that the large contractors do, at least a third is done by small businessmen who subcontract to the major contractor, and of the missile base work approximately half might be done by small subcontractors, you can reduce the percentage to 35 percent.

I wanted to point out that statistics can be very misleading.

Senator PROXMIRE. Thank you very much, Mr. Kingman.

Senator SPARKMAN. Mr. Chairman, I may just say we are constantly aware of the subcontracting. When we use these percentages we have been referring to prime contracts, you notice. When we referred to 16 percent, and so forth, we were talking of prime contracts.

We had in mind, of course, the great amount of subcontracting. We know that some of the largest companies have done a very good job of advertising the fact that they were dependent upon small business to keep themselves going, through the subcontracting.

Mr. KINGMAN. I think practically all subcontractors are small businessmen.

Senator SPARKMAN. Yes.

Senator PROXMIRE. Thank you, Mr. Kingman.

The next witnesses represent the Associated General Contractors of America, Inc., and I would appreciate it if they would appear as a panel, Mr. Anle Tester, Mr. D. K. Fordice, and Mr. W. E. Dunn.

I understand you gentlemen represent the same organization. Is it satisfactory that you appear together?

I want you to come up and sit at the table here. I am sure that you are aware of our problems in getting everybody on this morning. I would appreciate it very much, gentlemen, if you could summarize your testimony.

Would you gentlemen identify yourselves at the table, so that we can have for the record your names and not only your association with Associated General Contractors of America, but also your particular company associations?

**STATEMENTS OF ANCLE C. TESTER, DANIEL K. FORDICE, AND W. E. DUNN, ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.**

Mr. TESTER. Mr. Chairman, my name is Ancle C. Tester. I am a member of the Associated General Contractors of America, and I am also in the contracting business with my father.

Senator PROXMIRE. What is the name of your firm?

Mr. TESTER. The name of my firm is John Tester & Son. We are located in Clinton, Md., about 25 miles from Washington, D.C.

Our company was incorporated in—

Senator PROXMIRE. Once again, two of you gentlemen have fairly detailed statements here, and in view of the fact you are appearing together as a group I would appreciate it if you could summarize them.

We can put the entire statement in the record so it will be available to all the other members of the subcommittee and the committee, and they will be happy to look at it. If you gentlemen could, as I say, summarize, it would be very helpful.

Mr. DUNN. Mr. Chairman, may I identify myself? I am William E. Dunn, executive director of the Associated General Contractors of America.

On my right is Mr. Daniel K. Fordice.

I would like to answer your question about summarizing our statements.

Senator PROXMIRE. Yes, sir?

Mr. DUNN. If it please the chairman and the other member of the committee who is now present, Senator Sparkman, we would like the privilege that has been afforded the other witnesses of reading these statements. They are not long. This is a bill that is very important to us and to our industry, and I think it will bring out—

Senator PROXMIRE. We are giving the proponents of this legislation now about 75 percent of the time.

Mr. DUNN. We are proponents.

Senator PROXMIRE. We really are short on time.

I will tell you what I will do. We will compromise. There are three gentlemen. You do represent one organization. You can handle it any way you wish, and I will give you 15 minutes.

Mr. DUNN. Mr. Chairman, I would like the record to show that the Associated General Contractors, composed of over 7,100 members, 90 percent of whom are small business firms under the definition of the SBA, has been allowed 15 minutes to present its case in behalf of these bills.

Senator SPARKMAN. Mr. Chairman, I suggest they be allowed to read both statements in full.

Mr. DUNN. I would like to make—

Senator SPARKMAN. There are two statements, and they are not very long.

Mr. DUNN. And, Senator Sparkman, as a staff man, I would like to give you the answers to some of the questions you have asked, which questions I do not believe have been answered up to date. You asked certain other witnesses something that I know we have the information on.

Senator PROXMIRE. If you gentlemen are going to read your statements, then, we will start off with Mr. Tester. You read your statement. Then we will hear from Mr. Fordice.

Mr. TESTER. Thank you, Mr. Chairman. I will start right from the beginning.

My name is Anle C. Tester. I am vice president of the general contracting firm of John Tester & Son, Inc., Clinton, Md.

Our company was incorporated in 1943. It is a family firm, with the outstanding stock owned by my father, me, and my sister. Although the corporate organization goes back only 19 years, my father, John Tester, was engaged in construction before then. In fact, he

has 50 years of experience, having worked on many of the fine buildings in this city alone. I have been in the same kind of work for 30 years or longer, having served an apprenticeship, and so forth, in the construction industry.

John Tester & Son has never been considered big in the general contracting business—that is, not until a few months ago, and then only in the eyes of the Small Business Administration.

Meanwhile, I will say that my father and I have planned and worked over the years for the gradual and sound growth of our company. Our experience has taught us that in this business you cannot keep yourself in a sound competitive position by bidding only on certain preferred jobs. Volume business is necessary to keep going, because tough competition can always be counted on to hold down the profit margin on any job.

Now, we knew when we got into the general contracting business that it was—and is—a highly competitive field. Our firm is small, but we are not afraid of competition with the biggest. I welcome the opportunity to compete with the largest firms, because in that way we will constantly increase our ability to perform the work, not only quantity but quality.

We do object to having to compete with outfits that are propped up by a Government subsidy and given special preference when bids are let. We think when we bid low we ought to get the job, and then it is up to us to turn in a satisfactory performance. That is the way the general contracting business has always operated.

Our main work has been on government projects—Federal, State, and local. Jobs of this kind have formed the basis for our company's survival and its gradual growth. We know nothing else, and certainly we have always considered our firm a small business in this field. You gentlemen would think so too if you could see our office headquarters and examine the little organization we have bought together through the years. It is a good one and an efficient one—but it sure is not big.

Just the same, the Small Business Administration says we cannot even bid for the very kind of construction work for the Federal Government that, we think, has been our specialty and the only thing we really know.

Under regulations issued by the Small Business Administration, any construction firm that did an average annual gross business of \$5 million during the latest 3-year period is a big business. If such a firm bids on Federal jobs that have been set aside for small concerns, as defined by the Small Business Administration, its bids are thrown out as nonresponsive.

Sometimes these so-called nonresponsive bids are considerably lower than all other bids. But they are thrown out anyway. When the low bidder does not get a Government job, it just has to mean that the taxpayers pay the extra cost of the higher bid.

Officials of the Small Business Administration deny this. They have said many times that there really is not any extra cost to the taxpayer, because the construction firms that do not meet their size standards know they are not going to get the jobs, so they bid low just to make the Small Business Administration look bad. They never have offered any proof of this, and their contention ignores the

fact that by law a bid bond is required to protect the Government against irresponsible bidding—but they keep saying it.

I want to tell you about at least one job where they were shown to be completely wrong in this idea.

Last June an invitation for bids for construction of a group of buildings and related paving and utilities at Dulles Airport was issued by the Federal Aviation Agency. The invitation to bid included a notice that the job was a set-aside for small business. Up to that time, we had considered our company a small business concern by any standard, including that of the Small Business Administration. The job was one John Tester & Son was equipped to do. And we needed the work, because we had hit one of those dry spells that come along in the construction business.

So we submitted a bid. When the bids were opened last July 13, ours was low at \$1,474,711, which was \$52,289 below the second bid.

The estimated effective date of notice to proceed was July 27. On August 10, the regional director of the Small Business Administration wrote John Tester & Son a letter stating that a question had been raised in the Federal Aviation Agency about our eligibility as a small business. Of course, the Small Business Administration has men posted in all the Federal contracting agencies. We asked what the question was, and on August 15 the regional director wrote us again saying a Dun & Bradstreet report estimated that our contracts during the years exceeded \$5 million a year.

Now, when we submitted our bid, we had used figures for the fiscal years 1958, 1959, and 1960, which showed an annual average business during that period of less than \$5 million. Our fiscal year ends May 31, and our auditor had not at that time completed figures for the year ending May 31, 1961. But these figures were available by now, and they put our company slightly over an annual average of \$5 million for fiscal 1959, 1960, and 1961. Incidentally, our average annual business for the last 8 years, including 1961, is \$4,770,410.

On August 29, we received a telegram from the Director of the Office of Small Business Size Standards. I will read you this telegram:

We have determined that John Tester & Son, Inc., Clinton, Md., is not repeat not a small business concern for the purpose of Government construction procurements, since its average annual receipts for the 3 fiscal years ending May 31, 1961, exceeded \$5 million. Detailed letter will follow.

SAMUEL S. SOLOMON,  
*Director, Office of Small Business Size Standards.*

Gentlemen, I tell you if you want to get stung, have somebody send that to you when you have been fighting all your life to raise your quantity, your quality. And, buddy, when you get that it really floors you. You have a heck of a time coming back.

Incidentally, the second low bidder on this job was a firm we bid against often on many jobs—every day. We are competing against him now. We were equal competitors everywhere except with the Small Business Administration.

We decided to make a fight on this. I got me a lawyer, and he went to work checking the regulations to see what we could do to get the job we had bid on. What we found out caused me to write the Federal Aviation Agency on August 30 stating our willingness to buy some \$764,000 of the materials required for the job in labor surplus

areas. Under their rules, this would entitle us to an increase of 25 percent of the amount of annual receipts required to qualify as a small business concern. In other words, we could do up to \$6,250,000 annual business instead of \$5 million and still be classed a small business.

On August 31, the Federal Aviation Agency wrote us as follows:

Size determinations in this program are the responsibility of the Small Business Administration. We are controlled by their decision, and can, therefore, give no consideration to the factors set forth in your letter.

In further research, information was obtained from an electrical contractor, who was trying at the same time to qualify as a small business, that he had been told the labor surplus provision as written in SBA regulations was not intended to apply to contracts similar to this procurement. There obviously was some confusion here, but we persisted.

On September 6, the Federal Aviation Agency wrote us another letter saying the Small Business Administration had ruled we could qualify as a small business for this job if more than 50 percent of the performance was conducted in areas of substantial labor surplus. We had already sent in an item-by-item list of what purchases we intended to make in stated labor surplus areas, but this new letter asked for more data, including copies of quotations from suppliers and subcontractors.

On request from the Federal Aviation Agency, we had agreed to extend the acceptance time of our bid an additional 30 days, in spite of the difficulty we were having in obtaining extension agreements from some of our suppliers and subcontractors. Finally, a September 21 letter from the FAA formally accepted our bid. A contract was made, dated September 25, 1961, with an effective date of notice to proceed set at October 6, 1961.

I have mentioned all these dates in detail for the specific purpose of showing how we had to waste 10 weeks of summer weather, the best building time and a basis for our bid, while we were getting the Small Business Administration to agree to acceptance of our low bid for the work at Dulles Airport.

It is clear enough, I think, that the bid of John Tester & Son for this small business set-aside job could not for a moment be regarded as a fake bid by a big firm trying to make the Small Business Administration look bad. It was a good faith bid backed by a bid bond in the amount of \$294,800—and then we had to hire a lawyer and worry and struggle through 10 weeks before it was finally accepted.

Here is another interesting point. During the same time that all this was going on, the Federal Aviation Agency had asked for bids on another job involving terminal yard work at Dulles. Tester bid on this too. We were second low. The low bidder, although covered by a bid bond, for some reason was not required to fulfill his bid. Our company was told we did not qualify as small business—although, as I have related, we were just in the process of getting a set-aside job. Our bid on the yard work was ruled nonresponsive.

The award went to the third low bidder, who, incidentally, was the second low bidder on the first job—the same firm that some 90 days before had received a substantial loan from the Small Business Administration. He finally got a set-aside job, at a price of \$24,217 higher than my bid and \$195,909 higher than the original low bid.

The feeling of the contracting agency and the Small Business Administration obviously was that Tester had got one job—after 10 weeks of hassling—and we had better be satisfied with that. We were not satisfied, though, because we wanted this job also, and we felt our lower bid entitled us to get it.

This is what it comes down to: Unless Congress specifically exempts the construction industry from the Small Business Administration's set-aside program, John Tester & Son and many other firms like ours cannot have the opportunity to bid on the very kind of Government work we are best qualified to perform.

Mr. Chairman, in speaking for the construction industry, I respectfully urge that your committee give favorable consideration to S. 3096, which would exempt our industry from the set-aside program of the Small Business Administration. The construction industry as a responsible whole is suffering from the effects of this program, and we ask that we be removed from it. The unworkable subcontracting regulations issued by the Small Business Administration are a heavy burden on our industry, and we ask that we be relieved of this burden. Our industry is made up of many, many small businesses. We ask that we be permitted to operate under the traditional system of competitive bidding, with equal opportunity to all and special privileges to none.

In the case of our own firm, John Tester & Son, we are reducing our volume—not by choice but through necessity. We have had to lay off personnel and sell some of our equipment. The truth is, and I hate to say it, our company is now going in the wrong direction. If we are to be barred from even trying to get the Government jobs that are within our capacity, it seems certain that John Tester & Son will fall substantially below \$5 million business next year, and we are going to be made small business by the SBA whether we want to or not.

Thank you very much.

Senator PROXMIRE. Thank you very much for a vigorous, forthright and very effective statement.

Our next witness is Mr. Fordice. Go ahead, Mr. Fordice.

Mr. FORDICE. My name is Daniel K. Fordice. I am a partner in Fordice Construction Co., of Memphis, Tenn., and vice chairman of the heavy division of the Associated General Contractors of America, Inc. My firm is engaged in construction connected with river improvements in the lower Mississippi Valley, and most of our work is performed for the Corps of Engineers, U.S. Army. We are a small firm, both by definition and in fact—our average annual volume being on the order of \$1 million. In size, our usual contracts run from about \$25,000 to around \$1 million.

I appear in support of the bills S. 1363 and S. 3096, which you have under consideration. As a small businessman and as a contractor, I am opposed to the so-called small business program in construction because I believe it is destructive to the competitive bidding system which has been the hallmark of our industry and has made it one of the truly bright spots in our free enterprise system.

In particular, the small business set-aside program in construction is fostering subterfuge, lessening competition, and increasing costs to the taxpayers.

Before enlarging on these factors, let me make it abundantly clear that out of my own experience I can see no justification for wrecking a great industry under the guise of helping small business. I do not believe that small business in construction—and I am one—needs the tender care of a paternal bureaucracy to grow and prosper.

If you will permit me, let me recite the history of my own enterprise which I believe will furnish ample justification for this position. In my experience and observation, what I am going to tell you about my company is rather typical of the construction industry.

When I returned from service after World War II, I determined to go into the construction business on my own. Prior to the war, I had been a salaried employee of the Corps of Engineers for nearly 20 years, and although I was past 40 at the time, I wanted to embark on my own.

A longtime friend and fellow employee, Ralph Abraham, and I pooled our life savings, less than \$10,000, and started out. We had little money but fortunately had reputations for being energetic and honest. On our first job we were, in effect, joint venturers with others. We supervised the job and shared in the profits—and they were small. But we husbanded our resources and finally, in 1948, bid our first job on our own. It succeeded, and since then we have prospered through hard work and prudent management. Most other contractors started in a similar manner, not spoon fed by Government.

But this is the important point. We have never been the successful low bidder on a job of any size in which the majority of the competition has not been large business, by definition. We are now doing a job in Louisiana on which two other bidders were large firms, the fourth a small firm. We have competed throughout our history against the large firms and we have done it successfully. I am satisfied that we will continue to do so and without the help of the Small Business Administration or a set-aside program.

You may be interested in some information developed out of a run-down on Corps of Engineer jobs bid by Fordice Construction Co. from 1952 through 1961. We bid on 107 jobs. Of that total, 63 jobs—or 59 percent of the total—were awarded to small business concerns as defined by the SBA. Practically none of these jobs, I might say, were set-asides, but still small business firms got 59 percent of them, although larger firms were bidding on all of them. The average bid on these jobs, incidentally, was something more than \$500,000. I do not think there is anything unique about the jobs on which we bid. All through the construction industry, small firms regularly bid successfully against big firms.

We have some inherent advantages over our large competitors. Our overhead is infinitesimal compared with theirs. We run our own jobs rather than having to rely on paid superintendents. This personal supervision means more economy of operation and, we believe, increased efficiency. These factors alone give us a bidding advantage which is extremely important in a highly competitive field.

I was going to tell you here about the size of our office staff, but in view of the shortage of time I will pass that up.

I believe you can understand, on this record, why I am proud to be a citizen of a great nation where such can be accomplished. I think, too, you can understand why I am also proud to be a part of an indus-

try where it is possible, because there is the free and open competition of the marketplace.

Now let us analyze the set-aside's effect on our industry as I see it.

As it works out, the Small Business Administration's set-aside program as applied to the construction industry is harmful to the industry as a whole and in many cases adds an extra burden of cost to the taxpayers. As an example, consider what is happening in the field of pile dike construction.

This work requires highly expensive, specialized equipment and specially trained personnel. For this reason, most of the contractors in this field do not qualify as small business under SBA standards. A few do, however, and jobs have been set aside in pile dike construction. The inevitable result is that the larger contractors are doing the work as subcontractors to small contractors who are approved by SBA. The Government just deals with the larger firm as a subcontractor rather than a prime. And, of course, the Government pays the extra cost entailed in the small firm doing the bidding.

I would like to enlarge on that just a minute. What is happening is that the large people get a small contractor to bid the job for them. Then he subcontracts it back to the big contractor. It is common practice, and, I might say, it is growing.

This subterfuge has become common practice. It is entirely legal, but clearly it opens the way for the worst kind of job brokerage. And I understand the practice is approved by the Small Business Administration.

Probably the worst aspect of this situation is that it can actually result in putting legitimate business enterprises completely out of business.

Let me illustrate. I know of a company which for several decades has been engaged in excavation work using what we commonly call long-boom machines. About 10 years ago, this firm was purchased by another corporation which cannot qualify as a small business, although the subsidiary has continued to operate as before with the same executives and the same operating personnel doing about \$1 million average annual volume.

Since last June—and mark this well—there has not been a single non-set-aside job for which this specialized equipment is fitted advertised in the lower Mississippi Valley. Not one.

The irony of this is that over the last 10 years this enterprise has performed about \$12 million worth of work for the Corps of Engineers on which they were low bidder by 9.6 percent, or a savings to the taxpayers of more than \$1 million. This firm now has about six jobs on which it is the subcontractor, having arranged for small firms to bid for it.

I can visualize the set-aside program bringing about a result which is not contemplated by those who promote it. As the larger firms are excluded from competition on the smaller jobs, their interest will naturally turn toward the non-set-aside jobs. I can see where the larger contractors might well vastly change the competitive picture on jobs of \$1 million or more to the extent that the small firm, rather than being assisted, will be forced to bid exclusively on the smaller jobs.

I can see no point in indulging in a numbers game on what this program is costing. As reasonable men, I am sure you can under-

stand that lessening of competition, use of middlemen, and other such practices can only result in increased prices. Any price increase is unjustified because it can only be excused as a subsidy for an industry which has not asked for it and should not, as a matter of principle, have it.

The construction industry has been built on competitive bidding. It is inconceivable to me that anyone could maintain that such an atmosphere could breed monopoly or giant trusts. Actually, the fierce competition that has existed in recent years has, in many respects, made us a depressed industry with low profits and altogether too many failures—many of them among the giant concerns.

I will add that, so far as I know, the matter of small firms' participation in Government construction work has never been a problem until it was stirred up by the Small Business Administration. Small firms bid against big firms as a matter of course, and, as any contractor can tell you, they often get the jobs they go after.

Until very recently, it has never been considered desirable or necessary that small construction firms be propped up by the Government. And I see nothing fair or right in a situation where such subsidized firms go into competition with established contractors who, in building up their own businesses, have done it for themselves.

Actually, some of the firms that have received set-asides have been the worst-hit victims of this whole program. I know personally of construction concerns that have gone broke because of receiving set-aside jobs against the best judgment of the contracting agency. The Small Business Administration can override the contracting agency's judgment, you know, and has not hesitated to do so.

Mr. Chairman, I plead with your committee to recommend enactment of this remedial legislation so that our industry can continue in free and open competition. I ask you to remember that we are not order takers. We do not negotiate jobs with the Federal Government. We bid openly and freely in a tough contest, one with the other, small against big, big against small, and may the best man win. That is in the American spirit and in the American tradition, and that is the way it should remain.

Senator PROXMIRE. Thank you very much for a fine statement.

Mr. FORDICE. Mr. Chairman, that concludes my testimony. I am prepared, if you should want it, to answer a question asked by Senator Neuberger yesterday morning as to the reason why everybody did not have about the same price on a job. I think either Mr. Tester or myself could answer that.

Senator PROXMIRE. Why do you not answer it right now?

Mr. FORDICE. Of course, Mrs. Neuberger referred to house building, with which I am not particularly familiar. But take the construction that you see around Washington. The first thing is the site and the work underground, which is not an exact figure. It depends on judgment. You may hit any number of things when you start to excavate that will change your price. You can hit ground water that you did not expect.

I am familiar with a job in Memphis now where a deep excavation was made for a radiology building for a hospital. In starting that excavation, the contractors all knew and had been informed that there were unmarked graves under there, so the excavation had to be done very carefully to remove those bodies and rebury them.

But, in addition to that, they hit utilities, sewers, waterlines, and things of that nature, that nobody had any idea were there. It delayed that job. Where the contractor had intended to get that work underground done during the good season last year, it delayed that work until he could only start on it about March of this year.

That is one of the big features why people do not bid the same. But then comes the quantity survey or take off, as it is familiarly called, where men go over the plans for a job and take off each item and list it, tabulate it on sheets with two columns, one for material and one for labor.

Now, in the industry—Mr. Tester might want to correct me on this—it is my understanding that if any two takeoff men come within 1½ percent of each other they consider that good.

But, at any rate, that material is priced, and most of that is a firm price where probably everybody has about the same price. But that labor column is based entirely on the experience and judgment of that contractor and would not be the same, I do not believe, for any two contractors.

Then the specialties are done by subcontractors such as the mechanical and the electrical contractors, all of that. Different cities have different rules. But all of that may come in to that general contractor right up to the last minute when he has to turn in his bid, and he has to correlate all this.

I think that would explain why no two people bid the same price on the same job.

Senator PROXMIRE. That is a very excellent answer.

I take it you confirm this?

Mr. TESTER. I agree with what he said.

Senator PROXMIRE. I would like to ask Mr. Dunn—

Senator SPARKMAN. Mr. Chairman, before you do that, there is one statement in Mr. Fordice's presentation—and I may say it is a very good presentation—that I want to check.

You say:

The Small Business Administration can override the contracting agency's judgment, you know, and has not hesitated to do so.

I want to read the law, and ask you to listen to this:

Whenever the Administration and the contracting procurement agency fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator.

In other words, it is the procurement agency or department that has the final say. The Administrator cannot override him.

Mr. FORDICE. Senator, I do not know whether this confuses the issue or not, but the first case that I know of specifically was not a set-aside job, but the Corps of Engineers rejected the low bidder because they considered him incompetent. He did not have the equipment, the experience, and the financial resources. They were overridden and were forced to award the contract to that company.

Senator SPARKMAN. The only point I want to make about it is if the procuring agency was overruled, the contract was not a set-aside contract. It was an action taken under the certificate of competency provision of the Small Business Act.

Mr. FORDICE. Yes.

Mr. DUNN. I could comment on that.

Senator PROXMIRE. Do you want to comment, Mr. Dunn? Go right ahead.

Mr. DUNN. Yes, among other things, Mr. Fordice is referring to a certificate of competency, not a set-aside.

Mr. Chairman, Senator Sparkman, to sum up, the membership of the Associated General Contractors of America strongly support the proposed legislation to eliminate set-asides in construction for these principal reasons:

First, the set-aside program in construction is entirely unnecessary. The industry is composed of small- and medium-sized firms, and in its traditional free and open competitive system provides full opportunity for small businessmen to obtain a fair share of contracts.

Second, the set-aside program in construction is definitely harmful to the industry, as the testimony of Mr. Tester and Mr. Fordice has shown. Many hundreds of other AGC members could testify similarly to the disruptive effects of set-asides.

Third, the entire construction industry is on record in opposition to set-asides, as other testimony before your committee has shown. General contractors, mechanical and special contractors, and construction labor have all said that this program is harmful. It is no secret that officials in the Federal contracting agencies who have to deal with set-asides are opposed to them.

Such a program, which the industry did not ask for, does not need, and does not want, and which has done serious harm to the industry, should not be forced upon any group of American businessmen or workers by a Government agency.

Finally, Mr. Chairman, construction set-asides are costing the American taxpayers more for Federal construction than they would have to pay for it under the time-tested open competitive system.

This SBA program is against the public interest as well as the welfare of the construction industry.

Mr. Chairman, a number of questions were asked by you and Senator Sparkman—

Senator PROXMIRE. Before you come to those questions, Mr. Dunn, I would like to ask you some questions that may relate to this and may not, but we may be able to save a little time by dealing with these first.

Mr. Dunn, you are secretary of the Associated General Contractors? Is that correct?

Mr. DUNN. I am executive director.

Senator PROXMIRE. Executive director; I beg your pardon.

Mr. DUNN. It is the same thing.

Senator PROXMIRE. All right; and you appear for them here on the bill?

Mr. DUNN. I appear here as spokesman of the executive staff of the Associated General Contractors.

Senator PROXMIRE. Did they take any action—did the board of directors take action—or did the Associated General Contractors take action through a convention or something of the kind?

Mr. DUNN. Yes. At our last convention in Los Angeles in February a resolution was adopted after a great deal of discussion in committee and divisions, it was unanimously passed, to oppose the set-aside program of the SBA and ask Congress to look into this problem and do this by legislation.

Previously, in Boston, a year prior to that, another action was taken by our convention. And in between we had board meetings of four and five hundred representatives from all over the United States, Hawaii and Alaska included, who debated this issue and passed unanimous resolutions on the subject, Mr. Chairman.

Senator PROXMIRE. No opposition?

Mr. DUNN. I would like to enter into the record the series of resolutions.

(The resolutions referred to follow:)

#### RESOLUTION

[Forty-third annual convention, the Associated General Contractors of America, Inc., Biltmore Hotel, Los Angeles, Calif., February 26-March 1, 1962]

#### SMALL BUSINESS ADMINISTRATION

Whereas the association continues to receive reports of further regulations of the Small Business Administration interfering with free and open competition on public works contracts; and

Whereas the convention reviewed the most recent activities of the Small Business Administration with regard to subcontracting regulations and the mandatory use of set-asides: Now, therefore, be it

*Resolved*, That the 43d annual convention of the Associated General Contractors of America, meeting in Los Angeles, Calif., February 26-March 1, 1962, strongly condemns this latest intrusion on the time-honored principle of awarding public works contracts to the lowest responsible bidder after free and open competition. The association urges all its members to take active support of legislation to remove the Small Business Administration's control over the construction industry through its set-aside and subcontracting programs.

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[Midyear board meeting, the Associated General Contractors of America, Inc., Roosevelt Hotel, New Orleans, La., October 23-25, 1961]

#### SMALL BUSINESS ADMINISTRATION

Moved that, in order that the staff and executive officers of AGC may know how strongly we feel about this situation the board hereby states that the Small Business Administration is one of the major problems that we face in the industry today and that the staff and the executive officers should conduct their activities in opposition to Small Business interference in construction in any way.

Motion adopted unanimously.

NOTE.—The motion was introduced and seconded by members who both identified themselves as falling within the SBA definition of small business.

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#### RESOLUTION No. 7

[Forty-second annual convention, the Associated General Contractors of America, Inc., Statler-Hilton Hotel, Boston, Mass., February 27-March 2, 1961]

#### SMALL BUSINESS SET-ASIDES

Whereas the Small Business Administration has ordered defense construction agencies to set aside certain construction contracts for small construction firms; and

Whereas this policy prevents many qualified construction firms from bidding on these projects, and thereby limits free competitive bidding thus increasing the cost to the detriment of the public interest: Now, therefore, be it

*Resolved*, That the Associated General Contractors of America reaffirms its opposition to the set-aside program and urges that it be eliminated by administrative or legislative action.

[Midyear board meeting, the Associated General Contractors of America, Inc., Hotel Westward-Ho, Phoenix, Ariz., October 3-5, 1960]

## SMALL BUSINESS ADMINISTRATION

Motion was unanimously approved by the heavy, municipal and utilities directors' session recommending that the board oppose the Small Business Administration program of construction contract set-asides inasmuch as any restriction on open competitive bidding for public works is not in the public interest.

Motion adopted by the board approving this recommendation.

Senator PROXMIRE. May I ask this: There was no opposition whatsoever? The most recent one was unanimous?

Mr. DUNN. That is correct.

Senator PROXMIRE. Who does the AGC represent—that is, in terms of size? What portion of your membership would be classified as small and what proportion large?

Mr. DUNN. Ninety percent of our members are small according to these definitions.

Senator PROXMIRE. Nineteen?

Mr. DUNN. No, 90 percent.

Senator PROXMIRE. Ninety percent?

Mr. DUNN. Ninety percent of our members are small under the definition of SBA, although, Mr. Chairman, we have never known the term "small contractor" or "large contractor" until it was injected into this industry by SBA.

For 42 years we met problems of the industry, but we have never known of class distinction before among contractors.

But if you count heads, 90 percent of our members are small under SBA definition.

May I add that 66 of our chapters have passed resolutions supporting the national's position on set-asides, and others are coming in every day. We got one yesterday from Maine. We would like to enter those in the record.

Senator PROXMIRE. When SBA had the size standards hearings, did you testify?

Mr. DUNN. I intended to cover that. We did file a statement, Mr. Chairman. There were two hearings, I believe, referred to in testimony, one in 1958, when they came upon a definition of what was small or what was large, and again in February of this year. We did not testify, Mr. Chairman, but we filed a statement, and I would like to have this entered in the record at this point.

Senator PROXMIRE. Very good. Without objection, it will be entered.

(The statement referred to follows:)

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.,  
Washington, D.C., February 14, 1962.

Subject: Small business size standards.

MR. SAMUEL S. SOLOMON,

Director, Office of Small Business Size Standards, Small Business Administration, Washington, D.C.

DEAR MR. SOLOMON: This is in response to your public notice of January 30, 1962, in the Federal Register inviting opinion on the proposed redefinition of small business firms in the construction industry.

There has never been a class distinction within the construction industry where so-called small firms are separated from large firms and given a preference to do work. An arbitrary standard that promotes the reservation of contracts to any class of contractors for restricted bidding is fundamentally

against the competitive free enterprise system which has been the standard for the construction industry. Open competition for all public works construction, by award to the lowest responsible bidder, has without reservation proved to be the best method of obtaining economical bids. Such a standard offers maximum safeguards in the use of public funds and provides ample opportunity for construction firms of various sizes.

It is our considered opinion that section 2 of the Small Business Act, as amended in 1958, should insure full and free competitive bidding by all contractors, on an equal basis, in contracts for construction, maintenance, and repair. Nothing contained in this act should be construed to prevent or eliminate full and free competitive bidding, on an equal basis, by all construction contractors and subcontractors. The tendency to arbitrarily attach standards of restriction to our industry with consequent benefits to some and penalties to others appears to require remedial legislative action.

While the policies and practices of open competition which have heretofore existed within this industry are being restricted, other areas of procurement appear to need consideration. According to a presentation to the Senate, it was stated "Figures furnished to the Congress by the Department of Defense in the report entitled 'Military Prime Contract Awards to Small Business and Other Contractors' (July 1960 to December 1960) show that in fiscal year 1960, of Defense prime contracts with business firms for work in the United States, 86 percent of the dollar amount was negotiated and only 14 percent was advertised." It was further pointed out that of \$21.6 billion for military procurement by the Department of Defense, 74.6 percent (or \$16 billion) was awarded to 100 companies. This certainly is not the case with regard to defense construction.

So that you may know our policy on this subject, we quote here from our most recent convention resolution on the subject. It was passed unanimously at our 42d annual convention held in Boston, Mass., on February 27 to March 2, 1961, and reads as follows:

"RESOLUTION No. 7. SMALL BUSINESS SET-ASIDES

"Whereas the Small Business Administration has ordered defense construction agencies to set aside certain construction contracts for small construction firms; and

"Whereas this policy prevents many qualified construction firms from bidding on these projects, and thereby limits free competitive bidding thus increasing the cost to the detriment of the public interest: Now, therefore, be it

"Resolved, That the Associated General Contractors of America reaffirms its opposition to the set-aside program and urges that it be eliminated by administrative or legislative action."

We respectfully request that this letter be considered a part of the record for the hearing of February 20, 1962, in order that our reasons for not participating will be included in the report of this meeting.

Sincerely,

WILLIAM E. DUNN,  
*Executive Director.*

Mr. DUNN. I will tell you in principle what it says.

Senator PROXMIRE. It is a brief statement I understand.

Mr. DUNN. It is a page and a half.

Senator PROXMIRE. It has been entered.

Mr. DUNN. I can tell you why we filed a statement. Because, Mr. Chairman, AGC does not want to help define a "small firm" to the detriment of other firms which do not fit the definition and then discriminate against the other firms, knowing how it is going to be used, how this definition is going to be used, by SBA. Knowing the history of the set-aside program, once you define a small firm, that is the point at which you discriminate against those who do not fall in that definition.

We have some correspondence that might interest you on that, Mr. Chairman. This correspondence said we ought to go in and help SBA define a small firm.

By the way, SBA is increasing the size standard to \$7,500,000, and they probably will announce that soon.

But these letters we received pointed out we should go in and help define a firm as small—not one doing \$5 million, because that size definition was hurting them. This definition was hurting this particular contractor. They said, "Go in and make it \$6 million instead of \$5 million and we would like that."

Senator PROXMIRE. So you rejected the whole procedure? You did not want a definition either way?

Mr. DUNN. That is right. We could not follow the request of these two or three contractors because what they wanted to do was have the definition cut to their size so they fit in it and thus they would be able to operate under it, but they did not want anybody else over \$6 million to compete with them. Thus discrimination would start at \$6 million, and not \$5 million.

Senator PROXMIRE. Let me ask you something else. In your organization do you have dues assessed depending on the size of the member in any way, or do all your members pay equally?

Mr. DUNN. All regular members pay a nominal sum of \$125 a year.

Senator PROXMIRE. Who makes up the board of directors?

Mr. DUNN. Those are elected by the members throughout the States. Mr. Fordice is a director. Mr. Tester is a director. He was elected by his fellow contractors, his competitors.

It is not on a basis of who pays the most. Everybody pays the same, \$125 a year for regular membership.

I did not want to leave the impression the big contractors pay more than the little ones as was suggested by the question.

Senator PROXMIRE. In a recent nationwide survey of 976 small business construction firms, 86.7 percent were in favor of small business set-asides. It is of further interest to note that of the 976 polled, 401 were members of the Associated General Contractors of America, Inc., and 80 percent of the AGC members polled—your organization—favored set-asides for small contractors.

The results of this survey are shown below. Here they are:

The number of members of AGC was 401, 41.8 percent of those polled.

The number of nonmembers of AGC was 559, 57.3 percent.

The number not stating, 16, or 1.6 percent.

The number favoring set-asides were 846, or 86.7 percent of all those who responded.

The number against set-asides were 68, or 7 percent.

In other words, the contractors who replied were about 12 to 1 in favor of the set-aside program.

No opinion, 62, or 6.3 percent.

Number of AGC members favoring set-asides, 321, or 80 percent.

Number of AGC members against set-asides, 80, or 20 percent.

This is in sharp and direct and absolute contradiction to your testimony this morning.

Mr. DUNN. I would like to refute it.

Senator PROXMIRE. For the record, I am going to put this survey in at this point and invite you to comment on it.

(The survey referred to follows:)

POSITION PAPER REGARDING ASSERTIONS MADE CONCERNING SMALL BUSINESS ADMINISTRATION ACTIVITIES AFFECTING THE CONSTRUCTION INDUSTRY, JANUARY 31, 1962

Certain assertions have recently been made concerning the activities of the Small Business Administration (SBA) and their effect upon the construction industry. Because these allegations are unfounded, and if left unanswered would create a false image, the following is a statement of the SBA position to each of these allegations.

1. *Allegation.*—It is a fact that SBA officials have stated to AGC representatives that what the construction industry needs is more competition and the way to get more competition is to get more small firms to come into the business. SBA officials say that if a man wants to get into construction, the agency will assist him—help him get financed, give him technical advice, and set aside jobs for him.

*Actual fact.*—Congress in section 2(a) of the Small Business Act declared that the American economic system of private enterprise is predicated upon free competition and enunciated a policy in the interest of small business in order to preserve free competition and to maintain and strengthen the overall economy of the Nation. The Congress further declared that free entry into business must be assured in the achievement of this national policy. SBA's financial assistance and procurement and technical assistance programs are designed to accomplish this congressional pronouncement.

2. *Allegation.*—It is a fact that SBA creates inexperienced competitors to qualified contractors by making or guaranteeing loans to small firms which in many cases are regarded as poor risks and unable to obtain financing through normal channels. SBA's condition for considering a loan to a small firm is that the applicant must have letters from three lending institutions refusing to finance him.

*Actual fact.*—SBA's financial assistance program is designed to assist small business concerns which cannot obtain necessary financing through private or commercial sources. In administering the financial assistance program provided for in section 7 of the Small Business Act, SBA has administratively determined that financial assistance is not available from private or commercial sources if a borrower has been unable to obtain the funds requested from his bank of account, alone or in conjunction with a second lending institution depending upon the size of the loan requested, the lending policy of the banks refusing financial assistance, and the locality of the applicant. However, all loans made by SBA are of such sound value or are so secured that there is reasonable expectation of repayment. In no event does SBA extend financial assistance to a borrower who is considered to be a poor credit risk. In this connection it is noted that as of December 31, 1961, only \$4,789,000 have been charged off against all business loans made by SBA since the inception of the financial assistance program. This figure represents about one-half of 1 percent of SBA's share of \$909,970,000 disbursed as loans to small business. In addition, it is required whenever possible that loans be made on a deferred basis in participation with private sources.

3. *Allegation.*—It is a fact that the SBA will attest to the competency of these small firms by issuing a certificate of competency, which must be recognized by all Government agencies as the last word on qualifications to do the job.

*Actual fact.*—Pursuant to section 8(b) (7) of the Small Business Act, SBA is empowered to certify to Government procuring agencies that a small business concern has the capacity and credit to perform a specific contract. This section further provides that such certification by SBA shall be accepted by the procuring agency as conclusive. In carrying out this certificate of competency program, SBA conducts a thorough and careful investigation and analysis of a small business concern's financial and technical ability to perform a specific contract. A certificate of competency will not be issued unless this investigation and analysis establishes a reasonable assurance that the contract will be satisfactorily performed. Since the inception of the certificate of competency program through June 30, 1961, SBA has received 1,926 applications and has issued 904 certificates of competency. Of the certificates issued for this period, only 26 or approximately 2.8 percent of the contractors certified by SBA have failed to perform the contract for which the certificate was issued.

4. *Allegation.*—It is a fact that SBA can and does take award of Government construction contracts away from the lowest bidder and give it to someone else, even though his bid may be considerably higher.

*Actual fact.*—Section 15 of the Small Business Act provides for the establishment of a set-aside program in Government contracts as one means of carrying out the congressional small business policy. To resolve any doubt that may have existed as to the applicability of the set-aside program to construction contracts, section 2 of the Small Business Act was amended in 1958 to specifically provide that small business should receive a "fair proportion of the total purchases and contracts for purchases and services for the Government (including but not limited to contracts for maintenance, repair, and construction)." In application, if a particular construction procurement is set aside for award to small business concerns, any bid received from a large business concern will be treated as nonresponsive. An analysis of procurement statistics for the period January through June 1961, compiled by the Department of Defense for construction contracts of \$10,000 or more, reveals that 4,031 procurements were set aside for award to small business firms. In only 18 of these procurements were bids received from large business firms rejected as nonresponsive, although lower than the successful small business bidder. Accordingly, the small business set-aside program resulted in the rejection of low nonresponsive bids in less than one-half of 1 percent of the set-aside construction procurements for this period.

5. *Allegation.*—It is a fact that SBA officials have expressed no concern over additional cost to taxpayers of set-aside program. Their explanation is that present cost, whatever it may be, is only temporary, since public will ultimately benefit from lower prices because of added competition from new contractors put into business by SBA. Agency officially substitutes "reasonable" bid for "lowest" bid in evaluating contract proposals.

*Actual fact.*—No one has ever demonstrated or established that the set-aside program has resulted in appreciable additional costs to the Government. It is evident from the procurement statistics compiled by the Department of Defense, referred to in paragraph 4 above, that the rejection of 18 large business bids out of more than 4,000 procurements did not result in a significant increase in construction costs when considering that the difference between the award price and the rejected price on these contracts represents approximately one-tenth of 1 percent of the total cost of construction procurements set aside for small business during that period. However, it should be noted that a procuring agency has the authority to reject all bids and readvertise any procurement including one involving a small business set-aside, if it determines that the prices submitted are unreasonable. Since the continued existence of small business firms will insure and foster adequate competition, it is contemplated that the set-aside program will, in the long run, result in decreased procurement costs.

6. *Allegation.*—It is a fact that SBA fosters job brokerage by encouraging a small contractor who has received a Federal contract under the set-aside program to turn around and sub all or part to a larger contractor. Thus, a so-called small contractor who is third low can broker the job to apparent low bidder disqualified under SBA set-aside program.

*Actual fact.*—Although the successful bidder on a small business restricted construction procurement may subcontract a portion of an overall contract, this subcontracting, even if done to a large construction concern, cannot be characterized as job brokerage. Section 4-104 of the Armed Services Procurement Regulation (ASPR) recognizes that it is a custom in the construction industry to subcontract aspects of an overall contract, such as plumbing, heat, electrical, and air-conditioning work. In addition, this section of ASPR further authorizes the utilization of a subcontract clause under which the contracting officer may require the prime contractor to perform at least 20 percent of the entire project. Therefore, since "job brokerage" connotes the subcontracting of an entire project, it cannot be said that SBA encourages this practice.

7. *Allegation.*—It is a fact that SBA law neither defines a small business firm nor states what is a proper size contract to be set aside for such a firm. Law provides only that Administrator shall see to it that small firms receive a fair share of Government procurement contracts. SBA officials have refused to define "fair share," but have repeatedly stated that regardless of how much work is going to small firms, there has to be more.

*Actual fact.*—Section 3 of the Small Business Act provides that a small business concern "shall be deemed one which is independently owned and operated and is not dominant in its field of operation." In addition, section 3 of the act

gives SBA the authority to make a more detailed definition of small business for various industries under the guidelines set forth in the act. Based on upon this authority, SBA has developed the small business size standards which are codified in title 13 Code of Federal Regulations part 121.

Regarding the accusation that SBA officials have refused to define the term "fair share," it is noted that the Congress in sections 2 and 15 of the Small Business Act stated that small business should receive a fair proportion of the total purchases and contracts made by the Government. Obviously the term "fair proportion" does not refer to a single procurement or to a single industry, but rather to the totality of Government procurement. In addition, the term "fair proportion" is dependent upon the value and types of procurement that the Government may make at any given time. Since the type of material procured by the Government and the amount spent therefor is never constant, it would be difficult to establish standards which can be deemed to be a fair proportion for small business.

The Congress has experienced difficulty in determining what constitutes a "fair portion" of Government contracts to be awarded to small business. In reviewing the percentage of Government procurement being awarded to small business concerns, the Select Committees on Small Business of the U.S. Senate and the House of Representatives each indicated that the percentage of procurements being awarded to small business at the time of their inquiry was lower than that contemplated by the term "fair proportion" (H. Rept. 2683, 83d Cong., 1st sess., 11 (1954); H. Rept. 1610, 83d Cong., 2d sess., 56 (1954); H. Rept. 2235, 86th Cong., 2d sess., 128 (1960); S. Rept. 30, 87th Cong., 1st sess., 10 (1961)).

8. *Allegation.*—It is a fact that SBA does not limit size of contracts it will set aside for so-called small business firms (those doing less than \$5 million business a year). Construction contracts of \$500,000 or less are automatically set aside, and SBA actually has set aside contracts as large as \$5.5 million for bid by firms previously doing less than \$5 million business a year.

*Actual fact.*—While SBA recommends to a procuring agency that a contemplated procurement can be performed by small business concerns, the SBA does not have the authority to set aside any contract or part of any contract for award to small business. A contract or any part of a contract can be set aside for award to small business by a procuring agency based upon a determination made jointly with SBA, or upon its unilateral determination. Regarding construction contracts, the ultimate determination as to the advisability of establishing a small business set-aside still remains with the procuring agency. There is no agreement between SBA and the Department of Defense under which all construction contracts of a value of \$500,000 or less are automatically set aside for award to small business concerns. SBA and the Department of Defense have agreed, however, that construction contracts estimated to cost less than \$500,000 will be considered by the Department of Defense as having been the subject of an SBA request that they be set aside for award to small business. The study made by the Department of Defense for the period of January through June 1961, referred to in paragraph 4 above, reveals that on the 5,291 construction contracts between \$10,000 and \$500,000 awarded by the Department of Defense, set-asides were not utilized in 1,294 of these contracts.

9. *Allegation.*—It is a fact that SBA is going all out on a huge subcontracting program to require both the prime contractor and his subcontractors to subcontract even more work than at present. This policy is being pursued despite the fact that many Government agencies set limitation on amount a prime contractor can subcontract, also flies in face of strong congressional sentiment that too many brokers are already getting into construction industry.

*Actual fact.*—In order to carry out the intent of Congress as set forth in Public Law 87-305 (75 Stat. 666), the Department of Defense, the General Services Administration, and the Small Business Administration cooperatively developed a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors and suppliers under Government prime contracts. This program has been implemented by regulations promulgated by the Department of Defense and the General Services Administration. The statute and the regulations provide that SBA cannot prescribe the extent to which any contractor or subcontractor will be required to subcontract, or specify the particular business concern to which any subcontract shall be awarded. In addition, the statute specifically provides that construction contracts are to be included in the subcontracting program.

10. *Allegation.*—It is a fact that SBA is developing with Department of Defense and General Services Administration restrictive regulations which call

for cancellation of Government contracts if it is found that the prime contractor and his subcontractors have not subcontracted enough work to small firms. As part of this artificial competition setup, SBA will establish educational programs designed to provide small business capability for future contracts.

*Actual fact.*—The small business subcontracting program regulations promulgated by the Department of Defense and the General Services Administration provide for the inclusion of a small business subcontracting clause in Government prime contracts which may exceed \$500,000 and which, in the opinion of the contracting officer, offer substantial subcontracting opportunities. This clause requires the contractor to establish a small business subcontracting program and prescribes the requirements of the program. The clause also provides that, in the event the contractor fails to comply with these requirements, the contract may be terminated. However, the requirements do not include any provision regarding the amount of subcontracting to be done with small business.

It is apparent from the assertion concerning educational programs that the purpose of this undertaking has been entirely misconstrued. This program will not create artificial competition but will attempt to develop qualified small business sources in areas of procurement where no such sources now exist. It is contemplated that this program will provide new and expanding sources of supply and (by reason of increased competition), reduce Government procurement costs.

11. *Allegation.*—It is a fact that SBA's new subcontracting program will encourage bid peddling and bid shopping by providing notification and solicitation to small subcontracting firms of the award of a prime contract. Such notice will go out regarding prime contracts over \$25,000.

*Actual fact.*—Included in the subcontracting program will be a provision that all contractors performing contracts within the coverage of the regulations will be required to obtain from SBA, through the appropriate procuring agency, small business sources for certain subcontracts where no small business firms would otherwise be solicited. However, the program will not provide for "notification and solicitation to small subcontracting firms of the award of a prime contract." Unfortunately, the meaning or intent of this particular assertion is so ambiguous that a more definitive reply cannot be furnished.

12. *Allegation.*—It is a fact that SBA's proposed regulations will insist contractors must provide materials and services from a small subcontractor or supplier instead of doing this work himself if such purchases "were not regularly manufactured or provided by the prime contractor on previous projects." Thus, if it was a contractor's custom to buy ready-mix concrete, he could not establish a batch plant, regardless of the size of the job, without SBA approval.

*Actual fact.*—The jointly developed small business subcontracting program also includes provisions regarding a contractor's make-or-buy program. In connection with the approval of such programs, consideration is given to whether or not the contractor has regularly manufactured the item which he desires to make, to the price quoted by the contractor for the item as compared to the prices quoted by other manufacturers and the ultimate overall cost of the contract to the Government. However, the approval of make-or-buy programs is only required in negotiated contracts and is solely within the discretion of the contracting officer. Therefore, in a fixed price construction contract, ordinarily awarded through formal advertising, if a contractor desires to establish a batch plant to provide concrete for a specific procurement, he may do so although his previous practice was to buy ready-mixed concrete. The make-or-buy policy was not designed for use in the award of construction contracts. While the policy does not exclude construction, it will have little practical application to construction contracts.

13. *Allegation.*—It is a fact that in the spirit of bringing more competition to every phase of the construction industry, if SBA determines that there is not an "adequate" supply of small construction firms or suppliers of materials, it will help create such firms.

*Actual fact.*—In carrying out the objectives of the Small Business Act, SBA will assist a small business firm in diversifying its base of operations or converting into an area in which there is need for additional sources of supply. In order to render this assistance, it is necessary to determine the degree of concentration or competition that exists in certain industries and localities. However, this aspect of SBA's assistance is neither intended to nor should it result in the supplanting of large business firms by small business firms.

It may be of interest to note that in a recent nationwide survey of 976 small business construction firms, 86.7 percent were in favor of small business set-asides. It is of further interest to note that of the 976 polled, 401 were members of the Associated General Contractors of America, Inc., and 80 percent of the AGC members polled favored set-asides for small contractors. The results of this survey are shown below:

Companies reporting	Number	Percent
(a) Total.....	976	100.0
(b) Number members AGC.....	401	41.8
(c) Number nonmembers AGC.....	559	57.3
(d) Number not stating.....	16	1.6
(e) Number favoring set-asides.....	846	86.7
(f) Number against set-asides.....	68	7.0
(g) No opinion.....	62	6.3
(h) Number AGC members favoring set-asides.....	321	80.0
(i) Number AGC members against set-asides.....	80	20.0

Senator PROXMIRE. I thought this would be a good place to bring it up, because you gentlemen are here to rebut it or contradict it.

This appears in a presentation by the SBA prepared a couple of months ago for the guidance of this committee.

So you tear into it.

Mr. DUNN. I am certainly glad you brought it up, Mr. Chairman. This is an unfair and nonrepresentative survey. Polling only 401 out of 7,000 AGC members is not a representative survey. It is not only that, but it is not given the approval of the Bureau of the Budget. It was done without the cooperation and assistance of the industry. It is not correct on its face.

Let me point out one of the figures you just read. I think I have a copy of it.

It says number of AGC members contacted, 401. Then it says number against set-asides altogether, 68. Number of AGC members against set-asides, 80. How can you have 80 out of 68? They did not even watch their arithmetic on that, Mr. Chairman.

Furthermore, we do not know how this was conducted, how much of a sales pitch was given by SBA agents to contractors who were in a compromising position, how much pressure was put on them. We know of actual cases where SBA agents personally called on those being polled and later misrepresented the facts and the results of the poll.

We do not run our business on a popularity contest basis in which you go out and find people here and there to fill out a form asking them do they like this or that policy.

And certainly this country would not be in very good shape if it were run on such a basis, if it did not have organized procedures for the handling of the enactment and administration of law.

Senator PROXMIRE. You see the point that is raised by this survey. No matter how you attack this typographical error or anything else in the report, the fact is these were contractors who were specifically asked and who responded. I think that, whatever disagreement there may be on policy, we all agree that these people in the SBA are not dishonest, and they would not deliberately mislead the Congress or mislead the public.

Mr. DUNN. I agree with that.

Senator PROXMIRE. They show the contractors who were asked answered overwhelmingly that they favored set-aside programs.

While I respect the judgment of you gentlemen, and so forth, have you conducted any survey? Did you have any direct indication of a questionnaire to all of your contractors in which they have given a response one way or the other?

You have had a convention, but you know how conventions operate, including the Democratic convention.

Mr. DUNN. We have had several conventions, the matter was well advertised in advance, discussed thoroughly, and passed unanimously.

We could fill this room up with small contractors here, Mr. Chairman, in support of this bill, but we thought 1 or 2 spokesmen or 3 for 7,000 would be better because of the time limitations.

And if you want a popularity contest type of questionnaire we can do that too.

But Mr. Fordice sitting right next to me has a specific answer to your question.

Mr. FORDICE. It is rather local, but I believe in early March of this year I attended a State meeting of Associated General Contractors in Tennessee, in Knoxville. There were approximately 70 members there. I have no figures on who was large and who was small. But I would say out of the 70 not more than 10 were classified as large.

The vote there was unanimous—opposed to the set-aside program.

In addition to that, in my own chapter, back when this set-aside program was first raised up to about a half million dollars, we had a director who was going to a national directors' meeting and felt that he should be instructed before he went. A poll was taken then of about 60 members, 15 of whom qualified as big business. About 40 votes were returned. If anybody wanted, I can get the figures on this, but I do not have them with me. Approximately 32 opposed, and 8 were for it.

But that was at the very beginning, and now I know personally that some of these people that voted for the set-aside program at that time, after seeing it in operation, have changed over and are on the other side.

Senator PROXMIRE. The difficulty is that we all know how unions operate, how trade associations operate, how corporations operate. It is perfectly possible that if you have adroit and effective leadership that you can get a unanimous vote. In fact, there are a lot of unanimous votes I think in the Senate where if there were a rollcall you might get a little different viewpoint, sometimes a considerably different viewpoint.

I am just saying that there is some evidence that there may well be a substantial number of members of your own organization who disagree with you.

This survey indicates they overwhelmingly disagree.

But we have to leave it at the present point indeterminate, just saying there is this evidence on both sides.

Mr. DUNN. May I say, Mr. Chairman, in all fairness, I have studied this report of the SBA survey. We consider it a jackleg type of survey at best. It has not been recognized by anyone as being representative. We do not know who all were contacted and who were not. And we do not run our association on that basis.

I do not think you can say that there is an overwhelming desire for SBA set-asides on the basis of this kind of a survey, and we refute

that 100 percent as being inaccurate and not representative, and some persons contacted were misquoted as favoring set-asides.

We have never taken any policy matter to a secret ballot, nor was the SBA poll conducted on a secret ballot basis—it was personally conducted—as Mr. Fordice said—

Senator PROXMIRE. You have never taken any matter to what?

Mr. DUNN. To any kind of secret ballot. We work on the basis that it is the elected director whose job it is—

Senator PROXMIRE. You have never used the secret ballot?

Mr. DUNN. Oh, we do have the election of the directors.

Senator PROXMIRE. But you have never used this on this kind of thing?

Mr. DUNN. Not on policy questions. It is all out in the open. And Mr. Tester was elected on the basis of what his people wanted, and he comes in and fights for that. That is for sure.

Do you have a secret ballot in your district or your State of Wisconsin?

Senator PROXMIRE. We sure do when we elect—

Mr. DUNN. No, no. I am not talking of election of directors. Ours are elected on secret ballot. But when a question of national policy comes up for vote, sir, such as the matter of foreign aid, do you have a secret ballot among your constituents?

Senator PROXMIRE. I sit in the seat occupied formerly by old Bob La Follette, founder of the referendum, and those are always by secret ballot. When our people vote in Wisconsin on matters of policy, they vote in secret ballot, so nobody can put pressure on them, so there can be no punishment visited on them if they vote against other people who disagree.

Mr. DUNN. We have not done that in 42 years. I do not think we are going to start now.

Senator PROXMIRE. I have detained you too long. Your testimony has been extremely effective. If you want to sum up I think that is all right. We have given you 45 minutes.

Mr. DUNN. We appreciate that.

Senator Sparkman, your fine AGC constituents in Alabama have voted on this matter of whether they favor set-asides or not. Eighty-six percent of our AGC membership in the State of Alabama are small business by SBA definition. We have to get used to this definition, because we never had one before. But anyway our Alabama members voted 100 percent in support of this legislation and against SBA set-asides in construction. One hundred percent.

And that is the way it is going all across the country.

We would like to file those local votes with you. (See pp. 102, 174.)

We are not going to be pressured into a national survey but we will file the votes that are taken by each of the chapters.

Senator PROXMIRE. You say you are not going to be pressured. We are not trying to pressure you.

Mr. DUNN. Not you, sir. But the SBA makes a lot of the fact that we have never had a poll of our members on this subject. We work through our representatives groups, our directors, and the chapters.

There are one or two chapters out of 127 that are opposed to our position on this. A number of our members have written individual

letters. But these are one or two chapters out of 127. We had three until yesterday. We got a reversal from one. The group wrote in saying, "We recognized our position." And I told that one other chapter is about to change its mind. Now, that is as the truth comes out about set-asides and subcontracting rules.

I am sure that Senator Sparkman and you, Senator Proxmire, have today found out that this program has some bugs in it.

And I do not think the new size standard is going to improve it any. It is simply a matter that we must go back to free and open competition or we are in trouble. And I do not think that restricted bidding—in the form of set-asides—is free competition. As the Senator said very eloquently yesterday, he is for free competition so are we. But Mr. Bannerman of the Defense Department, said a set-aside of construction jobs is restrictive bidding and the Comptroller General of the United States says a set-aside is a negotiated contract. Thus set-asides and restricted bidding are not free and open competition for public work.

Mr. Chairman, give us free competition on public work and we will show you that actually construction jobs go to small firms as well as large, that construction is a whipping boy for the SBA set-aside program. It is their statistical wizardry.

We, the construction industry, are giving 53 percent of the construction dollar to the small firm under normal competitive bidding. Yet the overall average for all procurement is only 15 percent, Senator. Why? It has dropped down from 25 percent. We will beat the 15. We will beat the 25. Ours is 53.

I think SBA might concern itself to this area where they only have 4 and 5 percent of all procurement going to small firms. Compare that to 53 percent of construction going to small firms. Hard goods and manufacturing, research and development have only about 5 percent going to small firms. They should not come into the very little area in Federal procurement where there is free competition today.

Over 80 percent of the U.S. procurement of \$23 billion is today negotiated—88 percent I believe. Only 12 percent is competitively bid.

We think that SBA is sort of laying it on the construction industry, because this is the area where they advertise for bids and where they can get into set-asides, and then they take it out of open competition by making it restrictive bidding.

I would like to enter into the record at this point Mr. Bannerman's and the Comptroller General's definition of restricted advertising. Because that is exactly what we consider this.

(The excerpt referred to follows:)

EXCERPT FROM STATEMENT OF MR. GRAEME C. BANNERMAN, DEPUTY ASSISTANT SECRETARY OF DEFENSE (PROCUREMENT)

Before leaving this subject, we find it necessary to point out the statement made by the Small Business Administration that "100 percent small business set-asides are recognized as formally advertised procurements." Our regulations (ASPR 1-706.5(b)) provide that such set-asides may be entered into by conventional negotiations or by small business restricted advertising. The Comptroller General had advised that all of such procurements must be reported as negotiated.

Mr. DUNN. We think that those who are espousing the SBA and are the proponents of this existing program do so not knowing the

facts. I can see how you would go ahead where the other side of the story has not been told. But please remember that in doing so you are developing in this industry things that have never been there before. One is a crutch in the form of the Government. This is done by giving loans to those who cannot get a loan from a bank, if they can show it with a letter or two.

Two, you are relying on the set-aside to help that fellow out.

I would like to enter into the record the greatest check the contractor has, whether it be these two gentlemen or the 7,100 of our members who are not here, and that check is the fact that if the contractor's banker tells him he is overdrawn, extending himself too much, he ought to pay attention to the banker and follow his advice. And if a banker tells the contractor he cannot have a loan, I do not think the Government should give him a loan, because there is a great risk there to everyone, including the taxpayer.

Out of all the SBA loans that were given to contractors, according to reports by Mr. Horne, 17 percent failed. That is one out of every six.

I would say, as Mr. Fordice has just said, SBA is doing a disservice to our contractors in this country by giving them loans and set-asides after they were turned down by a bank, because in doing so SBA is misleading such contractors as to their own power and ability to survive. Let these contractors come up through the survival-of-the-fittest route, not the Government-support shortcut to trouble.

Mr. Chairman, you were elected to the U.S. Senate because of your ability, not because of the handicaps that you might want to put on some opponent. And I do not think you would like to see a program whereby the incumbent in office, one who has shown that he can succeed and get elected on his own merits, is put at a disadvantage and the other fellow, who wants to replace him, is given a 10-percent advantage or margin on votes and on top of that is financed by the Government.

That is the way our contractors who came up the hard way, who developed their own skills, feel about the SBA loan and set-aside program.

We feel that the SBA program is discriminatory against those who succeed by standing on their own two feet.

Thank you.

Senator PROXMIRE. Thank you very much for your certainly very forceful presentation.

Mr. DUNN. Thank you. We feel very strongly about this.

(The following was received for the record:)

SUPPLEMENTAL STATEMENT FOR THE RECORD BY WILLIAM E. DUNN, EXECUTIVE DIRECTOR, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

#### *AGC membership*

All regular chapter members of the Associated General Contractors of America pay \$125 annual dues, regardless of the volume of their business. As of June 4, AGC had 7,053 chapter members. The dues from chapter members in 1961 accounted for 94.8 percent of all income of the national association from dues.

A contractor whose needs cannot be adequately served by an AGC chapter may become a local member, paying \$250 annual dues. AGC has 14 local members, who in 1961 accounted for 0.4 percent of the association's income from dues.

A contractor who works in several States or within areas served by several chapters may become a national member, with annual dues of \$1,000 for firms

doing under \$4 million business annually and \$2,000 for firms doing over \$4 million business. AGC has 13 national members who pay dues of \$1,000 and 14 who pay \$2,000.

In 1961 the dues from national members represented 4.8 percent of the AGC's income from dues.

No member of the Associated General Contractors, whether a national member, a local member, or a chapter member, has more than one vote in association affairs.

There are also provisional members who are entitled to receive AGC publications and other services from the national organization and local chapters, but may not vote, hold office, or use the AGC emblem, and may not hold provisional membership for more than 3 years. AGC has 62 provisional members, who paid total AGC dues in 1961 of \$889, representing a small fractional part of income from dues.

The great body of AGC membership is contained in 127 chapters throughout the United States. For all practical purposes, the chapters are autonomous. The dues paid to chapters for local everyday service and industry betterment are quite generally on a sliding percentage scale based on the volume of work each member has. Such percentages customarily run from one-twentieth of 1 percent to one-fifth of 1 percent, the average being one-tenth of 1 percent. Most of the chapters have minimum dues of about \$300; most of them also have a maximum, which runs between \$1,500 and \$2,000.

The chapters, like the national, allow only one vote per member, whether he pays the maximum or minimum dues.

In the 43 continuous years of this association's existence, we have no evidence that any member has influenced the association's attitude by reason of the amount of dues he paid.

#### *How the SBA and set-aside program increases costs to the Government*

We submit herewith 40 examples of increased costs to the taxpayer as a result of the set-aside program. The actual cost of the set-aside program cannot be fully determined since qualified "large" businesses do not or cannot submit bids on the majority of set-aside work. The information which we have been able to develop was based on bids that were made by firms which SBA later determined to be not small business. These were bona fide bids and in some cases the rejected low bidder has fought to uphold his claim. The charge that any of these bids were not submitted in good faith disregards the fact that the bidder must have had a bid bond, and would not place himself in a hazardous position by submitting a bid on which he was unable to follow through. All that needs to be done to prove this point is to offer to award these contracts to these low bidders and see what happens.

#### *What Government officials think*

Time and time again, responsible contracting officers in the Government have conceded that the set-aside program is costing more money. Only recently, in the House Military Construction Appropriations hearings, the increased cost factor was again testified to by the military agencies. These comments are quoted below:

Rear Adm. Peter Corradi, CEC, U.S. Navy, Chief, Bureau of Yards and Docks said:

"By the very nature of the set-aside program, there is some cost, an administrative cost, for just handling the program as such. By inhibiting free and open competition, we introduce an element whereby we may not be getting the low bid. Axiomatically, we are getting a low bid from a small business firm. It is always possible, and in some cases probable, that large firms might have given us a lower bid. That is why we cannot estimate the difference."

Maj. Gen. J. B. Lampert, Director of Military Construction, Office, Corps of Engineers said:

"We are satisfied that there are some additional administrative costs because of the people on our various staffs to administer the operation of the small business program, but it is my personal opinion that there is some increase in the overall costs of construction resulting from carrying out the policy of awarding the maximum amount of construction possible to small business."

Lt. Gen. W. K. Wilson, Chief of Engineers said:

"I cannot help but feel that on more complicated and larger jobs, we are probably paying some more for the privilege of set-asides to small business."

Maj. Gen. A. M. Minton, Director of Civil Engineering said:

"As a general rule, Mr. Chairman, I feel that, across the board, this costs us a bit of money but just what the percentage is I do not know.

One of the underlying dangers of the set-aside program has been amplified in the House Military Construction Appropriations Committee hearings. This is the likelihood of the experience factor increasing the cost of construction over the years. Contracting officers use past experience as a basis of determining the estimated cost of construction projects. As these experience cost figures are nudged upward due to the increased cost on many set-aside jobs, a completely distorted and enlarged series of estimates will result. Quoted below from the report of the hearings is an exchange between Representative Harry Sheppard, chairman of the committee, and Maj. Gen. L. E. Seeman, Director of Installations, Office, Deputy Chief of Staff for Logistics:

"General SEEMAN. Over a period of years, if you are inhibited from getting free competition, pretty soon your estimating does not have any basis to estimate on the basis of free competition.

"Mr. SHEPPARD. I think you have brought out one of the most important points of this matter. General, what is your estimate originally based on? Is it based upon the cost factor or job concept?

"General SEEMAN. It is based upon actual bidding.

"Mr. SHEPPARD. You have wrapped it up right there."

#### *Certificates of competency by SBA*

A question was raised in the subcommittee hearings regarding the power of the Small Business Agency to override a contracting agency's rejection of a construction bid because of inadequate productive capacity or credit. (Re: p. 151—Question by Senator Sparkman; testimony by Daniel K. Fordice.)

The SBA bulletin, "How SBA Helps Small Construction Firms," issued February 1962, says this to the small contractor turned down for these reasons: "The contracting agency will notify SBA of the rejection. SBA, in turn, will contact you to learn whether you want to appeal the rejection through the agency's certificate of competency (COC) service. If you do, agency specialists will study your firm to determine if it can meet the requirements of the particular contract, sale, or lease. *If SBA finds that you can meet the requirements, it will issue a certificate to this effect, and the contracting agency then will be required to award your company the contract.*" [Emphasis added.]

This same bulletin states that the Small Business Administration has issued 32 certificates of competency (that is, overridden the contracting agencies) to small construction companies.

#### *SBA loans to construction firms*

Soundly operated, competent construction firms frequently find they must compete with concerns that have been propped up with loans from the Small Business Administration. As of June 30, 1961, SBA had made 774 loans to construction companies in a total amount of \$28,366,216.

A considerable number of these loans has gone bad. As of the above date, 78 of the borrowers, or slightly more than 10 percent, were delinquent in excess of 60 days. Fifty-nine other loans, or 7.6 percent, were in process of liquidation.

The SBA Administrator, in a letter to Representative Phil Weaver, took note of this high delinquency and liquidation rate, but added: "It is also recognized by this Agency, and by commercial lenders as well, that financial assistance to the construction industry incurs more risk than to many other industries."

#### *Small business share of military procurement*

The major argument used against removing small business set-asides from the construction industry is that there has been an alarming decline in the small business share of military procurement, from an overall standpoint as well as in the construction industry. The Small Business Administration has pointed out that 25 percent of the \$11.5 billion spent for military procurement in fiscal year 1954 went to small business, contrasted with a small business share of only 15.9 percent of the \$23 billion military procurement budget in fiscal year 1961. The argument continues that small construction firms formerly received about 70 percent of the military construction dollar, whereas they now receive (fiscal year 1961) only 53.6 percent.

Further facts need to be considered.

Small construction firms did receive about 70 percent of the military construction dollar in the past. In fact, in fiscal year 1956 and fiscal year 1958, more

than 70 percent went to small firms. But two major factors must be kept in mind when using these figures. First, these percentages were achieved without the help of the Small Business Administration, since this was before the set-aside program was implemented. Second, these percentages were achieved prior to the shift in military construction to the heavy missile base programs. These missile jobs are beyond the capabilities of small firms. It would be an injustice to give them this work, since they do not have the capacity to perform. The Corps of Engineers and others recognize this, although their concern is naturally with the damaging effect such action would have on the national defense. The overwhelming amount of missile work being awarded to large firms by the Corps of Engineers bears out this statement.

But even here we are talking about prime construction contracts. A great deal of the money going to large firms through these prime contracts has been passed on to small firms in subcontracts and in material purchases. About one-half of building construction is subcontracted, and in other construction about one-third of the work is subcontracted. Department of Defense statistics indicate that small firms receive about 37 percent of defense subcontract dollars.

Most significant, however, is the fact that in categories of construction other than missile work small firms are still receiving the greater percentages of the military construction dollar. A recent Corps of Engineers' breakdown illustrates this point:

*Corps of Engineers—Military construction contract actions, including modifications, placed in United States, possessions and Puerto Rico during the period July 1, 1961, through Mar. 31, 1962*

[\$10,000 and over. Dollars in thousands]

Type of construction	Total awards		Small business awards		
	Actions	Dollars	Actions	Dollars	Percent <sup>1</sup>
Army construction.....	433	85,938	362	70,784	82
Air Force ICBM.....	1,240	417,222	109	26,280	6
Air Force (other than ICBM).....	666	100,407	543	70,524	70
NASA.....	30	31,816	14	3,323	10
Other construction.....	35	4,203	25	3,510	83
Total.....	2,404	639,586	1,053	174,421	27

<sup>1</sup> Percentage column added by AGC.

It is quite obvious that small construction firms did get a great share of the military construction dollar before the missile program began, and still do in the type of work they are able to perform. They got this share in the past without any help from the Small Business Administration, under the free and open competitive bidding system traditional in our industry. The small construction firms will continue to get the great share of military construction in the future, as the emphasis shifts to work on which they are capable of performing.

However, even with the decline of the small business share of the military construction dollar to 53.6 percent in 1961 fiscal year due to the missile work, construction still had the highest percentage contribution to small business of any major military procurement category. In fact, only two minor categories exceeded the construction small business percentage in fiscal year 1961.

It is in the field of military hard goods and research and development where the emphasis of the Small Business Administration should be directed. The 12th annual report to the Senate by the Senate Small Business Committee quoted below made this quite clear:

"In fiscal year 1961—the year of the highest peacetime military budget in our country's history—small firms received only 15.9 percent. In that year the military departments spent \$16.6 billion out of its \$22.9 billion budget for major hard goods (aircraft, missile systems, ships, tank-automotive, weapons, ammunition, and electrical and communications equipment). Small firms were awarded only 4.5 percent of contract dollars spent for these items.

"The military departments are also spending more of the defense budget on research and development, almost 100 percent of which is being awarded to large business firms. In fiscal year 1961, the military departments spent more than

\$6 billion for research and development, of which small business firms received only 2.9 percent."

Military hard goods made up only 20 percent of the total \$3.6 billion that went to small business in fiscal year 1961, while R. & D. accounted for only 4 percent. Construction, however, which received only 5 percent of total military procurement, made up 17 percent of the small business dollar in fiscal year 1961—only 3 percent less than military hard goods.

With such a target area so clearly drawn in hard goods and R. & D., it is difficult to understand why taxpayers' dollars are being spent to promote small business participation in an industry like construction, where this participation is already sufficient. The Small Business Administration should direct its efforts to those industries where such efforts are needed.

We have already pointed out the unfairness and inaccuracies of the SBA survey, presumably made at public expense, on how small construction firms feel about the SBA set-aside program. While one of its glaring mathematical errors (squeezing 80 into 68) has been attributed to a typographical error, may we say that this error has found its way into a number of documents, both mimeographed and printed, and appears in official SBA publications.

But the survey itself, even if its accuracy were not questioned, only purports to show that 321 out of over 7,000 AGC members polled by SBA in one manner or another have indicated a preference for SBA set-asides. While this may be 80 percent of those polled, it is only about 4½ percent of our membership. Members of Congress well know that some of the most famous polls of public opinion, particularly on political matters, have been grossly inaccurate. This looks like another one of that kind.

We do not have complete information as to the manner in which this poll was conducted, but we have received many reports on how SBA agents personally called on small contractors in an effort to obtain an endorsement of the set-aside program. We quote here letters and a telegram showing how SBA agents have apparently misrepresented the facts and attempted to influence the replies of those who were questioned.

1. Letter from Paul Donahue to Joel Leighton, dated December 18, 1961.
2. Letter from Tom Power to Joel Leighton, dated January 30, 1962.
3. Letter from Joel Leighton to William E. Dunn, dated May 8, 1962.
4. Wire from Herbert Stebbins to William E. Dunn, dated June 15, 1962.

CONTI & DONAHUE, INC.,  
*West Lynn, Mass., December 18, 1961.*

THE ASSOCIATED GENERAL CONTRACTORS OF MASSACHUSETTS, INC.,  
*Boston, Mass.*

(Attention: Joel Leighton.)

GENTLEMEN: Mr. Albert Doyle of the SBA called here last week.

His main aim seemed to be to get contractors to say they favored the SBA set-aside program. In fact, he stated that the majority of AGC members to whom he had talked favored the SBA program. However, the only one specifically mentioned was the president of the AGC of New Hampshire.

He claimed to know of no case where the program has cost the Government money so I cited the dredging case outlined in the national newsletter.

This information is only for what it might be worth.

Yours,

PAUL F. DONAHUE.

THE ASSOCIATED GENERAL CONTRACTORS OF NEW HAMPSHIRE, INC.,  
*Concord, N.H., January 30, 1962.*

MR. JOEL B. LEIGHTON,  
*Managing Director, Associated General Contractors of Massachusetts, Inc.,  
Chestnut Hill, Mass.*

DEAR JOEL: In reference to your inquiry concerning Mr. Doyle's reference to the president of the AGC of New Hampshire favoring the SBA program I have talked with Herbert B. Stebbins of Blanchard-Stebbins, Inc., who was our president in 1961.

Mr. Stebbins reports that he did talk with Mr. Doyle who said he was making a survey of contractor opinion on SBA.

Mr. Stebbins states that he was emphatic and vocal in his opposition to the SBA in his conversation with Mr. Doyle and that there was no possibility of Mr. Doyle misunderstanding Stebbins' position.

Mr. Stebbins said that he was asked if he were an AGC member and if his position was influenced by the AGC.

Mr. Stebbins replied that he was undoubtedly influenced to some extent by AGC thinking but that even if he were not a member the SBA would be inimical to his political philosophy which basically opposes all Government interference in business.

In short it would appear that if Mr. Doyle is quoting the president of the New Hampshire AGC as favoring SBA he is most certainly misrepresenting Mr. Stebbins' position.

Sincerely,

Tom,  
TOM POWER,  
*Executive Secretary.*

ASSOCIATED GENERAL CONTRACTORS OF MASSACHUSETTS, INC.,  
*Chestnut Hill, Mass., May 8, 1962.*

Mr. WILLIAM E. DUNN,  
*Executive Director, Associated General Contractors of America,  
Washington, D.C.*

DEAR MR. DUNN: At a regular meeting of the Associated General Contractors of Massachusetts held April 11, 1962, at which 56 general contractor member firms were present out of a total membership of 113—a slightly larger attendance than is usually present at our monthly meetings—it was voted to oppose the continued application of the Small Business Administration set-asides and subcontractor procedures in the construction industry, and to support the position taken before Congress by the Associated General Contractors of America.

In view of the repeated attacks upon the AGC position, especially in printed matter circulated at Government expense by the Small Business Administration, a few words about this vote are in order.

The matter was first discussed at two separate meetings of our chapter board of directors, which consists of 16 general contractor member firms. All members of the board were furnished copies of the pamphlet published by the Small Business Administration, dated February 1962, entitled "How SBA Helps Small Construction Firms," and of the so-called "Position Paper Regarding Assertions Made Concerning Small Business Administration Activities Affecting the Construction Industry," dated January 31, 1962, also sent out by SBA. They, of course, had also received the various National AGC Newsletters and copies of the Constructor magazine which discussed SBA programs.

The board voted to recommend to the full membership that this association go on record opposing the continued application of SBA set-asides and subcontractor procedures in the construction industry. Twelve of the sixteen members of the board fall within the SBA definition of "small business."

Following this vote, a special notice was mailed to all members of this association stating that the recommendation of the board would come before the full membership for discussion and vote on April 11. This notice also stated, "In order that you may also have the SBA side of the story before voting, we are enclosing copies of the same two publications of the SBA that were furnished the board," mentioned above.

At the membership meeting the motion was discussed for about three-quarters of an hour before the vote was taken. Of the firms present, as far as I am able to determine, 51 would qualify as "small business" under the SBA definition. Several had received Government set-aside contracts. Three or four were strongly in favor of the SBA program. When the vote was finally taken, about 75 percent voted in favor of the motion as reported above.

Here is a case where certainly "both sides" were presented. The action was not taken hastily. Those voting had received previous notification the vote would be taken. You have my word that there was no "politicking" to gain support for the motion. I consider it an honest representation of the opinion of the members of this association.

It is interesting to note that the vote was almost exactly the reverse of the 80 percent favorable AGC poll which the SBA claims to have conducted. By the way, how did SBA ever explain the obvious discrepancy in the figures they published in the "Position Paper" which reported this 80 percent figure? I refer to the fact that out of the total of 976 companies "reporting" (an interesting word for the personal calls paid upon the firms by representatives of SBA—surely no one feared that a straightforward answer might jeopardize their

chances of getting an SBA loan or being "qualified" as small business for the purposes of being awarded contracts) the "Position Paper" listed 846 favoring set-asides, 68 against set-asides, and 62 no opinion. These three figures total the 976 "reporting." Yet, in the next lines of the same table, it is stated 321 AGC members favored set-asides and 80 were against set-asides. In other words, more AGC members were against set-asides than the total of AGC and non-AGC members combined (68) who were reported as against. I hope SBA is more careful with their figures than this in their regular non-"information service" operations.

Very truly yours,

JOEL B. LEIGHTON,  
*Managing Director.*

[Telegram received June 15, 1962]

*To William Dunn, Executive Director, AGC of America, Washington, D.C.:*

Reaffirm my strong opposition to SBA set-asides in construction. My political philosophy strongly opposed to Government intervention in business.

HERBERT B. STEBBINS,  
*Immediate Past President, AGC of New Hampshire, Manchester, N.H.*

#### ADDITIONAL SUPPLEMENTAL STATEMENT

This part of our supplemental statement is prepared following the testimony of Mr. John E. Horne, Administrator of the Small Business Administration on June 26. Every point that Mr. Horne makes in his statement is answered in the testimony of our witnesses and the supplemental statement filed hereto.

We would like to reemphasize our answer to Mr. Horne's oft-repeated statement that bids of so-called large contractors cannot be considered in determining the cost of this program because such large contractors are purely volunteers and they do not intend to go through with their contract. To this we say, give these contractors the opportunity and the right to go through with the bid that they made, and we will soon find out whether they are purely volunteers who do not mean business. It is our strong conviction that a contractor who makes a bid supported by a bond means business and is not playing games.

Mr. Horne expresses a fear that if an exception is made whereby the construction industry is exempt from the set-aside program, this would create demands from other industries for similar treatment.

We would like to emphasize that the construction industry is entirely different from any other industry and has been so recognized by Congress in many statutes. We also point out that it is one of the most highly competitive industries in our entire economy. By its very nature and competitive makeup, there are no monopolies in construction. Further, as Chairman Proxmire pointed out, there is no evidence of demands from other industries for such exemption.

The ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.,  
*Washington, D.C., July 10, 1962.*

HON. WILLIAM PROXMIRE,  
*U.S. Senate, Old Senate Office Building,  
Washington, D.C.*

DEAR SENATOR PROXMIRE: I wish to thank you for your letter of July 3, 1962, in which you state our testimony and supplemental statement have been included in the record which will close on July 11.

In addition, you request any information which we may have on the unionization of smaller construction firms.

We have no exact data on this subject, having never had occasion to classify our contractors as either "small or large," "union or open shop." However, we do have some information which might throw some light on this subject.

First of all, there are many areas in this country in which the relatively small contractor, as well as the larger contractor, operates open shop. This is traditional in many places in the South, Middle West, and Southwest. On the other hand there are other geographical areas in which all the members, regardless of

size, employ workmen who are members of a labor union, or are otherwise covered by a labor agreement.

In these normal situations the policies of the Small Business Administration on set-asides would possibly have no effect on the issue of whether the company employs union workmen or operates open shop. Thus, construction firms will continue to operate union or open shop in these areas, depending on past practices and traditions in the industry in their particular locality.

I believe the problem which the unions complain of is more apt to occur in those areas in which there is an areawide labor agreement negotiated by an AGC chapter, or some other employers group, with the building trades unions. In such a situation a newly created firm with an SBA loan or set-aside would probably not be covered by such an areawide agreement.

I might point out here that to qualify for AGC membership, a firm must demonstrate, over a period of 2 years, that it possesses "skill, integrity, and responsibility." In our opinion the difficulties which organized labor has had with the SBA actually stem from the set-asides and other aids which are granted to the new construction firm which begins operation in an area covered by an AGC negotiated labor agreement.

I am quite sure the unions themselves are better qualified to speak on this subject specifically, but from my observations, both as a trade association executive and as a member of the President's Missile Sites Labor Commission, I feel that the situation is as I have herein above described.

Sincerely,

WILLIAM E. DUNN,  
*Executive Director.*

Senator PROXMIRE. Our next witnesses are Mr. Young, Mr. Maguire, and Mr. Speros.

Are you willing to come up together? If you are, you are mighty welcome.

Mr. Young, you represent the J. Young Construction Co., Beaufort, S.C.?

**STATEMENTS OF JOE YOUNG, J. YOUNG CONSTRUCTION CO., BEAUFORT, S.C., AND GUS SPEROS, SPEROS CONSTRUCTION CO., LAURINBURG, S.C.**

Mr. YOUNG. That is right.

Senator PROXMIRE. We are glad to have you.

Mr. YOUNG. Mr. Maguire is not present.

Senator PROXMIRE. Mr. Speros, of course, represents the Speros Construction Co. of Laurinburg, N.C.

Mr. SPEROS. Yes.

Senator PROXMIRE. Do you gentlemen have statements?

Mr. YOUNG. We do not have statements. I do not have a prepared statement, just a little summary.

Senator PROXMIRE. How long a statement is it?

Mr. YOUNG. Five minutes.

Senator PROXMIRE. Fine.

Mr. SPEROS. I have one of about 3 or 4 minutes.

Senator PROXMIRE. Very good.

Mr. YOUNG. Mr. Chairman, my name is Joe Young, owner of the J. Young Construction Co., located in Beaufort, S.C. You probably are more acquainted with Beaufort by the name Parris Island. That is the Marine recruit depot just across the river from Beaufort.

I have had the pleasure of attending your meeting yesterday morning where I heard the statements of Congressman Phil Weaver and Mr. Paul Askew.

Congressman Weaver in his opening statement said that he was in favor of small business, but, as he continued, it became apparent that we in the small construction business have his blessings but we will have to shift for ourselves, since these bills provide for the elimination of small business set-aside programs for construction.

I would like to acquaint this committee with just a few of the pertinent facts with respect to big business and small business.

You well know that small business is limited by a natural restriction, which is finance. So we find it difficult to compete against big business. Yet the only guard we now have is the set-aside program, and this is now threatened.

The set-aside program, in my opinion, and I am sure I speak for the multitude of small contract businesses and contractors, is a worthwhile and needed program in the field of construction.

Congressman Weaver in his presentation further contended that practically all contractors are in favor of doing away with the set-aside program. On this point I take issue. The distinguished Congressman is either not close enough to the construction business or he has been ill informed.

I am a member of the AGC and have been for many years. Not once have I been asked by my association if we are in favor of the present set-aside program. And to my knowledge I do not know of any other contractors who have been polled on this question.

Mr. Askew represents labor. And at this point allow me to interject that the combined labor unions are also big business. He says in essence that the set-aside program of construction will cost the taxpayers more money because it narrows the field of competition.

At this point I strongly differ with Mr. Askew, because in small contracts where small business contractors are able to make bond there is in most every instance heavy competition. I know this, because I am on the scene of activity. And in most every case, and with few isolated exceptions, the bids are below Government estimates.

So it is evident that the set-aside program is working and giving the taxpayer a good price as well as supplying jobs for many people who receive salaries according to the predetermined wage scale as set forth by the Department of Labor.

At this point, Mr. Chairman, Mr. Weaver also dealt at length with the Cape Canaveral situation where he said that there was turmoil and, in part, threw a little dark light on the small contractors of that area and, as a matter of fact, rather insulting to their dignity and their trustworthiness on the wage scale, that they have not been keeping up.

I differ with Mr. Askew. I think the integrity and the honesty of these small businessmen are not to be questioned. I think they follow the line, and the contribution they have made to Cape Canaveral in their work is to be commended, and through their efforts we sent two great Americans into orbit and brought them back.

Mr. Chairman, I did not come here full of documentary proof, nor am I here sponsored by any powerful group or groups. I came as a friend of the committee and paid my own expenses.

My only purpose for being present is to give you firsthand information and answer any questions that will aid you in making your determination.

In conclusion, Mr. Chairman, I hope that this committee will see fit to recommend the continuation of the set-aside program and commend the Government for making this a fair and workable program.

At this point I wish to thank the committee for their patience and indulgence.

Senator PROXMIRE. Thank you.

Before you finish, Mr. Young, I want to ask you this: What size is your firm?

Mr. YOUNG. I am among the smallest, sir. Our annual gross is about a million and a half.

Senator PROXMIRE. You are a member of the AGC?

Mr. YOUNG. Yes, sir. I have been for many years.

Senator PROXMIRE. And you have never been asked your opinion on this?

Mr. YOUNG. No, sir.

Senator PROXMIRE. You know of no other contractors who have been asked?

Mr. YOUNG. None I know of. I have talked to several.

Senator PROXMIRE. Is your view exceptional, or is it widely shared among contractors?

Mr. YOUNG. My view is widely shared.

Senator PROXMIRE. For set-asides? Most of them favor it in your judgment?

Mr. YOUNG. That is right.

Senator PROXMIRE. Most of the contractors you know?

Mr. YOUNG. That is right.

Senator PROXMIRE. You talked about the wage scale problems raised yesterday. Do you and your fellow small contractors who qualify and share your view pay wages that are about the same, a little less, or a little more than the big contractors?

Mr. YOUNG. No; our wage scale is predetermined on a Government job, sir, and is set up by the Department of Labor.

Senator PROXMIRE. Except, as Mr. Bannerman indicated, that there are some fringe differences. In other words, the firm that may comply with the bare requirements of the Davis-Bacon Act. But you also may have a union which insists on some additional provisions for retirement and for other safeguards.

Mr. YOUNG. I could speak for myself. We have some fringe benefits in our company—that is, insurance and so forth—but we run a nonunion shop, and I do not know what the unions require and therefore I am not able to answer.

Senator PROXMIRE. I see.

All right, Mr. Speros.

Mr. SPEROS. Thank you, sir.

I am Gus Speros with Speros Construction Co. of Laurinburg, N.C. It is a corporation of which I am president. Our annual receipts run anywhere from \$600,000 to \$1,500,000, so, therefore, we are considered small business by the Small Business Administration and by everyone else I imagine.

Our firm is a member of the AGC. However, evidently we are not members of the same AGC as Mr. Dunn represents, because Mr. Dunn stated that the annual dues were \$125 a year and that there was no

difference between the small contractors' dues and the large contractors' dues.

So, therefore, I just do not know what to say, with the exception that my dues are \$68.75 per quarter, or \$275 per year.

And in addition to this we pay what we call job service dues. Job service dues are on a graduated scale, that graduated scale being as follows:

On a project from \$10,000 to \$20,000 we pay \$7.50.

On a project of \$50,000 to \$60,000 we pay \$27.50.

On \$60,000 to \$70,000 we pay \$32.50.

When you take a million dollar job you pay \$475.

When you take a \$2 million job you pay \$475 plus one-twentieth of 1 percent for each additional \$100,000, throwing away the odd figures.

So that is a job service. However, there are maximum job service dues of \$1,500, which, fortunately or unfortunately, we have never been required to pay.

I have no prepared statement. I just came up——

Senator PROXMIRE. Let me just ask you about this then. This means that the AGC's funds would come more largely, at least in greater proportion, from those firms that are big than those firms that are small?

Mr. SPEROS. Yes, sir; definitely.

Senator PROXMIRE. The very small firm, the smallest kind of firm, the firm much smaller than yours, for example, which would be a member of AGC, would pay the minimum dues, and a firm which is the biggest kind of firm you can imagine would pay substantially more one way or another?

Mr. SPEROS. Yes, sir; definitely so.

This is for the Charlotte chapter, which is North and South Carolina chapter. Our dues may be higher. Mr. Young and I discussed it. I had never known Mr. Young before this trip to Washington. And he says he does not pay job service dues, that they bill him for them but he just does not pay them because he does not believe in paying job service dues.

I told him I would have to continue paying mine because that was my agreement with them—until I got thrown out for coming up here like this I guess.

Mr. YOUNG. I thought you were not going to say anything about that.

Mr. SPEROS. I would like to comment on a number of things that have been said in regard to this doing away with small business set-asides.

Senator PROXMIRE. I want to say at this point, because I do want to be completely fair, Mr. Dunn testified I thought very well and very effectively for his organization, and I know Mr. Dunn feels he would like to reply to this. I think we are going to be here forever if we get into an argument.

I think it best, Mr. Dunn, if it is satisfactory with you, that you file a letter with the committee, and this will certainly be made a part of the record and be made available to all members of the committee, so that we can get your reply to this, so that we can clear the whole thing up.

But if we engage in discussion now——

Mr. DUNN. It will only take three or four words.

The dues that these gentlemen pay to our national organization are \$125. He pays the same as the largest company, and the largest company pays no more than he.

Is that correct, Mr. Fordice?

Mr. FORDICE. That is correct.

Mr. DUNN. Is that correct, Mr. Tester?

Mr. TESTER. Yes.

Mr. DUNN. What do you pay, Mr. Fordice?

Mr. FORDICE. \$125.

Mr. DUNN. Mr. Tester?

Mr. TESTER. \$125.

Mr. DUNN. Thank you, Mr. Chairman.

Senator PROXMIRE. All right. You may proceed.

Mr. SPEROS. Not to start an argument, I pay nothing to the national organization. All of mine is paid to my chapter.

Mr. DUNN. The chapter pays in \$125 of your money.

Mr. SPEROS. Mr. Fordice stated that small contractors were bidding work for large contractors. This may be true. If it is true, I think it should be investigated, because definitely we have to sign that we are not a subsidiary of any parent company when we bid Government work which is set aside.

I have only been bidding Government work for 2 years, and we have been very successful in it. We have been very competitive in it, and we have made a good profit in it. We have competed against both large business and small business. And personally I do not mind competing against large business. I think the set-aside program is good.

I started off after I got out of the Army and started this company and have worked it up into a very successful organization in my standards. We did it without aid of set-asides and so on. We just did it by hard work and sweat as one of the other gentleman up with Mr. Dunn stated.

However, I would like to see the Small Business Act remain as it is so that the young people who are coming out of school will have an incentive to go in business for themselves, so that they will not have to go to work for a large corporation. It would be very bad.

Now we have no more corner grocery stores that can pass candy to the kids. They have got to go to the supermarket and so on like that.

And the construction industry if it is left in the open market will be just like supermarkets, and there will be no small businessmen.

And so, therefore, I ask that the small business set-aside remain as it is and that this bill not be changed.

Senator PROXMIRE. Very good.

I think both you gentlemen have given very persuasive testimony.

I would like to ask one question, because I do want to clarify the AGC thing without getting into further dialectics.

But it seems to me then the situation is this: That the national organization gets \$125 from each contractor—period. But the chapter, which is the group which seems to be effective and dominant, to speak with a very strong voice, does discriminate in terms of size, and it does get a much higher proportion of the dues from the big

contractor than from the little contractor. That would reconcile your testimony.

Mr. YOUNG. That is correct.

Mr. SPEROS. There is a maximum of \$1,500 job service dues, so the man doing a hundred million would not pay any more than the man doing 4 or 5 million.

Senator PROXMIRE. A hundred million on one particular job?

Mr. SPEROS. Particular job.

Senator PROXMIRE. A maximum of \$1,500?

Mr. SPEROS. \$1,500 on all jobs.

Senator PROXMIRE. All chapters are the same? Or do they vary?

Mr. SPEROS. I do not know, sir.

Senator PROXMIRE. In any one year?

Mr. SPEROS. Yes, sir.

Senator PROXMIRE. Thank you very much, gentlemen.

We will insert Mr. Maguire's statement here.

(The statement referred to follows:)

STATEMENT OF E. J. MAGUIRE, MOORESTOWN, N.J.

I have asked to be permitted to testify at this hearing on the merits of Senate bills S. 3096 and S. 1363, because I feel so strongly on the subject of retaining and strengthening the Small Business Administration's set-aside program, particularly in the case of contracts for military maintenance, repairing or construction.

I wish first to thank this committee for the opportunity afforded me to state my beliefs and, further, to thank the committee in advance for their consideration of a very small businessman—the kind of businessman who is representative of millions of businessmen in the United States who are unable to afford extensive legal staffs and who are not represented in Washington by a lobby, in spite of the fact that they, together with their employees, represent the largest bank of labor, know-how, and productive capabilities ever assembled in the history of the world.

I first direct myself to S. 1363 and dispose of it by stating that S. 3096 is an exact copy with additional clauses. Therefore, if I now confine myself to S. 3096 my remarks will pertain equally to S. 1363.

In regards S. 3096, let me first state that I have high regard for the opinion of Senator Williams, of New Jersey, but wish to take exception to the bill as follows:

I was born the son of a small, small businessman—an electrical contractor and retail store operator. I wired my first house at the age of 12, performed my first municipal contract at the age of 15, and, with the exception of 5 years working as a mechanic and as a supervisor in the Bremerton Navy Yard electrical shop, I have spent my entire life working as an electrical contractor in and around New Jersey.

I am also engaged in other small retail business.

I have been connected in one capacity or another with civil defense for the past 13 years, and I am presently the Burlington County Coordinator of Civil Defense and Disaster Control. A large percentage of my time is devoted to civil defense and to organizing civilians to effect a maximum state of preparedness for natural or wartime disaster. It is the finding of myself and staff that the many small businessmen in the service and construction fields represent the greatest potential available for assisting in the conduct of a war or for recovery from an attack. Small business is well dispersed and, therefore, less apt to be broadly and severely damaged by an attack than is large business.

In this respect, I recall hearing a small businessman state jokingly that small business was not the target of our enemy, but, instead, was the target of big business—a case of "I do not fear my enemy, but spare me from my friends."

Small business is resourceful, adaptable, and inventive, by necessity.

Small business is not bound to set patterns and is capable of quick conversion to emergency measures.

Small business is quick to recuperate and easy to relocate during and after disaster.

And let there be no mistake—small business is capable.

Millions of skilled, well-trained personnel, with know-how and a desire and determination to put it to work that just cannot be found in the big organization man, by and large.

Small business is constantly under attack by big, well-organized interests, and yet it survives and flourishes.

If a combine could be assembled, bigger than Westinghouse or General Motors by comparison with the big business interests who gang up on the small businessman, and if that combine should make Westinghouse or General Motors its target, those two great companies would fold and crumble just as effectively as they might from a pinpoint bombing attack on the United States.

Therefore, a statement that the "security and well-being of the United States cannot be realized unless the actual and potential capacity of all business is encouraged and developed," is accurate only if the concept of encouragement and development of small business is applied meaningfully.

You cannot encourage and develop small business by removing the set-aside program, which is one of the few encouragements available to small business today.

President Kennedy has stated, "Because of the vital role of small business both in peace and in time of national emergency, we must protect and improve its position in the national economy."

It is my belief that sooner than destroy the set-aside program, the program should, instead, be strengthened.

I hesitate to inject statistics into this testimony because numbers can be put together to emphasize either side of this coin. While, on the one hand, the dollar volume of military contracts for construction awarded to small business firms has increased, the percentage of the total military construction awards to small business contractors has dropped from 70 percent in 1958 to 40 percent this year.

The Small Business Act, wisely created by Congress to preserve free, competitive enterprise, was designed to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including, but not limited to, contracts or subcontracts for maintenance, repair, and construction) be placed with small business enterprises.

In the contracting field approximately 90 percent of the Nation's contractors enjoy only 40 percent of the Nation's military construction. This would seem to be a far cry from "a fair proportion."

A small businessman engaged on military construction is required by the Davis-Bacon Act to pay the same rate of wage that has been established by the trade unions in the area. Since most small contractors do not engage in a federally recognized apprentice program, they are precluded from the use of low paid employees on Federal work. Small contractors who hold agreements with trade unions have available to them the advantage of using as many as one low paid apprentice for every five journeymen. However, those contractors not holding union agreements do not have to pay various fringe benefits incurred by labor, so that the total cost averages out about the same.

The spirited bidding of small contractors, therefore, substantially reduces the cost of the work. This does not always manifest itself in a saving to the Government because much of the Government military construction is let to general contractors, many of whom do the major part of their bid shopping after they have acquired a prime contract. Thus, the ultimate low price is reflected in higher profits to the general contractor instead of in savings to the Government.

It is my opinion that opposition to the Small Business Administration's set-aside program does not exist with the run-of-the-mill general contractor, and certainly not with the subcontractor. The opposition comes, instead, from the big businessman and from the business organization to which he belongs and in which he is most influential.

Many such organizations, which maintain lobbies in Washington, collect dues from their members based directly or indirectly on their volume of business. Therefore, the big businessman who maintains his membership and, thus, in theory has only one vote in such an organization, yet is most influential because his financial contribution to the organization is larger than that of each of the many small contractors who belong to the same organization.

The organization in its program of educating its membership either fails to advise the member of the value of the set-aside program or fails to advise the member of legislation which would adversely affect him, such as this bill S. 3096.

Before coming here today I checked with the membership of the South Jersey Chapter of the National Electrical Contractors Association and asked the mem-

bers if they had ever heard tell of either of the two bills here under consideration. The answer was universally "No."

I next asked them if they were familiar with, or had ever heard tell of the Small Business Administration set-aside program, and the statement was generally "No."

They were, however, familiar with the end result of the set-aside program because they had seen and agreed with the stipulation in the notice to bidders that this work was reserved for small business.

When asked if their National Electrical Contractors Association representative had ever advised them of all of the various assistance which was available to them from the Small Business Administration the answer was generally "No." When asked if they would appreciate assistance from the Small Business Administration in solving their problems or minimizing "redtape" and other problems associated with Government contracts, their answer was universally "Yes."

And, finally, when they were asked if the general contractor to whom they bid ever advised them that he was going to use their price when he entered his bid, and when I asked them further if after the general contractor was awarded a contract he ever awarded the subcontract work to them without any effort to further negotiate the price downward, they wanted to know if I was joking, and stated that their experience was no different than mine in this area. Some even stated they were not planning to offer further bids to general contractors unless steps were made to definitely prevent bid shopping.

I, therefore, conclude by stating that in my opinion and in the opinion of such small business contractors with whom I have talked concerning these bills, that neither of these bills should be enacted but, instead, Congress should give attention to the possibility of requiring that these contracts be broken down further to permit direct bidding by electrical contractors, mechanical contractors, and general construction contractors, in their respective fields.

This practice has been employed to great advantage in several States on State, county, municipal, and school board construction, resulting in savings to the purchasing agency, better quality construction, and in renewed faith on the part of the small businessman that his Government is looking after his interests.

Gentlemen, again I wish to thank you for giving your attention to just a little citizen, thus proving that ours is truly a Government by the people and for the people.

Senator PROXMIRE. Our next witnesses are Mr. Vincent Morreale and Mr. Robert Connerton. If you gentlemen want to come up together—I understand you are appearing together.

**STATEMENT OF ROBERT J. CONNERTON, INTERNATIONAL HOD CARRIERS', BUILDING & COMMON LABORERS' UNION OF AMERICA, AFL-CIO**

Mr. CONNERTON. My name is Robert Connerton. Mr. Morreale is unable to be here. Unfortunately, he became sick last night.

Senator PROXMIRE. Do you have a prepared statement, Mr. Connerton?

Mr. CONNERTON. Yes; I do.

Senator PROXMIRE. Do you have copies of it?

Mr. CONNERTON. I have sufficient copies of it.

Senator PROXMIRE. I will ask the clerk to get copies of the statement.

Mr. Connerton, while the clerk is bringing the statement up, you are the assistant to Mr. Morreale.

Mr. CONNERTON. The general counsel.

Senator PROXMIRE. The general counsel of the National Hod Carriers', Building & Common Laborers' Union?

Mr. CONNERTON. That is correct.

Senator PROXMIRE. You are employed by the same organization?

Mr. CONNERTON. That is correct, Mr. Chairman.

Senator PROXMIRE. I would appreciate it if you could make your statement as brief as you can. It looks fairly concise as it is. Go right ahead.

Mr. CONNERTON. Mr. Chairman, in view of the fact Mr. Askew testified yesterday at quite some length and that President Haggerty of the building and construction trades department testified this morning, I shall not read the prepared statement.

I just would like to make a very brief comment.

Senator PROXMIRE. Without objection, this statement will be put in the record at the end of your presentation so that it will all be available to other Senators.

Mr. CONNERTON. Mr. Chairman, I would like to make just a very few brief remarks.

First, with respect to our position here, we have had occasion over the past 10 years to appear before committees of the House and the Senate on different bills. I want to point out to the chairman that this is the first occasion on which we have appeared on the same side, so to speak, as the Associated General Contractors, and I think this indicates to the chairman how strongly we feel about this particular bill.

We feel that while we certainly support the principles that are set forth in the Small Business Act, and while we certainly have no opposition to the Small Business Administration as such or to small business as such, we are vigorously opposed to the application of the Small Business Act to the construction industry.

We feel, Mr. Chairman, that in the first place there was no need demonstrated for the application of the Small Business Act to the construction industry, and we feel that a very careful review by this committee will indicate that there is no need at the present time for the application of the Small Business Act to the construction industry.

Without getting into personalities or without getting into organizations or anything else, we feel that the application of the regulations and the actual practice out in the field between the Small Business Administration and the various contracting agencies have resulted in a great deal of harm to the public, particularly to the employers who are involved in this industry and to the unions who are involved in this industry.

We strongly urge the committee to carefully study this entire problem. And as this information comes to light, we feel rather sure that you will agree with us that the application of the Small Business Act to the construction industry has been unduly harsh, that it has not taken into consideration unique facts and circumstances surrounding this industry, and we request the committee to consider this matter as quickly as possible.

I am very grateful to the members of the committee for the opportunity of appearing before it today.

Senator PROXMIRE. Thank you, sir, very much. It is excellent testimony and you have supplied a fine statement which will be put into the record.

(Mr. Connerton's prepared statement follows:)

STATEMENT OF ROBERT J. CONNERTON, INTERNATIONAL HOD CARRIERS',  
BUILDING & COMMON LABORERS' UNION OF AMERICA, AFL-CIO

Mr. Chairman, members of the committee, my name is Robert J. Connerton. I am appearing on behalf of the International Hod Carriers', Building & Common Laborers' Union of America, AFL-CIO, a union composed of approximately 475,000 members, primarily employed in the building and construction industry.

I am appearing here today in support of S. 3096 introduced by Senator Williams of New Jersey, which is designed to remove building and construction from the set-aside program under the Small Business Administration Act.

May I state that neither I, nor the organization I represent, are opposed either to the principles set forth in the Small Business Act or to the Small Business Administration as such. We believe that prior to the inception of the set-aside program that a fair proportion of Federal construction contracts were let to small businessmen and that the free competitive enterprise system had flourished in the building and construction industry by our open, free competitive bidding system, in awarding work to the lowest, responsible bidder.

We believe that there was no need whatsoever to apply the set-aside program to the construction industry and that its application was not only unnecessary, but has been undesirable, unworkable, and unjust as well.

We feel that the entire set-aside program in this industry is premised upon a complete misunderstanding of the unique facts and circumstances surrounding the day-to-day operation of the construction industry, with the result that the very structure and stability of this, the largest industry in the land, has been imperiled.

First, unlike steel, auto, or airframe manufacturers, e.g., there are well over half a million employers in the construction industry. Most contracts come about as a result of open competitive bidding. We believe in this system of contract by construction and are dedicated to the principle of equality of bidding opportunity to all contractors—small and big alike. The Davis-Bacon Act, e.g., in the main, expresses the sense of the Congress that all contractors be placed on an equal competitive level—wagewise. We are thus seeking amendment of the Davis-Bacon Act to require the predetermination of certain prevailing fringe benefits by the U.S. Department of Labor on Federal and federally assisted construction, in order to eliminate a glaring inequity—wagewise—as a result of the rapid development of these private welfare programs, which again will tend to place all contractors in an equally competitive position.

Under regulations issued by the Small Business Administration any construction firm that performed an average annual gross business of \$5 million during the latest 3-year period is a big business. Regulations further require that, ordinarily, contracts in amounts of \$500,000 or less be automatically set aside for small businessmen. Set-asides also occur on contracts exceeding \$500,000 and in one instance a \$5½ million job was set aside for small businessmen. In addition, there have been instances where projects were split up into segments, in order to place the project into the small business category.

Well over 90 percent of the firms in this industry fall within the category or firms defined as "small" business by the Small Business Administration. No firm or group of firms dominate this highly competitive industry. Further, in this industry even when a large contractor obtains a project, under our system of subcontracting, a large percentage of the work is in turn subcontracted to smaller or specialty firms. On building construction, e.g., at least 50 percent of the prime contract is subcontracted while on heavy construction approximately one-third is subcontracted.

Therefore, historically and traditionally in this industry the small contractor has always received a fair proportion of Government and other construction, and the hundreds of thousands of small contractors in this industry eloquently testify to this fact. For example, during a recent 5-month period, of 827 contracts in amounts of \$500,000 and under, awarded by the Corps of Engineers, 783 went to "small (SBA definition) firms" even though only 447 were set aside by the Small Business Administration, and of these 827 prime contracts, a large percentage was in turn subcontracted to small firms.

With the application of the SBA tests, the Government has been denied the benefits of full, free competitive bidding. I would estimate that the cost of the program has thereby increased approximately 10 percent, without any increase in corresponding benefits to the industry or to the public. This program subsidizes inefficient and marginal contractors at the expense of competent and efficient contractors.

Contractors in certain sections of the industry, such as dredging, have been paralyzed with vast investments in improved and efficient machinery unable to bid simply because they have been successful, with the net result that, if they survive at all, within a year or two they will fall into the category of "small firms" and thereby be entitled to bid on set-aside work. Unqualified contractors have been qualified by a certificate of competency from the SBA, against the experienced judgment of the contracting agency. In some cases, a small firm after receiving a set-aside program found itself unable to perform a contract because of lack of proper equipment, and was required to subcontract the work to a larger contractor which had been disqualified from bidding in the first instance. This can only provide an incentive to an unsavory practice of brokering or to large firms arranging to have small firms bid for them. Further, there have been instances where all local contractors were disqualified from bidding because of their size, and in one instance, the contract was awarded to a contractor located over a thousand miles from the locality where the work was to be performed, who then proceeded to disrupt the established local collective bargaining relationship by coming to the locality and contrary to established local practices, endeavored to work employees 56 hours per week at straight time, failed to contribute to the prevailing local health and welfare funds, and tried to pay less than the prevailing wage with the result that a serious labor dispute arose.

Further, I can visualize the retardation of improved efficiency in this industry. Each year in this land thousands of contractors start in business, small contractors become larger and large contractors become smaller. The performance of our construction industry is unequalled in this world primarily because of the full, free competition among all contractors. In this process, many of these small contractors became large by ingenuity, resourcefulness, "know-how", and innovation in techniques of construction and machinery. Now, for the first time in this industry a contractor is prevented from competing simply because he has been successful. Indeed, the situation is so completely unrealistic that in many cases, through the award of a set-aside project, a contractor becomes ineligible to bid further on set-aside work, having fallen into the category of a "large business."

But what of these small firms? Will they be encouraged to bid on a large project when they know that if successful they will automatically fall into the category of a large businessman and thereby be precluded from future bidding on set-aside work? I think not, and the industry and the public thereby will be deprived of the benefit of this competition as well as the benefit of competition by larger contractors on smaller projects. Indeed, I can visualize something we have never witnessed in this industry before, a caste system, where as a result of the rigid, artificial, mechanistic formula invoked by the SBA two classes of contractors will exist. The need for amendment is urgent. We respectfully urge early consideration and enactment of S. 3096.

Senator PROXMIER. Our final witnesses today are Mr. Phil Read, who is the Deputy Assistant Commissioner for Procurement Policy, Federal Supply Service, GSA, and Mr. John Harrison, who is the Deputy Director, Construction Division, Public Buildings Service, GSA.

Gentlemen, we are very happy to have you here.

STATEMENTS OF PHILIP G. READ, DEPUTY ASSISTANT COMMISSIONER FOR PROCUREMENT POLICY, FEDERAL SUPPLY SERVICE, AND JOHN HARRISON, DEPUTY DIRECTOR, CONSTRUCTION DIVISION, PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION

Mr. READ. Thank you.

Senator PROXMIRE. I am terribly sorry you had to wait so long as the final witnesses. We are happy we can get you on this morning and not make you come back later.

Mr. READ. Thank you very much.

Senator PROXMIRE. Mr. Read, I have your statement.

Mr. READ. I have a prepared statement. Mr. Harrison is accompanying me.

Senator PROXMIRE. Mr. Harrison?

Mr. HARRISON. I am going to keep quiet.

Senator PROXMIRE. That is what more of us in the Senate ought to do more of the time.

Go right ahead, sir.

Mr. READ. Mr. Chairman, members of the subcommittee, I am Philip G. Read, Deputy Assistant Commissioner for Procurement Policy, Federal Supply Service, General Services Administration, and I have with me Mr. John Harrison, Deputy Director of the Construction Division of our Public Buildings Service.

We appreciate this opportunity to appear before your subcommittee to express the views of the General Services Administration regarding S. 1363 and S. 3096, which are designed to amend the Small Business Act to provide that the program under which Government contracts are set aside for small business concerns shall not apply in the case of construction, maintenance, and repair. These views were set forth previously in letters to the Senate Committee on Banking and Currency dated June 27, 1961, and June 6, 1962.

Before making any comments on the provisions of these bills, I would like to state that GSA is completely in accord with the policy set forth in the Federal Property and Administrative Services Act and the Small Business Act that a fair proportion of the total purchases and contracts for property and services for the Government shall be placed with small business concerns.

In carrying out this policy, GSA has a dual responsibility. First, GSA is responsible for developing and promulgating the Federal Procurement Regulations which have Government-wide application and which contain appropriate small business policies and procedures, including set-asides and subcontracting programs. These regulations provide all executive agencies with an appropriate basis for maintaining vigorous small business programs.

Secondly, GSA is responsible, as one of the executive agencies of the Government, for assuring that small business receives a fair share of GSA contracts.

In this connection, it is appropriate to note that GSA currently is reexamining its small business program with a view to identifying any additional means—including, I might add, the possibility for making greater use of set-asides—which may be employed to assure GSA compliance with the Government's policy on small business.

With respect to the specific provisions of S. 1363 and S. 3096, sections 1 and 2 of these bills would have the effect of eliminating the present joint determination authority in the Small Business Act to make small business set-asides for construction, maintenance, and repair work.

Accordingly, I would like to comment briefly, at this point, regarding GSA's experience in awarding such contracts to small business and particularly its experience with set-asides.

In fiscal year 1961, GSA's contracts for construction, maintenance, and repair amounted to \$239.4 million, and 35.7 percent, or \$85.3 million, was awarded to small business. Since, however, this area of contract awards is made up of two broad categories; namely, maintenance and repair and new construction, I propose to discuss each of the categories separately.

With respect to maintenance and repair contracts, total awards amounted to approximately \$86 million, and 81 percent, or \$70 million, was awarded to small business. At the present time, such contracts are automatically set aside for small business—that is, class set-asides have been made with respect to set-asides—in eight GSA regional offices where it is estimated that the contract will not exceed \$200,000 and in two GSA regional offices where it is estimated that the contract will not exceed \$300,000.

As a result, a substantial dollar volume of maintenance and repair contracts are being set aside and awarded to small business.

It has been our experience, however, that during periods when small business set-asides were not in use, small business also received a substantial proportion of maintenance and repair contracts. In view of this fact, we cannot say with any certainty that the use of the joint determination set-aside authority is necessary in order to award small business a fair share of GSA maintenance and repair contracts.

With respect to new construction, GSA contracts in fiscal year 1961 amounted to about \$153,800,000. Approximately \$15,380,000, or 10 percent, was awarded to small business, and the awards included contracts for projects that were set aside for small business.

This low percentage of awards to small business for new GSA construction, despite the use of set-asides, is attributable to the fact that a large part of the total dollar volume for new construction involved projects which were beyond the capabilities of small business concerns.

Accordingly, there tends to be a limited area in which set-asides can be employed to increase the share of new construction going to small business. That is, within the GSA program.

Although it does not appear that any large increase in the small business share of GSA construction, maintenance, and repair can be accomplished through the use of the small business set-asides, it also appears that the small business share might very well be somewhat lower if authority to make joint determination small business set-asides is not available.

It is our view that the elimination of set-asides for maintenance, repair, and construction, at a time when both GSA and other Government agencies are making a concerted effort to help small business, may have an adverse psychological effect on the accomplishment of the overall program to assist small business.

I would like to add also that we feel the elimination of the construction set-aside authority specifically would decrease to some extent the share of Government procurement being awarded to small business. We feel that such results appear to be incompatible with the small business policies of both the Congress and the administration.

For these reasons we believe that sections 1 and 2 of S. 1363 and S. 3096 should not be enacted.

With respect to section 3 of S. 3096, it is our opinion that the purpose of the congressional finding contained in this section is not clear, particularly in the light of the introductory language "all other statutes to the contrary notwithstanding."

On the assumption, however, that the section is not intended to affect the small business subcontracting program for which provision is made in section 8(d) of the Small Business Act, we would have no objection to the enactment of this provision.

With respect to section 4 of S. 3096, we believe that the section is unnecessary and may place an undue burden on contractors. We believe further that adequate information concerning subcontracting with small businesses will be available through the operation of the small business subcontracting program clause which has been prescribed by the General Services Administration and by the Department of Defense with the concurrence of the Small Business Administration.

In conclusion, I want to reiterate the view which has been expressed by the Administrator of General Services that GSA shares the President's interest in furthering the role of small business in Government procurement. In order to accomplish this objective, we believe it is necessary to utilize all of the means available, including present statutory provisions with respect to set-asides and subcontracting programs.

Senator PROXMIRE. Before the set-aside was applied to construction, what percentage of small business awards for new construction through GSA went to small business? It is 10 percent now, or it was 10 percent in 1961 I should say, in fiscal 1961.

Mr. READ. I am not in a position to quote you specific figures.

Senator PROXMIRE. Is it up or down?

Mr. READ. Right off the top of my head, so to speak, I cannot quote figures. I can say that the percentage of awards to small business has tended to fluctuate very markedly due to the fact that there seems to be quite a variation in the size of the jobs that come up from year to year.

In one year the jobs may be within the capability of small business, and you find that your percentage of awards to small business will go up quite sharply. In another year the size of the jobs will be much larger and the awards to small business will be much smaller.

I can illustrate this by the following—

Senator PROXMIRE. So that 1961 may not be typical at all?

Mr. READ. It may not be typical at all.

Senator PROXMIRE. 1962 may have been much better? Can you give us an impression whether it was better?

Mr. READ. It appears it will be better.

For example, in 1959, overall percentage of awards to small business with respect to our total maintenance, repair, and construction program was 58 percent as opposed to the overall percentage of 35 percent in 1961.

So we find that the program tends to fluctuate quite widely.

Senator PROXMIRE. Of this unfortunately small amount of 10 percent in 1961, how much of that \$15,380,000 was set aside and how much of it was not?

Mr. READ. I do not have an exact figure on that. I would estimate that it was probably in the neighborhood of \$5 to \$6 million.

Senator PROXMIRE. I see. So there were only \$5 or \$6 million set aside, and the rest was based on the small businesses getting it competitively?

Mr. READ. That is correct.

Senator PROXMIRE. How much of that \$153 million was competitive bid, not negotiated?

Mr. READ. The vast majority of GSA procurement is handled on formally advertised basis for construction.

Senator PROXMIRE. You have my congratulations.

By vast majority you mean 80 percent?

Mr. READ. I would say at least 80 percent. Perhaps higher. Perhaps as high as 90 percent.

Senator PROXMIRE. Throughout our Government there is just a small percentage advertised. It is most distressing to those of us who want to keep costs down and also feel so strongly that everybody ought to have a crack at it.

Thank you very much. This is very helpful, and I appreciate it. Did you want to add something?

Mr. HARRISON. No, sir.

Senator PROXMIRE. I appreciate you gentlemen coming very much. The committee will stand in recess subject to the call of the Chair.

(Whereupon, at 12:24 p.m., the subcommittee was recessed subject to the call of the Chair.)



## CONSTRUCTION SET-ASIDE AMENDMENTS

TUESDAY, JUNE 26, 1962

U.S. SENATE,  
COMMITTEE ON BANKING AND CURRENCY,  
SUBCOMMITTEE ON SMALL BUSINESS,  
*Washington, D.C.*

The subcommittee met, pursuant to recess, at 9:30 a.m., Senator William Proxmire (chairman of the subcommittee) presiding.

Present: Senators Proxmire, Sparkman, and Neuberger.

Senator PROXMIRE. The subcommittee will come to order.

Today the Small Business Subcommittee is continuing hearings on S. 1363 and S. 3096. These bills would amend the Small Business Act to exempt Government construction contracts from the small business set-aside program.

These bills have caused considerable comment and controversy. It is the purpose of these hearings to provide for the record, views both for and against these bills. The proponents of the legislation, the opponents of the small business set-aside for construction, have made a very strong and very persuasive case. We have heard from them, and this morning we are going to hear an opponent of the legislation, a proponent of the set-aside program, the Administrator of the Small Business Administration, Mr. Horne.

Mr. Horne, we are happy to have you before us.

**STATEMENT OF JOHN E. HORNE, ADMINISTRATOR; ACCOMPANIED BY T. G. WAALE, DIRECTOR, OFFICE OF PROCUREMENT AND TECHNICAL ASSISTANCE; EUGENE J. DAVIDSON, ASSISTANT GENERAL COUNSEL; LOGAN HENDRICKS, DIRECTOR, OFFICE OF FINANCIAL ASSISTANCE, SMALL BUSINESS ADMINISTRATION**

Mr. HORNE. Thank you very much, Mr. Chairman. I wonder if I may invite two or three of my staff members to sit up here with me?

Senator PROXMIRE. Yes, you might ask them to step up here, and you might identify them for the record.

Mr. HORNE. All right. To my immediate right Mr. Ted Waale, who is Director of the Office of Procurement and Technical Assistance. To his right is Eugene Davidson, who is one of our Assistant General Counsels and whose speciality is in the procurement field.

To my immediate left is Logan Hendricks, who is Director of the Office of Financial Assistance.

Mr. Chairman, I appreciate very much being before your committee, and I certainly appreciate your having an early meeting.

The bills (S. 1363 and S. 3096) under consideration by this subcommittee call for the elimination from the set-aside program of the Small Business Administration of contracts for construction, maintenance, and repair—which I will hereafter refer to by the simple term “construction contracts.” Under the set-aside program, as you all know, suitable Government purchases are reserved for award to small business concerns on a competitive basis.

I am grateful for the opportunity to discuss the program for construction contract set-asides with you. I hope to clear away at least some of the misunderstanding underlying this program and to emphasize that the enactment of the legislation under consideration would, in our opinion, be harmful to the Government, and harmful to small construction firms.

The set-aside program, authorized by section 15 of the Small Business Act, is essential to insure that small business concerns receive a fair proportion of Government contracts. In furtherance of the program, the Small Business Administration has made cooperative arrangements with the Department of Defense, the General Services Administration, and other procurement agencies. Proposed purchases by these cooperating agencies are reviewed to determine whether they should be restricted to small business.

I should like to emphasize that such a determination must be made jointly by the procuring agency and SBA. Under no circumstances can SBA act alone in this matter.

I would like to leave my text for a moment here to point out that there is a program known as unilateral set-aside in which the procuring agencies may and do make set-asides for small business without consultation with SBA. We do not know of these set-asides before they are made. The bulk of my statement today, though, Mr. Chairman, relates to the joint set-aside program.

Senator SPARKMAN. May I interrupt right there for this brief clarifying question?

Mr. HORNE. Yes.

Senator SPARKMAN. You say there is a unilateral set-aside program but there is no unilateral program as far as SBA is concerned?

Mr. HORNE. No, sir.

Senator SPARKMAN. SBA cannot set aside any contract at any time by itself?

Mr. HORNE. That is entirely correct.

In the beginning, the set-aside program was considered applicable to construction as well as to other contracts. However, because of doubts which were raised by decisions of the Comptroller General with respect to SBA's authority to set aside construction contracts, the Small Business Act was amended by Congress in 1958 to resolve this question. (Two decisions of the Comptroller General and the legislative history of the amendment will be found at the end of Mr. Horne's testimony. See p. 163.) Thus the amendment made clear that one of the purposes of the act was—

to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small business enterprises \* \* \*

This is from the language itself. This is the language of the law. The effect of the legislation now being considered would be to nullify the 1958 action of Congress.

Supporters of the proposed legislation contend that small construction firms, unlike their counterparts in other industries, could regularly obtain a fair proportion of Government contracts without the assistance of set-asides. At one time there may have been some basis for the argument that small firms were receiving a fair share of construction contracts. During the fiscal year 1958, while SBA was refraining from recommending construction set-asides, small business concerns were awarded 72.8 percent of the dollar value of all military construction procurements. Thus when the authority of SBA to conduct construction set-asides was clarified—the language I mentioned just a moment ago—some 2 weeks after the close of that year, there was about in some minds about the need of them. Nevertheless they were resumed and were continued on a somewhat limited scale until, in May of 1959, the Department of Defense requested that they be suspended.

Reluctantly, SBA consented. Although SBA officials would have preferred the continuance of the set-aside system, they were willing to explore the possibility that small firms might continue to obtain a fair share of construction contracts without such assistance. Accordingly, they suspended the program with the understanding that it would be reactivated if, after a reasonable period, the small business share of construction contracts decreased appreciably.

The misgivings of SBA were borne out by subsequent events. In the fiscal year 1960 the small business share of military construction contracts declined to 50 percent. Thereupon the Department of Defense agreed with SBA that the set-aside programs for construction contracts should be reactivated. Even after this was done, an increase to only 54 percent was achieved in the fiscal year 1961. Moreover, this small increase was only temporary. Since then, a steep decline has set in. During the first 9 months of the fiscal year 1962, the figure sank to 39.6 percent. I might add that the small business size standard for construction concerns has not been changed since May 9, 1958. It will be changed, Mr. Chairman, effective August 1, 1962, of this year, but the résumé I have given of the decline of the dollar share going to small business refers to times when the size standard was the same.

These statistics speak for themselves. The small business share of military construction has been steadily declining. In our opinion, and as has been pointed out by the Department of Defense, the construction set-aside program is one means of arresting this decline. Without the program, the figures I have cited would doubtless plunge to new lows. The proposal to discontinue it, therefore, is most inappropriate. Such a step would be inconsistent with oft-expressed intent of Congress that small firms share equitably in Government prime contracts. It would also be inconsistent with the desire expressed by the President that all Government procurement agencies adopt every feasible measure to increase the small business share of the procurement dollar.

The importance of the construction set-aside program to the Government can be measured by the fact that approximately 90 percent of

the members of the construction industry are small business concerns. To a very substantial extent, the prices which the Government will have to pay for construction work in the future depends upon the competition which the leaders of the industry receive from these concerns. By strengthening small construction firms, and thus facilitating their growth or at least their continued existence, the program will serve to keep prices down. Without the assistance provided by it, the competitive potential of small business would be seriously weakened. In the end, this could cost the Government dearly.

There is no doubt in my mind that the opposition to the program, reflected in S. 1363, S. 3096, and similar bills, is based for the most part upon misunderstanding. Supporters of these bills have made a number of assertions which reflect surprising ignorance of our set-aside procedures. I would like, Mr. Chairman, to review some of the more important misconceptions voiced by these critics and demonstrate their inconsistency with the applicable facts. It is my hope that such clarification will have a persuasive effect on at least some of those who are now urging the discontinuance of construction set-asides.

Perhaps the most common misunderstanding, persistently expressed by many proponents of the bills, is that all construction contracts between \$2,500 and \$500,000 are automatically set aside for small business. It is claimed, or at least suggested, that procurement officials have been deprived of discretion with respect to such contracts. Needless to say, that is untrue. As I emphasized at the outset of this statement, no purchase can be set aside for small business without the approval of the contracting agency. SBA cannot act alone in the matter.

When the set-aside program was first established, it was necessary for the SBA procurement center representative to review each procurement and initiate individual set-aside actions on each procurement meeting the established statutory and regulatory criteria for a set-aside—the availability of a sufficient number of qualified small business concerns to assure competition and fair and reasonable prices. Furthermore, it was necessary to repeat this action even when the same items were purchased recurrently and there had been no change in conditions which justified the original set-aside. This resulted in a duplication of effort. In order to simplify and expedite the program, the Congress amended the Small Business Act in 1958 to authorize set-asides for classes of awards or contracts, as well as for individual awards and contracts.

Where we have reason to believe that the criteria are generally applicable to a class of contracts we request the procurement agency to treat each contract in such class as if it had been the subject of a specific set-aside recommendation by SBA. In no respect does this impair the right of procurement officials, however, to reject a recommendation. They can and do call our attention to those contracts in which the particular facts would not justify a set-aside. Where the facts warrant, the recommendation is rescinded. In cases of disagreement, section 15 of the Small Business Act specifically provides that "the matter shall be submitted for determination" by the head of the procuring agency. Thus, even in industry, all SBA can do in such cases is to appeal. The final authority is in the procuring agency.

Our application of this procedure to construction contracts is merely an extension of the class recommendations we had made in other

industries for items such as adhesives, ready-mix asphalt, boxes and crates, cement, various types of containers, and for services such as drycleaning, janitorial services, and guard and watchman services. As we gained experience in the field of construction, it became apparent that the class set-aside procedures are applicable to the bulk of construction contracts between \$2,500 and \$500,000. Accordingly, it was agreed with the Department of Defense and civilian purchasing agencies that the contracting officer should consider each requirement for construction within these dollar limitations as if we had made a specific recommendation to restrict it to small business.

An analysis prepared by the Department of Defense covering the first half of the calendar year 1961 illustrates the workings of the system. During this period the Department awarded 5,291 construction contracts under \$500,000. In approximately 20 percent of these cases the Department determined, with the concurrence of SBA, that the governing facts would not justify a set-aside. This record will hardly sustain the contention that all construction contracts between \$2,500 and \$500,000 are automatically set aside.

Senator PROXMIRE. May I interrupt at that point?

Mr. HORNE. Yes, sir.

Senator PROXMIRE. In addition to the 20 percent which would not justify a set-aside and were not put in that category, was there an additional group in which the SBA did not concur but which the departments refused to set aside without SBA concurrence; or were those significant in number?

Mr. HORNE. These statistics I am speaking of here, Mr. Chairman, as I have explained, refer to construction contracts between \$2,500 and \$500,000 which are recommended for set-aside by SBA, under the class set-aside authority. But with the procuring agency having the final authority. If they do not consider our recommendation appropriate, they call it to our attention, and if we concur the set-aside is not made. Even if we do not concur, they could still refuse to set aside. We don't have any mandatory authority in this area.

Senator PROXMIRE. Of these 5,291 construction contracts you say about 20 percent, about a thousand or so, were not set aside. I am asking whether of the remaining 4,200, were there many instances in which the agency disagreed with the SBA; that is, in which the SBA felt there should have been a set-aside and the agency simply overruled you and did not permit—

Mr. HORNE. No, sir. Within the figure I have given you here, the answer to your question would be, "No." The procuring agencies did agree, they didn't raise a question, didn't raise a point, and they went ahead and said the others were appropriate.

Senator PROXMIRE. So the complete picture was: about 20 percent were not set aside and 80 percent were in this category?

Mr. HORNE. Yes, sir.

Senator PROXMIRE. Thank you.

Mr. HORNE. Another allegation is that many of the small firms obtaining contracts under the construction set-aside program are incompetents financed by SBA. Statistical information on SBA construction loans does not distinguished between Federal and other construction activities. The delinquency rate on our loans to firms engaged in all types of construction and, we believe, predominantly in non-

Federal activity, is higher than that experienced on our loans to small businesses generally. This is not to say, however, as I will indicate later, that those loans in which delinquency is experienced are necessarily destined for liquidation or heavy loss. Many of the delinquencies are in the 30- to 90-day category and frequently are cured.

The explanation of a higher delinquency rate for construction loans is to be found in the nature of the construction business. In an article which appeared in a recent (April 1962) issue of the Bulletin of the Robert Morris Associates, a national association of bank loan and credit officers, Mr. James M. Henderson, vice president of the Fidelity & Deposit Co. of Maryland and an authority in the surety field, described the problem in these words:

The contracting business is one of the most risky enterprises in our economy but, despite this, competition is so keen that its net profits scarcely exceeded 1 percent per annum—quite a bit less than a decade or two ago. Many very able contractors showed less profit than that for 1960, and many looked at red-ink results, even though well established as good operators. The hazards of contracting are so great that some who have successfully operated for many years have failed, sometimes through no fault of their own.

Senator SPARKMAN. Mr. Chairman, may I interrupt there? Yesterday a subcommittee of the Select Committee on Small Business under the chairmanship of Senator Moss of Utah opened hearings on causes of failures of small business. The first witness was an officer of Dun & Bradstreet. He made a very interesting presentation. One of the interesting things about it was that in the classes of business, as he gave them, the highest rate of failures was in the field of construction.

Mr. Horne was there and, I am sure, remembers that particular part of his testimony. It was somewhat in line with the statement just made. Furthermore, he mentioned that competition was sharp in the field of construction contracts.

Mr. HORNE. Yes.

In the light of this evidence, it is not surprising that small construction firms encounter great difficulty in obtaining credit from private banks. For many of these firms, SBA is the only source of financial assistance essential to their operations. We expect, as in the past, to continue to provide such help—bearing in mind, of course, that the interests of the Government must be adequately protected. My next sentence, I think, Mr. Chairman, is very important: It may be of interest to note that the dollar rate of loss evaluated as of December 31, 1961, was 1.6 percent in construction loans as compared with 1.3 percent in connection with all business loans.

This is significant in view of the fact that another objection which has been circulated is that as of June 30, 1961, approximately 18 percent of SBA construction-firm borrowers were delinquent 60 days or more. The impression has been created that 18 percent of our construction loans will result in a "dead" loss. This is not the case. The fact is that though a loan may be delinquent, it is fortified with collateral, often including guarantees. If the delinquency is not cured and liquidation insures, many of these loans will be paid in full or losses will be greatly minimized through recovery from collateral. This explains the comparatively low percentages of loss based on evaluations as of December 31, 1961, the figures to which I just referred.

I wonder if those who accuse SBA of encouraging unfit concerns to take Government construction contracts realize that, normally, the decision whether a particular firm can handle a contract is made by the contracting officer rather than by SBA. The great bulk of the small concerns to whom such contracts have been awarded obtained them because the contracting officer made a favorable decision respecting their ability to perform. In such cases SBA did not participate in the decision. It is true that SBA can certify as to the capacity and credit of a small firm by issuing a certificate of competency. We have done so since 1953 in some 30 construction cases. None on the contracts involved in these certifications has been terminated for default. This can hardly be reconciled with the charge that we are careless about competence.

Senator SPARKMAN. May I comment there? That seems a very small number.

Mr. HORNE. Yes.

Senator SPARKMAN. How many cases of construction contracts would be involved over that nearly 10-year period? It would run into thousands, I should think.

Mr. HORNE. Well, no; but Senator Sparkman is asking this question, if I understand him correctly: How many instances have come to SBA's attention?

Senator SPARKMAN. No. How many construction contracts have been given to small business during that period of time?

Mr. HORNE. Many thousands.

Senator SPARKMAN. That is what I say, many thousands. But in spite of the fact thousands were given out, you have issued certificates of competence in only 30 instances?

Mr. HORNE. It probably means, too, Senator Sparkman, that based on the overall estimate of certificates of competency program, it would be a very generous estimate to say that perhaps a hundred construction contracts have been referred to us for a COC.

A COC never comes to our attention unless the small businessman is low bidder and unless the procuring agency questions his ability to perform because of a lack of capacity or financial competency.

Generally, throughout the history of the COC program, we have granted about 50 percent of the applications for COC's. That is the reason I say in the construction industry that 100 cases coming to our attention would be a very generous estimate.

Senator SPARKMAN. Yes, but I think the significant thing is people say that you issue certificates of competency to take care of this great number of contracts. I think it is quite significant that out of thousands of such contracts you have only issued 30 certificates of competency.

Mr. HORNE. Or another way to say it, Senator, is out of thousands of construction contracts awarded by the Government to small contractors, in less than a hundred at most have the military or the procuring authority questioned the capacity or financial ability of the contractor to perform.

Senator SPARKMAN. And out of those only 30 certificates of competency have been issued?

Mr. HORNE. Have been issued.

Senator SPARKMAN. And not a single one of those has resulted in a delinquency?

Mr. HORNE. Not a single one has been terminated for default.

Senator PROXMIRE. Out of the 30, was there any failure to perform?

Mr. HORNE. Mr. Waale?

Mr. WAALE. No, there was no failure to perform.

Senator PROXMIRE. In other words, there have been no delays, no loss to the Government?

Mr. WAALE. There may have been delay for some time, but there is no instance of any contractor being defaulted because of nonperformance.

Senator PROXMIRE. You say there may have been some delay?

Mr. WAALE. Schedules.

Senator PROXMIRE. Is delaying a default of the contract?

Mr. WAALE. The contract schedule may have been set up for 6 months and the contractor may have finished it in 8 because of reasons beyond its control.

Senator PROXMIRE. Is this an unusual situation?

Mr. WAALE. No; in the construction field it is considered not unusual.

Mr. HORNE. I might say, Mr. Chairman, that in the exercise of COC authority, this agency is most cautious. Beginning back in the Small Defense Plants Administration days—I am sure my predecessor in those days did the same thing as I am doing now—this authority has been exercised with caution. We realize that on COC we are pitting our judgment against the judgment of the contracting officer. We want to be sure that we don't make a mistake.

Occasionally we make a mistake, but across the board in every industry our COC record is unusually good, and I am sure the overall record where COC's have been issued is better than where COC's never came into the picture. The delays, too, that Mr. Waale talked about may have been excusable. Sometimes delays are excusable. Also, sometimes change orders and things of that sort have taken place. Delays, therefore, don't necessarily mean that the contractor was at fault.

Senator PROXMIRE. Can you tell us on the basis of your experience with these 30, was there any unusual situation, anything that would indicate that in these 30 situations the Government may have been inconvenienced by delay or may have incurred additional cost because of delay that they normally would not in the usual kind of contracting. Assuming, perhaps, that you had had a large contract?

Mr. HORNE. I have no figures or no knowledge of that. If such has been the case, Mr. Chairman, I don't have any knowledge of it.

Senator PROXMIRE. Thank you.

Mr. HORNE. The fact that none of them were terminated for default would indicate that generally speaking most of them were performed quite well.

Another misunderstanding relates to the claim that construction set-asides result in additional costs to the Government. To my knowledge, there is no convincing evidence to support this view. People who make this criticism seem to be under the impression that the award under a set-aside is made to the lowest bidder, regardless of whether his offer is reasonable. The fact is, of course, that a contracting officer is required to cancel any small business set-aside in which the prices submitted are unreasonable. The procurement is then readvertised in open competition.

In this connection it is to be noted that the Government engineers devising the technical specifications for a construction contract normally prepare an advance estimate of the costs involved. In fact, such an estimate is required by regulation in the case of construction contracts which are expected to cost more than \$10,000. The estimate, which is kept secret until the bids are opened, provides contracting officers with reliable guidance in determining whether the lowest bid received represents a reasonable price. This safeguard is just as effective in the set-aside program as it is in open procurements.

Supporters of the bills are inclined to make much of the fact that large concerns occasionally submit bids on construction set-asides, which are lower than those submitted by small business firms. It is said that such volunteer bids illustrate the savings which could be effected by abolishing construction set-asides. This is an unrealistic view, as was pointed out by the Department of Defense. In most cases the contractors who submit such bids know that they cannot be accepted. These ineligible large firms are thus free to bid unrealistically or even at a loss in order to discredit the bids offered by small firms who are bound by the prices they quote.

The procurement agencies of the Government have asserted they have no proof that the small business construction set-aside program involves additional costs to the taxpayer. In a report made to the Senate Small Business Committee on February 5, 1962, the Department of Defense included the following statement:

Some questions have, in fact, been raised as to whether we have not over-emphasized the role of small business in our construction programs at the cost of paying unreasonable prices to effectuate set-asides. We have, however, conducted a thorough review of construction contracts awarded during the 6 months ending June 1961, and have concluded that this allegation is unfounded.

Mr. Chairman, with the committee's permission, I would like to depart from the statement for a moment to address myself to intimations of at least one of the witnesses that SBA programs are antiunion and that SBA personnel advised its contractors that their costs will be higher if they employ union labor.

There is absolutely no basis for such innuendo. Our programs are designed to assist small business concerns. Some small firms are unionized and some are not. We never query a small concern about its union relations, nor do we involve ourselves in this area in any way. These are matters within the responsibility of other agencies of the Government.

The appropriate procedure for any labor union which has a grievance against undesirable wage or other labor practices of some construction concerns—and the records of the Department of Defense and Department of Labor will undoubtedly demonstrate that some large concerns have also been guilty of similar practices—is to seek to eliminate these undesirable practices. Destroying the set-aside program, which is one of the few means whereby smaller construction concerns, including those employing union labor, can participate in Government work, is not the solution. This would injure all small firms, including those which are not guilty of any bad practices.

Still another complaint made against construction set-asides is that small firms which receive the awards subcontract too much of the work. In the construction industry a prime contractor rarely handles the whole project himself. There is no reason to believe that

small construction firms subcontract more of the work than is customary in the industry. No less than their large competitors, these small firms assume all of the risks and burdens of prime contractors and they deserve recognition as such.

In a recent study of the set-aside program conducted by the White House Committee on Small Business (which is comprised of representatives of the Council of Economic Advisers, the Bureau of the Budget, Departments of Defense, Justice, Labor, Treasury, and Commerce, the Federal Trade Commission, the General Services Administration, and the Small Business Administration) it was concluded that the program has been a "useful tool in fulfilling the policy of Congress that a fair proportion" of Government contracts be placed with small firms. The committee "while acknowledging the possibility of a slightly higher price on a particular procurement" affirms its belief that—

The overall set-aside program contributes to the likelihood of continuing the small business competition which is essential in achieving substantially lower prices in the long run.

It is submitted that the above conclusions of the White House Committee on Small Business with respect to the set-aside program in general are no less applicable to construction set-asides.

In conclusion I want to emphasize that construction contracts are by no means the only issue involved here. Exemption of the construction industry from the set-aside program would lead inexorably to demands from other industries for similar treatment. These demands would be difficult to resist. Indeed the likelihood is that, under mounting pressures, we would be compelled to yield again and again. The only way to prevent such a development is to stand firm now against this attempt to deprive small construction firms of the benefits of the program.

It is my hope that this brief review of construction set-asides, and of the misunderstandings surrounding them, will convince you of their importance to the welfare of small business. It is my further hope that this committee will disapprove S. 1363 and S. 3096.

Mr. Chairman, that concludes my formal statement. I shall be glad to try to answer any questions the committee members may have or to supply any additional information the chairman may want.

Senator PROXMIRE. Senator Sparkman?

Senator SPARKMAN. Mr. Chairman, just a couple of questions.

Mr. Horne, you say that the size standards have not been changed since 1958, but a change will be made August 1?

Mr. HORNE. That is right, yes.

Senator SPARKMAN. That is the increase from \$5 million to \$7.5 million. I think that may very well explain part of the decline in small business participation in construction, because by holding to that level, while other things were going up, undoubtedly a great many of the small companies were eliminated.

There are only two things that I have heard, in the correspondence that I have had and people that I have talked with, that seem to have some merit in them: First, the limitation to the \$5 million size. It has been pointed out to me that some of the contracts set aside would immediately take some small business firms out of the \$5 million limitation because the contract was larger than that.

I had a good deal of correspondence regarding the Saturn test stand. I believe the contract was for \$7 million, and I remember that point was made in that connection. However, I think your increase to \$7.5 million is a very good move and ought to give considerable relief.

The second matter I want to ask you about, because I am not clear on this: Sometime ago I had some correspondence regarding a set-aside by the Army Engineers on construction totaling \$30 million. The point was made in practically every letter I received that there was no small business concern capable of handling a \$30 million contract.

The thought occurs to me—and this is something that I do not know—that that \$30 million may have been a whole program and divisible into smaller contracts. Do you know, offhand, anything about that? I realize that that would not have been yours, that was done by the Army Engineers.

Mr. HORNE. Mr. Waale, go ahead.

Mr. WAALE. I don't recall any particular instance of a particular contract totaling \$30 million. I wonder perhaps if that may not have been a program.

Senator SPARKMAN. That is what I say. It probably was an overall job that was divisible into many different contracts. But the correspondence that came to me just referred to it as a \$30 million set-aside and that no small business could carry it on. I am sorry that I do not have more definite information about it. But it might be well, if you can, to check into that and see just what it was. If you wish, I could go back on some of my correspondence. I do not believe that we have ever referred to other than just a Corps of Engineers set-aside of \$4 million.

Mr. HORNE. I am reasonably sure, Senator Sparkman, that the total amount would not at all be considered for a set-aside. With your permission we will get in touch with a member of your staff and see if we can get further information on this for your file and give you a complete report on it.

Senator SPARKMAN. Yes. As I say, those are the only two points that have been made that seem to me to have merit, and one of them you have met by raising the limitation to \$7.5 million.

Mr. HORNE. If I also may say a word, sir, about the first contract you mentioned, the Saturn site. That was a decision of the Department of Defense. I will ask Mr. Waale to correct me if I am wrong, but I am of the opinion—I think I am entirely right about this—that this particular set-aside was not one initiated and recommended by the Small Business Administration. This came under the unilateral set-aside authority which the Department of Defense may exercise.

Senator SPARKMAN. It was made because of an error of the Corps of Engineers. I imagine the Corps of Engineers, since they are responsible, will make the correction.

Mr. HORNE. I was amused, however, that some of the proponents of the set-aside program immediately used this as an example of how incompetent the Small Business Administration is, when we had nothing to do with it.

Senator SPARKMAN. You had nothing to do with this.

Mr. HORNE. We didn't even know about it until after it had been proposed and complaints made about it. And that was the first time it came to our attention.

Senator SPARKMAN. I think you have given us a very fine paper and a very fine explanation. Thank you, Mr. Chairman.

Senator PROXMIRE. Senator Neuberger?

Senator NEUBERGER. No questions.

Senator PROXMIRE. In your statement—this follows up the first point that was made by Senator Sparkman—you talk about the decline in the small business participation in construction contracts. You say that the small increase in 1961 after the set-aside program was reinstated was only temporary:

Since then, a steep decline has set in. During the first 9 months of the fiscal year 1962, the figure sank to 39.6 percent.

That is a very sharp drop. I am wondering what the explanation is, especially in view of the fact that you have a set-aside program in operation.

I can see that one argument against the set-aside program would be it does not work. After all, if without a set-aside program you have a higher percentage, why have one?

Mr. HORNE. We are of the opinion that without the set-aside program, the figure I have cited would have been a great deal less.

The only explanation I can give—and I will ask Mr. Waale to comment on this—Mr. Waale, Mr. Chairman, is familiar with the details of this program. He works with it all the time. One explanation is, of course, increasing competition. The other explanation for the decline in spite of the set-aside is the fact that some construction contracts have been of such nature, like some other contracts, that they simply aren't the type that small business can be expected to perform.

Construction work, such as missile site construction, is becoming more complex and becoming larger. These factors perhaps have helped to account for some of the decline.

Senator PROXMIRE. Has any study been made of this with contracts on new weapons systems?

Mr. HORNE. We made no study of it.

Senator PROXMIRE. How about subcontracts?

Do you have any statistics to indicate what proportion of subcontracts small businesses are getting now?

Mr. HORNE. Mr. Waale, do you wish to answer?

We do not have complete statistics concerning the new subcontract program with which the chairman is familiar. We will be able to have that in the future as the subcontracting program becomes more effective.

Mr. Waale, will you comment on that?

Senator SPARKMAN. Will you?

Mr. WAALE. Mr. Chairman, referring to the subcontracting, recent overall figures that have been announced by the Department of Defense indicate that to date in this fiscal year, subcontracting approaches about \$4 billion. The records on subcontracting are just being collected at the present time. Under the joint agreement we have worked out with the Department of Defense and General Services Administration there will be figures forthcoming presently. We

do not have too much detail other than the figures which have been submitted by the Department of Defense.

Senator PROXMIRE. Do you have any explanation at all for the sharp drop in the small business share of that construction contract Senator Sparkman mentions?

Mr. WAALE. The small business dollar share of construction procurement has been affected by the procurement mix. However, as Mr. Horne mentioned, we feel very sure that because of the procurement mix, missile site procurement, and extremely large dollar construction contracts, the percentage of 39.6 would have been less had not the set-aside program been in effect.

Mr. HORNE. Of course, it has been of a little bit of interest, Mr. Chairman, to me—somewhat frustrating, I might add—that in spite of the decline in the dollar value going to small business, the opposition has become more intense. If the opponents of the set-aside program had any real justification, it seems to me they would have been more justified 2 or 3 years ago or a year or so ago than today. Back then small business was getting a larger share of the defense dollar than it is getting today.

Senator PROXMIRE. In your statement you say :

It would also be inconsistent with the desire expressed by the President that all Government procurement agencies adopt every feasible measure to increase the small business share of the procurement dollar.

If this legislation should pass, either the Metcalf bill or the Williams bill, would it then be impossible for the President to provide for any kind of special consideration for small business? Would you construe this language to prevent such Presidential action, especially section 2 on page 2—

but nothing contained in this act shall be construed to prevent or eliminate full and free competitive bidding, on an equal basis, by all contractors in connection with contracts for maintenance, repair, or construction.

Would this bar the President or the Secretary of Defense from having any kind of an effective program in small business procurement, contracting, and maintenance?

Mr. HORNE. Mr. Chairman, my belief is that it certainly would handicap them severely. The President, of course, has great authority, as the chairman knows, that he might exercise under other provisions. I don't know myself what those provisions are.

It seems to me, though, if this part of the act should be repealed, and the 1958 action of Congress should be rescinded, that for all practical purposes the set-aside program would be seriously endangered and there would be no set-aside program at all in the construction industry. I don't see that the President would have any authority. As I say, it would have to be vested elsewhere, and I don't know where it is. And I think he would be severely handicapped so far as this particular part of the program is concerned.

Senator PROXMIRE. You gentlemen are the outstanding experts in the small business field, and if you are not aware of this, I do not know who would be.

Mr. HORNE. I know of no other authority he would have.

Senator PROXMIRE. You say in your statement :

By strengthening small construction firms, and thus facilitating their growth or at least their continued existence, the program will serve to keep prices down.

This is very, very hard for me to accept. I like the authority and I subscribe to the notion of trying to keep small businesses alive. But actually what you are doing is to exclude the substantial construction firms whose participation would strengthen competitive bidding. It would seem apparent that prices would be lower rather than higher, if you open up bidding and permit everybody to bid.

Mr. HORNE. Let me make this comment on that point if I may, Mr. Chairman. I am perfectly honest in saying that when it comes to proving some of these assertions in a definitive way, it is practically impossible to do so. It is just as difficult, I think, to prove that not having the set-aside makes for higher prices as it might be to prove the set-aside makes for lower prices. I don't think either argument can be proved definitely.

Senator PROXMIRE. Except that you have such a tremendously competitive situation in construction, as you have established so well in your paper. It is as competitive as any segment of our economy. There are so many engaged in the activity. It is so easy to enter the construction industry and it is likely to continue to be, that it is idle to argue that you have to have this program to keep more firms artificially in business doesn't add up. It seems to me you can't even argue this on social grounds. I do not see how you can argue this on grounds for saving money to the taxpayer when you exclude firms from participating in competing bids.

Senator NEUBERGER. Will the Senator yield?

Senator PROXMIRE. Yes.

Senator NEUBERGER. Are we not familiar with the situation where the big contractor can come in and actually freeze out the little fellow. Be willing to take a loss and squeeze him out? This happens in other situations, and it always sounds good. But I am rather familiar with the newspaper business and I have seen this happen. They will cut advertising rates until they drive their competitor out and then up go the advertising rates. This just happened in my city. It seems to me that this is not all black and white.

Senator PROXMIRE. I think you are completely right in retailing and in many other areas. I am just wondering if this would be true in construction in view of the history of the ease of access and the fact that the construction industry is so highly competitive; much more so than in many other areas.

Senator SPARKMAN. Mr. Chairman, may I suggest at that point that here it is still competitive. There is still competitive bidding among 90 percent of the construction firms.

Senator PROXMIRE. I understand that. The only argument is that in many circumstances the big firm may have efficiencies which the smaller firm may not have, in which case Government cannot benefit from the big firms' efficiencies the Government cannot enjoy.

Senator SPARKMAN. And they also have efficiency to such an extent that they can do what Senator Neuberger very well pointed out.

Mr. Chairman, I have to leave. I have to preside at a Foreign Relations Committee meeting.

Mr. HORNE. Mr. Chairman, if I may say, sir, two of the points I was going to make have already been made. I might also add two other points. I am of the opinion—and I think this is fairly obvious—that small firms will compete among themselves. But

frequently where they have to compete against somebody on whom they may have to rely later on for subcontracts, there is a reluctance to compete. You do not find them competing as much where they have to compete against the large contractors, as where they compete among themselves.

And I keep also coming back to this point: I think it is very important to keep in mind that any time the contracting officer thinks he has a low bid that isn't fair to the Government, or isn't in keeping with past experience he can always throw it out. There is nothing in the world the Small Business Administration can do about it, even if we tried to.

Another point I might make is something from the Department of Defense.

Presumably the possibility of the slightly higher price on some procurements was believed to be overwhelmingly offset by the assurance of continuing small business competition. In future procurement with such continuing competition, of course, the Government will be assured of lower prices in the long run.

Senator PROXMIRE. This would make sense, it seems to me, if you have a situation in which you have some sort of a specialized product and you can see that a substantial proportion of your producers are going to be eliminated. Then you are left with a situation of kind of oligopoly in which you have a few firms that would get together and divide up the business, or one firm would bid low one time and another another time.

As I understand the construction industry, this is not true. It is so highly competitive, there are so many firms, that you are unlikely to create a situation at any time in the future where you do not have vigorous and effective competition. Maybe that is wrong, this impression. I know this is not true in many areas in which the Government purchases, because you do get collusion.

Senator NEUBERGER. Will the Senator yield?

Senator PROXMIRE. Yes.

Senator NEUBERGER. I was hoping you would not forget our friends, General Electric and Westinghouse that used to meet out at the airport hotel and set prices. Just because they are big does not mean that they are going to compete and that we will benefit from it.

Senator PROXMIRE. I agree wholeheartedly. The recent record is especially replete with examples of collusion and examples of big firms holding prices up. I just wonder if construction is the kind of industry where we can expect such collusion, on the basis of our understanding.

Mr. HORNE. Mr. Chairman, it is my opinion that if the big members of any industry want to do this sort of thing, they can do so even if they may be smaller ones that can compete with them.

Senator PROXMIRE. Is there any prospect you are going to wipe out small competitors, that you are not going to have open competition?

Mr. HORNE. I think the answer to your question, sir, is that the number of small competitors may be considerably reduced.

Senator PROXMIRE. I see Mr. Davidson nodding.

Mr. HORNE. Mr. Davidson, do you want to make an answer to the chairman's question?

Mr. DAVIDSON. During the course of the hearing certain witnesses who favor the legislation indicated that large firms have such large

overheads as to enable small firms to bid competitively against them. The fact that these small firms fail to bid, even though they could bid competitively, I think is indicative of the fact that there is a withdrawal from open competition by small firms which would have resulted in a benefit to the Government.

Senator PROXMIRE. Very interesting.

All right, in your statement you explain the set-aside range. I am wondering what proportion of contracts above \$500,000 have been successfully bid by small business.

Mr. HORNE. Mr. Waale, do you want to comment?

Mr. WAALE. Mr. Chairman, I don't have the exact figures, but there have been a number of them that have been successful.

Senator PROXMIRE. I take it this has been sharply declining in recent years in view of the general statistics overall.

Mr. WAALE. There are many contracts above \$500,000 that have been successfully performed by small business, some of which have been set aside unilaterally or jointly.

Senator PROXMIRE. Would those statistics be available at all for the record?

Mr. WAALE. Yes, we have some and they can be made available to the record.

Senator PROXMIRE. I would appreciate that.

Mr. WAALE. That is pertaining to the joint set-aside. We definitely have them.

Mr. HORNE. You want them in excess of \$500,000?

Senator PROXMIRE. That is correct.

Mr. HORNE. All right.

(The statistics referred to follow:)

*Military construction set-asides agreed to (beginning with September 1960 when program was reactivated)*

	Over \$500,000		Under \$500,000		Total	
	Number	Amount	Number	Amount	Number	Amount
Fiscal year 1961: <sup>1</sup>						
September-January.....	21	\$20,403,909	3,004	\$154,607,689	3,025	\$175,011,598
February.....	8	12,741,700	821	32,716,872	829	45,458,572
March.....	10	10,480,000	1,257	52,759,204	1,267	63,239,204
April.....	7	7,969,000	1,293	54,906,432	1,301	62,875,432
May.....	8	5,650,000	2,161	87,890,811	2,168	93,540,811
June.....	5	7,028,117	2,470	87,468,642	2,475	94,496,759
Total.....	59	64,272,726	11,006	470,349,650	11,065	534,622,376
Fiscal year 1962: <sup>2</sup>						
July.....	6	4,894,000	656	27,041,545	662	31,935,545
August.....	8	13,750,000	802	26,984,620	810	40,734,620
September.....	9	10,255,000	746	25,632,240	755	35,887,240
October.....	8	8,326,000	891	45,235,902	899	53,561,902
November.....	8	8,371,000	1,062	48,329,235	1,070	56,700,235
December.....	12	11,036,000	764	31,931,547	776	42,967,547
January.....	8	9,285,400	839	41,458,709	847	50,744,109
February.....	10	7,580,000	940	40,540,823	950	48,120,823
March.....	16	16,132,000	1,180	62,171,361	1,196	78,303,361
April.....	5	4,450,000	1,477	58,611,959	1,482	63,061,959
May.....	14	16,085,000	2,263	76,900,451	2,277	92,985,451
Total.....	104	110,164,400	11,620	484,838,392	11,724	595,002,792

<sup>1</sup> In addition to the 59 set-asides agreed to over \$500,000, 47 set-asides amounting to \$107,684,700 were initiated and rejected.

<sup>2</sup> In addition to the 104 set-asides agreed to over \$500,000, 64 set-asides amounting to \$173,614,173 were initiated and rejected.

Senator PROXMIRE. You stated that:

In the light of this evidence, it is not surprising that small construction firms encounter great difficulty in obtaining credit from private banks. For many of these firms, SBA is the only source of financial assistance essential to their operations.

Why is this? Why cannot the banks take care of it?

Mr. HORNE. Mr. Chairman, because it is an industry in which there is a higher rate of failures, highly competitive, the banks shy away from making loan, more so than is usually the case in other industries. It is the risk involved.

I remember that Mr. Lanman, who is our Deputy Administrator for Financial Assistance, discussed this matter with the bank with which he was associated before he joined the agency. He was aware of this situation when he was in the banking business.

Senator PROXMIRE. Here is a matter of very significant public economic policy: Should the SBA, should the Government, follow a credit policy of keeping so many firms alive in this industry that, as you indicate in your statistics, none of them are doing very well, the rate of profits is very low, and the rate of failures is high. And is it not true that if the Government steps in with credit to firms which cannot get credit from the banking system that we are going to continue to have an excess number of firms and very unhealthy and unstable situations for the people who are in the industry.

Mr. HORNE. I think the chairman will keep in mind—I think this is the key point—that the actual loss that has been experienced on these loans is very, very little in excess of our overall loss rate. It is true that the delinquencies are greater, but the actual loss as far as the Government is concerned is very, very little.

Senator PROXMIRE. What that means is that you will have a firm that can give you collateral. They may fail, but you can liquidate the collateral and the Government will come out all right. But you still will have firms that have been competing and getting business and getting away from others and then failing.

Mr. HORNE. This is true, of course, practically in any industry.

Senator PROXMIRE. Would you say it is greater in construction than almost any place?

Mr. HORNE. It is greater here. I think also the disadvantage can be offset by the fact that we are able to keep many of these firms in business at no loss to the Government, at profitable operations and keep them in the competitive position so they can continue to bid, offer their prices, and in the long run make lower prices available overall for the country.

Senator PROXMIRE. That may be; but, once again, it is a terrible price for the people who are in this business and are competing with other firms that are just kept alive by a kind of Government subsidy. Is that not right? Is not SBA interest charge below the usual commercial loan cost? SBA loans are at what rate; 5½ percent?

Mr. HORNE. 5½ percent.

Senator PROXMIRE. And that is lower than most construction firms are probably able to get with banks, is it not?

Mr. HORNE. Probably so.

Senator PROXMIRE. Terms are probably easier.

Mr. HORNE. But this would be true of any other industry, Mr. Chairman.

Senator PROXMIRE. But this industry particularly has an unfortunate record of failure. There is, apparently, an excess number of firms in it; on the basis of the failures.

Mr. HORNE. Of course, it might also, Mr. Chairman, be argued that in an industry that is having difficulty, perhaps more sympathetic help is justified than otherwise would be the case.

Senator PROXMIRE. I can see if you have a situation where an area is underbanked, if you have a situation where for some reason, some irrational reason, the banks do not make credit available, the SBA might move in. But if you have a situation where in most parts of the country you have an ample supply of credit, is it logical for SBA to say that "here is an industry in which failure is great and in which competition is so heavy that it is hard for these people to prosper; therefore SBA has to step in with more capital, to keep more people in the business"? It is hard to follow that logic in terms of the well-being of the industry as a whole.

Mr. HORNE. If it is done in a haphazard manner or done improperly, I would say there is a great deal of justification in what you are saying. I might add as evidenced by the low loss that we have, that we have done, I think, a very good job, about as good a job here as we have elsewhere.

I might also add that we have a pretty high rate of decline; of refusing to approve applications generally. We look at applications very carefully and our rate of disapproval on applications in this industry is fairly high also.

Senator PROXMIRE. Then on the last page of your statement you discuss a White House study. It is very interesting. How big a study is that?

Mr. HORNE. Sir?

Senator PROXMIRE. You say:

In a recent study of the set-aside program conducted by the White House Committee on Small Business \* \* \* it was concluded that the program has been a "useful tool in fulfilling the policy of Congress that a fair proportion" of Government contracts be placed with small firms \* \* \*.

Is this a very detailed study; is it one that we might be able to put in the record?

Mr. HORNE. No, it is not a detailed prepared study, Mr. Chairman. We participated and others participated. Most of the information made available was from the Department of Defense. As to the Department of Defense, I don't know whether their spokesman included some of the information that we gathered from them in the White House Committee in his testimony. The Department of Defense investigations and studies were very inconclusive as to whether the set-aside program resulted in higher prices. They have said consistently that they have no evidence that the higher cost allegation is justified. The quotations are from a Committee report which will be released shortly.

Senator PROXMIRE. We would simply like to see a copy of the study if we could. We will put it in the record if it is not too detailed.

Mr. HORNE. All right, sir.

(The document referred to follows:)

WHITE HOUSE COMMITTEE ON SMALL BUSINESS,  
Washington, D.C., January 1962.

THE PRESIDENT,  
The White House,  
Washington, D.C.

DEAR MR. PRESIDENT: In your original announcement of the establishment of the White House Committee on Small Business, you stated that you looked to the Committee " \* \* \* to provide the leadership in Government that is required to develop new, constructive policies and programs in this vital area." Among other subjects to which you directed our attention was that of the role of small business in Government procurement. As you stated at the time, " \* \* \* I look to the White House Committee on Small Business \* \* \* to devise means for assuring small business a larger share of Government contracts and subcontract \* \* \*"

Pursuant to that directive, the Committee appointed a task force which, under the direction of Assistant Attorney General Lee Loevinger, is making an intensive examination of Federal procurement policies. The Committee expects to study the findings and recommendations of the task force in the next few months. Our own suggestions will be forwarded to you at that time.

One aspect of the impact of Government procurement on small business, that of the joint set-aside program, has recently been the subject of considerable interest. Because the Committee felt that the question of the value of the program, and particularly, the question of the cost to the Government of goods and services purchased under the set-aside program, might well arise again, an ad hoc subcommittee was appointed. The findings and recommendations of the Subcommittee, which were adopted unanimously by the Committee, are attached.

Respectfully yours,

JOHN E. HORNE, *Chairman.*

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE,  
INSTALLATIONS AND LOGISTICS,  
Washington, D.C., December 5, 1961.

Memorandum.

To: Hon. John E. Horne, Chairman, White House Committee on Small Business.

From: Clyde Bothmer, Chairman, Subcommittee on the Question of Small Business Set-Asides.

The subcommittee on the above, which included Mr. Maness, of the Small Business Administration, and Mr. Gasque, of the General Services Administration, has carefully considered whether any change should be made in the set-aside program now being used by Government procuring agencies. It is the unanimous feeling of the members of the subcommittee that the present program should be continued substantially as it is, adding to it only through education and emphasis.

The set-aside program, authorized by the Small Business Act, provides in essence for Government procurement agencies to limit those who may bid on total procurements to small firms when "there is reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices." A portion of a procurement may similarly be set aside for small firms when the procurement is "severable into two or more economic production runs," and "one or more small business concerns are expected to have the technical competency and productive capacity to furnish a severable portion of the procurement at a reasonable price." Set-asides may be made as a result of a determination by the contracting agency alone, or by the contracting agency in conjunction with the Small Business Administration.

It is the belief of the subcommittee that the set-aside program has been a useful tool in fulfilling the policy of Congress that "a fair proportion of the total purchases for property and services for the Government" shall be placed with small business firms. For example, the Small Business Administration reports that Defense Department set-aside awards exceeded \$1 billion for the first time in fiscal year 1961. While the Armed Services Procurement Regulation, as well as the internal regulations of GSA and some other agencies, has provided for set-asides for several years, it was only on September 26, 1961, that similar provisions were included in the Federal Procurement Regulations which are applicable Government-wide. The effective date of these FPR provisions is De-

ember 31, 1961, but the affected agencies have the option of earlier use. The FPR is applicable to, and was coordinated with, the following 22 agencies: AEC, Agriculture, BOB, Commerce, HHFA, Labor, NASA, OCDM, Panama Canal, Post Office, SBA, State, Treasury, VA, USIA, FAA, GAO, HEW, ICA, Interior, Justice, and TVA. It is also important to note that the Armed Services Procurement Regulation was changed in several respects during the development of the Federal Procurement Regulations upon the basis of new policies and procedures jointly agreed to by ASPR and FPR representatives. Thus, even though ASPR has been in effect for some time, it too contains some relatively untested procedures. In view of the above facts, it is not desirable to change the program at this time.

As stated earlier, we must continue to educate responsible officials and emphasize the small business program through every available means. It has become increasingly obvious that programs and policies alone will not suffice to assure small business an increasing share of Government procurement. To accomplish this purpose, it is essential that all interested personnel, including—but not limited to—procurement personnel, must actively support and concentrate on the small business program. For this reason, the Department of Defense, which Department's problem in channeling contracts to small business is aggravated by the complexity of the weaponry purchased, has chosen to establish percentage goals for all major procuring activities. Other governmental agencies, faced with less difficult circumstances, have not adopted this technique. Nevertheless, it is the feeling of the subcommittee that all agencies require additional time to educate field personnel, and to emphasize the small business program (including the set-aside procedure) before any substantial changes to the program are considered.

It is worthy of note that there has been dissatisfaction with the set-aside program voiced in some quarters. It is the feeling of the subcommittee that such dissatisfaction may well be an outgrowth of the current emphasis which this administration has placed on the small business program; that is, the more business the small business receives, the more the "pinch" is felt by large firms. The subcommittee believes that it is in this context that questions have been raised as to the possible payment of price differentials where total set-asides are used. It seems obvious that Congress provided for, and many successive administrations have supported, a small business program in the belief that a healthy small business community is an essential ingredient in a sound national economy. While it is true that the set-aside program limits competition to some extent, this program has been endorsed by both Congress and the executive branch for many years. Evidently, therefore, there can be little doubt that the set-aside program was intended to limit the class of bidders as a means of enabling small business to receive its fair share of Government business. Surely, then, the corollary concept, that the purchase price might in some cases be higher than that which would have been arrived at through completely unlimited competition, must have been recognized and accepted. Presumably, the possibility of a slightly higher price on some procurements was believed to be overwhelmingly offset by the likelihood of continuing small business competition over the years, with such continuing competition, of course, essential in achieving substantially lower prices in the long run.

It is also appropriate in this report to note that a survey was recently made within the Defense Department of all construction contracts of \$10,000 or more awarded during the period between January and June 1961. There were 5,493 such contracts which in value totaled \$743,040,000. Of these, set-asides were used in 4,031 cases involving awards of \$242,026,000. There were 18 cases in these set-aside procurements in which large business firms submitted the low bid which was, of course, rejected as being nonresponsive to the Government's invitation. The difference between the bids accepted and these low rejected bids totaled \$296,203, which is less than 5 percent of the value of the 18 awards in question and approximately one-tenth of 1 percent of the value of the set-aside awards.

The Small Business Administration representative on the subcommittee suggested that this report would be incomplete without an endorsement of the current efforts being made by all Government agencies to increase the small business participation in Government procurement.

It is recommended that the full committee adopt the conclusions set out above, and include them in an appropriate report to the President.

(The following was later inserted in the record:)

EXCERPT FROM JUNE 1962 PROGRESS REPORT OF WHITE HOUSE COMMITTEE  
ON SMALL BUSINESS

\* \* \* \* \*

D. *Small business set-asides.* The set-aside program, authorized by the Small Business Act, provides in essence for limiting those who may bid on procurement contracts to small firms in cases where there is reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices. The Committee has studied the program and found it to be a useful tool in fulfilling the policy of Congress that "a fair proportion of the total \* \* \* contracts and subcontracts for property and services for the Government" shall be placed with small business firms. The Committee feels that the present program should be continued substantially as it is, adding to it only through education and emphasis. Particular attention was devoted to the allegation that the cost to the Government under a set-aside program exceeds the price which would be paid if the program were not in effect. While acknowledging the possibility of a slightly higher price in a particular procurement, the Committee affirms its belief that the overall set-aside program contributes to the likelihood of continuing the small business competition which is essential in achieving substantially lower prices in the long run.

\* \* \* \* \*

Senator PROXMIRE. Then the other question I wanted to ask on your paper was where you say, "Exemption of the construction industry from the set-aside program would lead inexorably to demands from other industries for similar treatment." And you point out that this would just make the whole set-aside situation collapse.

I am not aware of any other industry which asks for this exclusion. Here we have an industry in construction, however, in which we have not only the leading association asking for exclusion, we also have the labor unions very strongly and firmly, apparently in a united way, asking for it. So that we have both labor and management uniting. And it does seem to be, on the basis of the paper you present here, a peculiarly different situation, with competition so very intense and with small business having in the past, at least, been able to compete quite effectively without a set-aside program. What other industries did you have in mind that might want to be exempt?

Mr. HORNE. Mr. Chairman, I am not in a position to specify a particular industry. I know that since I have been with the agency that there has been flak constantly about the set-aside programs. What I am expressing here is simply this: if Congress, after making clear in 1958 that it did intend the set-aside program to be applicable to this industry, should now reverse itself, my fear is the precedent that you are setting would bring to question the entire set-aside program. There is no way to prove that such would take place. I am simply pointing out that this, I think, is a possibility. I think this is a bad precedent and I think that the chances are that you will have pressures from other industries to do away with the program in their particular industry.

Senator PROXMIRE. You had no particular industry in mind?

Mr. HORNE. No, sir; just this flak against the program overall, if successful, it could encourage others. This is something, Mr. Chairman, that happens quite frequently. Everything rocks along fine until you make an effort to stop this decline from 25 percent in 1954 overall to less than 16 percent overall in 1960 and 1961—when you make an effort to stop this decline and to let the small businessman get the share of the defense dollar that is in keeping with his overall ability to perform.

Senator PROXMIRE. I agree we should do more to help small business get a greater share of the procurement dollar.

Mr. HORNE. You step on somebody's toes anytime you do this. And it is true, in spite of the fact that the share going to small business has dropped in the construction industry in spite of the set-aside.

Senator PROXMIRE. How big a segment of the procurement dollar is represented by the legislation we have before us?

Mr. HORNE. The amount actually awarded in 1960 was \$781,231,636. In 1961 the amount awarded dollarwise, now, not percentage-wise—

Senator PROXMIRE. What I am talking about is the proportion that construction represents of all procurement.

Mr. HORNE. I might say this: I think this might be a way to answer your question—

Senator PROXMIRE. Twenty-five percent, twenty percent?

Mr. HORNE. You may have noticed a news release just a few days ago by the Defense Department saying that this year for the first time since the Korean war the small business share dollarwise in the contracting programs, not just construction, but overall, had broken the \$4 billion mark. Now, if the total amount is \$4 billion, I should think that about 40 percent of that \$4 billion, 40 or 45 percent of that \$4 billion was made available under the set-aside. If you figured this on down, then about 25 percent of the total dollar would be construction, so about 25 percent of the set-aside would also be construction, if you come from the top down.

Senator PROXMIRE. So about one-quarter of procurement would be in this construction, maintenance, and so forth.

Mr. HORNE. It could be on a prime contract basis.

Senator PROXMIRE. I see. All right.

I have a series of questions from the previous testimony, and I will be as rapid as I can on this.

Congressman Weaver cites figures that, he says, demonstrate pretty clearly that small business gets a fair share of construction contracts and that the set-aside program is not needed by small business.

I assume your answer is that that share has been declining very sharply lately. Is that correct?

Mr. HORNE. Yes, sir.

Senator PROXMIRE. Congressman Weaver testified that construction contracts differ from other types of set-asides in that certain factors, such as soil conditions on the construction site, weather conditions, and the cost of labor, make it impossible to state with any degree of certainty what a construction procurement would cost. Do you want to comment on that?

Mr. HORNE. I don't agree with the Congressman, Mr. Chairman. I don't see any great peculiarities of differences between the construction industry and other industries so far as the set-aside program itself is conducted. It is conducted in identical manner from one industry to the other.

Senator PROXMIRE. Mr. Paul Askew, assistant to the president of the International Union of Operating Engineers, testified that "every union in the United States affiliated with the building and construction trades department, and, Mr. Chairman, that is all of them, as-

sembled in convention this last November 1961, voted unanimously to approve a resolution requesting this legislation before you." This is a strong statement. Would you want to comment on it?

Mr. HORNE. Mr. Chairman, as I pointed out in some of my testimony, some of the people who get contracts under the construction set-aside are unionized, some are not. I have no figures on this proportion whatsoever.

Senator PROXMIRE. I hope those figures are available. I asked Mr. Askew to furnish them. I have not seen them so far. Perhaps he is going to make them available. It would be most interesting, because I feel as a matter of realistic fact that one of the reasons the unions feel so strongly about this is that they feel that by and large the small contractors are not organized, at least are not organized to the extent that the big contractors are.

But I am wondering if this is true. My own experience with contractors in Madison, Wis., is that they are almost all organized.

Mr. HORNE. My assumption would be—here again I have no figures—that there is more unionization among the larger ones than there is among the smaller ones. But I think it also raises this question: Are we going to rule the small businessman out of the possibility of selling to the Government because he does not have organized labor? The small businessman helps to support the great expenditures of our defense industry, whether he is unionized or not, and it seems to me, sir, that there may be other ways to bring about or encourage unionization rather than through Government purchases.

Senator PROXMIRE. That may be, but the fact is that somebody who hires workers who belong to a union and engages in collective bargaining, legitimate collective bargaining, it seems to me is paying something of a premium under most circumstances, and I think he ought to be given consideration. At least, he should not be discriminated against by Government policy.

Mr. HORNE. I don't think he is, sir, and I think the shoe would be on the other foot if these bills were passed.

Senator PROXMIRE. How would the shoe be on the other foot? You mean the unions would be—

Mr. HORNE. I think it might very well be argued that you are discriminating against the small businessman, because he is not unionized. I agree with you completely that a company shouldn't be discriminated against because it is unionized, but I don't think the company that isn't unionized should be either, as far as Government purchases, are concerned.

Senator PROXMIRE. How are you discriminating against the small businessman, if he is unionized, if you simply make contracts available to everybody on the basis of open and free competition?

Mr. HORNE. Only for the points that we have gone over heretofore in support of the procurement program. Some of the small business people, for one thing, as Mr. Davidson pointed out, simply don't come in and compete where they are afraid they are going to have to rely later on the big fellow for a subcontract.

I might add, Mr. Chairman, so far as the protection of the labor and management is concerned, we all, I think, would be concerned about this, that under the Davis-Bacon Act, any company doing construction work, contracts of \$2,000 or above, does have rules applied

to him and he does have to pay a fair wage. This is determined by the Department of Labor under the Davis-Bacon Act.

So I think that some of the allegations that scab labor has been used in performing set-aside construction contracts couldn't be true if the Davis-Bacon Act is in force.

Senator PROXMIRE. Sure it could be true. The scab labor could conform to the Davis-Bacon Act. But there could be other provisions. That is the minimum, really. There are all kinds of other benefits which collective bargaining has provided for union members who work for contractors and the cost to the contractor would not be covered by Davis-Bacon provisions. Davis-Bacon provisions relate to the prevailing wage, do they not?

Mr. HORNE. Yes, sir.

Senator PROXMIRE. So if there are other provisions that may be of great benefit and considerable cost—

Mr. HORNE. So-called fringe benefits that do come in under other provisions that are not applicable to Davis-Bacon Act; that is correct, sir.

I might say this, Mr. Chairman, not that I am particularly concerned about it, like yourself or like anybody else in public office, you can't possibly please everyone. I might add that so far as I know, I have only one time been accused of being unfriendly to labor. That was in connection with a statement from one of the witnesses relative to our administering this act.

I have no choice, as the chairman knows, except to administer this act to the best of my ability as long as it is part of the legislation. But in the administering of the act I want to make clear to anyone who may have any doubts about it, there is no question whatsoever of organized labor versus nonunion labor.

I repeat something I said a moment ago. The fact that a firm is unionized should not be the basis for doing away with the set-aside program, just because other firms getting some set-asides do not employ organized labor.

Senator PROXMIRE. No; that certainly is not the thrust of my question. I do not think anybody would argue that, in or out of the unions. But I think we do have to recognize that people who employ union labor are likely to be taking on an additional cost. To the extent that we find larger contractors organized and smaller contractors not organized, if in addition to this we add the disadvantage of the larger contractor being excluded from bidding on contracts of certain size under certain circumstances, then the disadvantage obviously accrues not only to the larger contractors, but to their workers who are organized. And I think, as you agree, and as many of us agree in the Congress, collective bargaining ought to be encouraged in every possible way.

Mr. HORNE. Mr. Chairman, but I just want to mention this point, too: that even if you did away with the set-aside program and you had open competition, the same situations that might be advantageous now to a nonunion contractor under the set-aside program, could continue to work to his advantage.

Senator PROXMIRE. We are not denying that. The weakness of the position that I am trying to develop in the questions here is that we do not have the figures, we do not know if the small contractors are

less organized or not. I wish we had them. If we had them, we would have some kind of a base. But to the extent that this assumption is true, then a set-aside further aggravates the situation of an employer who employs union help and gives the employees the benefits of collective bargaining.

Mr. Askew also testified, and I quote:

We don't believe it, the set-aside program, adapts itself to the construction industry, but by its very nature, the set-aside program on small business becomes violently antiunion, just by its nature, not by design of SBA.

I think we have probably discussed that.

Mr. Askew also testified:

No one will deny, including labor, that this construction should be free from work stoppages, even those created by SBA when they hold up the work looking for, or trying to give birth to, a nonunion contractor to do the work."

This is a severe indictment of SBA.

Mr. HORNE. There isn't any basis whatsoever, Mr. Chairman, for that statement, so far as I know, and I doubt very, very seriously if any basis could be found for it. It is typical of some of the other allegations that have been made by the proponents of this legislation and by the opponents of the set-aside program.

Senator PROXMIRE. Thank you.

It has been alleged that some construction contracts have been set aside for small business that small business is not capable of performing.

You have answered that.

Did you change the definition of a small business construction firm from an average business of \$5 million over the past 3 years to \$7.5 million over the past 3 years to avoid further criticism of the set-aside program for construction contracts?

That is the definition going into effect in August.

Mr. HORNE. That change goes into effect on August 1. Our decision to change the size standards was reached after hearings, after going through the required administrative procedures, including giving the required public notice. We had it under consideration for some time and studied it for some time.

Senator PROXMIRE. All right, I will see if I have anything else here.

Mr. Daniel K. Fordice, Fordice Construction Co. of Memphis, Tenn., testifying for the Associated General Contractors:

What is happening is that the large people get a small contractor to bid the job for them. Then he subs it back to the big contractor. It is a common practice and, I might say, it is growing.

\* \* \* It is entirely legal, but clearly it opens the way for the worst kind of job brokerage. And I understand the practice is approved by the Small Business Administration.

Mr. HORNE. Mr. Chairman, I might say this: In this program, of course, you are going to have some people who try to abuse it. That is true of anything. Whether you have a program or not, you are going to have some people trying to commit abuses in the construction industry. What this agency will continue to do and what it is doing now is to try to work as best it can with the other agencies of Government to administer a good prime contracting and subcontracting program for small business. But keep in mind, if I may suggest two points:

No. 1, the control always rests with the procuring authority. If any such malpractices become so great in scope that the DOD wanted to discontinue or refuse to accept a suggested set-aside because of any taint involved, or any accusation, or any doubt, it can always do so.

I should think that it would be better, if there is any malfunctioning in this program, for the people who are concerned to sit down and try to find a better way of handling and administering the program, rather than commit the mistake of burning down the barn so as to get rid of a few rats.

I might also add that under section 4-104.2 of the Armed Services Procurement Regulations, a prime construction contractor is required to do, within shop, at least 20 percent of the total amount of the work. This is applicable to the smallest or the largest. As I pointed out a few moments ago, it is customary in the construction industry very, very customary in this industry for the successful bidder to subcontract a great deal of his work. If we find any evidence of this charge, we would attempt to correct it, but I have no evidence that it is a growing practice. I have no evidence that it is.

Senator PROXMIRE. I think you could make some kind of a comprehensive and constant study of this thing, because I can see Mr. Fordice has a good point. There would be a natural tendency for this to develop for a small firm to bid with the deliberate idea of subcontracting most of it, particularly if it is a job which was set aside but is peculiarly adapted to a bigger operation. The only protection that you have given me that is specific is the 20 percent provision, and that, after all, is only one-fifth of the work. Eighty percent of it can go to some big outfit.

Mr. HORNE. We have this protection, I think, sir: if the SBA engaged in such practices or otherwise became incompetent or careless in its part of the program, here, again, the procurement agencies have the final word. I might point out to the chairman something that would interest him, and this is in keeping with my suggestion that if there is any way to improve administration of it, let those of us who are involved sit down and try to do so. In this respect: Mr. Waale and I talked to one of the labor officials and invited him to call our attention to any specific cases that were creating any difficulty or black mark, so to speak.

We endeavored, also, following a request of a subcommittee on appropriations of a little over a year ago, to discuss the program with the associated general contractors. But our invitation was not accepted.

I am saying all of this to emphasize the point that we are always willing, and I am sure that I speak for those who control this program, the procuring agencies, to sit down with other agencies and affected interests and discuss the program from the standpoint of trying to improve it if it can be improved. I think this would be a more sensible procedure than to try to kill the program outright.

Senator PROXMIRE. I want to thank you very, very much, Mr. Horne.

I want to say in conclusion that we have the comments of SBA on amendments suggested by Mr. Robert Stauter. Your comments, in your letter of June 25, will be placed in the record after Mr. Stauter's testimony. (See p. 85.)

This was a very forthright and persuasive job you did this morning. I was deeply impressed by it. I do want to say that as chairman of the subcommittee I am going to do all I can to have the subcommittee act on this bill, up or down, one way or the other, as promptly as possible. I certainly do not intend to sit on it at all. I hope we can act on it shortly.

(The decisions of the Comptroller General and the legislative history referred to on p. 138 follow:)

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, October 23, 1957.

B-132740.

HON. WENDELL B. BARNES,  
*Administrator, Small Business Administration.*

DEAR MR. BARNES: Reference is made to your letter of July 26, 1957, requesting our consideration of the propriety of exercising the authority granted under section 214 of the Small Business Act of 1953, as amended (15 U.S.C. 643), and setting aside for exclusive award to small business concerns a substantial portion of the contracts to be made pursuant to section 403 of the Housing Amendments of 1955 (69 Stat. 651).

The amended section 214 of the Small Business Act of 1953 provides that small business concerns within the meaning of the act shall receive any award or contract or any part thereof as to which it is determined by the Small Business Administration and the contracting procurement agency (a) to be in the interest of maintaining or mobilizing the Nation's full productive capacity, or (b) to be in the interest of war or national defense programs.

Section 403 of the Housing Amendments of 1955 authorizes the Secretary of Defense or his designee to enter into contracts with any eligible builder to provide for the construction of housing on lands owned or leased by the United States situated on or near a military reservation or installation. Advertising is required in the manner provided in section 3 of the Armed Services Procurement Act of 1947, and the term "eligible builder" is defined in subsection (b) of section 403 as a person, partnership, firm, or corporation determined by the Secretary after consultation with the Federal Housing Commissioner "(1) to be qualified by experience and financial responsibility to construct housing of the type described in subsection (a) of this section, and (2) to have submitted the lowest acceptable bid."

It is proposed that certain of these construction contracts be let by advertising restricted to small business bidders in order to give effect to the congressional policy that the Government should aid, counsel, assist, and protect, insofar as possible, the interest of small business concerns. Your letter sets forth that the percentage of Government contracts and purchases awarded to small business firms has been declining and that this consistent decline has caused concern in both the executive and legislative branches of the Government. The Small Business Administration has ascertained that small business concerns are particularly equipped to participate in the Government's construction programs, and in several instances where proposals for construction of housing authorized by section 403 of the Housing Amendments of 1955 have been examined, the Administration has determined that awards to small business concerns would be in the interest of maintaining or mobilizing the Nation's full productive capacity or in the interest of the war or national defense programs.

We are advised that the contracting officials involved in three of the proposed construction projects have indicated concurrence with these determinations but that a question has been raised as to whether the contemplated procedure of restricting the awards to small business concerns would comply with the requirements for advertising set out in section 3 of the Armed Services Procurement Act of 1947. It appears to have been suggested that, if only small business concerns were made eligible for award, the resulting contracts would be of a negotiated type not permitted under section 403 of the Housing Amendments of 1955.

Your letter discusses the general question as to the effect of statutory authority permitting the limiting of eligible bidders and the opinion is expressed that joint determination set-asides for small business awards are not negated by that part of subsection (a) of section 403 of the Housing Amendments of 1955 which requires advertising in the manner prescribed in section 3 of the Armed Services Procurement Act of 1947. It is argued that a contrary conclusion would do vio-

lence to the congressional intent and policy that the Government should aid, counsel, assist and protect, insofar as possible, the interest of small business concerns; and that the contrary conclusion would be in conflict with the accepted rule of statutory construction that remedial statutes should be liberally construed.

On the other hand, we are bound to recognize the fact that full, free, and open competition for Government contracts has been the basic policy of the Congress as declared in its enactments for more than a hundred years, and we do not feel that specific statutory exceptions to that general rule are to be construed more freely than reasonably necessary to effectuate their apparent intent.

Viewed from this standpoint, there is serious doubt whether section 214 of the Small Business Act of 1953, as amended, was intended to be applicable to construction contracts. The act relates primarily to the utilization of the potential productive capacity of plants operated by small business concerns and it specifically refers only to "contracts for supplies and services," "contracts for research and development," and to the furnishing of "materials," "supplies," and "equipment." In this connection, it is to be noted that the matter of entering into construction contracts is separately considered in both the Armed Services Procurement Act of 1947 and the Federal Property and Administrative Services Act of 1949, and that contracts for "supplies and services" and those for construction of public buildings and works have traditionally been treated as separate and distinct subjects in statutes, regulations, and decisions of the accounting officers. Also, the eligibility provisions of subsection (b) of section 403 of the Housing amendments of 1955 appear clearly to have been intended to require unrestricted advertising and the consideration of all bids received from firms qualified by experience and financial responsibility to construct housing of the type described in subsection (a) of section 403.

In the circumstances, you are advised that we believe it would be improper for the contracting agencies involved to set aside any portion of the contracts to be made pursuant to section 403 of the housing amendments of 1955 for exclusive award to small business concerns.

Sincerely yours,

JOSEPH CAMPBELL,  
*Comptroller General of the United States.*

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COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, D.C., October 22, 1958.*

B-132740.

HON. WENDELL B. BARNES,  
*Administrator, Small Business Administration.*

DEAR MR. BARNES: Reference is made to your letter of September 18, 1958, requesting reconsideration of our decision to you of October 23, 1957, B-132740 (37 Comp. Gen. 271), on the question as to whether it would be proper for contracting agencies to set aside any portion of the contracts to be made pursuant to section 403 of the Housing Amendments of 1955, as amended (Capehart housing), for exclusive awards to small business concerns.

The view was expressed in our decision that there existed serious doubt as to whether the former section 214 of the Small Business Act of 1953, as amended, was intended to be applicable to construction contracts. You now refer to Public Law 85-536, H.R. 7963, approved July 18, 1958 (72 Stat. 384), which represents a complete revision of the Small Business Act of 1953, as amended. Section 15 of the new act enlarges the authority contained in the former section 214 to make exclusive awards to small business concerns under certain conditions, in that the exercise of such authority is no longer restricted to situations where it is determined by the Small Business Administration and the contracting agency that an award to a small business concern would be in the interest of maintaining the Nation's full productive capacity or be in the interest of war or national defense programs. Also, section 2(a) of the new act states, in pertinent part, as follows:

"It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as possible, the interests of small business concerns in order \* \* \* to insure that a fair proportion of the total purchases and contracts for property and services for the Government (including but not limited to contracts for maintenance, repair, and construction) be placed with small business enterprises \* \* \*."

The congressional declaration of policy in the former section 202 of the Small Business Act of 1953, as amended, did not contain any specific reference to construction contracts. As stated in our decision of October 23, 1957, the act primarily dealt with the productive capacity of plants operated by small business concerns and specifically referred only to "contracts for supplies and services," "contracts for research and development," and to the furnishing of "materials," "supplies," and "equipment."

Doubt as to the applicability of the former Small Business Act to construction contracts was recognized in House Report 555, 85th Congress, 1st session, to accompany H.R. 7963. At page 5 of the report, it was stated:

"The Small Business Act now provides that small business shall obtain a fair share of purchases and contracts for 'supplies and services' for the Government. Some question has been raised whether this language is broad enough to cover all types of Government procurement. Accordingly, this language is revised in section 2 of the act as rewritten by H.R. 7963 to make absolutely clear that it is the intent of Congress that small business concerns shall obtain a fair proportion of all types of Government contracts. 'Property contracts' as used in this section is used in its broadest sense and includes supply contracts, maintenance, repair, and construction contracts, as well as any other kind of contract let by Government agencies."

We agree with your suggestion that the amendment of the Small Business Act of 1953 by Public Law 85-536 should remove any doubt as to the applicability of the new Small Business Act to Government construction procurements. However, housing projects authorized for construction under section 403 of the Housing Amendments of 1955, as amended, would appear to represent a special problem inasmuch as the construction work is financed through FHA-insured mortgages, and the Congress has placed certain limitations with respect to eligibility for such insurance, including the requirement not only that the mortgage should not exceed the bid of the eligible bidder, but also that the average cost of the housing units should not exceed a specified amount and that the insured mortgage should not exceed the FHA estimate of the replacement cost of the property when the proposed improvements are made. (See 12 U.S.C. 1748b and 24 CFR 292 a.7 and 292 a.8.)

However, in the light of the congressional policy maintained in Public Law 85-536, you are advised that we now perceive no legal objection to your original proposal that a fair proportion of the contracts to be awarded pursuant to section 403 of the Housing Amendments of 1955, as amended, be set aside for small business awards after advertising in the usual manner except that only small businesses would be eligible to bid. Whether or not such a policy should be adopted in regard to proposed construction of that type would, of course, under section 15 of new Small Business Act, be a matter for final determination by "the Secretary or the head of the appropriate department or agency" concerned. We believe that such a final determination should be made only after giving due consideration to the number and extent of contracts for housing construction which have been awarded to small businesses after unrestricted advertising and to the question as to whether, in the usual case of an advertisement restricted to small businesses for construction of a military housing project, the Government could reasonably expect to obtain an acceptable low bid from an "eligible bidder" as defined in the housing amendments, which would meet the requirements for FHA-insured mortgage financing of the project involved.

Sincerely yours,

JOSEPH CAMPBELL,  
*Comptroller General of the United States.*

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EXCERPTS FROM HEARINGS BEFORE THE HOUSE BANKING AND CURRENCY COMMITTEE, 85TH CONGRESS, 1ST SESSION, ON H.R. 6645 AND H.R. 7474, BILLS TO AMEND THE SMALL BUSINESS ACT, MAY 14, 15, 16, 17, 21, AND 22, 1957

(Testimony of Hon. Wendell B. Barnes, Administrator of the Small Business Administration, p. 23 :)

"I have submitted to this committee a section-by-section analysis of H.R. 6645, which, I believe, is self-explanatory. I would like, nevertheless, to call the attention of this committee to certain differences between H.R. 6645 and the present Small Business Act.

"1. In section 202, which enunciates the policy of the Congress in enacting the Small Business Act, the present statement in that section that a fair propor-

tion of the total purchases and contracts for supplies and services for the Government be placed with small business has been revised to state that a fair proportion of the total purchases and contracts for property and services for the Government, including but not limited to contracts for maintenance, repair, and construction, be placed with small business. This revision makes it clear that the policies laid down by Congress and the activities of the Small Business Administration are extended to all types of Government contracts. These will include in addition to the usual supply contracts, contracts for research and development, and for all types of maintenance and construction including the construction of highways."

(Colloquy between Mr. Barnes and Congressman Multer, p. 183:)

"Mr. MULTER. Thank you, Mr. Chairman.

"Mr. Barnes, do you have in front of you the mimeographed copy of H.R. 7474? I think it would be easier if we used that as we go through it rather than the printed bill because on that you will have the changes very clearly marked.

"Mr. BARNES. Yes, sir; I have it before me.

"Mr. MULTER. On the first page, in section 101, there is a change by writing into the statute the words 'including but not limited to contracts for maintenance, repair, and construction.'

"There is no objection by the administration to the inclusion of that language, is there?

"Mr. BARNES. We favor that, sir.

"Mr. MULTER. Good."

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[Congressional Record, vol. 103, pt. 8, 85th Cong., 1st sess., p. 10220,  
June 27, 1957]

"Mr. MULTER. \* \* \* The existing law provides that small business shall obtain a fair share of purchases and contracts for supplies and services in the Government. The word 'supplies' may be interpreted to exclude certain types of property and inasmuch as some question has been raised whether this language is broad enough to cover all types of Government procurement, the language of section 2 of the act has been rewritten to make absolutely clear that it is the intent of Congress that small business concerns shall obtain a fair proportion of all types of Government contracts. Therefore, the word 'property' has been substituted for the word 'supplies.' It is intended that the word 'property' as used in this section is to be interpreted in its broadest sense to include supplies, contracts, maintenance, repair, and construction contracts as well as any other kind of contract let by Government agencies."

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SOURCE: HOUSE REPORT NO. 555, 85TH CONGRESS, 1ST SESSION, SMALL BUSINESS ACT, H.R. 7963, JUNE 13, 1957

"CLARIFICATION OF PROVISIONS ON PROCUREMENT

"The Small Business Act now provides that small business shall obtain a fair share of purchases and contracts for 'supplies and services' for the Government. Some question has been raised whether this language is broad enough to cover all types of Government procurement. Accordingly, this language is revised in section 2 of the act as rewritten by H.R. 7963 to make absolutely clear that it is the intent of Congress that small business concerns shall obtain a fair proportion of all types of Government contracts. 'Property contracts' as used in this section is used in its broadest sense and includes supply contracts, maintenance, repair, and construction contracts, as well as any other kind of contract let by Government agencies."

SOURCE: SENATE REPORT NO. 1714, 85TH CONGRESS, 2D SESSION, SMALL BUSINESS ACT, H.R. 7963, JUNE 16, 1958

"PROCUREMENT CONTRACTS FOR SMALL BUSINESSES

"H.R. 7963, as passed by the House of Representatives, was amended by the committee to include certain language contained in S. 3224. This language was prepared by the General Services Administration with the cooperation of the

Small Business Administration and is intended to make it easier for small business concerns to do business with the Government. Existing law directs the Small Business Administration to assist small business concerns in obtaining a fair proportion of Government contracts for property and services. Under existing law, such assistance may be made only when it is found to be in the interest of maintaining or mobilizing full productive capacity or in the interest of war or civil defense programs.

"This amendment puts the procurement assistance program on a peacetime basis, and permits assistance to be rendered for all types of Federal procurement without regard to any relationship to the maintenance of full productive capacity or any relationship to war or civil defense programs. In addition, the amendment would make the assistance program more efficient by authorizing classes of Federal contracts to be earmarked for small business concerns without the necessity for earmarking every individual contract."

Senator PROXMIRE. The record will be held open for a brief time for additional statements which interested parties would like to file.

We have received a number of letters and a telegram regarding this legislation, which will go in the record, together with any that may be received before the record is closed.

The subcommittee, with that in mind, then, will recess.

(Whereupon, at 10:55 a.m., the subcommittee was recessed.)

(The following were received for the record:)

DEPARTMENT OF LABOR,  
OFFICE OF THE SECRETARY,  
Washington, July 2, 1962.

HON. WILLIAM PROXMIRE,  
*Chairman, Small Business Subcommittee, Committee on Banking and Currency,  
U.S. Senate, Washington, D.C.*

DEAR SENATOR PROXMIRE: This is in further reply to your letter of June 13, 1962, concerning some problems that have arisen in connection with the hearings on S. 1363 and S. 3096.

In answer to your specific questions, the Department conducts regular studies of the union wage scales in the building trades. These studies give not only the basic hourly rate, but also show the amount of employer contributions to funds for health and welfare, pension, and vacation benefit plans. For your information, there are enclosed the latest quarterly study which gives the rates paid to seven trades in 100 cities and also our last annual survey showing the rates paid to most trades in 52 cities. We are also enclosing copies of some fringe benefit provisions contained in building trades union contracts with employers. These provisions are taken from the contracts of five different building trade unions located in different sections of the United States.

The Bureau of Labor Statistics has not conducted any studies of the rates paid to nonunion construction workers in the same localities, and we are therefore not able to give you a comparison between the union and nonunion rates. The only recent figure that we have on the annual earnings of construction workers is that of the median earning for 1960 which was \$5,570. We do not have a comparison of union and nonunion earnings nor do we have a breakdown for the different trades.

The Department is not aware of any study indicating the relative extent of union organization of small as opposed to large construction firms. It is reasonable to assume, however, that more small than large firms are not organized.

We regret that we do not have available much of the information for which you asked, but you may be interested to know that the problem of competition by nonunion firms who do not pay the union fringe benefits is the subject of proposed legislation in the Congress. S. 1360 and H.R. 9656 are proposed amendments to the Davis-Bacon Act which would require the inclusion of certain fringe benefits in the prevailing wage as determined by the Department under the Davis-Bacon Act. Hearings were held before the Special Subcommittee on Labor of the House Education and Labor Committee on March 8, 9, and 13,

1962, in which this problem was explored in considerable depths. For your information, I am enclosing my statement before the subcommittee.

If we can be of further assistance to you, please feel free to call upon me.

Yours sincerely,

ARTHUR J. GOLDBERG,  
Secretary of Labor.

#### UNION BUILDING TRADES SCALES SHOW SLIGHT INCREASE IN FIRST QUARTER OF 1962

Wage scales of union building trades workers advanced an average of 0.3 percent during the first quarter of 1962, the U.S. Department of Labor's Bureau of Labor Statistics reported today. The increase was the same as in the corresponding quarter of 1961, according to the Bureau's quarterly survey of 7 major building trades in 100 cities.

Scale changes during the first quarter of 1962 raised the estimated average hourly wage scale for building trades workers to \$3.87, an increase of 1 cent. Painters showed the greatest gain—an average scale increase of 2.9 cents. Plumbers and building laborers followed with average scale advances of 1 cent. For all other crafts studied except electricians, the average rose by at least 0.6 cents.

These increases were due to higher scales for a tenth of the workers included in the survey. Increases of 10 cents an hour were provided in about a third of the adjustments and of 15 cents in a sixth. Advances of more than 15 cents occurred in 1 of every 14 adjustments as did those of less than 5 cents. Rates advanced in 17 cities for carpenters and painters, in 16 cities for building laborers, and in 10 to 15 cities for the other 4 crafts.

The level of scales on April 2, 1962, was 3.8 percent higher than on April 3, 1961. The advance from 1961 to 1962 amounted to 14.1 cents and varied by trade from 8.7 cents to 16.3 cents.

Estimated changes in union scales over the quarter and the year and the rate levels on April 2, 1962, are shown below. In computing the changes in rates, the increases in each trade were average among all workers in the trade. Data for the separate crafts, by city, are shown in the accompanying table.

Trade	Change in average to Apr. 2, 1962, from—				Rate levels	
	Jan. 2, 1962		Apr. 3, 1961		Apr. 2, 1962	
	Percent	Cents	Percent	Cents	Average	Range
Bricklayers.....	0.2	0.7	3.1	13.0	\$4.37	\$2.90-\$5.20
Carpenters.....	.2	.8	3.7	14.3	3.97	2.50- 4.85
Electricians.....	( <sup>1</sup> )	.2	3.8	15.4	4.24	3.00- 4.95
Painters.....	.8	2.9	4.0	14.2	3.75	1.75- 4.20
Plasterers.....	.1	.6	2.2	8.7	4.17	2.65- 4.70
Plumbers.....	.2	1.0	4.0	16.3	4.22	3.00- 4.98
Building laborers.....	.3	1.0	4.7	13.4	3.00	1.25- 4.10
All trades.....	.3	1.0	3.8	14.1	3.87	-----

<sup>1</sup> Less than 0.05 percent.

Union scales are the minimum wage rates (excluding holiday and vacation payments made directly to the worker each pay period) agreed upon through collective bargaining and reported to the Bureau by local respondents. The scales do not reflect rates for apprentices or for premium work. Overtime beyond established maximum daily and weekly hours is excluded.

Information on employer contributions to insurance (welfare), pension, and vacation funds, as provided in labor-management contracts, is presented for the various trades. These contributions are expressed in cents per hour or percent of basic scale. Such contributions are not included in the average scales or rate changes. Some contracts also provide for additional payments to other funds such as holiday and unemployment benefits. Information on payments to these funds was not collected.

PRELIMINARY Union hourly wage scales and employer insurance, pension, and vacation payments for selected building trades in 100 cities, April 2, 1962

City	Bricklayers			Carpenters			Electricians			Painters		
	Base scale <sup>1</sup>	Insurance <sup>2</sup>	Employer contribution to fund <sup>3</sup>	Base scale <sup>1</sup>	Insurance <sup>2</sup>	Employer contribution to fund <sup>3</sup>	Base scale <sup>1</sup>	Insurance <sup>2</sup>	Employer contribution to fund <sup>3</sup>	Base scale <sup>1</sup>	Insurance <sup>2</sup>	Employer contribution to fund <sup>3</sup>
Albuquerque, N. Mex.	\$ 345	-	-	\$ 385	-	-	\$ 300	-	-	\$ 300	-	-
Albany, N. Y.	4,150	-	-	3,200	7 1/2¢	-	3,950	1%	-	3,550	-	-
Albany, Ga.	4,100	5¢	15¢	3,725	7 1/2¢	-	4,200	1%	-	3,550	7 1/2¢	-
Baltimore, Md.	4,000	-	-	3,400	7 1/2¢	-	3,950	1%	-	3,250	-	-
Birmingham, Ala.	4,000	-	-	3,400	7 1/2¢	-	3,950	1%	-	3,250	-	-
Boston, Mass.	4,200	15¢	15¢	3,850	15¢	10¢	4,300	15¢	10¢	3,550	15¢	7 1/2¢
Boston, N. Y.	4,250	-	-	3,225	-	-	3,000	-	-	3,725	17 1/2¢	-
Buffalo, N. Y.	4,125	-	-	3,225	-	-	3,000	-	-	3,725	17 1/2¢	-
Burlington, Vt.	3,750	-	-	2,750	-	-	3,000	-	-	1,750	-	-
Bute, Mont.	3,750	-	-	3,450	-	-	3,650	-	-	3,370	9¢	-
Charlotte, S.C.	2,900	-	-	2,750	-	-	3,450	-	-	2,250	-	-
Charlotte, W. Va.	4,250	-	-	3,925	-	-	3,925	-	-	3,250	-	-
Charlotte, N. C.	4,125	-	-	3,225	-	-	3,850	-	-	3,150	-	-
Chicago, Ill.	4,000	10¢	-	3,270	-	10¢	3,680	-	-	3,250	-	-
Cincinnati, Ohio	4,125	10¢	-	4,080	10¢	-	4,500	-	-	3,500	-	-
Cleveland, Ohio	4,085	15¢	10¢	4,110	15¢	-	4,290	-	-	3,500	-	-
Columbus, Ohio	4,060	10¢	-	3,760	-	-	4,020	-	-	3,865	12¢	-
Dallas, Tex.	4,150	-	-	3,775	7 1/2¢	-	4,250	-	-	3,300	12 1/2¢	-
Dayton, Ohio	4,225	7 1/2¢	-	3,925	7 1/2¢	-	4,250	-	-	3,438	7 1/2¢	-
Denver, Colo.	4,250	-	-	3,800	-	-	4,040	-	-	3,650	-	-
Des Moines, Iowa	4,375	10¢	4%	3,600	12 1/2¢	4%	4,125	15¢	10¢	3,200	12 1/2¢	10¢
Detroit, Mich.	3,950	-	-	3,850	10¢	-	3,800	15 1/2¢	-	3,375	10¢	-
El Paso, Tex.	4,000	-	-	3,350	-	-	3,850	-	-	3,050	-	-
Erie, Pa.	4,200	10¢	-	3,715	10¢	-	4,125	-	-	3,300	-	-
Albuquerque, N. Mex.	\$ 3,875	-	-	4,180	14¢	-	4,180	-	-	4,235	7 1/2¢	-
Albany, N. Y.	3,600	-	-	3,900	10¢	-	4,100	-	-	4,050	7 1/2¢	-
Albany, Ga.	3,770	-	-	3,770	12 1/2¢	-	3,750	10¢	-	2,160	-	-
Birmingham, Ala.	3,770	-	-	3,750	7 1/2¢	-	3,850	-	-	2,850	7 1/2¢	-
Boston, Mass.	3,800	15¢	-	4,350	15¢	-	4,350	15¢	-	2,900	10¢	-
Buffalo, N. Y.	4,055	12 1/2¢	-	4,075	20¢	10¢	4,075	10¢	-	3,210	12 1/2¢	10¢
Burlington, Vt.	3,600	-	-	3,875	15¢	-	3,875	-	-	2,700	7 1/2¢	-
Bute, Mont.	3,600	-	-	3,550	-	-	3,550	-	-	1,250	-	-
Charlotte, S.C.	2,650	-	-	3,900	-	-	3,900	-	-	2,650	7 1/2¢	-
Charlotte, W. Va.	3,740	-	-	3,450	-	-	3,450	-	-	1,550	-	-
Charlotte, N.C.	3,500	-	-	3,825	-	-	3,825	-	-	2,200	-	-
Chattanooga, Tenn.	3,475	-	-	4,200	15¢	-	4,200	15¢	-	3,225	7 1/2¢	-
Chicago, Ill.	4,175	-	-	4,115	-	-	4,115	-	-	3,925	-	-
Cincinnati, Ohio	3,550	-	-	4,040	10¢	6¢	4,040	10¢	6¢	3,520	-	-
Cleveland, Ohio	3,000	-	-	3,350	-	-	3,350	-	-	2,800	-	-
Columbus, S.C.	3,000	-	-	3,975	12 1/2¢	-	3,975	12 1/2¢	-	2,800	-	-
Columbus, Ohio	3,600	10¢	-	4,100	10¢	-	4,100	10¢	-	2,785	7 1/2¢	-
Dayton, Ohio	4,000	10¢	-	4,000	10¢	-	4,000	10¢	-	2,775	10¢	-
Dayton, N. Y.	4,100	-	-	4,350	15¢	-	4,350	15¢	-	3,875	10¢	-
Des Moines, Iowa	3,825	-	-	4,025	-	-	4,025	-	-	2,875	7 1/2¢	-
Detroit, Mich.	3,670	13¢	10¢	3,900	9¢	4%	3,900	9¢	4%	3,000	10¢	3%
El Paso, Tex.	3,100	10¢	-	3,800	10¢	-	4,000	10¢	-	1,875	10¢	-
Erie, Pa.	3,800	10¢	-	4,000	10¢	-	3,875	15¢	-	2,775	10¢	-

See footnotes at end of table.

Union hourly wage scales and employer insurance, pension, and vacation payments for selected building trades in 100 cities, April 2, 1962—Continued

City	Bricklayers				Carpenters				Electricians				Painters				
	Basic scale*		Employer contribution to fund		Basic scale*		Employer contribution to fund		Basic scale*		Employer contribution to fund		Basic scale*		Employer contribution to fund		
	Insurance*	Vacation pay†	Insurance*	Vacation pay†	Insurance*	Vacation pay†	Insurance*	Vacation pay†	Insurance*	Vacation pay†	Insurance*	Vacation pay†	Insurance*	Vacation pay†	Insurance*	Vacation pay†	
Evansville, Ind.	10¢	-	\$ 4,000	7 1/2¢	-	\$ 3,750	-	1%	-	\$ 3,200	15¢	-	1%	-	\$ 2,800	15¢	-
Fargo, N. Dak.	-	-	3,900	-	-	3,750	10¢	-	-	3,750	10¢	4%	-	-	3,100	10¢	10¢
Flagstaff, Ariz.	-	15¢	*3,675	8¢	15¢	4,350	9¢	1%	-	4,350	10¢	1%	-	-	3,500	10¢	-
Hartford, Conn.	-	-	4,150	9¢	-	*3,900	7 1/2¢	1%	-	4,050	7 1/2¢	1%	-	-	3,485	7 1/2¢	-
Houston, Tex.	-	-	4,125	-	-	3,655	-	1%	-	4,050	7 1/2¢	1%	-	-	3,485	7 1/2¢	-
Indianapolis, Ind.	-	-	4,230	-	-	3,750	7 1/2¢	1%	-	4,050	2%	1%	-	-	3,600	-	-
Jackson, Miss.	-	-	3,750	-	-	3,150	-	1%	-	3,500	-	1%	-	-	2,875	-	-
Jacksonville, Fla.	-	-	3,750	-	-	3,150	-	1%	-	3,500	-	1%	-	-	2,875	-	-
Jacksonville, Fla.	-	-	4,250	-	-	*3,875	-	1%	-	4,300	10¢	1%	-	-	*3,800	-	-
Kearsville, Tenn.	-	-	4,025	-	-	3,325	-	1%	-	4,300	10¢	1%	-	-	3,600	-	-
Lansing, Mich.	-	-	4,200	-	-	3,540	8¢	1%	-	3,630	9¢	1%	-	-	3,430	10¢	10¢
Las Vegas, Nev.	-	-	4,630	-	-	4,200	10¢	10¢	10¢	4,800	10¢	1%	-	-	4,150	12¢	-
Little Rock, Ark.	-	-	3,900	-	-	3,400	10¢	10¢	10¢	3,600	10¢	1%	-	-	3,100	12 1/2¢	-
Los Angeles, Calif.	-	-	4,500	-	-	4,000	10¢	10¢	10¢	4,200	10¢	1%	-	-	3,710	12 1/2¢	7¢
Lowell, Mass.	-	-	4,050	11 1/2¢	-	3,800	-	1%	-	4,025	10¢	1%	-	-	3,470	-	-
Madison, Wis.	-	-	4,100	-	-	3,650	-	1%	-	4,110	-	1%	-	-	3,380	10¢	-
Madison, Wis.	-	-	4,150	12 1/2¢	-	3,540	10¢	1%	-	3,540	10¢	1%	-	-	2,850	12 1/2¢	-
Memphis, Tenn.	-	-	4,150	15¢	-	*3,825	-	1%	-	3,875	10¢	1%	-	-	3,300	-	-
Miami, Fla.	-	-	*3,970	10¢	10¢	3,700	10¢	10¢	10¢	3,800	10¢	1%	-	-	3,460	10¢	10¢
Minneapolis, Minn.	-	-	4,025	15¢	-	3,680	15¢	1%	-	3,850	4%	1%	-	-	3,310	15¢	-
Mobile, Ala.	-	-	3,900	-	-	3,600	12 1/2¢	-	-	3,975	10¢	1%	-	-	3,400	-	-
Mobile, Ala.	-	-	3,500	-	-	3,000	-	-	-	3,300	10¢	1%	-	-	2,750	-	-
Montgomery, Ala.	-	-	4,000	-	-	*3,550	-	1%	-	*3,675	10¢	1%	-	-	3,200	25¢	15¢
Newark, N. J.	-	-	4,650	8¢	15¢	4,200	4%	1%	-	4,225	10 1/2%	1%	-	-	3,700	9¢	15¢
New York, N. Y.	-	-	4,800	10¢	15¢	4,400	9¢	1%	-	4,225	10 1/2%	1%	-	-	3,700	9¢	15¢
New Orleans, La.	-	-	3,825	7 1/2¢	-	3,400	-	-	-	4,100	7 1/2¢	1%	-	-	*3,125	-	-
Evansville, Ind.	-	-	\$ 3,950	-	-	3,600	12 1/2¢	-	-	\$ 3,915	7 1/2¢	-	-	-	\$ 2,525	7 1/2¢	-
Grand Rapids, Mich.	-	-	3,600	10¢	-	3,400	10¢	15¢	-	3,950	10¢	15¢	-	-	2,550	8¢	-
Hartford, Conn.	-	-	4,150	9¢	15¢	4,150	13¢	15¢	-	4,150	13¢	15¢	-	-	*3,550	9¢	-
Houston, Tex.	-	-	3,913	10¢	-	3,875	7 1/2¢	10¢	-	3,875	7 1/2¢	10¢	-	-	2,800	-	-
Indianapolis, Ind.	-	-	3,950	-	-	4,060	-	-	-	4,060	-	-	-	-	2,725	7 1/2¢	-
Indianapolis, Ind.	-	-	3,900	-	-	3,950	-	-	-	3,950	-	-	-	-	3,350	-	-
Jacksonville, Fla.	-	-	4,000	-	-	3,900	10¢	-	-	3,900	10¢	-	-	-	3,250	10¢	-
Kansas City, Mo.	-	-	4,000	-	-	3,900	10¢	-	-	3,900	12 1/2¢	15¢	-	-	*2,710	10¢	(1)
Kearsville, Tenn.	-	-	4,000	-	-	3,750	-	-	-	3,750	-	-	-	-	2,975	-	-
Lansing, Mich.	-	-	3,800	10¢	-	3,900	11¢	-	-	3,900	11¢	10 1/2%	-	-	2,830	8¢	-
Las Vegas, Nev.	-	-	4,550	15 1/2¢	-	4,575	12 1/2¢	10¢	-	4,575	12 1/2¢	10¢	-	-	3,420	-	-
Los Angeles, Calif.	-	-	4,250	15¢	-	4,250	15¢	25¢	-	4,250	15¢	2 1/2%	-	-	3,260	10¢	-
Los Angeles, Calif.	-	-	3,750	-	-	3,750	-	-	-	4,050	10¢	10 1/2%	-	-	2,700	-	-
Lowell, Ky.	-	-	3,750	-	-	3,750	-	-	-	4,050	10¢	10 1/2%	-	-	2,700	-	-
Madison, Wis.	-	-	*3,800	-	-	*3,740	10¢	5¢	-	*3,100	-	-	-	-	*3,100	-	-
Manchester, N.H.	-	-	3,975	12 1/2¢	-	3,650	10¢	5¢	-	3,650	10¢	5¢	-	-	2,700	-	-
Memphis, Tenn.	-	-	3,600	-	-	3,850	5¢	-	-	3,850	5¢	-	-	-	*1,875	-	-
Minneapolis, Minn.	-	-	3,600	-	-	3,600	-	-	-	3,600	-	-	-	-	2,900	-	-
Mississippi, Miss.	-	-	*3,690	10¢	10¢	3,820	10 1/2¢	10¢	-	3,820	10 1/2¢	10¢	-	-	2,930	10¢	10¢
Mississippi, Miss.	-	-	3,750	15¢	-	3,750	15¢	20¢	-	*3,860	13¢	10¢	-	-	3,000	-	-
Mobile, Ala.	-	-	3,750	12 1/2¢	-	4,000	-	-	-	4,000	-	-	-	-	2,000	12 1/2¢	-
Montgomery, Ala.	-	-	2,750	-	-	3,500	10¢	-	-	3,500	10¢	-	-	-	1,250	-	-
Newark, N. J.	-	-	3,600	5¢	15¢	3,850	5¢	15¢	-	3,850	5¢	15¢	-	-	*1,900	-	-
New York, N. Y.	-	-	4,100	10¢	15¢	*4,150	10 1/2%	20¢	-	*4,150	10 1/2%	20¢	-	-	*3,050	10¢	-
New Orleans, La.	-	-	3,500	5¢	-	3,900	7 1/2¢	7 1/2¢	-	3,900	7 1/2¢	7 1/2¢	-	-	2,000	-	-

See footnotes at end of table.





(Other material furnished by the Secretary of Labor will be found in the files of the committee.)

ALPHA PORTLAND CEMENT CO.,  
Easton, Pa., March 26, 1962.

HON. JOSEPH S. CLARK, JR.,  
U.S. Senate,  
Washington, D.C.

DEAR SIR: Your support is respectfully requested for favorable action on S. 1363—to amend the Small Business Act to provide that the program under which Government contracts are set aside for small business concerns shall not apply in the case of contracts for maintenance, repair, or construction.

The Alpha Portland Cement Co., as a part of the construction industry, is vitally interested in legislation affecting the welfare of the industry. We recognize that the construction industry, as well as the national economy, to be healthy must provide equal opportunity for business, large and small, to compete. We believe it is the basic intent of the Small Business Act's set-aside program to insure that the small construction firms have the opportunity to secure a "fair" share of Government construction work. The good intentions of the set-aside program cannot be disputed. However, the administering officials do not know how much Government construction already is being done, directly or indirectly, by small firms. They have never defined the "fair share" of such work that they purportedly seek for small firms—they simply say it must be more. In addition, they attempt to establish by monetary means what they mean by a small business and what they consider contract work for small construction firms.

In the set-aside program, the Small Business Administration attempts to establish the monetary limit by stating that any contractor whose annual gross income during the previous 3 years has averaged more than \$5 million per year cannot participate in the set-aside program and therefore cannot bid on a large portion of current Government construction work.

Also, in the set-aside program, the Small Business Administration attempts to establish a monetary limit on contracts to be included in the set-aside program. For example, set-aside requests are made automatically for all Department of Defense construction jobs of \$500,000 or less. However, Small Business Administration field representatives are authorized to request set-asides for jobs over this level. In fact they have stated: "There is no dollar limit above which set-asides would not be made." They have made set-asides on construction contracts up to \$5.5 million.

These arbitrary and somewhat contradictory attitudes on the part of the Small Business Administration we believe are not to the best interests of small business, the construction industry, the preservation of free competitive enterprise, and the taxpayer. There is no indication that the set-aside program is necessary to insure that small construction firms get a fair share of Government business. But there is an indication that it prevents or deters many qualified construction firms from bidding on Government construction contracts. This limits competitive bidding and thus may increase the cost of such projects to the detriment of the public interest.

We believe in the best interests of the country and the construction industry that the Small Business Act must be amended to eliminate the set-aside program for small business concerns on Government construction contracts. This will restore free and competitive bidding by all contractors, on an equal basis, in connection with Government contracts for maintenance, repair, and construction. We urge you to use your best efforts to secure committee hearings on bill S. 1363 before the Senate Banking and Currency Committee so that this bill can come before the Senate for a vote.

It is our sincere belief that this amendment to the Small Business Act will be to the advantage and general welfare of the country as a whole.

Thank you for your consideration and I will appreciate advice as to your feelings in regard to the bill.

Yours very truly,

N. O. WAGNER,  
Executive Vice President.

LEWISTON, IDAHO, *May 25, 1962.*

Senator A. WILLIS ROBERTSON,  
*Chairman, Senate Banking and Currency Committee,*  
*Washington, D.C.*

DEAR MR. ROBERTSON: It is with increasing alarm that I see our Government leaning more and more towards Socialist doctrines. I think that this trend has been particularly evident in the field of agriculture, yet all industry is being affected to some degree by it. Another case in point is that of the Small Business Act which I vigorously protest. The curbing of competition in industry violates free enterprise and is a serious deterrent to our economy. Why penalize big business—the keystone of our economy?

As a "stockholder" in our Government I am most interested in the support of bills introduced in the Congress to correct this situation, but since I do not have a vote I can only write to influential officers in our Government for their support. Will you help?

Yours, very truly, I am,

Mrs. GEORGE P. ANDERSON.

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

ACTION TAKEN BY AGC CHAPTERS OPPOSING THE SMALL BUSINESS SET-ASIDE PROGRAM IN CONSTRUCTION

Attached are copies of resolutions passed by various chapters of the Associated General Contractors of America, Inc., opposing the small business set-aside program in construction.

We have been informed by a total of 69 AGC chapters listed below that they have taken similar action (resolutions—chapter votes) opposing the small business set-aside program in construction.

Alabama: Alabama Branch, AGC (and Alabama Road Builders Association).

Alaska: Alaska Chapter, AGC.

Arizona:

Arizona Chapter, AGC.

Arizona Building Contractors, AGC.

California:

Northern and Central California Chapter, AGC.

San Diego Chapter, AGC.

Southern California Chapter, AGC.

Colorado:

Associated Building Contractors of Colorado, Inc.

Colorado Contractors Association, AGC.

District of Columbia: Master Builders Association, District of Columbia.

Florida: Central Florida Chapter, AGC.

Georgia: Georgia Branch, AGC.

Hawaii: Hawaii Chapter, AGC.

Idaho: Idaho Branch, AGC.

Illinois: Building Contractors Association of Rockford, Inc.

Indiana: Indiana General Contractors Association, AGC.

Iowa: Master Builders of Iowa, AGC.

Kansas:

Kansas Builders' Chapter, AGC.

Kansas Contractors Association, AGC.

Louisiana: Louisiana Highway and Heavy Construction Branch, AGC.

Maine: Associated General Contractors of Maine.

Maryland: Baltimore Builders Chapter, AGC.

Massachusetts: Associated General Contractors of Massachusetts.

Minnesota: Associated General Contractors of Minnesota.

Mississippi: Association of Building Contractors of Mississippi.

Missouri: Associated General Contractors of Missouri.

Montana:

Montana Contractors Association, AGC.

Montana Building Chapter, AGC.

Nevada: Nevada Chapter, AGC.

New Jersey: Associated General Contractors of New Jersey.

## New Mexico :

Associated Contractors of New Mexico, AGC.  
New Mexico Building Branch, AGC.

North Dakota : Associated General Contractors of North Dakota.

Oklahoma : Oklahoma Builders Chapter, AGC.

## Oregon :

Portland Chapter, AGC.

Portland Chapter, Building Division, AGC.

## Pennsylvania :

Philadelphia Builders Chapter, AGC.

Master Builders Association of Western Pennsylvania, AGC.

South Dakota : Associated General Contractors of South Dakota.

## Tennessee :

Chattanooga Chapter, AGC.

Knoxville Chapter, AGC.

Memphis Chapter, AGC.

Mid-South Municipal Chapter, AGC.

Mississippi Valley Flood Control Branch, AGC.

Nashville Chapter, AGC.

Tri-Cities Chapter, AGC.

## Texas :

Associated General Contractors of Jefferson County.

Austin Chapter, AGC.

Dallas Chapter, AGC.

East Texas Chapter, AGC.

El Paso Chapter, AGC.

Fort Worth Chapter, AGC.

Houston Chapter, AGC.

Panhandle of Texas Chapter, AGC.

Rio Grande Valley Chapter, AGC.

San Antonio Chapter, AGC.

Texas Heavy, Municipal & Utilities Branch, AGC.

Texas Highway-Heavy Branch, AGC.

Waco Chapter, AGC.

West Texas Chapter, AGC.

Utah : Utah Chapter, AGC.

## Washington :

Mountain Pacific Chapter, AGC.

Seattle Northwest Chapter, AGC.

Spokane Chapter, AGC.

Tacoma Chapter, AGC.

Eastern Washington Builders Chapter, AGC.

West Virginia : Associated General Contractors of West Virginia.

## Wyoming :

Associated General Contractors of Wyoming.

Wyoming Contractors Association, Inc., AGC.

## RESOLUTION No. 13. SUPPORTING THE METCALF-WEAVER BILLS

Whereas the Small Business Administration, an agency of the Federal Government, is engaged in a costly and unwise program wherein Federal construction programs of Federal agencies are "set aside" for a restricted group of bidders arbitrarily approved by Federal agencies ; and

Whereas this program of set-asides, departing as it does from traditional customs and practices in the construction industry, is not looked upon with favor by the construction agencies within the Federal Government ; and

Whereas both construction firms and projects are designated through the use of arbitrary standards established by only the Small Business Administration ; and

Whereas it is the declared intention of said agency to further expand its program and policies to include the Federal-aid highway program and subcontracting as related to all programs in the construction industry ; and

Whereas it is the aim and purpose of the Small Business Administration to generate increased competition in the construction industry by way of sponsoring and assisting unqualified, inexperienced firms frequently incapable of competing on a fair and equitable basis with established reputable construction organizations; and

Whereas the total program of the Small Business Administration results in increased costs to the public by reason of artificial restrictions and standards, at the same time providing unfair competition in an industry already highly competitive: Now, therefore, be it

*Resolved by the Associated General Contractors of Missouri in convention assembled in the city of St. Louis this 24th day of January 1962, That this association, whose majority of membership comes within the present definition of "small business," is strongly and unalterably opposed to the set-aside policy of the Small Business Administration; and be it further*

*Resolved, That this association goes on record in support of the Metcalf and Weaver bills in Congress, measures which would exempt the construction industry, and properly so, from the set-aside program; and be it further*

*Resolved, That a copy of this resolution be presented to each Member of Missouri's congressional delegation.*

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#### RESOLUTION

Whereas the Small Business Administration has ordered defense construction agencies to set aside certain construction contracts for small construction firms; and

Whereas this policy represents unwarranted interference with the recognized and proved system of free and open competitive bidding, thereby increasing costs to the detriment of the public interest: Now, therefore, be it

*Resolved, That the Master Builders of Iowa hereby declares its opposition to the set-aside program and strongly urges that it be eliminated by administrative or legislative action.*

Adopted by members of the Master Builders of Iowa at the association's 50th annual convention in Des Moines, December 5, 1961.

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#### THE ASSOCIATED GENERAL CONTRACTORS OF WEST VIRGINIA, INC., CHARLESTON, W. VA.

*Resolution adopted by the annual convention of the association at the Daniel Boone Hotel, Charleston, Saturday, January 20, 1962*

#### SBA SET-ASIDE

The time-proven system of free competitive bidding by contractors assures to owner builders the highest quality of construction at the lowest possible cost.

Any interference with that fundamental law of business economics works only to the detriment of all concerned.

Such an interference by the Small Business Administration is threatening the vitality of the construction industry.

It is the SBA practice of setting aside a growing proportion of Federal construction projects for bidding by small business firms, with the SBA making its own definition of what constitutes a small business firm.

Since all independent construction firms are essentially small business, this SBA practice actually causes higher prices for the Government by eliminating from competition many qualified firms capable of better performance at lower cost.

The Associated General Contractors of West Virginia, Inc., consequently calls upon the Small Business Administration to end its unrealistic attempt to regulate the construction industry.

We join with the National Joint Cooperative Committee of the Associated General Contractors of America and the Council of Mechanical Specialty Contracting Industries in holding that the SBA set-aside practice is "an inept intrusion in the free competitive pattern of small business operations of the construction industry."

## RESOLUTION CONCERNING SMALL BUSINESS ADMINISTRATION

Whereas the Oklahoma Chapter, Builders' Division, Associated General Contractors of America, Inc., continues to receive reports of further regulations of Small Business Administration interfering with free and open competition on public works contracts; and

Whereas the membership has reviewed the most recent activities of the Small Business Administration with regard to subcontracting relations and the mandatory use of set-asides: Now, therefore, be it

*Resolved*, That the Oklahoma Chapter, Builders' Division, Associated General Contractors of America, Inc., in a regular State membership meeting at Oklahoma City, Okla., on April 25, 1962, strongly condemns this latest intrusion on the time-honored principle of awarding public works contracts to the lowest responsible bidder after free and open competition. The association urges all its members to take active support for legislation to remove the Small Business Administration's control over the construction industry through its set-aside and subcontracting programs; and

Further, the membership hereby instructs the officers of this association to file a copy of this resolution with the Oklahoma congressional delegation.

## RESOLUTION

Whereas this association steadfastly believes that the productive efficiency of the construction industry in Arizona, and throughout the United States of America, is highly dependent upon and largely due to this Nation's system of private enterprise and free competition; and

Whereas this system of free enterprise requires that contractors have the opportunity to bid competitively on construction contracts without limitations or restrictions, thereby producing the best construction for the Nation at lowest costs to the taxpayer; and

Whereas certain policies and actions of the Small Business Administration are felt to impede this freedom of competition and to affect the economy of this Nation, and the operation of the construction industry, adversely; and

Whereas the Administrator of the Small Business Administration has defined a small business concern in the construction industry as being one with average annual sales for the past 3 years not more than \$5 million; and

Whereas notwithstanding such limitation on the size of small business concerns the Small Business Administration has continued to increase the size of construction contracts to be set aside for small business concerns from \$50,000, and even in one case to construction contracts as large as \$4,500,000, so that the proportion of Federal construction contracts being set aside for small business concerns is constantly increasing to the detriment of the construction industry and resulting in less efficient and economical procurement of property and services by the Federal Government; and

Whereas too large a proportion of Federal construction contracts has been set aside for small business concerns thereby tending to increase the cost of the national defense program and other Federal construction programs at a time when an increase in such programs appears imminent; and

Whereas the public interest in the national defense programs and other Federal construction programs is best served by awarding construction contracts on the basis of the competitive bids solicited from the widest possible range of contractors regardless of size; and

Whereas for the foregoing reasons the set-aside program of the Small Business Administration, with respect to construction contracts, should be limited to negotiated contracts which can be more effectively set aside for small business concerns and which can better achieve the purposes of the Small Business Administration; and

Whereas there has been some indication that the Secretary of Commerce may attempt to interfere with the awarding of highway construction contracts by State highway departments on the basis of competitive bids without setting aside a portion thereof for small business concerns; and

Whereas the Congress, in enacting the Highway Act of 1956, intended that highway construction contracts were to be awarded by the States on the basis of competitive bids that would realize full economic advantages; and

Whereas it is necessary for the foregoing reasons to exempt competitive bid construction contracts from the set-aside program of the Small Business Administration: Now, therefore, be it

*Resolved*, That we urge corrective legislation to the extent necessary—

(I) to exempt from the set-aside program of the Small Business Administration construction contracts awarded on the basis of competitive bids by an agency of the Federal Government and to so exempt negotiated contracts or change orders where the work becomes an essential part of a project originally awarded on the basis of a competitive bid; and

(II) to make it clear that the Secretary of Commerce does not have authority to require State highway departments to set aside highway construction contracts for small business concerns; and be it further

*Resolved*, That copies of the foregoing recitals and resolution be furnished to all the members of our congressional delegation and to other interested Members of Congress and that each member of this organization take whatever action may be available to accomplish the purposes hereof.

Adopted by unanimous approval on May 5, 1961, by the general membership of the Arizona chapter, Associated General Contractors of America, Inc.

JAMES R. McDONALD,

*Executive Secretary, Associated General Contractors, Arizona Chapter.*

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#### RESOLUTION

Whereas the Small Business Administration, an instrumentality of the executive branch of the Federal Government of the United States of America, has achieved many worthwhile benefits for small business concerns, including the set-aside program for goods and services other than construction, tax relief, Federal disaster and operating loans, small business investment companies, publication of educational material, and many other benefits and, therefore, has directly and indirectly benefited this organization and each of its members; and

Whereas 90 percent or more of the members of this organization would be currently classified as small business concerns by the Small Business Administration, and this organization thus feels free to oppose certain policies and actions of the Small Business Administration which would inevitably destroy the desire on the part of individual companies to grow in size and increase their efficiency, which would adversely affect the construction industry, which is one of the largest and most vital segments of our Nation's economy; and

Whereas the productive efficiency of the construction industry in Louisiana and in America is highly dependent upon and largely due to this Nation's system of private enterprise and free competition and this system requires that contractors have the opportunity to bid competitively on construction contracts without limitations or restrictions thereby producing the best construction for the Nation at lowest costs to the American taxpayer;

Whereas the public interest in all Federal construction programs is best served by awarding construction contracts on the basis of the competitive bids solicited from the widest possible range of contractors regardless of size; and

Whereas it is necessary for the foregoing reasons to exempt competitive bid construction contracts from the set-aside program of the Small Business Administration: Therefore be it

*Resolved*, That we urge the Congress to enact remedial legislation to the extent necessary to exempt from the set-aside program of the Small Business Administration all construction contracts awarded on the basis of competitive bids by any agency and/or department of the Federal Government; and be it

*Resolved further*, That copies of this resolution be tendered by U.S. mail to the Louisiana congressional delegation, and that all due and creditable publicity be given it through the normal channels of public relations.

Passed unanimously this 25th day of April 1961, at Baton Rouge, La., by the executive committee of the Louisiana Highway and Heavy Construction Branch, the Associated General Contractors of America, Inc., suite 222, the Capitol House Hotel, Baton Rouge, La.

J. T. FOLK, Jr., *President.*  
PRESTON EGGERS, Jr.,  
*Managing Director.*

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.,  
Portland, Oreg., February 12, 1962.

Mr. Wm. E. DUNN,  
Executive Director, Associated General Contractors of America, Inc.,  
Washington, D.C.

DEAR MR. DUNN: This is to advise that the Portland chapter, AGC, at its annual membership meeting on January 16, adopted a resolution to reaffirm our position as being definitely opposed to the Small Business Administration set-aside program and, further, to reassure the national AGC of our support of their position to back the Metcalf-Weaver bills which would exempt the construction industry from the SBA set-aside program.

Sincerely yours,

A. H. HARDING, *Manager.*

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RESOLUTION

Whereas the Colorado Contractors Association does not favor and does not approve of the Small Business Administration set-aside program as it is being applied in the construction industry by limiting and restricting competitive bidding on many Government construction contracts, contrary to established policy of free enterprise and free competition and to the detriment and increased expense of all taxpayers; and

Whereas S. 1363 has been introduced in the U.S. Senate, and H.R. 3690 has been introduced in the U.S. House of Representatives of the 87th Congress, each of which bills would exempt the construction industry from the Small Business Administration set-aside program and thereby restore free and competitive bidding on Government construction contracts by all contractors on an equal basis, with resulting benefit to taxpayers and the public: Now, therefore, be it

*Resolved*, That the Colorado Contractors Association at its 29th annual convention, go on record as being opposed to the currently existing Small Business Administration set-aside program, and that wholehearted endorsement is given to the passage of S. 1363 and H.R. 3690; be it further

*Resolved*, That a copy of this resolution be forwarded to the sponsors of the above-mentioned bills and to the Colorado delegation in Congress.

COLORADO CONTRACTORS ASSOCIATION, INC.

Dated at Denver, Colo., this 19th day of January 1962.

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RESOLUTION OF THE ASSOCIATED GENERAL CONTRACTORS, UTAH CHAPTER, SALT LAKE CITY, UTAH

Favoring the support of the Metcalf-Weaver bills, S. 1363 and H.R. 3690, to exempt construction contracts from Small Business set-asides

Inasmuch as the Small Business Administration is encouraging the formation of new small firms in the construction field; and

Creating inexperienced competitors to qualified contractors, by making or guaranteeing loans to small firms which in many cases are regarded as poor risks and unable to obtain financing through normal channels; and

That the Small Business Administration will attest to the competency of these small firms by issuing a "Certificate of Competency" which must be recognized by all Government agencies; and

That the Small Business Administration can, and does, take awards of Government construction contracts away from the lowest bidder and give it to someone else, even though his bid may be considerably higher.

Therefore, by restricting competition, the Government is incurring extra cost for construction because of this set-aside program; and

That such a program is severely injuring the contract method and competitive system, it puts a premium on inferior ability while penalizing success. This is done at the taxpayer's expense, whose money is spent on higher bids or on uneconomically subdivided projects: Now be it therefore

*Resolved*, That the Associated General Contractors, Utah Chapter, now assembled in convention at Salt Lake City, Utah, on this 19th day of January 1962, go on record endorsing that the Congress of the United States pass legislation as listed above exempting construction contracts from the small business set-asides.

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.,  
*Knowville, Tennessee, March 21, 1962.*

Mr. WILLIAM E. DUNN, *Executive Director,*  
*Associated General Contractors, Washington, D.C.*

DEAR MR. DUNN: This will confirm to you the action taken by the Tennessee State AGC Branch in passing the following resolution regarding the Small Business Administration legislation:

"Resolved, That the Tennessee State AGC Branch strongly endorses the position of the Associated General Contractors of America, Inc., in supporting legislation to end the interference of the Small Business Administration in Government construction contracts. Accordingly, the association is requested and urged to seek the relief to which legitimate contractors are entitled through the enactment of S. 1363 and H.R. 3690 and to do any and all things necessary to this end on behalf of Tennessee AGC contractors."

I hope you will feel free to use this letter in presenting our side of the story to Congress.

Sincerely,

GEORGE W. REAGAN, *President.*

[Telegram]

WATERVILLE, MAINE, *June 7, 1962.*

WILLIAM DUNN,  
*Executive Director,*  
*Associated General Contractors of America,*  
*Washington, D.C.:*

The board of directors of the Maine Chapter of AGC voted yesterday to support the position of the national AGC on a proposed amendment to the Small Business Act.

RALPH KNOWLTON,  
*Secretary, Maine Chapter.*

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

*Summary of examples of increased cost to Government because of set-asides*

Example No.	Construction site	Lowest bid submitted by responsible contractor	Higher bid accepted under SBA set-asides	Increased cost to taxpayer	Per cent
1	Flood control improvement project, Onondaga County, N.Y.	\$208,492.00	\$241,560.00	\$33,068.00	15.8
2	Consolidated Constructors, Inc., Portland, Maine	(1)	(1)	(1)	(1)
3	Corps of Engineers, hospital and dental clinic, Sheppard Air Force Base, Tex.	4,315,877.00	4,482,255.00	166,378.00	4.0
4	Corps of Engineers, Vicksburg District, constructing Piney Creek new levee, Yazoo County, Miss.	110,318.00	122,445.00	12,127.00	11.0
5	Corps of Engineers, warmup pad additions, Myrtle Air Force Base, S.C.	(2)	(2)	(2)	(2)
6	Corps of Engineers, Vicksburg District, mat casting plant, Greenville, Miss.	(1)	(1)	(1)	(1)
7	Air Force, replacement of operational aprons, Luke Air Force Base, Ariz.	(1)	(1)	(1)	(1)
	Removal and replacement of runway paving, Davis-Monthan Air Force Base, Ariz.	(1)	(1)	(1)	(1)
8	Corps of Engineers, Vicksburg District, clearing and construction of control weir, Humphries County, Miss.	107,689.67	111,548.40	3,858.73	3.5
9	Corps of Engineers, maintenance dredging between St. Johns River and Melbourne, intercoastal waterway, Jacksonville to Miami, Fla.	61,340.00	79,450.00	18,110.00	30.0
10	Corps of Engineers, construction of recreation areas 3 and 4, success project, Tulare County, Calif.	145,896.00	163,399.00	17,503.00	12.0
11	Corps of Engineers, airfield paving, Barksdale Air Force Base, Shreveport, La.	(1)	(1)	(1)	(1)

See footnotes at end of table.

Summary of examples of increased cost to Government because of set-asides—  
Continued

Example No.	Construction site	Lowest bid submitted by responsible contractor	Higher bid accepted under SBA set-asides	Increased cost to taxpayer	Per cent
12	Bureau of Yards and Docks, heat and head facilities, Camp Lejeune, N.C.-----	1,196,800.00	1,238,800.00	42,000.00	3.5
13	Wherry housing rehabilitation and improvement project, Nellis Air Force Base, Clark County, Nebr.-----	1,393,350.00	1,456,115.00	62,765.00	4.5
14	Corps of Engineers, stone protection, San Joaquin River, San Joaquin County, Calif.-----	683,845.00	705,643.00	21,798.00	3.0
15	Corps of Engineers, combat operations center, Westover Air Force Base, Mass.-----	1,198,900.00	1,203,967.00	5,067.00	-----
16	Extension of runway 27, Sanford Naval Air Station, Sanford, Fla.-----	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
17	Fort Snelling National Cemetery, modifications and extension, Minnesota.-----	302,431.00	311,895.00	9,464.00	3.0
18	Corps of Engineers, list of bank stabilization projects, Pine Bluff, Ark.-----	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
19	Construction of static test replacement facilities, Redstone Arsenal, Ala.-----	539,092.95	564,766.45	25,673.50	4.8
20	Hancock Airport, repair of Capehart housing roads, Syracuse, N.Y.-----	24,780.00	29,500.00	4,720.00	19.0
21	Black Hills Ordnance Depot, Igloo, S. Dak., rehabilitation of water supply depot.-----	82,360.75	89,886.50	7,525.75	9
22	Purchasing and contracting office, Fort Hood, Tex.-----	171,124.00	177,877.00	6,753.00	3.94
23	U.S. Army Engineers, laboratory and office building, blast load generator, Waterways Experiment Station, Vicksburg, Miss.-----	399,698.00	405,256.00	5,558.00	1
24	Range instrumentation roads, White Sands Missile Range, N. Mex.-----	299,156.36	239,720.40	10,564.04	4.61
25	Construction of rock walls west side of club road, Fort Bliss, Tex.-----	6,256.00	6,995.00	739.00	11.8
26	Construction of ground-air transportation recreation building, A.C. & W. Station, Eufaula, Ala.-----	84,710.00	85,096.00	386.00	-----
27	Relocation (construction) of Oklahoma State Highway 99, Arkansas River section, Keystone Reservoir, Okla.-----	508,458.00	527,220.00	18,762.00	4
28	Corps of Engineers construction of detour road, Blue Island, Ill.-----	33,995.00	37,677.00	3,682.00	11
29	Corps of Engineers, rehabilitation of jetties, Jacksonville Harbor, Jacksonville, Fla.-----	78,780.00	89,391.00	10,611.00	13
30	Installation of regulators and capacitors and modification of existing electrical substation, Fort Gordon, Ga.-----	39,448.00	43,465.00	4,017.00	10
31	Emergency repair to taxiway and drainage, U.S. Naval Air Station, New Orleans, La.-----	13,949.00	15,800.00	1,851.00	13
32	Antenna foundations and miscellaneous pavement repairs, Navy Electronics Laboratory, San Diego, Calif.-----	30,565.00	31,655.00	1,090.00	4
33	Conversion of sprinkler system, U.S. Naval Supply Center, Bayonne, N.J.-----	14,680.00	16,438.00	1,758.00	13
34	Marine Corps Air Station, Cherry Point, N.C., maintenance and repair service for paving.-----	30,850.00	39,350.00	8,500.00	28
35	U.S. Naval Base, Newport, R.I., repair of roads, parking lots and curbsings.-----	116,872.00	137,636.00	20,664.00	18
36	Entrance to drydock, dredging, Norfolk Naval Shipyard, Portsmouth, Va.-----	8,720.00	16,000.00	7,280.00	84
37	Flooring work, Elmendorf Air Force Base, Alaska.-----	9,441.00	11,795.00	2,354.00	25
38	Modification of high thrust jet test cells, Tinker Air Force Base, Okla.-----	363,108.00	393,627.00	30,519.00	8
39	Construction of scrap metal storage area and access road paving, R. & M. facility, McClellan Air Force Base, Calif.-----	53,962.00	58,117.00	4,155.00	8
40	Terminal yard work, Dulles International Airport, Chantilly, Va.-----	1,617,217.00	1,641,000.00	23,783.00	-----
	Total.-----	14,252,161.73	14,775,245.75	593,084.02	4

<sup>1</sup> Figures not applicable.

<sup>2</sup> Details as to names of bidders and amounts bid not specified.

<sup>3</sup> Details not specified.

## EXAMPLES OF INCREASED COST

## EXAMPLE NO. 1

*Flood control improvement project, Onondaga County, N. Y., IFB-CIVENG-30-023-62-32*

Low bidder: Syracuse Constructors, Inc.-----	\$208,492
Rejected because of affiliation with "large" firm.	
Awarded to 2d low bidder-----	241,560
Added cost to Government (15.8 percent)-----	33,068

## EXAMPLE NO. 2

*Consolidated Constructors, Inc., Portland, Maine*

Summary of bids submitted by Consolidated Constructors, Inc., on Air Force and Corps of Engineers projects during 1960. Consolidated, a "large" firm, was low bidder on the following:

1. Dining hall, GOMARC, Bangor, Maine:	
Low bid-----	\$181,249
Next bid-----	182,575
2. Fence and structure, Dow Air Force Base, Maine:	
Low bid-----	15,487
Next bid-----	16,500
3. Fire protection, SNARK, Presque Isle, Maine:	
Low bid-----	218,598
Next bid-----	231,850
4. Gap filler, Depot Mountain, Maine:	
Low bid-----	207,294
Next bid-----	210,000
5. Radar facilities, Caswell Air Force Base, Maine:	
Low bid-----	192,021
Next bid-----	204,240
6. ANG engine buildup shop, Dow Air Force Base, Maine:	
Low Bid-----	123,423
Next Bid-----	130,850
7. Modification, dining hall, Caswell Air Force Base, Maine:	
Low bid-----	6,349
Next bid-----	6,527

Consolidated notes that if they had been disqualified on these seven projects because of small business status, the added cost to the Government would have been \$38,121. The restriction on bidding effectively in 1960 would have put the firm out of business, and an independent subsidiary—Dawson, Johnson & Kibler—was therefore formed to bid on Government work, nearly all of which was to be let in increments of \$500,000 or less. The subsidiary was successful low bidder on three projects totaling \$260,028. Total savings to the Government in accepting these bids was \$32,121, or about 12 percent. The subsidiary has now been declared ineligible to bid on set-aside work because of the affiliation with Consolidated.

## EXAMPLE NO. 3

*Corps of Engineers, Hospital and Dental Clinic, Sheppard Air Force Base, Tex., INV. No. ENG-41-443-61-18*

This job, estimated at \$4½ million, was set aside by the corps for bidding by small firms at the request of SBA, which agency claimed that the 2-year performance time would permit small business participation and provide adequate competition.

Low bid was submitted by B. L. Abbott Construction Co., of Houston, Tex., \$4,315,877.

B. L. Abbott, a former employee of Johnson, Drake & Piper, Inc., had been assisted financially by that firm in establishing his small independent business.

Protest was received by SBA that this financial assistance constituted "affiliation" with the larger firm, and this bid was rejected. Award was made to next low bidder at an added cost of \$166,378 (4 percent).

## EXAMPLE NO. 4

*Corps of Engineers, Vicksburg district, constructing Piney Creek new levee, Yazoo County, Miss., INV. No. CIVENG-22-052-61-17*

Low bidder: Atlas Construction Co., Ruston, La.....	\$110,318
Rejected because of affiliation with a "large" firm, the T. L. James Co.	
Awarded to next low bidder.....	122,445
Added cost to Government (11 percent).....	12,127

## EXAMPLE NO. 5

*Corps of Engineers, Warmup Pad Additions, Myrtle Beach Air Force Base, S.C., INV. No. ENG-38-081-61-09*

Details as to names of bidders and amounts bid not specified. Construction daily reports that low bid by small firm on their set-aside job was 100 percent over corps' estimate, leading to cancellation of the set-aside.

## EXAMPLE NO. 6

*Corps of Engineers, Vicksburg district, mat casting plant, Greenville, Miss.*

The Corps of Engineers lets annual operating contracts for the production of concrete mat, used in river bank stabilization. Private firms bid to operate Government-owned plants.

Low bid for 1960 operation of the plant at Greenville was submitted by a company in Vicksburg, Miss. The corps attempted to disqualify this bidder, who had no experience whatever in this type of work, but was overruled in its judgment by the SBA, which issued a certificate of competency which, backed by GAO rulings, takes precedence over the experience and engineering judgment of veteran contracting officers.

The Vicksburg firm was low by \$20,000, bidding \$577,000. This saving has long since been lost through added costs of corps administration, as this firm has not performed satisfactorily.

Contract completion was expected by December 1, 1960, but had not yet (March 19, 1961) been attained. Added costs specifically were incurred through obtaining concrete mat units from other plants, through additions to contracts there, and transportation to placement sites which should be served by the Greenville plant. This emergency procurement from other sources was necessary to meet placement schedules during the late fall and winter seasons of low water.

## EXAMPLE NO. 7

*Air Force, replacement of operational aprons, Luke Air Force Base, Ariz., INV. No. 02-604-60-85*

Low bid by a small firm. This firm did not possess the equipment necessary to perform the work, and was obliged to rent it from the M. M. Sundt Co., a large firm which was prohibited from entering a bid in the first place.

The equipment rental rate was such that the small firm lost money on the job.

*Removal and replacement of runway paving, Davis-Monthan Air Force Base, Ariz., INV. No. 02-601-60-30*

Low bid by small firm Schlucter-Hoeveler Associates of New York City which was also obliged to sublet the work to Sundt.

## EXAMPLE NO. 8

*Corps of Engineers, Vicksburg District, clearing and construction of control weir, Humphries County, Miss.*

Bids opened Feb. 21, 1961:

Low bid.....	\$107,689.67
Rejected because of affiliation with large firm	
Second bid.....	111,548.40
Added cost to Government (3½ percent).....	3,858.73

## EXAMPLE NO. 9

*Corps of Engineers, maintenance dredging between St. Johns River and Melbourne, Intercoastal Waterway, Jacksonville to Miami, Fla.*

Bids opened Nov. 31, 1961:

Low bidder: Hardaway Dredging Co.....	\$61,340
Rejected because of "large" classification.	
Awarded to next bidder.....	79,450
Added cost to taxpayers (30 percent).....	18,110

## EXAMPLE NO. 10

*Corps of Engineers, construction of recreation areas 3 and 4, success project, Tulare County, Calif., INV. #CIVENG-04-167-62-5*

Low bidder: Kaweah Construction Co., Visalia, Calif.....	\$145,896
Rejected because of affiliation with a "large" firm, the W. M. Lyles Co.	
Awarded to next bidder.....	163,399
Added cost to taxpayers (12 percent).....	17,503

## EXAMPLE NO. 11

*Corps of Engineers, airfield paving, Barksdale Air Force Base, Shreveport, La., INV. #ENG-41-443-62-26*

Bids received Dec. 16, 1961:

Four bids were received on set-aside basis.	
Low bidder.....	\$729,112
Engineers estimate.....	582,658
Over Engineers estimate (25.2 percent).....	146,454

All bids rejected and readvertised for open competitive bidding on January 8, 1962 INV. #ENG-41-443-62-69 identical job except slight revision estimated at \$5,000.

Low bidder ("large" firm).....	\$689,123
Second bidder who was also second bidder at original opening bid \$690,681, a difference of \$39,289 from his first bid.	
Saving to the taxpayer by unrestricted readvertising (5 percent).....	\$39,989

## EXAMPLE NO. 12

*Bureau of Yards and Docks, heat and head facilities, Camp Lejeune, N.C.*

Low bidder: York Building Co., Raleigh, N.C.....	\$1,196,800
Rejected because of affiliation with a "large" firm.	
The job was awarded to the second low bidder at an increased cost to the taxpayers of \$42,000 (3.5 percent).	

## EXAMPLE NO. 13

*Wherry housing rehabilitation and improvement project, Nellis Air Force Base, Clark County, Nev.*

Bids opened Feb. 17, 1960:

Low bidder: Lembke Construction Co., Las Vegas, Nev.....	\$1,393,350
Rejected because of "large" classification.	
Next bid.....	1,456,115
Added cost to taxpayer (4.5 percent).....	62,765

## EXAMPLE NO. 14

*Corps of Engineers, stone protection, San Joaquin River, San Joaquin County, Calif., INV. #CIVENG 62-3*

Bids opened Feb. 15, 1962:

Low bidder: A. Teichert & Son, Inc., Sacramento, Calif.....	\$683,845
Declared nonresponsive because of "large" classification.	
Awarded to next bidder.....	705,643
Added cost to taxpayers (3 percent).....	21,798

## EXAMPLE NO. 15

*Corps of Engineers, Combat Operations Center, Westover AFB, Mass., ENG. 19-016-16-70*

Bids taken Apr. 29, 1962:

Low bidder: Frouge Corp., Bridgeport, Conn.....	\$1,198,900
Rejected because of "large" classification.	
Awarded to second low bidder.....	1,203,967
Added cost to Government.....	5,067

## EXAMPLE NO. 16

*Extension of runway 27, Sanford Naval Air Station, Sanford, Fla., NBY No. 40670-61*

Bids due May 22, 1962. Job has been set aside for small business, although it was bid earlier this year under a set-aside, but the low bid was considered too high (\$80,000 to \$90,000 above estimate).

Originally, this job involved very tight specifications since the runway is to be used by the Vigilante aircraft, which flies twice the speed of sound. Adherence to specifications would have required equipment such as controlled batch plant and a paving machine not ordinarily used by small contractors.

As a result, specifications have been cut to allow the use of ready-mix concrete to eliminate the controlled batch plant requirement. The original job would have involved the placing of about 2,800 yards of concrete, but this has been cut to 1,700 yards and asphalt has been substituted elsewhere. In addition, the use of a paving machine has been eliminated, and additional bid items have been included which a procurement officer at the base feels will attract more small contractors to bid the job on the second invitation.

## EXAMPLE NO. 17

*Fort Snelling National Cemetery, modifications and extension, Minnesota; date of letting, Jan. 11, 1962*

Low bid submitted by Kraus Anderson Co., St. Paul.....	\$302,431
Rejected because of "large" classification.	
Awarded to second low bidder.....	311,895
Added cost to Government (3 percent).....	9,464

## EXAMPLE NO. 18

*Corps of Engineers, list of bank stabilization projects, Pine Bluff, Ark., area*

The Pine Bluff Sand and Gravel Co. was not eligible to bid on the bank stabilization contracts listed below because they were set aside for bidding by small business. However, this company did subcontract these projects from the successful bidder, and even under this procedure was able to save the Government \$79,423.

Contract No.	Low bid	Next bid	Difference	Percent
DA-22-052-CIVENG-61-113.....	\$225,668	\$227,390	\$1,722	0.8
DA-03-050-CIVENG-61-369.....	229,795	236,244	6,449	2.8
DA-03-050-CIVENG-61-639.....	208,448	222,486	14,038	6.7
DA-03-050-CIVENG-61-831.....	669,702	725,500	55,798	8.3
DA-03-050-CIVENG-62-542.....	374,359	375,775	1,416	.4
Total.....	1,707,972	1,787,395	79,423	4.65

## EXAMPLE NO. 19

*Construction of static test replacement facilities, Redstone Arsenal, Ala.,  
June 15, 1962*

Low bidder: Dunn Construction Co., Inc., Birmingham, Ala.....	\$539,092.95
Rejected because of "large" classification.	
Awarded to second low bidder from Dallas, Tex.....	564,766.45
Added cost to Government (4.8 percent).....	25,673.50

## EXAMPLE NO. 20

*Hancock Airport, repair of Capehart housing roads, Syracuse, N.Y., IFB-30-614-  
62-37, project No. HAN 77-2 (ADC), small business set-aside*

Low bidder:	
Base bid.....	\$16,690
Additives.....	8,090
Total.....	24,780
Base bid.....	17,800
Additives.....	5,900
Total.....	23,700
Base bid.....	22,000
Additives.....	7,500
Total.....	29,500

The award was made in May to the third low bidder at an increased cost to the Government of \$5,310 (or 31 percent) on the base bid or \$4,720 (or 19 percent) on the combination bid. The low and second low bidders were rejected because of their "large" classification.

## EXAMPLE NO. 21

*Black Hills Ordnance Depot, Igloo, S. Dak., rehabilitation of water supply depot,  
contract No. DA-39-010-ORD-505*

Low bid submitted by South Dakota Improvement Co.....	\$82,360.75
Rejected because of affiliation with "large" firm.	
Awarded to second low bidder.....	89,886.50
Added cost to Government (9 percent).....	7,525.75

## EXAMPLE NO. 22

*Purchasing and Contracting Office, Fort Hood, Tex., INV. AIV-41-093-59-68,  
April 3, 1959*

Application of 2-inch hot-mix asphaltic concrete overlay on 16 miles of West Range Road.

*Tabulation of bids*

1. Cage Bros.....	\$171,124
2. A. R. Seldon.....	171,749
3. The Jarbet Co., Inc.....	172,665
4. Strain Bros.....	175,711
5. (Deleted) Construction Co.....	177,877
6. (Deleted) Co.....	183,910
7. (Deleted).....	224,363

The first four bidders were eliminated because of various regulations of the Small Business Administration which resulted in the job being awarded to the fifth low bidder at an increased cost to the Government of \$6,753, or 3.94 percent of the first low bid.

## EXAMPLE NO. 23

*U.S. Army Engineers, laboratory and office building, blast load generator, Waterway Experiment Station, Vicksburg, Miss.; bid date, Oct. 19, 1962*

Low bidder: Electronic Missile Contractors, Inc.....	\$399,698
Rejected because of "large" classification.	
Awarded to 2d low bidder.....	405,256
Added cost to Government (1 percent).....	5,558

## EXAMPLE NO. 24

*Range instrumentation roads, White Sands Missile Range, N. Mex.*

Low bidder: Hugh McMillan, Inc.....	\$229,156.36
Rejected because of "large" classification.	
Awarded to 2d low bidder.....	239,720.40
Added cost to Government (4.61 percent).....	10,564.04

## EXAMPLE NO. 25

*Construction of rock walls, west side of Club Road, Fort Bliss, 300 and 400 areas*

Low bidder: El Paso Pavers, Inc.....	\$6,256.00
Rejected because of "large" classification.	
Awarded to 2d low bidder.....	6,995.00
Added cost to Government (11.8 percent).....	739.00

## EXAMPLE NO. 26

*Construction of ground/air transmitter-receiver building Aircraft Control and Warning Station, Eufaula, Ala.*

Low bidder: Mid-South Constructors, Inc.....	\$84,710
Rejected because of "large" classification.	
Awarded to 2d low bidder.....	85,096
Added cost to Government.....	386

## EXAMPLE NO. 27

*Relocation (construction) of Oklahoma State Highway 99, Arkansas River section, Keystone Reservoir, Okla., schedule No. 2 bridge*

Low bidder: Frisbie Construction Co., Inc.....	\$508,458
Rejected because of "large" classification.	
Awarded to 2d low bidder.....	527,220
Added cost to Government (4 percent).....	18,762

## EXAMPLE NO. 28

*Corps of Engineers, construction of detour road, Blue Island, Ill.*

Low bidder: Standard Paving.....	\$33,995
Rejected because of "large" classification.	
Awarded to 2d low bidder.....	37,677
Added cost to Government (11 percent).....	3,682

## EXAMPLE NO. 29

*Corps of Engineers, rehabilitation of jetties, Jacksonville Harbor,  
Jacksonville, Fla.*

Low bidder withdrawn because of bidding error.	
2d low bidder: Marine Investment Co.....	\$78,780
Rejected because of "large" classification.	
Awarded to 3d low bidder.....	89,391
Added cost to Government (13 percent).....	10,611

## EXAMPLE NO. 30

*Installation of regulators and capacitors and modification of existing electrical  
substation, Fort Gordon, Ga. Invitation No. 09-057-61-55*

Low bidder: E. C. Ernst.....	\$39,448
Rejected because of "large" classification.	
Awarded to 2d low bidder.....	43,465
Added cost to Government (10 percent).....	4,017

## EXAMPLE NO. 31

*Emergency repair to taxiway and drainage, U.S. Naval Air Station, New  
Orleans, La., NBY 30454*

Low bidder: Geo. H. Cheek Construction Co.....	\$13,949
Rejected because of "large" classification.	
Awarded to 2d low bidder.....	15,800
Added cost to taxpayer (13 percent).....	1,851

## EXAMPLE NO. 32

*Antenna foundations and miscellaneous pavement repairs, Navy Electronics  
Laboratory, San Diego, Calif., NBY 36853*

Low bidder: R. E. Hazard Contractors.....	\$30,565
Rejected because of "large" classification.	
Awarded to 2d low bidder.....	31,665
Added cost to Government (4 percent).....	1,100

## EXAMPLE NO. 33

*Conversion of sprinkler system, U.S. Naval Supply Center, Bayonne, N.J.,  
NBY 31910*

Low bidder: Automatic Sprinkler Corp. of America.....	\$14,680
Rejected because of "large" classification.	
Awarded to 2d low bidder.....	16,438
Increased cost to Government (12 percent).....	1,758

## EXAMPLE NO. 34

*Marine Corps Air Station, Cherry Point, N.C., maintenance and repair service  
for paving, NBY 37052*

Government estimate.....	\$30,250
Low bidder: Nello L. Teer Co.....	30,850
Rejected because of "large" classification.	
Awarded to 2d low bidder.....	39,350
Added cost to the Government (28 percent).....	8,500

## EXAMPLE NO. 35

*U.S. Naval Base, Newport, R.I., repair of roads, parking lots and curbsings,  
NBY 37500*

Government estimate.....	\$125,000
Low bidder: Campanella & Cardi Construction Co.....	116,872
Rejected because of "large" classification.	
Awarded to 2d low bidder.....	137,536
Added cost to Government (18 percent).....	20,664

NOTE.—Another large firm bid on this job but was higher than the small firm awarded the contract.

## EXAMPLE NO. 36

*Entrance to drydock, dredging, Norfolk Naval Shipyard, Portsmouth, Va.,  
NBY-33661*

Government estimate.....	\$12,720
Low bidder: Diamond Construction Co.....	8,720
Rejected because of "large" classification.	
Awarded to 2d low bidder.....	16,000
Added cost to Government (84 percent).....	7,280

## EXAMPLE NO. 37

*Flooring work, Elmendorf Air Force Base, Alaska, contract No. AF 65 (501)-  
2015*

Low bidder: Fuller Paint & Glass Co.....	\$9,441
Rejected because of "large" classification.	
Awarded to 2d low bidder.....	11,795
Added cost to Government (25 percent).....	2,354

## EXAMPLE NO. 38

*Modification of high thrust jet test cells, Tinker Air Force Base, Okla., contract  
No. AF34 (601) 9795*

Low bidder: S & E Contractors, Inc.....	\$363,108
Rejected by SBA regional office because S & E "has failed to file application for size determination or small business certificate; therefore, they are assumed to be other than a small business concern * * *"	
Awarded to next low bidder.....	393,627
Added cost to Government (8 percent).....	30,519

## EXAMPLE NO. 39

*Construction of scrap metal storage area, and access roads paving, R. & M.  
facility, McClellan Air Force Base, Calif., AF04-606-9228*

Low bidder: A. Teichert & Sons, Inc.....	\$53,962
Rejected because of "large" classification.	
Awarded to 2d low bidder.....	58,117
Added cost to Government (8 percent).....	4,155

Quotation from Defense Department report on this job:  
"Responsive small business bidder (name deleted) declared in their bid that the estimated percentage of subcontracting contemplated was 94 percent. Their letter dated August 21, 1961, declared Teichert & Son, Inc., as their subcontractor."

## EXAMPLE NO. 40

*Terminal yard work, Dulles International Airport, Chantilly, Va., invitation date, June 22, 1961; bid date, July 27, 1961*

The low bidder on this construction job at Dulles International Airport decided not to fill out the final papers making him eligible for an SBA set-aside, which the job had been designated. SBA ruled the second low bidder, Tester Co., did not qualify under the restricted bidding rule—although only a week before the Tester firm had qualified for a set-aside after a 10-week battle with SBA. Award finally went to the third low bidder.

Added cost to taxpayers, \$196,000 over the original low bid; almost \$24,000 over the second low bid.

## REPLIES FROM AGC CHAPTERS TO SBA CHARGES

The Administrator of the Small Business Administration, John E. Horne, in letters to Members of Congress, one as recently as June 14, has referred to the Associated General Contractors of America as "an organization which purports to represent the industry but which is dominated by large business interests \* \* \*."

In view of the serious nature of this charge against the AGC by the head of a Government agency, a letter was sent on June 22 to all AGC chapter managers by William E. Dunn, executive director, the Associated General Contractors of America, quoting the foregoing statement by Mr. Horne and adding:

"Please wire us collect whether your chapter is 'dominated' by large business interests. Also, do you think the National AGC is dominated by large business interests?"

The responses showed that the chapter officials feel almost unanimously that neither the AGC nationally nor the chapters, themselves, are dominated by large business interests. Two chapters felt that AGC nationally was dominated by large business. However, these two chapters did not consider themselves dominated by large business. The replies are attached.

## INDIANA

## INDIANAPOLIS, IND.

No less than 75 to 80 percent of contractors submitting bids on Indiana highway and bridge construction, including Federal system, qualify under regulations as small business firms. Largest contracts involved thus far less than \$4 million. Size of projects advertised range from \$40,000 to \$3½ million. No complaint of lack of opportunity from any bidder or prospective bidder. There appears to be no advantage to set-aside program insofar as Indiana is concerned. Believe the program sufficiently diversified in size to offer ample opportunity to all bidders.

W. M. HOLLAND,  
*Executive Secretary,*  
*Indiana Highway Constructors, Inc.*

## CALIFORNIA

## SAN FRANCISCO, CALIF.

Our chapter is not dominated by big business. To the contrary. We represent hundreds of smaller contractors. We do not favor SBA set-asides.

BRUCE MCKENZIE,  
*Manager, Northern & Central Chapter, AGC.*

## OREGON

## PORTLAND, OREG.

This chapter is not dominated by large business interests and we do not think the national AGC is dominated by large business interests. Our chapter is opposed to small business set-asides in construction, and have adopted resolutions to this effect on two different occasions.

A. H. HARDING, *Manager.*

## FLORIDA

## ORLANDO, FLA.

Of the 32 members of this chapter only 5 are big business. We believe most AGC members are small business. We strongly oppose construction set-asides.

CENTRAL FLORIDA CHAPTER, ORLANDO.

## PENNSYLVANIA

PHILADELPHIA, PA.

This chapter composed of 89 building construction firms, one-third of which are small size with remainder medium or large. Our board of directors elected by this membership consists of 25 individuals representing firms also ranging from small to large and is therefore obviously not dominated by large business interests; this board has passed resolution unanimously opposing set-asides.

Program in the construction industry since national AGC is composed approximately 7,300 construction firms of all sizes with officers and directors elected by membership and with full opportunity for members to discuss all issues at national meetings, we believe charge of domination by large business interests is also completely unfounded.

HARRY P. TAYLOR,  
*Executive Secretary,*  
*Philadelphia Builders Chapter, AGC.*

## TEXAS

ABILENE, TEX.

West Texas chapter members are all very small businessmen and adamant in stand against sugar-coated giveaways that ultimately destroy God-given American traits of initiative, independence, and honest competition. More Estes cases certain to be spawned under this force feeding of the economy's grassroots. We solidly support the AGC stand against construction set-asides and urge that this basic truth be given full airing at the Washington hearings.

FRANK D. FULLER,  
*Executive Secretary, West Texas Chapter, AGC.*

## WISCONSIN

MADISON, WIS.

Over one-half general building contractor members of the Wisconsin chapter do less than \$1 million of construction annually. It is not dominated by large business interests nor is national AGC. Wisconsin chapter vigorously opposed to SBA set-aside program which welcomes the broker contractor, encourages bid shopping, stifles competitive bidding and further burdens the taxpayer.

STEPHEN E. GAVIN,  
*Manager and General Counsel,*  
*Wisconsin Chapter, AGC, Inc.*

## PENNSYLVANIA

PITTSBURGH, PA.

As president of the Master Builders Association of Western Pennsylvania, Inc., I can unequivocally state our chapter is not dominated by large business interests. Our chapter is of the firm opinion the AGC is not dominated by large business interests. Further, our chapter concurs with the resolution adopted by the AGC at recent convention in opposition to the Small Business Administration.

L. M. WEED,  
*President, Master Builders Association*  
*of Western Pennsylvania, Inc.*

## MISSOURI

JEFFERSON CITY, MO.

Those contractors that contribute their time to our chapter affairs represent all segments of the highway-heavy industry. No group, whether relatively large or small, dominates the chapter. Probably less than 10 percent of our 110 members would be large business under SBA standards and these concerns are certainly not over represented on our board of directors. To my knowledge no group dominates national AGC affairs. Our association has taken a formal position against small business set-asides by unanimous vote of our membership at our last annual business meeting.

DEWITT BARKER,  
*Assistant Manager, AGC of Missouri.*

## TEXAS

SAN ANTONIO, TEX.

We definitely feel that neither this chapter or the national AGC is dominated by large business interest. We also oppose SBA set-asides.

SAN ANTONIO CHAPTER, AGC.

## CALIFORNIA

LOS ANGELES, CALIF.

Of approximately 400 construction firm members, only 5 percent perform work in excess of \$5 million per year. Therefore, Mr. Horne's statement that this industry is dominated by large business interests is erroneous in southern California. From all statistics available, this average holds true throughout the United States and refutes his charges. This chapter, through official action, condemns set-asides in construction and has so stated in communications to the SBA.

W. D. SHAW.

## CALIFORNIA

SAN DIEGO, CALIF.

This AGC chapter in its 35 years of existence has never been dominated by large business interests, in fact, most of those members on our board are contractors with less than \$1 million annual volume and our president (serving his second term) constructs on a job at a time in the \$200,000 bracket and is sole owner of his small business.

GLENN DOWDY,  
*San Diego Chapter, AGC.*

## DISTRICT OF COLUMBIA

WASHINGTON, D.C.

This chapter composed of 42 construction firms of all sizes. At least 80 percent are small business as defined by SBA. Each member firm has equal vote and voice. Policies are established by democratic process, same as U.S. Government. We know by observation national AGC operates likewise, with no domination by large business. Washington dominated men at Valley Forge, Lincoln in his first inaugural, if rallying people to a just cause can be called domination. This chapter voted unanimously to oppose SBA set-asides in construction as a violation of American principles.

RANDALL C. WYANT,  
*Secretary-Treasurer, District of Columbia Chapter, AGC.*

## NEBRASKA

OMAHA, NEBR.

This chapter is absolutely not dominated by large business interests, nor do we feel the national AGC is dominated by large business interests. This chapter is opposed to small business set-asides in construction.

DEAN G. KRATZ,  
*Nebraska Building Chapter, AGC.*

## TENNESSEE

MEMPHIS, TENN.

The Memphis AGC chapter is not dominated by large business interests. Of the 32 Memphis AGC members about 28 would qualify as small business. The remaining four by no means dominate the construction industry of Memphis as competition is very keen. Based on my experience during the past 7 years as secretary and general counsel of the Memphis chapter and attending board and committee meetings and conventions of the national AGC, I do not feel that the association is dominated by large business interests. Having heretofore taken a position against small business set-asides, the Memphis chapter reaffirms this position and urges the national AGC to continue its vigorous opposition. As counsel for the Legislative Committee of the Tennessee AGC State Branch, I am sure I express the views of all Tennessee AGC general contractors as reflected in a unanimous vote in a meeting in Knoxville, February 10, 1962. Nothing has since happened to change this position.

JAMES P. SMITH,  
*Counsel, Memphis Chapter, AGC.*

## KANSAS

TOPEKA, KANS.

The Kansas Builders' chapter, whose members construct 80 percent of this State's commercial structures for private and public owners has only three members whose volume exceed \$7 million. Total membership is 53. Clearly, we are not dominated by big business interests, never were and never will be. Knowledge gained from 3 yearly contacts with other 126 managers of AGC chapters affirms our belief that national AGC office would die if its contractor members were in control and dominated its policies. This chapter published resolution opposing SBA activities as hampering traditional competitive bidding. Resolution of 1961 was reaffirmed in January 1962.

WESLEY A. BASTEDO, *Manager.*

## MISSISSIPPI

JACKSON, MISS.

Our chapter made up almost entirely of small business firms representative, we think, of national AGC makeup. This chapter has formally stated its position against Small Business Administration construction set-asides.

KIRK JEFFREYS,  
*AGC of Mississippi.*

## WEST VIRGINIA

CHARLESTON, W. VA.

The Associated General Contractors of West Virginia is not dominated by any segment. We are 101 contractors, not large contractors, not small contractors, but general contractors of skill, integrity, and responsibility who want no interference with the free, competitive bidding system. Probably 85 percent of general contractor membership of this chapter would qualify as small contractors. We believe this percentage also probably true of national AGC. At least 8 of the 11 general contractors on our executive committee would doubtless be listed as small contractors. This chapter, at annual convention in January, adopted a resolution opposing the set-aside program. There was only 1 dissenting vote among approximately 50 members present in business session.

ASSOCIATED GENERAL CONTRACTORS OF WEST VIRGINIA, INC.,  
JOHN A. ANDERSON,  
*President.*  
EUGENE H. BROWN,  
*Executive Secretary.*

## GEORGIA

ATLANTA, GA.

This branch with 128 members is not and never has been dominated by large business interest and do not feel the National Association is either. Our board and members in official meetings have taken a firm stand against small business set-asides in construction.

ROBERT H. STRICKLAND,  
*Executive Secretary, Georgia Branch, AGC.*

## FLORIDA

WEST PALM BEACH, FLA.

Regarding domination of this chapter by large business interests, not one, repeat, no single member or associate member this AGC chapter in category of large business and no faction or clique of affiliates dominate this chapter. They all, repeat all, run it including the associate members embracing some of the smallest subcontractors in Palm Beach County, Fla.

FLORIDA EAST COAST CHAPTER.

## WISCONSIN

MILWAUKEE, WIS.

Milwaukee chapter and national AGC is not dominated by large business interests. Refer to our letter to Senator Proxmire. Duplicate copy sent you today air mail.

GEORGE A. BENISH,  
*Manager, General Contractors Association of Greater Milwaukee.*

## WYOMING

CHEYENNE, WYO.

AGC of Wyoming has 61 members, only 3 of which can be classified as not small business under SBA definition; all of board of directors from small business firms. Members voted unanimously to support set-aside legislation. Wyoming member of board of directors of AGC of America is from small business firm. Our belief that neither Wyoming AGC nor AGC of America dominated by large business interest.

JACK KNOTT, *AGC of Wyoming.*

## TENNESSEE

KNOXVILLE, TENN.

Believe all our 13 local members qualify as small business contractors. Our chapter unanimously passed resolution opposing small business set-asides in construction. Do not feel that large business dominated AGC. Our small chapter has a member on the national advisory council.

W. L. AMBROSE, Jr.,  
*Executive Secretary, Knoxville Chapter, AGC.*

## NORTH CAROLINA

RALEIGH, N.C.

Carolinas Branch AGC is governed by a 16-man board of directors, most of whom qualify as small business under SBA regulations. We have 374 general contractor members, approximately 22 have annual gross dollar business volume of over 3 million. This chapter of AGC is definitely not dominated by big business.

W. HARRY VANDERLINDEN,  
*Executive Vice President, Midstate Contractors, Inc.,  
President, Carolinas Branch, AGC.*

## MISSOURI

ST. LOUIS, Mo.

Review of members dues reports last year under bracket system shows 46 members with annual business volume of \$1 million or less, 17 members to \$3½ million, 3 members to \$5 million and 9 members reported volume over \$5 million. Our chapter president and both vice presidents' firms reported volume under \$5 million. Since all local association's policies are developed by or subject to approval by total membership, the answer to your question is obvious. Our chapter's policies are formulated by small business interests. If this analysis is applicable to most other chapters the policy of the national AGC must therefore be formulated by small business interests. Our association feels that the small business program in construction is contrary to the public interests.

ASSOCIATED GENERAL CONTRACTORS OF ST. LOUIS,  
HENRY TILL, Jr., *Manager.*

## NEW JERSEY

TRENTON, N.J.

New Jersey chapter namely composed of small business under \$3 million. Our understanding national predominantly small business.

A. R. TRAUTMANN,  
*Assistant General Manager,  
Associated General Contractors of New Jersey.*

## TEXAS

AUSTIN, TEX.

With reference Mr. Horne's assertion concerning AGC, wish to advise this chapter is not dominated by large business interests and further, we are sure that national AGC is not dominated by large business interests. This is confirmed by the fact that possibly 90 percent of AGC members are classified as small business by SBA.

JAMES M. RICHARDS,  
*Texas Highway-Heavy Branch, AGC.*

## IOWA

[Letter]

DES MOINES, IOWA.

We acknowledge receipt of your letter in which the Administrator of the Small Business Administration, John E. Horne, is reported as contending that the AGC of America is dominated by large business interests. If this is an indication of Mr. Horne's knowledge we are convinced that the Small Business Administration is badly in need of a new administrator. We have a membership of 143 members. With the \$5 million limitation it is possible that eight of our members might not qualify as small businessmen. With the \$7½ million limitation we are satisfied that three companies would classify as small businessmen. These firms have all been members of our association for a great many years. There have been times when they have been represented on our board of directors. At present none of them are represented on our board. At no time since this association was organized in 1923 have the larger contractors made any effort whatever to dominate association activities. I personally have attended national AGC meetings since 1923 and I have never observed any activity initiated or sponsored by any group which might be considered large business.

O. W. CROWLEY,

*Executive Secretary, AGC of Iowa.*

## TEXAS

HOUSTON, TEX.

Eighty percent of the members of the Houston Chapter, AGC, are small business firms, 75 percent of the members of the board of directors of the Houston Chapter are representatives of small business firms, our chapter and our board of directors have gone on record as being strenuously opposed to the set-aside program of the Small Business Administration. It is our belief that the free competitive enterprise system has made this a great land and helped us develop a great industry. We are dedicated to that system, why isn't everybody?

HOUSTON CHAPTER, AGC.

## TEXAS

DALLAS, TEX.

At the annual meeting of the Texas AGC chapters on May 12, 1962, a resolution was adopted opposing present policies of the Small Business Administration and requesting the national AGC to go on record urging Congress to remove SBA from interference with the construction industry by its set-aside policies and contracting policies. The 600 AGC contractors in Texas are not in any way dominated by large business interest but are all small business interest working together for a common cause.

H. FRANK B. HARRELL,

*Secretary, Texas AGC Chapters Council.*

## TEXAS

FORT WORTH, TEX.

Small Business Administration allegations of domination of the construction industry by large business interests completely unfounded in Metropolitan Fort Worth area. Conversely probability of qualified construction firms of all sizes continuing to function could be materially reduced by implementation of SBA policies and theories.

JOHN T. CADENHEAD,

*President, Fort Worth Chapter, Associated General Contractors.*

## RHODE ISLAND

PROVIDENCE, R.I.

This chapter membership with 1 definite and 2 possible exceptions of 24 members is in SBA definition of small business. Not 1 of entire 24 members believes set-asides will help the industry or the public. This small business chapter unalterably opposed to set-asides. Believes AGC represents primarily small business and accurately reflects opinion of membership on this issue.

WILLIAM J. SHEEHAN,

*Executive Secretary, Rhode Island Chapter, AGC.*

## KANSAS

TOPEKA, KANS.

One hundred and thirty-seven members in Kansas Highway Heavy AGC Chapter, over 90 percent small business firms. We are on record opposing set-aside program of Small Business Administration and have so informed all Kansas delegation in the Congress. No domination in this chapter by large business interest of 12 members of board of directors; only 2 from large business.

K. W. COMFORT,

*Manager, Kansas Contractors Association.*

## WASHINGTON

TACOMA, WASH.

Reversing position taken in 1960. Tacoma chapter now on record and strongly opposing SBA set-aside policies in construction.

This particularly significant because of 45 general contractor members over 95 percent are small.

GERALD C. CAMPBELL,

*Tacoma Chapter, AGC.*

## MONTANA

HELENA, MONT.

This chapter is in no way dominated by large business interests and could not operate under domination of such interests any more than national office of AGC, as high majority of members are small business by SBA standards. Full membership of our association unanimously passed strong resolution condemning SBA set-asides in construction, and we wholeheartedly support pending bills to exempt construction industry from SBA set-asides.

J. W. MARLOW,

*Montana Contractors Association.*

## DELAWARE

WILMINGTON, DEL.

Set-asides discussed board meeting, April 17, building division, April 25. Those present both meetings opposed to set-asides, but no official action taken.

M. O. BADER,

*Secretary-Manager, Associated General Contractors of Delaware, Inc.*

## IOWA

DES MOINES, IOWA.

Ridiculous to think this chapter dominated by large contractors. Our members depend on locally generated projects of relatively small size. We believe this typical most AGC chapters. Master Builders of Iowa by chapter action strongly opposes set-asides program.

KEN LEWIS.

## FLORIDA

PENSACOLA, FLA.

This chapter AGC membership is composed of small business firms except one out of area, contractor Daniels Construction Co.

TILLMAN C. BURKS,

*Secretary Manager.*

## INDIANA

INDIANAPOLIS, IND.

Our chapter of 71 members 32 gross less than \$½ million; 15 from \$½ million to \$1 million; 20 from \$1 million to \$5 million; only 4 gross over \$5 million, thus not dominated by big business; poll of our chapter unanimous against small business set-asides and have adopted a resolution opposing.

MARSHALL D. ABRAMS,

*Executive Secretary.*

## TENNESSEE

MEMPHIS, TENN.

Seventeen of our sixty-four members are large business by definition, but recent modification of definition probably will remove three or four.

From this category, several of this number are only minimum dues payers. When question of small business set-aside submitted to membership for vote on secret ballot, seven voted in favor of program. Since 1952 every president

except one has been small business, including current occupant of that office. Of our board of directors of 26, 20 are small business. Big business, neither in numbers, financial support, nor influence, is a dominant factor in this organization. Nationally our branch is represented by a director and division vice chairman, both of whom are small business and one of whom seconded motion putting AGC nationally on record as opposed to small business program. Small business members have been leaders both nationally and in this branch against the program.

BRUCE TUCKER,  
*Manager, Mississippi Valley Flood Control Branch, AGC.*

## NEW MEXICO

ALBUQUERQUE, N. Mex.

New Mexico Building Branch, AGC, membership composed primarily of contractors doing annual business volumes of from \$250,000 to \$2 million. The three association officers are from this group. Six of the nine association directors are of this volume group. Our nominating committee annually encounters difficulty inducing association members to serve as directors, officers, and committee members. Rivalry to dominate this association is nonexistent. This association has and does oppose the practice of SBA set-asides in construction. There is no evidence from national office communications or through convention action that the AGC is dominated by large business.

ALVA J. COATS,  
*Manager, New Mexico Building Branch, AGC.*

## MASSACHUSETTS

BOSTON, MASS.

Mr. Horne's statement that AGC is an organization dominated by large business interest is not borne out by facts. In the case of the AGC of Massachusetts, 9 out of 115 general contractor members meet the SBA definition of large business. Out of 16 firms on board of directors, 3 meet the SBA definition of large business. All four chapter officers meet definition of small business. Out of two national directors, one does one-fourth the business he could do and still be classified by SBA as small. How association position against SBA arrived at reported in detail in letter to you of May 8.

JOEL B. LEIGHTON,  
*Managing Director, AGC of Massachusetts.*

## KENTUCKY

PADUCAH, KY.

Our chapter is not dominated by large business interests. I think the national AGC is dominated by large business interests.

J. G. CRAWFORD,  
*President, AGC of Western Kentucky, Inc.*

## TEXAS

CORPUS CHRISTI, TEX.

In reply to your June 22 letter, please be advised that our chapter is not dominated by large business interests. The members of this chapter feel that the national AGC policy is dominated by large business interests because of lack of active interest by smaller firms. Our chapter is in favor of the small business set-asides program.

CURTIS BELL,  
*South Texas Chapter, AGC.*

ALABAMA BRANCH,  
ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.,  
*Birmingham, Ala., May 10, 1962.*

Re S. 1363 and S. 3096 (exemption of construction contracts from SBA set-asides).  
Senator WILLIAM PROXMIRE,  
*Chairman, Subcommittee on Small Business, Senate Banking and Currency Committee, Senate Office Building, Washington, D.C.*

DEAR SENATOR: All members of this branch of AGC have been supplied with a copy of a pamphlet prepared by the Small Business Administration captioned "Facts—Construction Set-Asides for Small Business."

One of the "facts" stated therein is that AGC opposition to set-asides is not representative, that it reflects only the views of "large contractors who dominate the thinking and actions of the AGC." Also quoted is a suggestion that "AGC representatives give an accounting of exactly how many of their members really opposed the set-asides \* \* \* will find that all the noise and commotion is caused by 5 or 10 percent of AGC membership representing the large, long-entrenched organizations."

We have questioned this "fact" and acted on the suggestion. We have polled each member in Alabama and out of our total membership 86 percent qualify as "small" by SBA standards, and contrary to facts as stated by SBA all are opposed to the set-aside program. We are therefore pleased to give this accounting, that our members large and small alike are unanimous in stating their views in this matter are correctly represented by our Washington office.

Rather than attempting to discuss pros and cons we respectfully suggest a careful reading of "Facts" by members of the committee. We have confidence in their perceptiveness, and believe that this alone will raise serious doubts as to the merits of the program.

In view of the above it is our hope that in due time you will act favorably on a suitable bill to exempt construction contracts from SBA set-asides.

Yours very truly,

J. B. RAWLS, *Executive Secretary.*

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THE MASTER BUILDERS' ASSOCIATION, INC.,  
DISTRICT OF COLUMBIA CHAPTER OF THE ASSOCIATED  
GENERAL CONTRACTORS OF AMERICA, INC.,  
*Washington, D.C., May 28, 1962.*

HON. A. WILLIS ROBERTSON,  
*Chairman, Senate Banking and Currency Committee,  
Senate Office Building,  
Washington, D.C.*

DEAR SENATOR: The Master Builders' Association, Inc., District of Columbia Chapter of the Associated General Contractors of America wishes to go on record in support of bills S. 1363 and S. 3096, such bills having been introduced to exempt construction from the set-aside program of the Small Business Administration.

The Master Builders' Association, Inc., is composed of 42 general contractors who perform work in and around the Washington metropolitan area and is the oldest commercial building organization in the area. The members of this organization have performed the bulk of all Government and commercial construction in this area and the majority were always classified as "small business" until the recent change in ruling. Even with the new ruling in effect, it is extremely interesting to note almost 75 percent of our members' business is performed with small businesses. We, therefore, cannot understand why our members should be classified or penalized as being "large business" and correspondingly, are restricted from quoting on certain construction projects; such projects which one agency dictates or decides to set aside for a special group. This is very definitely discriminatory.

The prohibition of discrimination is found in a number of laws and regulations of the Federal Government and its agencies. We would, therefore, expect the Federal Government above all entities, not to engage in any discriminatory activities. By the SBA definition of "small business," and its application of that definition in all its activities, it eliminates those SBA services from all firms who do not meet its definitions. Since any Government agency must serve all taxpayers equally, the entire set-aside program is discriminatory and unfair, favoring one taxpayer over another. A subsidy should not be granted to one segment of the population only, unless it is clearly demonstrated to be a necessity, and in the interest of all the people; otherwise it is not only wrong, but probably unconstitutional. There is ample proof the subsidy program of SBA is not only unnecessary, but is an actual detriment. It uses the tax money of all the people to benefit a few and, at the same time, increases the cost of construction to the taxpayers by restriction of competition.

The thousands of construction firms in business today did not need the assistance of a Federal agency to get started in the race. To our knowledge there is not a year, a month, or even a day when there has not been some firm entering the construction business—this before the advent of SBA set-asides. Thus,

it hardly seems fair for a Government agency to stop "the race," disqualify the "horses" because they have won too many races, then further penalize the owners of the disqualified by requiring them to "feed" the new entries and pay for the "trophies" for future winners.

We believe free, open, unrestricted competition is the best assurance to the public of the highest value for its tax dollar. We also believe this is the fairest and only impartial policy that can be applied to all construction firms, regardless of size.

There are numerous other reasons why the subject legislation should be enacted into law; however in the interest of brevity, we feel it unnecessary to incorporate them in this letter. We endorse the stand taken by the Associated General Contractors of America and we strongly support their actions to date.

We trust you will see fit to vote in favor of bills S. 1363 and S. 3096 and request this letter be read into the record in support.

Copies of this letter are sent herewith to the full membership of your Subcommittee on Small Business.

Very truly yours,

RANDALL C. WYANT,  
*Secretary-Treasurer.*

CENTRAL FLORIDA CHAPTER,  
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.,  
*Orlando, Fla., May 11, 1962.*

SUBCOMMITTEE ON SMALL BUSINESS,  
*Senate Banking and Currency Committee,  
Care of Hon. William Proxmire, Chairman,  
Senate Office Building, Washington, D.C.*

DEAR SIR: We respectfully request that your committee give a favorable report to legislation removing Small Business Administration set-aside in the construction industry.

To begin with, the SBA criterion for a small contractor is unrealistic. A contractor who does up to \$5 million in volume a year is by no means small in this business. He does not need the so-called protection of the set-aside program. The effect of setting jobs aside for a certain segment of the industry stifles competition, and the public pays for it.

Any contractor who is capable, no matter how large or small he is, can bid competitively on all types of public work, just as he does on private work. This business is self-limiting; that is, all contractors except a very few giants of the industry are limited by their capital, their bonding capacity and their management ability. Contractors who normally perform small work will tend to bid jobs costing less than \$100,000. Others will bid up to \$250,000. Others will bid up to \$500,000 jobs, and so on up to those costing in the millions of dollars.

However, when the Small Business Administration sets aside jobs in the \$500,000 to \$1 million category, it is not helping the truly small contractor in the least, for small contractors are not able to finance jobs of this nature. By restricting the number of bidders, however, the SBA definitely limits competition with its resultant increase in costs to the public.

A contractor with ambition and ability will grow and prosper in the free enterprise system. When artificial restraints such as the SBA set-asides are put into effect, however, the efficient contractor is penalized, for he often finds himself classified as "big business," while the inefficient contractor who has been unable to grow above a certain stage of development is rewarded.

This is not to say that the so-called small contractors are all inefficient, for many of them are small by choice. Some deliberately remain in the small category in order to be able to bid on the small business set-aside jobs.

The fact remains that able contractors of all sizes can and do bid in competition with one another on private work, and the intrusion of the Small Business Administration into this free competitive system is unwarranted.

This chapter is composed primarily of small contractors and we strongly urge that the construction set-asides be discontinued.

Sincerely,

EDWIN R. BROWN, *Executive Secretary.*

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.,  
 IDAHO BRANCH, INC.,  
 Boise, Idaho, June 19, 1962.

Mr. WILLIAM E. DUNN,  
 Executive Director,  
 Associated General Contractors of America, Inc.,  
 Washington, D.C.

DEAR BILL: Reference is made to your letter of June 12, 1962, on the subject of the Small Business Administration.

It is interesting to note that the Idaho Branch has 52 contractor members whose volume of work falls into the categories listed below. Please note that our survey on members' volume was made for the years 1959, 1960, and 1961. In each of these 3 years the following statistics were developed:

	<i>Members</i>
0 to \$1,000,000-----	39
\$1,000,000 to \$2,000,000-----	8
\$2,000,000 to \$3,000,000-----	3
Over \$7,000,000-----	2

The dues for our contractor members are predicated on the volume each member performs. Following is the schedule:

From 0 to \$500,000: \$1.50 per \$1,000.  
 From \$500,000 to \$1,000,000: \$1 per \$1,000.  
 Minimum dues, \$200; maximum dues, \$1,250.

The Idaho Branch pays the national dues of \$125 out of the dues collected. As I advised you in an earlier letter our Idaho Branch unanimously passed a resolution opposing the set-aside program in construction of the SBA. It is also interesting to note that the motion was moved and seconded by small contractors.

If it would prove helpful to you I would be pleased to provide you the list of our contractor members and the volume each performed in the years 1959, 1960, and 1961.

If I can be of any further service please advise.

Sincerely yours,

JOHN P. MOLITOR,  
 Executive Secretary.

CENTRAL LOUISIANA CHAPTER,  
 ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.,  
 Alexandria, La., July 9, 1962.

Mr. WILLIAM E. DUNN,  
 Executive Director, Associated General Contractors of America, Inc.,  
 Washington, D.C.

DEAR BILL: I was away on vacation when your letter arrived, requesting information relative to the domination of AGC by large business interests, and have just gotten around to answering your requests.

Although this information will not be in time to be of assistance when Mr. Horne testifies in opposition to bills exempting the construction industry from small business set-asides and restrictive subcontracting regulations, I would like to have this information become a matter of record for your future use as you see fit.

The Central Louisiana Chapter, AGC, is composed of 13 construction firms, any one of which could be classified as small business under the SBA definition. For the past 6 years, the officers of this chapter have all represented small business firms with the majority of board members being small business representatives. By no stretch of the imagination could it be said that this chapter is dominated by large business interests. In spite of the predominance of small business firms in this chapter, we strenuously oppose the SBA set-aside program in construction, and any other encroachment on the historical system of competitive bidding.

With best personal regards, I am,

Sincerely,

WILLIAM H. MATTHEWS, *Manager.*

ASSOCIATED GENERAL CONTRACTORS OF MINNESOTA, INC.,  
*Minneapolis, Minn., June 29, 1962.*

Mr. WILLIAM E. DUNN,  
*Executive Director, AGC of America, Inc.,  
 Washington, D.C.*

DEAR BILL: Inasmuch as I was out ill for a couple of days, I was unable to respond quickly to your letter of inquiry of June 22, 1962 concerning SBA.

The following is information you may wish to use in the future:

1. Our board of directors voted unanimously to oppose small business set-asides in construction.
2. Based on their average work volume for the past 3 years, seven out of the nine board members firms would qualify as small business under the 5 million definition.
3. Using the same definition, 187 of our 200 members would qualify as small business.
4. It is my opinion our chapter is not dominated by large business interests.
5. Two of our three national board members firms would qualify as small business.

Very truly yours,

D. F. MANGUSON, *Acting Manager.*

ASSOCIATED GENERAL CONTRACTORS OF NORTH DAKOTA,  
*Bismarck, N. Dak., June 15, 1962.*

Mr. WILLIAM E. DUNN,  
*Executive Director, Associated General Contractors of America, Inc.,  
 Washington, D.C.*

DEAR BILL: At our annual meeting on December 5, 1961, the following motion was adopted: "A motion was made by John McCormick, Jr., seconded by Vince Buck and carried, that AGC fight Small Business Administration set-aside program in the construction field and get SBA set-asides out of construction." That motion was adopted unanimously at a meeting which was attended by representatives of probably 65 or 70 percent of our membership.

A check of the operations of our members indicates the following percentages:

	Percent
Contractors doing less than \$1,000,000 volume of work.....	83
Contractors doing \$1,000,000 to \$2,000,000 volume of work.....	10
Contractors doing \$2,000,000 to \$3,000,000 volume of work.....	5
Contractors doing over \$3,000,000 volume of work.....	2

Above figures based on 1961 volume of work with 86 contractors represented. I hope this information will be helpful to you in your SBA hearings.

Yours very truly,

C. L. HOFFMAN, *Manager.*

GENERAL BUILDING CONTRACTORS ASSOCIATION, INC.,  
 PHILADELPHIA BUILDERS' CHAPTER,  
 ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.,  
*Philadelphia, Pa., April 24, 1962.*

Hon. A. WILLIS ROBERTSON,  
*Chairman, Senate Banking and Currency Committee,  
 Senate Office Building, Washington, D.C.*

DEAR SENATOR ROBERTSON: This association is the recognized spokesman for the general building construction industry in the five-county area of Metropolitan Philadelphia, which is, as you know, one of the leading construction centers in the Nation.

It is with this in mind that I write to you to express the views of our association regarding the activities of the Small Business Administration in its program of set-asides in construction.

Our association has taken a stand of complete opposition to the SBA's set-aside program in construction. We hope that you have the same viewpoint. Further, we hope that you will support the various bills which have been introduced on this matter and which we understand have been referred to the House and Senate Banking and Currency Committees. Hearings should be held on such

vital legislation so that it can be reported out of these committees for action by this session of Congress.

We believe that SBA's interference with the time-honored and proven system of open, competitive bidding on all Federal Government construction, maintenance, and repair contracts—with award going to the lowest responsible bidder—is leading us in a very dangerous direction. Further, such activity is needlessly costing the Government—hence taxpayers—more and more money.

As you know, in order to qualify for consideration for a loan from the SBA, the applying firm must present letters from two banks which attest that it is absolutely unqualified to receive a bank loan in the judgment of the two reputable bankers. After new and untried firms are thus artificially created, they are hand-fed by the earmarking of many Government construction jobs. We think—and hope you agree—that this is an absurd policy which rewards inexperience and failure at the expense of all taxpayers.

SBA purportedly carries out its set-aside program to aid small business. We believe that such activity is unnecessary and discriminatory because an overwhelming percentage of U.S. construction firms are small business concerns.

If the cancerous growth of SBA's set-aside program in construction is not halted, it is our belief that it will result in irreparable damage to the construction industry rather than helping it, the Government, or the taxpayers.

In expressing these views to you, it is our hope that you likewise have the same convictions and will, accordingly, do all within your power to get legislation passed which will remove construction from the set-aside program of the Small Business Administration.

Respectfully yours,

HARRY P. TAYLOR,  
*Executive Secretary.*

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ASSOCIATED GENERAL CONTRACTORS OF SOUTH DAKOTA, INC.,  
HIGHWAY AND HEAVY CHAPTER,  
*Pierre, S. Dak., April 18, 1962.*

Hon. A. WILLIS ROBERTSON,  
*Chairman, Senate Banking and Currency Committee,*  
*Senate Office Building, Washington, D.C.*

DEAR SIR: I am writing this with the hope that you may help hasten hearings on legislation to remove construction from the SBA set-aside program. Construction should be removed from this program because of the delay it would cause in actual construction; as you know, delay is costly and as a consequence would promote inflation. This program would also reduce competition which is so necessary in our free enterprise system.

In my opinion, this program is unwarranted and I hope your committee will hasten its hearings on exempting the construction industry from this program.

Respectfully yours,

H. ESTERVIG CONSTRUCTION Co., INC.,  
By H. ESTERVIG.

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AUSTIN BRIDGE Co.,  
*Dallas, Tex., April 12, 1962.*

Hon. A. WILLIS ROBERTSON,  
*Chairman, Senate Banking and Currency Committee,*  
*Senate Office Building, Washington, D.C.*

DEAR SIR: We have been advised that several bills have been introduced in the Congress which if passed would free the construction industry from controls and set-asides by the Small Business Administration. The writer has been in the construction business for more than 35 years with the same company, and I am of the opinion that the small business set-asides as presently being carried out are harmful to the economy as a whole. They eliminate competition in construction work by limiting the number of bidders, and in a number of cases the records show that the U.S. Government has paid considerably more for work than they would have done if the practice of lowest and best bidder had been carried out without the small business limitation.

We have known of instances in the State of Texas within the past year where a project that totaled more than \$5 million had been set aside for small business and, as a result of this, the number of bidders on the work has been reduced at

least in half as compared to what it would have been if the usual free competitive bidding practices in the construction industry had been allowed. It is my opinion that when the Small Business Administration is able to set aside a project of this size, it is a complete departure from the original thinking when the Small Business Act was passed.

I believe that the majority of the construction industry opposes this small business set-aside principle, and that the interest of the country will be served if it is eliminated from governmental construction contracts.

Yours very truly,

SAM PINSON.

BENNING CONSTRUCTION Co.,  
Atlanta, Ga., April 11, 1962.

HON. A. WILLIS ROBERTSON,  
U.S. Senate, Washington, D.C.

MY DEAR SENATOR ROBERTSON: I urge immediate hearings on legislation to free the construction industry from harassment by the Small Business Administration.

There have been many bills introduced with this intent. It is imperative that action be taken in this session.

Very truly yours,

F. H. BENNING.

EMMETT, IDAHO, May 25, 1962.

Senator A. WILLIS ROBERTSON,  
Democrat, of Virginia.

DEAR SENATOR: I am soliciting your aid in getting the construction business out from under the direction of the Small Business Act, making it possible for any construction company to bid on any or all construction jobs they wish.

Sincerely yours,

WALTER CAMPBELL.

CARPENTER & CARPENTER, INC.,  
Everett, Wash., May 25, 1962.

Senator A. WILLIS ROBERTSON,  
Senate Building, Washington, D.C.

DEAR SENATOR ROBERTSON: May I ask your thoughtful attention and favorable action on proposed bills that would exempt the construction industry from the "set-aside" program of the Small Business Administration.

As is true of most Government bureaus, they are carried away with their importance and assume they have mandates to run all their affairs to the limit, and they also assume that they have all the answers.

The construction industry is largely made up of small businesses, and probably is faced with the toughest competition of any business.

When SBA "sets out" projects, they invite higher costs of construction to be paid by the public for jobs that would otherwise be the case and possibly also get less efficient bidders, resulting in additional higher public expenditure.

Thank you for giving this your careful consideration.

Cordially yours,

GLENN W. CARPENTER.

WEISER, IDAHO, May 25, 1962.

Senator A. WILLIS ROBERTSON,  
Chairman, Senate Banking and Currency Committee.

DEAR SIR: I am writing this, to ask your help, in stopping the unfair SBA deal on construction. It not only hurts the big construction companies, but it also hurts the thousands of taxpaying stockholders, not to mention the aged people whose only way of keeping off the relief rolls is the dividends they get from investments, which they have worked and saved for, for many years.

I am a widow, 71 years old, and if my dividends are reduced (I get \$675 per year) it will be one more for the taxpayers to support.

Respectfully yours,

Mrs. EUNICE CLARK.

COOPER & WOODRUFF, INC.,  
Amarillo, Tex., May 23, 1962.

Hon. WILLIS ROBERTSON,  
U.S. Senate,  
Senate Office Building, Washington, D.C.

DEAR SIR: The present set-aside program of the Small Business Administration is an uncalled-for interference with the normal economic operation of a considerable segment of the construction industry, and has produced some very undesirable results in this locality. Several of these set-aside jobs have been awarded to other than the low bidder. A recent job was awarded at \$164,000 above the low bid. It is my opinion that on some of these jobs none of the bidders were qualified in all requirements of organization, equipment, and cash assets. The SBA has stated that it expects to give technical advice to the contractors, which deserves no better comment than to be termed ridiculous. Contractors bidding on jobs let under this program have had considerable difficulty in getting surety bonds, and it is our understanding that the SBA is making plans to help its contractors in this matter. What help can be given other than some form of Government guarantee? The entire set-aside program should be terminated and this agency reduced in size and scope of operation for otherwise it will continue to grow with more and more tax dollars required.

As president of a company qualified to bid on these set-aside jobs, I respectfully ask that you support corrective legislation.

I also wish at this time to express my opposition to the present administration-sponsored legislation for medical care for the aged, and against any tax bill that will result in a net loss of income to the Federal Government. There can be no justifiable basis for continuing down the road to bankruptcy in this time of prosperity.

Yours very truly,

L. L. COOPER.

SEATTLE, WASH., April 12, 1962.

Re: Small Business Administration and construction industry.

Hon. A. WILLIS ROBERTSON,  
Chairman of Senate Banking and Currency Committee,  
Senate Office Building, Washington, D.C.

DEAR SENATOR ROBERTSON: I am writing to tell you of my concern over the activities of the SBA in the construction industry. There are thousands of construction companies that bid for their work on an extremely competitive basis throughout the United States. The competitive bidding that exists on all projects where public funds are involved, makes our industry the most competitive industry in America today.

There is no need for a Government agency to stimulate competition in our industry. This is one of the things that the SBA is trying to do. Their set-aside program to mark certain Government jobs for construction companies of a particular size is not warranted. They have arbitrarily designated construction companies that do a business of less than \$5 million a year on an average, in a 3-year period, as a small business. These small businesses are the only ones allowed to bid on certain Government jobs. This is controlling competition when it is not needed. In our business, the small contractor is equipped to do the small job. There are thousands of them. The large contractors do not cut their price and gobble up all the small jobs, thereby putting their small competitors out of business. If you will check the record, I am sure you will see this is true.

You must be as concerned as I am that each penny of the taxpayer's dollar be spent on projects that most need attention. We, in the construction industry do not need regulatory assistance. The SBA apportionment of jobs have in some cases actually cost the taxpayer money because awards were made to contractors who were not low bidders. This is wasteful. Organizations that direct and condone such waste are not needed in our Government. Our Government already has too many worthwhile places to spend its money to require it to organize bodies like the SBA that promote wasteful and unbeneficial activities.

There are other areas where the SBA is becoming involved in the construction industry. They are not necessary or warranted, but I will not try to cover them in this letter. I implore you to examine the facts of the SBA activities in the construction industry. I am sure you will agree that Government funds and manpower can be better utilized in other areas.

If you have any question regarding my position in this matter, please do not hesitate to write. I shall look forward to your letter advising me of your opinions on this problem.

Respectfully,

JAMES P. CRUTCHER.

ATHERTON, CALIF., June 1, 1962.

Senator A. WILLIS ROBERTSON,  
*Chairman of Senate Banking and Currency Committee,*  
*Senate Office Building, Washington, D.C.*

SIR: It has come to my attention that there is need for clear thinking and action in regard to some harmful procedures of the Small Business Administration. I refer particularly to the practice of setting aside numerous construction contracts (which are actually substantial in size but which are arbitrarily declared to be small) and restricting the award of contracts to firms which are favored by the Small Business Administration. I believe it is proper for me to express an opinion on this subject because I have 50 years' experience in construction and engineering management, many of those years in responsible positions where I could observe the needs of the construction industry and the results of Government interference.

The act under which the Small Business Administration operates reads: "The Government should aid, counsel, assist, and protect, insofar as possible, the interest of small business concerns in order to preserve free competitive enterprise." This is contrary to the laws of nature and is probably contrary to the Constitution of the United States.

First. It is difficult to understand just how aid extended to one selected group of competitors to the disadvantage of another group would preserve free competitive enterprise.

Second. The laws of nature, under which all of us must live and which all of us must obey, do not provide artificial assistance to the small or weak animal or plant (or construction firm).

Third. It does not seem possible that under the Constitution of the United States it would be legal for the administrator of a Government bureau to be clothed with authority to select certain business firms, of his choice, to be the recipients of Government favor, particularly when such action adds to the costs of construction and wastes substantial sums of money—taxpayers' money. Is it legal to use taxpayers' money to punish and harass business firms whose only crime is being competent?

It is a well known fact that Government interference in construction operations adds 10 to 15 percent to costs as compared to privately managed, truly competitive and efficient construction.

Fourth. Who is the man or the group who decide what is "a fair proportion" of business to be awarded to firms which are selected by that man or group? What are their qualifications for making the selection? Have they any construction experience? Do they really know anything about construction operations or costs, or are their decisions made on some other basis?

Very truly yours,

C. P. DUNN, *Consulting Engineer.*

ESCO CORP.,  
Portland, Oreg., June 5, 1962.

HON. SENATOR A. WILLIS ROBERTSON,  
*Chairman of Senate Banking and Currency Committee,*  
*U.S. Senate, Washington, D.C.*

DEAR SENATOR ROBERTSON: The ESCO Corp. has for 40 years been an active part of the construction industry, through the design, engineering and manufacture of equipment used in virtually every heavy construction project both here and abroad.

The Associated General Contractors of which we are a member, has recently called to our attention the present rulings of the Small Business Administration in regard to set asides on construction contracts.

It is our company's opinion that open competition for all public works construction, awarded to the lowest responsible bidder, is the best way to serve both Government and the public interest.

We understand that a number of bills have been introduced in Congress, both by Democrats and Republicans, to remove construction from the SBA set-aside program.

We urge your support of this legislation.

Yours very truly,

R. W. DEWESEE,  
*Vice President, Sales.*

(A similar letter was received by Senator Morse.)

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FORCUM-LANNOM, INC.,  
*Dyersburg, Tenn., April 16, 1962.*

Senator A. WILLIS ROBERTSON,  
*Chairman, Senate Banking and Currency Committee,*  
*Senate Office Building, Washington, D.C.*

DEAR SIR: Our company is being hamstrung by the SBA set-aside program in construction. We desperately need work, but cannot bid on many projects because of the arbitrary regulations forced upon the industry by the country's fastest growing bureau.

Meanwhile, unqualified and underfinanced contractors are bidding on this work subsidized by our tax money through the SBA. This policy is un-American and costly to our Government. Please expedite your committee hearings so that we can get some relief from this harassment.

Yours very truly,

E. H. LANNOM, Jr.

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FOREST LUMBER CO.,  
*Pittsburgh, Pa., June 7, 1962.*

SENATE BANKING AND CURRENCY SUBCOMMITTEE ON SMALL BUSINESS,  
*Washington, D.C.*

GENTLEMEN: We understand that there is a bill pending before the Senate Committee on Banking and Currency known as S. 3096. This bill is an amendment to the Small Business Act. The purpose of S. 3096 is to grant relief to the construction industry which historically utilizes subcontractors in construction, maintenance, and repair.

We would like to go on record in support of an amendment to S. 3096 to cover the procurement of materials necessary for such maintenance repair and construction including but not limited to treated lumber and products thereof.

For example under the present Small Business Act, we lose out on a large volume of business because the Koppers Co., Inc., to whom we supply yellow pine for treatment at several of their plants is not permitted to bid on considerable lumber business placed by the Government.

Forest Lumber Co., which is our company, employs 18 persons. We operate as wholesalers furnishing yellow pine to Koppers. We have made arrangements with Brunswick Lumber Co., of Alberta, Va., to cut and ship this lumber. Brunswick Lumber Co. has approximately 55 employees. The lumber is being trucked by a small trucking company employing, we understand fewer than 100 employees.

S. 3096 if amended as suggested in paragraph 2 will grant relief to hundreds of small business concerns related to the forest products industry by permitting our customers, like Koppers Co., Inc., to participate as prime contractors in the sale of treated lumber and related products to the Government.

Very truly yours,

A. J. DIEBOLD, JR., *President.*

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DALLAS, TEX., *May 28, 1962.*

HON. A. WILLIS ROBERTSON,  
*Senate Office Building, Washington, D.C.*

DEAR SENATOR ROBERTSON: There are pending two bills (S. 1363, the Metcalf bill, and S. 3096, the Williams bill) which would exclude construction from the Small Business Administration practice of setting aside the low bid on a project if it is made by a "large business" and giving the job to a higher bid as long as it is made by a company which they consider a "small business."

As you can readily understand, this practice is open to much arbitrary interpretation as to which bids will be set aside and as to which businesses will be considered large and which small.

To be fair to the construction industry, and to save money for the taxpayers of this country, the only practical action is to exclude the construction industry from this practice by the Small Business Administration. There is not this much difference in construction companies, and if we are to retain as much free enterprise in this country as possible, this practice must be abolished in the construction industry.

Since you are on the Senate Banking and Currency Subcommittee, which I understand will hold a hearing on these bills the latter part of this month, I would appreciate anything you could do to get these bills out of committee so that favorable action may be taken on them.

Thank you for your help.

Sincerely,

P. W. GIFFORD.

GLOBE GLASS MANUFACTURING CO.,  
Chicago, Ill., May 10, 1962.

Re Senate bills S. 1363 and S. 3096 designated as "amendments to the Small Business Act."

HON. A. WILLIS ROBERTSON,  
Senate Office Building, Washington, D.C.

MY DEAR SENATOR ROBERTSON: The writer has been advised that hearings on the above bills have been scheduled before your committee on May 16, 1962.

For some time we have been engaged in submitting bids for U.S. Government requirements of safety glass. We have, at certain intervals, received contracts based on these bids. We have likewise been subjected to set-aside orders on our bids when it has been determined that a plant in an area suffering unemployment should have the right to participate in a contract on the basis of our bid.

As a small business concern the benefits that we have received through allotment of contracts to us has been of help, and, by the same token, the set-aside orders for allocation to unemployment areas has adversely affected us to a material degree.

All of the small business concerns bidding for safety glass are firms that buy their raw glass from "big business" manufacturers, who are in general also manufacturers of safety glass which they sell in competition with these small business firms.

These small business firms are completely at the mercy of their raw glass suppliers in controlling their costs. In recent months these raw glass manufacturers have raised the price of raw glass without raising the price of safety glass, thereby putting a squeeze on the safety glass manufacturer by increasing the cost of a finished product while, at the same time, holding down the selling price of the finished product.

The difficulties that small business encounters in this field has in some measure been helped by the program wherein the Government has adopted the statutes pertaining to aid to small business.

The pending Senate bills above mentioned, which has been introduced as amendments to the Small Business Act will, if adopted, completely destroy the aids that the adoption of the Small Business Act made available to small business.

These pending bills seek to change the purpose of the present statutes so that they become statutes—

- (1) For the aid of all business instead of small business;
- (2) For the furtherance of the antitrust and monopoly laws pertaining to all business (without special consideration of the needs of small business); and
- (3) Which will provide for methods of reporting business activities that will be available for study long after a substantial number of small business establishments will be out of business.

A careful analysis of these pending bills will disclose that they are bills to prevent help to small business, and instead of being labeled as "Amendments to the Small Business Act," they should be called bills to deprive small business of the aid available under the Small Business Act.

As the head of a small business, the writer respectfully requests that your committee reject the above pending bills.

Sincerely yours,

MORRIE KELLMAN, *President.*

CHICAGO, ILL., June 6, 1962.

Re Senate bills 1363 and 3096.

HON. A. WILLIS ROBERTSON,  
Senate Office Building, Washington, D.C.:

Bid of Pittsburgh Plate Glass on bid No. DSA-4-62-1387 issued by Defense General Supply Center, Richmond, Va., for laminated safety glass type 1, size 1/4 by 36 by 48 inches is below price that small-business laminator can manufacture product based on need to purchase raw glass for finished product. Removal of set-aside for protection of small business will intensify and aggravate difficulty of small business in competing with large business when small business is dependent for raw ingredients on large business competitor who controls raw material.

GLOBE GLASS MANUFACTURING Co.,  
MORRIE KELLMAN.

THE GOLDSTON Co., INC.,  
Corpus Christi, Tex., May 22, 1962.

HON. A. WILLIS ROBERTSON,  
U.S. Senate, Washington, D.C.

DEAR SIR: We ask you not to remove the construction industry from the small business set-aside (S. 1363 and S. 3096).

We are not in sympathy with the views of our association in this matter.

It was our understanding that when the small business set-asides first came into being the limit was around \$500,000. This, in some manner, was upper to around \$5 million. The contract of \$5 million is small business to a great number of contractors in the construction industry but to a greater number of contractors it is decidedly big business. It is our personal opinion that this group of contractors in the construction industry who would be helped by the \$500,000 or less set-asides is the group that should be protected by the small business set-asides.

Thanking you for your consideration.

Sincerely yours,

W. M. GOLDSTON.

GREEN CONSTRUCTION Co.,  
Oaktown, Ind., April 12, 1962.

HON. A. WILLIS ROBERTSON,  
Chairman, Senate Banking and Currency Committee,  
U.S. Senate, Washington, D.C.

DEAR SENATOR ROBERTSON: This letter is written to express my growing concern in regard to small-business qualification and the size and number of construction projects which are being limited to bidders qualifying as small-business concerns.

As an individual I operate Green Construction Co. and Green Coal Co., two independent and entirely separate companies in every respect, except that they are both owned by me, an individual. Each is located differently, has its own recordkeeping, methods of operating, etc., and are completely independent of each other.

Green Coal Co. does a gross business each year amounting to about \$3 million and Green Construction Co. grosses about \$3½ million annually. For purposes of classifying us as a large or small business the total gross of the above two have been added together, resulting in a total sufficiently large to eliminate us from classification as a small business.

The type of construction work which we have been doing for the past 20 years, and upon which we are dependent, is now restricted to small business. This includes many multi-million-dollar contracts.

What are we to do in order to continue in business? We operate in an area which has been designated a labor surplus area for many years, furnishing considerable continuous employment. Are we not important or not wanted, in the present scheme of things?

Furthermore we have a highly efficient organization with a record of being very competitive, which should be of interest in Federal construction because of the ultimate savings of taxpayers' money.

This is a very real and pressing problem to us and to other contractors in the construction industry, and I believe to you and your committee as well as our country at large. We urge your immediate attention in correcting this unwholesome situation.

Very truly yours,

ROBERT E. GREEN, *Owner.*

QUINCY, ILL., June 5, 1962.

Hon. A. WILLIS ROBERTSON,  
*Chairman, Senate Banking and Currency Committee,*  
*Senate Office Building, Washington, D.C.*

DEAR SENATOR ROBERTSON: I have followed with a great deal of interest the activities of the Small Business Administration, particularly as they affect the construction industry.

The Small Business Act, as it is being administered by our Federal Government, sets aside certain construction work and reserves that work arbitrarily for contractors designated as "small business." Theoretically, the assistance and protection of small business appears to be good. Practically, it accomplishes a further governmental interference with free competition.

The Small Business Administration overlooks the fact completely that the overwhelmingly majority of construction firms are small business. It appears to create, deliberately, inadequate-financed competition in place of established and fully experienced construction companies. It ignores completely the long-established American procedure, under which all public works construction is bid and awarded under open competition, such awards being made to the lowest responsible bidder after public advertisement. Over the years this policy has proven to be the most effective way to obtain economical bids and has offered the maximum protection in the expenditure of public funds. Yet this policy of competitive bidding has been discarded in the Small Business Administration's set-aside program, taking more unnecessary dollars away from the greatly overburdened American taxpayer.

It is apparent that Small Business Administration, by its public statements and rulings, intends to continue its unnecessary and unwise regulation of the construction industry. It is my understanding that several bills to remove construction from the SBA set-aside program have been introduced in the current session of Congress.

To eliminate a continuation of further Government interference in our free competitive system at additional cost to the taxpayer, I urge you to support the above-mentioned legislation when it comes up for consideration.

Sincerely yours,

G. W. GUTENKUNST.

HAGLER CONSTRUCTION Co.,  
*Dallas, Tex., May 21, 1962.*

Hon. A. WILLIS ROBERTSON,  
*U.S. Senate, Washington, D.C.*

SIR: We are very interested in the Small Business Administration legislation before Congress. We have not been in the market for, nor do we intend to seek, SBA financing; however, we support the SBA, for it has been through this agency's efforts that Government prime contracts have been submitted for bids in the size that most small business could bid on. A few years ago we found ourselves cut out because small jobs were lumped together as one bid.

We are well aware that the National Association of General Contractors are fighting the SBA; but after our conversation with other contractors, we believe that this opposition is primarily supported by the very large contractors.

Very truly yours,

ALVIN R. HAGLER.

INTERNATIONAL UNDERWRITERS OF AMERICA,  
*Walla Walla, Wash., May 25, 1962.*

Hon. A. WILLIS ROBERTSON,  
*U.S. Senate,*  
*Washington, D.C.*

DEAR SIR: This letter is written to protest the methods used by the SBA in the getting of bids for construction jobs.

We urge the early passage of legislation which will help in effect to free the construction industry from the harassment by the SBA. Any one of the 15 bills presently before the House could accomplish this end.

We trust that speedy action can be taken to overcome this problem.

Very truly yours,

JOHN MCCARTNEY, *President.*

FREDERICK JOHNSON CO.,  
*Seattle, Wash., May 25, 1962.*

Senator A. WILLIS ROBERTSON,  
*Chairman of Banking and Currency Committee,*  
*Washington, D.C.*

DEAR SIR: As a very small investor in one of the larger and more responsible contracting firms in the United States, I would like to point out some of the evil results resulting from the practices of the Small Business Administration in their program of set-asides.

As you may realize, the contracting business is always highly competitive; and I do not believe that the taxpayers should be penalized in order to promote the interest of certain smaller and often irresponsible contracting firms. There are many instances already where the larger and more capable contractors have been shut out from contracts in order to favor the so-called small business operator, and the taxpayers have been penalized accordingly.

As we understand it the object of the Small Business Act has been to promote competition in various industries. If in the case of the contracting firms, there is any collusion in bidding, the Government agencies have ample protection against such practices; but in general we believe that Government contracts and Government purchases should be awarded to those who operate most efficiently and can do a job or supply a given material for the least cost to the taxpayer.

This has reference to the several bills before your committee to remove construction from the SBA set-aside program.

FREDERICK JOHNSON.

LARDNER & WICH, INC.,  
*Baltimore, Md., May 25, 1962.*

HON. A. WILLIS ROBERTSON,  
*Senate Banking and Currency Committee,*  
*U.S. Senate,*  
*Washington, D.C.*

DEAR SIR: May we express to you that we are highly in favor of S. 1363 and S. 3096, respectively, which exempt construction from the set-aside program of the Small Business Administration.

We feel very strongly that the SBA construction set-aside program is no good for the industry, and, therefore, we urge you to favor the passage of these bills.

Very truly yours,

JOHN F. WICH, *President.*

R. E. LEE & SON, INC.,  
*Charlottesville, Va., April 20, 1962.*

HON. A. WILLIS ROBERTSON,  
*Senate Office Building,*  
*Washington, D.C.*

MY DEAR SENATOR: We do not like many aspects of the Small Business Administration program and hope you will lend your support to the proposals now before Congress that will exempt construction from SBA set-asides.

Let me emphasize that my business is small business and it is unlikely ever to attain big-business status as now defined by SBA.

The set-asides are completely unessential in construction. Nearly all of our competitors are small. The elimination of the rare big-business contractor will scarcely add to our business but it can and has added substantially to the cost of certain projects. Eventually it can have the effect of breaking up the large organizations that are essential to perform some of the huge projects that must be done upon occasion.

Sincerely,

R. E. LEE.

EUGENE LUHR & Co.,  
Columbia, Ill., April 11, 1962.

Hon. A. WILLIS ROBERTSON,  
Chairman, Senate Banking and Currency Committee,  
U.S. Senate, Washington, D.C.

SIR: Our firm has been watching with great interest the developments of the Small Business Administration's shackling effect on the Nation's construction industry. It seems that with each passing day the SBA is becoming more drunken with power and is rapidly destroying one of our American heritages of free enterprise. This power being exercised by the restrictions imposed upon the construction industry is, in our opinion, gravely undermining the Nation's economy.

In the past several years the industry has experienced more competition than at anytime previous. More contractors are submitting bids on each project and the competition is very keen. Still the SBA is advocating more competition in its set-asides. While the administration is trying to balance the budget and economize, the SBA makes loans with the stipulation that the borrower be turned down by at least three commercial lending institutions. Does the lending of money to such a risk make for sound economy? Why should the long-established and successful contractors be penalized and discriminated against to subsidize inexperienced competition?

It is our understanding that originally the set-asides were to be limited to those projects of \$50,000 or less, then they were raised to \$500,000, now they seem to be unlimited as evidenced by the attached list of bid abstracts on recent projects. Unless the aspirations of SBA are checked within a reasonable length of time, we feel that they will achieve their apparent goal of wrecking the construction industry and the principles upon which it has been built.

Certainly with the 15 bills now in the 87th Congress advocating the removal of the SBA set-aside program from construction industry, you and your colleagues should make every effort to effect an early hearing on this legislation. The Nation as well as the industry can ill afford the continuance of the set-aside program. May we solicit your support and effort in this matter.

Yours very truly,

HARRY H. NIEMANN.

MATICH CORP.,  
Colton, Calif., May 22, 1962.

Hon. A. WILLIS ROBERTSON,  
U.S. Senate, Washington, D.C.

DEAR SENATOR ROBERTSON: At a western chapters' conference of the AGC (Associated General Contractors) recently held in San Francisco the delegates passed, among others, two resolutions, copies of which are enclosed, both directly related to a problem vital to me as an individual, as part owner of a contracting company, and, no less, as president of the southern California chapter of the AGC.

Stripping off the formal terminology from these resolutions our delegates have said in effect that the SBA (Small Business Administration) has disavowed its high purpose to preserve free competitive enterprise by an unwarranted intrusion into a highly important segment of the economy. This invasion by the SBA may very well be the cause of a monumental frustration in our industry by chipping away at a well established and proven and universally accepted method of doing business in a free and competitive system.

Of the many objections to the SBA planned program the most often expressed are:

1. The construction industry is already made up of small business.
2. The set-asides interferes with free competition.
3. The set-asides are costing the taxpayers money.
4. The SBA is not the best judge of the competency of construction work.
5. The SBA has no mandate from Congress for its construction set-aside program.
6. At what point of business and at whose discretion shall a contract be set aside?

These represent only a few of the objections and the many disagreements between our industry and the SBA program. A thorough knowledge and study of the peculiarities of our industry would soon bring to light the fact that enormous sums of money would be dissipated and lost if the SBA program was

permitted to become a factor in our business and would tend to create an imbalance and instability in an otherwise well self-regulated industry.

Once you are fully aware of the consequences of the SBA program I can only ask for your support and to urge other members to support the Moorhead bill (H.R. 10518) and the Senate bills which seek to amend the Small Business Act to exempt construction and other contracts from the set-aside program.

Respectfully submitted.

MARTIN A. MATICH,  
*President, Matich Corp.*

WESTERN CHAPTERS CONFERENCE,  
*April 27, 1962.*

*Be it resolved,* That the delegates to the Western Chapters Conference express their unalterable opposition to the use of public monies to provide traveling expenses and other avenues of propaganda to the representatives of the Small Business Administration. Further, the Western Chapters Conference takes exception to the use of public funds to finance the vicious attacks on the Associated General Contractors by representatives of the Small Business Administration in their trips throughout the country spreading misinformation on the nature of bids submitted by AGC members and attempting to divide the association and the industry into classes of contractors each opposed to the other. We urge our chapters and members to object to these attacks on the industry and the association by voicing their disapproval through their members of Congress and by writing the Bureau of the Budget requesting that funds be no longer made available for these purposes; and be it further

*Resolved,* That the delegates in convention assembled also express their wholehearted support to their congressional delegates, urging their support to the passage of the Moorhead bill (H.R. 10518), which exempts the construction industry from the SBA set-aside program.

JOHN S. MCQUADE CO.,  
*Philadelphia, Pa., May 7, 1962.*

HON. JOSEPH S. CLARK, JR.,  
*U.S. Senate, Washington, D.C.*

DEAR SIR: May I ask your hearty support of legislation now before the Congress to remove construction from the SBA's set-aside program?

This SBA program is a vicious piece of legislation as it pertains to construction. One of the qualifications for a loan being the absolutely unqualified reject of a bank loan by two reputable bankers, whereby if approved the applicant can then compete with successfully organized and operating businesses, is a paradox of the worst kind. The competitive and traditional method of operation within the building industry, so well known to you as a representative of the people and to many segments of our Federal Government, should indicate the immediate propriety of removing from this SBA set-aside program the entire construction industry.

I hope that you will do all in your power to support legislation which will protect our industry, one of the great industries of the country, from the inroads that are being made on its strength and vitality by the unfortunate legislation now on our books. It is perfectly ridiculous for our Government to support unqualified and inept businessmen in a program of contracts and commitments which they have neither the experience to manage and supervise nor the finances to support.

May I count on your good judgment and strong support to remove construction from this SBA set-aside program?

Very truly yours,

JOHN S. MCQUADE, JR.,  
*President.*

PASADENA, CALIF., *May 29, 1962.*

Senator A. WILLIS ROBERTSON,  
*Chairman, Senate Banking and Currency Committee,*  
*Senate Office Building, Washington, D.C.*

DEAR SIR: The purpose of this letter is to solicit your vigorous support of the pending legislation to exempt construction for the Small Business Administration's set-aside program and thereby bring about a return of the competitive bidding system on Government construction contracts.

Early passage of the above legislation will help free the construction industry from the unfavorable practices of the SBA as indicated in numerous recorded cases in the award of construction contracts and which represent an added burden on taxpayers.

Now, as we all know, the strong support of responsible representation in Government is needed to maintain our free enterprise system; therefore, your interest and support of the legislation to change the SBA program in question will be appreciated.

Yours very truly,

W. B. MEEK.

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MORRISON-KNUDSEN CO., INC.,  
Boise, Idaho, April 16, 1962.

HON. A. WILLIS ROBERTSON,  
*Chairman, Senate Banking and Currency Committee,*  
*Senate Office Building, Washington, D.C.*

DEAR SENATOR ROBERTSON: It is our understanding that at present two bills have been introduced in the Senate similar to S. 3096 introduced by Senator Williams which would remove construction from the Small Business set-aside program and remove permanently this blight on the competitive free enterprise system in construction.

We cannot urge you too much to do everything that is possible to bring this matter to committee hearing so that it can be fully and openly debated in the Senate.

We know that the Associated General Contractors of America, of which we are a member and which comprises over 7,000 members, is on record as being opposed to Small Business interference in our competitive system. This may be particularly surprising to you when I tell you that over 85 percent of the members of the Associated General Contractors of America qualify as small businessmen under the existing regulations of the Small Business Administration.

We also have reason to believe that these bills to limit the SBA from the construction industry have the approval and would have the backing of organized construction labor throughout the United States.

I am attaching herewith, for your information, a copy of a pamphlet published by the Associated General Contractors of America on the subject of "What Every Taxpayer Should Know About the Small Business Administration" which, if you have not already read it, I believe will be of interest to you.

Yours very truly,

JAMES D. McCLARY,  
*Executive Vice President.*

(The pamphlet attached to this letter will be found in the files of the committee.)

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FALLS CHURCH, VA., May 21, 1962.

Re S. 1363 and S. 3096.

HON. A. WILLIS ROBERTSON,  
*Senate Office Building, Washington, D.C.*

DEAR SENATOR ROBERTSON: You are urged to vote for S. 1363 and S. 3096 exempting construction from the set-aside program of the Small Business Administration.

Cost to the taxpayer goes up when competition is lessened or eliminated. If bidding is restricted, as it is under SBA policies, construction costs inevitably rise. SBA's Assistant General Counsel has conceded that prices obtained under the set-aside program in construction "are not, admittedly, the lowest possible prices in each and every case."

When the "lowest possible prices" are not obtained through free and open competitive bidding, the taxpayer gets the extra bill.

Your favorable consideration will be greatly appreciated.

Sincerely,

ROBERT A. MOYER.

BILLINGS, MONT., *May 29, 1962.*

Senator A. WILLIS ROBERTSON,  
*Chairman, Senate Banking and Currency Committee,*  
*Senate Office Building, Washington, D.C.*

DEAR SENATOR ROBERTSON: It is extremely urgent that everything possible is done to see that legislation is enacted exempting construction from Small Business Administration's set-aside program.

Facts prove that an overwhelming majority of the construction jobs, both civilian and military, administered by the Corps of Engineers for the Department of Defense are already done by small business enterprises without any help from SBA.

Preventing other firms from submitting bids on such work is another way in which Federal Government is stifling the very competition it purportedly promotes by its fair trade investigations. Low-bid figures submitted by capable contractors, and rejected because they didn't fit the SBA qualifications, indicate the Small Business Administration's set-aside program is more costly to taxpayers than if their interferences were prohibited.

Your attention toward preventing further use of this program is urgent.

Yours very truly,

D. O. NASH.

PARK RIDGE, ILL., *May 29, 1962.*

HON. A. WILLIS ROBERTSON,  
*Chairman, Senate Banking and Currency Committee,*  
*U.S. Senate, Washington, D.C.*

DEAR SIR: Although I am not personally involved in the construction industry, I was surprised to learn of the Small Business Administration's set-aside program.

To me this is another encroachment of the Federal Government in the field of private business, providing subsidy to marginal contractors at the expense of the taxpayer.

It is my understanding that in addition 84 percent of the firms participating in Federal construction work, either as prime contractors or subcontractors, meet the SBA definition of "smallness." Further, I understand prime construction contractors subcontract approximately one-third of their Government work to other firms. In building construction, an average of about one-half the work is subcontracted.

I urge you to favorably consider legislation which has been introduced to exempt construction from SBA's set-aside program, which I feel is necessary to bring about a return of the competitive bidding system in Government construction contracts. I understand that some 15 bills have been introduced by both Democrats and Republicans from all parts of the country to accomplish this result.

Yours very truly,

MAURICE A. NELSON.

NORAIR ENGINEERING CORP.,  
*Washington, D.C., May 21, 1962.*

Senator A. WILLIS ROBERTSON,  
*Senate Office Building, Washington, D.C.*

DEAR SENATOR: I strongly urge you to support two bills which exempt construction from the set-aside program of the Small Business Administration. These bills are S. 1363 and S. 3096.

The people of the Small Business Administration are not familiar with the construction industry. They have absolutely no conception of how a building is constructed and what portion subcontractors and suppliers participate in the construction of a large building. If they did know they would realize that the majority of subcontractors are small business. The general contractor in many cases must be a large business with sufficient capital to pay the subcontractors' costs and pay suppliers' bills when they are due. The mere fact that a general contractor might be low bidder on three or four \$5 million projects within a year does not really classify him as a large business which controls a considerable part of the industry.

Competitive bidding in the construction industry does not favor a large business. To the contrary, small businesses, due to less overhead, can often underbid a large corporation.

The Associated General Contractors of America have made a survey of many Government jobs wherein the bid of a contractor was classified as a big business and was rejected, and the job subsequently given to the second or third bidder. These records indicate that taxpayers are being subjected to millions of dollars of additional expense due to this arbitrary action. Many construction agencies now have seen that small business set-asides can seriously affect their construction program and have readvertised in several instances eliminating the small business requirement. Taxpayers are entitled to the lowest possible price obtained through free and open competitive bidding.

The Small Business Administration is a detriment to the country with regard to the construction industry and every effort should be made on your part to eliminate this industry from small business set-asides.

I would greatly appreciate your efforts in this direction.

Very truly yours,

RICHARD H. NORAIR.

BOISE, IDAHO, May 29, 1962.

Hon. A. WILLIS ROBERTSON,  
U.S. Senate, Washington, D.C.

DEAR SENATOR ROBERTSON: Fifteen bills to remove construction from the Small Business Administration set-aside program are reported to have been introduced in the 87th Congress, by both Democrats and Republicans from all parts of the country.

I urge early passage of this legislation as an aid in freeing the construction industry from harassment of SBA.

Set-asides are unnecessary in the construction industry as 90 percent of the Nation's contracting firms fall into the small business category; and most, if not all, of the large firms sublet a goodly portion of their jobs to smaller construction companies.

The principal objection to SBA set-aside program in the construction industry is that costs to the taxpayer are, on the whole, increased without any tangible benefit therefrom.

Further, I object to unwarranted Government tampering with free enterprise by imposing restrictions on open competitive bidding.

Yours very truly,

J. V. OTTER.

PALMBERG CONSTRUCTION Co.,  
Astoria, Oreg., July 2, 1962.

Senator NEUBERGER,  
Senator MORSE,  
Senate Committee on Banking and Currency.

DEAR MADAM OR SIR: I am a small AGC contractor speaking against Senate bills 1363 and 3096.

Our AGC National Newsletter of June 22, 1962, states as follows: "Rising rate of failures in construction may be largely due to mounting labor costs on one hand and keen competition on the other, AGC Executive Director William E. Dunn is quoted as saying in BNA's construction labor report of June 20." On the other hand, our AGC National Newsletter of June 8, 1962, quotes Mr. Fordice, vice chairman of AGC's heavy division, in testimony presented to the Small Business Subcommittee of the Senate Banking and Currency Committee as stating: "In particular, the small business set-aside program in construction is fostering subterfuge, lessening competition, and increasing costs to the taxpayer who pays the bill."

From the foregoing, it would appear that AGC, which admits to being composed of 90 percent small contracting firms, would like to further increase competition in the face of the stated "rising rate of failures in construction." As a small contractor member of AGC, I oppose this attitude in our national organization and I can see no logic in an organization claiming a 90-percent small contractor membership propagandizing against a program instituted for the benefit of small contracting firms, and certainly necessary to them in view of the rising rate of failures.

Yes, subterfuge is being fostered, mainly in the unethical practice of large contractors using small contracting firms to submit bids in their behalf. Controlling legislation is required to eliminate such subterfuges on the part of contractors as well as to eliminate subterfuges practiced by contracting agencies

in combining jobs or job lettings such that the jobs are large enough to be removed from set-aside lists, or combined in such a way that large contracting firms have an advantage in preparing and submitting bids.

The contention that construction set-asides increases costs to taxpayers is ridiculous in view of the keen competition resulting in the aforementioned failures in construction. Mounting labor costs undoubtedly account for some of these failures, but this only supports the necessity of construction set-asides for the small contractor. The additional labor costs required by a small contractor with his small equipment as compared to the large contractor's big equipment results in increasingly higher percentage of labor costs to the small contractor every time another wage increase takes effect. It is Congress which has burdened the small contractor with controlled unionism and these continuing wage increase demands, and the small contractor looks to Congress to preserve his right to earn a livelihood through further controls such as the construction set-aside program of the Small Business Administration until some means of fair competition between large and small contractors can be developed.

I have yet to know of an illegitimate small contracting firm propped up by SBA Government subsidy, as large contractors claim, and I think that if anyone has special preferences in bonding, bidding, negotiating, or performing construction work, it has been the large contractor—and it is about time the small contractor is given some consideration in balancing the picture.

Unfortunately, thousands of small contracting firms, some AGC members like ourselves, and many non-AGC members, do not have the training, the time, or the personnel to express themselves against Senate bills 1363 and 3096 such as we are endeavoring to do. We feel that you know this and will act accordingly in connection with these bills.

Very truly yours,

H. G. PALMBERG.

W. H. PATTERSON & Co., INC.,  
Baton Rouge, La., May 4, 1962.

Senator WILLIS ROBERTSON,  
Senate Office Building, Washington, D.C.

DEAR SIR: In the beginning let me say that W. H. Patterson & Co., Inc., is a firm of small road contractors never doing in excess of \$2½ million worth of work in a year.

I note that the Subcommittee on Small Business of the Senate Banking and Currency Committee will hold a hearing on S. 1363 and S. 3096, purpose of which is to remove SBA set-asides in the construction industry, on May 16. For your consideration, I respectfully submit the following information.

The construction industry as a whole is in its weakest financial condition since the depression, due in the main to intense, and partially irresponsible, competition. The construction industry has served the American public and saved it more money than any single industry, due to the proven principle of awarding to the lowest responsible bidder on public and private work. The industry now, and as in the past, subcontracts to other firms a great percentage of its work.

The apparent efforts of the Small Business Administration to enlarge its sphere of influence are, and can only be, detrimental to the public good. Its efforts to arbitrarily define small contractor and award construction to firms who meet this arbitrary definition can only result in untold increases in cost to the American public.

The idea of inexperienced bureaucrats trying to force upon a technical industry a complete change in its historic policy to the detriment of the American public seems, at this time in our history, to be utterly indefensible.

It is most certainly obvious that our tax dollars are not at this time sufficient to meet the requirements of Government for other programs which are certainly more defensible than is the policy of the SBA. The idea of using much needed public funds to increase the cost of construction at this time in our national history seems to me to be irresponsibility at its very worst.

Your clear thinking and support of efforts to remove the activities of the SBA from construction will be sincerely appreciated by the writer, and by your constituents once they stop to realize the issues involved. This appears to be one place that some money from the taxpayers could be conserved. Thank you for your consideration.

Very truly yours,

E. V. PATTERSON, JR.

ARLINGTON, VA., June 4, 1962.

HON. A. W. ROBERTSON,  
*Chairman, Senate Banking and Currency Committee,*  
*U.S. Senate, Washington, D.C.*

DEAR SENATOR ROBERTSON: I am writing to you with regard to the following two bills designed to exempt construction from the set-aside program of the Small Business Administration:

S. 1363, introduced by Senator Metcalf, Democrat, of Montana.

S. 3096, introduced by Senator Williams, Democrat, of New Jersey.

I understand that public hearings on these bills will be held by your committee in the near future.

As a voter of long standing from the State of Virginia and as an American citizen concerned, nay, alarmed by the rising cost of Government as to clearly stated by our Senator Byrd a few days ago, I request of you and I urge you to do all in your power to assure passage of these two bills.

There is a wealth of evidence which has been and/or will be presented to your committee to prove that the set-aside program of Small Business Administration for the construction industry is unnecessary. The small construction firms, as prime contractors or subcontractors, are now receiving a large share of the Government contracts let. Competition in the construction industry is as keen as ever. In fact, construction firms are born in competition and live by competition.

Ignoring this intrinsic characteristic of the construction industry, the bureaucrats of the Small Business Administration have established such arbitrary policies that result in the restriction of competition and the consequent added costs to taxpayers. They have devised the system of set-asides and direct loans to men who think they would like to get into construction but may be unable to obtain credit from regular lending institutions. This "entrenched" Government agency reaches out for more and more Government regulation of the construction industry. To add insult to injury, its field representatives use their time (paid by the taxpayers money) to lobby against any bills designed to curtail their activities, false mandates, and arbitrary decisions.

I cannot afford a lobbyist. I will never use public funds for lobbying. However, I possess a more effective weapon where the interest and welfare of my country is concerned. I can humbly address myself to my Senator, my voice on Capitol Hill, and ask him to raise his voice and use his power to protect the interest and welfare of the American citizen and taxpayer. This I am doing now, Senator, and your long brilliant record of public service, convinces me that I could place my trust in no better hands.

Very truly yours,

JAMES C. PEARSON.

FRUITLAND, IDAHO, May 24, 1962.

Senator A. WILLIS ROBERTSON,  
*Washington, D.C.*

DEAR SENATOR: We strongly support any legislation that will remove construction from the tactics and harassment of the Small Business Administration.

We feel as though the set-aside program as presently administered is unnecessary and very unfair to the entire business of construction.

We do not favor Medicare under social security, as we feel only those people who are unable to pay their own expenses should receive help. The tax burden would be too heavy on the young people. Our age is 64 years.

Yours truly,

Mr. and Mrs. A. H. SCHLATEMAN.

MENLO PARK, CALIF., May 28, 1962.

HON. A. WILLIS ROBERTSON,  
*Chairman, Senate Banking and Currency Committee,*  
*Washington, D.C.*

DEAR SIR: Along with others I wish to protest Small Business Administration's frequent rulings regulating the construction industry and urge you to use your influence to remove construction from SBA's set-aside program by enactment of the bills now before Congress to do just that.

Yours in fairness to the construction industry.

HELEN P. SMITH.

SAN FRANCISCO, CALIF., May 31, 1962.

Senator A. WILLIS ROBERTSON,  
*Chairman, Senate Banking and Currency Committee,*  
*Washington, D.C.*

Representative BRENT SPENCE,  
*Chairman, House Banking and Currency Committee,*  
*Washington, D.C.*

GENTLEMEN: I am taking the liberty of writing you in protest to anticipated plans of the Small Business Administration insofar as they affect the construction industry.

The Small Business Act, as currently construed by the U.S. Government, prevents larger contractors from being awarded construction work which is arbitrarily "set-aside" and reserved exclusively for contractors designed as "small business." This is particularly true on work being contracted by the Department of Defense.

It is my estimation that the SBA is not only spending tax dollars to restrict competition in the highly competitive construction industry, but in so doing the construction cost may exceed that if the contracts were placed for competitive bid. Competitive bidding has always proved the most beneficial to industry and taxpayer and feel that the SBA is usurping considerable powers in attempting to draw lines on who will and will not participate in the Nation's defense construction.

In addition to this, the SBA is spending considerable tax dollars to print and distribute thousands of pieces of literature for the sole purpose of combating proposed legislation exempting the construction industry from the provisions of the Small Business Act.

Stifling of competition hurts all contractors, small and large and this Nation has been based on a competitive free enterprise system that has made us history's greatest country. Now, along comes a few poorly informed men that want to destroy the system that has made us great.

Hoping that you gentlemen will find it possible to bring your influence and the influence of your committees to bear in this instance and return to the competitive open bidding system.

Respectfully yours,

E. R. WARREN.

WINSTON BROS. CO.,  
*Minneapolis, Minn., May 28, 1962.*

Re legislation to exempt the construction industry from the Small Business Administration set-aside program.

SENATE BANKING AND CURRENCY COMMITTEE,  
*Congress of the United States of America,*  
*Washington, D.C.*

(Attention: Hon. A. Willis Robertson, Senator; chairman).

GENTLEMEN: There are, or soon will be, some 15 separate bills up for consideration by your Banking and Currency Committee, all of which are aimed at removing construction contracts from the set-aside program of the Small Business Administration (under sec. 2(a) of the Small Business Act). Our company favors the purpose of these bills and urges that they be given favorable consideration by your committee.

We are a firm with a history of 87 consecutive years of continuous activity in the construction industry. Our status in the industry, by any normal trade criteria, though admittedly not by the criteria prescribed in the SBA regulations, is that of a small business concern. Even under the latter criteria we are "big" business only by reason of our being fortunate enough to have exceeded the maximum average amount of receipts during the past 3 years which, under SBA regulations, would qualify us as a small business concern. Our firm is independently owned and operated, and is most definitely not dominant in our field of operation.

We are decidedly and unalterably opposed to the vicious, unwarranted, arbitrary, and discriminatory effect of the SBA set-aside program as now applied to the construction industry. Our reasons for this position, based upon our long experience in the industry and our observation of the operation of the SBA set-aside program are:

1. Such a set-aside program is an interference by Government in the normal competitive free enterprise system and should not be tolerated in the absence of compelling reasons based upon protection of the public interest, which does not exist.

2. The American construction industry is and always has been most highly competitive without recourse to Federal statutory intervention; hence any SBA set-aside program is not needed.

3. The SBA set-aside program is admittedly discriminatory, favoring one segment of the industry (so-called small business) and against another (so-called big business), where no such discrimination is justified, and it violates the traditional concepts of our free enterprise system.

4. Instead of encouraging competition, its stated and only justifiable objective, the SBA set-aside program restricts competition by eliminating so-called big business from the competitive market on all construction which is set aside.

Therefore we wish to register our opposition to the SBA set-aside program in the construction industry and our support of the proposed legislation to exempt our industry from it. The several bills which have that effect and which we support are:

S. 1363	H.R. 10563	H.R. 10744
S. 3096	H.R. 10581	H.R. 10754
H.R. 3690	H.R. 10653	H.R. 10806
H.R. 5092	H.R. 10683	H.R. 10846
H.R. 10518	H.R. 10709	H.R. 11008

Respectfully yours,

R. C. BALCH, *Secretary.*



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H. C. HARRIS, NEW YORK

